

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

1991 MAY -3 AM 11: 37

OFFICE OF THE SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Department of Education TITLE NUMBER: 126

RULE TYPE: Procedural; CITE AUTHORITY 18A-3-2

AMENDMENT TO AN EXISTING RULE: YES x NO     

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 155 (Policy 5203)

TITLE OF RULE BEING AMENDED: Rules of Procedure for Certification  
Appeals Board

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:                     

TITLE OF RULE BEING PROPOSED:                     

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 13, 1991 AT 12:00 noon. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Howard Kardatzke, Director  
Office of Professional Education  
WV Department of Education  
Capitol Complex, Bldg. 6, Room B-337  
Charleston, WV 25305-0001

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Barbara L. Easty  
May 3, 1991

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

FISCAL NOTE WORKSHEET

HD NO \_\_\_\_\_ DRAFT NO \_\_\_\_\_ BILL NO \_\_\_\_\_ RESOLUTION NO \_\_\_\_\_

SUBJECT Policy 5203: Rules of Procedure  
for Certification Appeals Board FUND \_\_\_\_\_

SOURCE OF REVENUE:  GENERAL  SPECIAL  OTHER (SPECIFY) \_\_\_\_\_

COST ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) \_\_\_\_\_

INCOME ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) \_\_\_\_\_

SHOW OVER-ALL EFFECT IN ITEMS 1 AND 2 AND ITEM 3 GIVE EXPLANATION OF BREAKDOWN BY FISCAL YEAR INCLUDING LONG-RANGE EFFECT

EFFECT OF PROPOSAL	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
1. ESTIMATED TOTAL COST	\$	\$	\$	\$	\$
PERSONAL SERVICES	\$	\$	\$	\$	\$
CURRENT EXPENSES					
REPAIRS AND ALTERATIONS					
EQUIPMENT					
OTHER					
2. ESTIMATED TOTAL REVENUES	\$	\$	\$	\$	\$

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

IMPACTS  
FISCAL: NONE

STATE STAFF:

DATE \_\_\_\_\_ AGENCY \_\_\_\_\_ AUTHORIZED REPRESENTATIVE \_\_\_\_\_

## EXECUTIVE SUMMARY

### Proposed Revisions to Policy 5203: Rules of Procedure for Certification Appeals Board

#### Purpose

Policy 5203 identifies the procedures for the nine-member Certification Appeals Board which hears appeals from individuals who have been denied West Virginia professional certification.

#### Background

The Certification Appeals Board was created in July 1988 to hear appeals on certification denials. For the most part, the Board's review and decisions are based on West Virginia Board of Education regulations and/or State Code provisions. The Certification Appeals Board may, however, render a decision based on extenuating circumstances if current State Board policy is judged detrimental to the quality of the professional personnel employed in West Virginia public schools. By a State Board amendment adopted at its April 1991 meeting, the decision of the Appeals Board may be reviewed by the State Superintendent of Schools who may sustain or overturn the Board's action.

#### Proposed Revisions

The proposed revisions in Policy 5203 are editorial in nature. They either provide minor language changes, e.g. Board of Regents to Board of Directors or Trustees, or transfer narrative related to the Certification Appeals Board from Policy 5202, Minimum Requirements for the Licensure of Educational Personnel to Policy 5203.

#### Impact of Change

##### Instruction

None

##### Leadership

None

##### Financial

None

##### Staff Development

None

Administrative

The proposed consolidation of narrative related to the appeals process into one policy rather than distributed between Policy 5202 and Policy 5203, should facilitate referral to the appeals procedures.

HK:rk:2819g/HK21

TITLE 126  
~~LEGISLATIVE RULE~~  
WEST VIRGINIA BOARD OF EDUCATION  
CHAPTER 18A-3  
SERIES 155  
POLICY 5203

Title: Rules of Procedure for Certification Appeals Board  
(Policy 5203)

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Section 1. Background General

~~Section-2-~~

1.1 Purpose - The purpose of the Certification Appeals Board is to provide an appeals process for individuals related to interpretations of certification regulations in order to allow an objective review of issues and decisions.

1.2 Authority - West Virginia Code 18A-3-2 grants authority to the State Superintendent of Schools "to issue certificates valid in the public schools of the State in accordance with standards and requirements approved by the State Board of Education". This policy outlines the appeal process for persons who have been denied certification.

1.3 Filing Date -

1.4 Effective Date -

1.5 Repeal of Former Rule -

Section 3. 2. Jurisdiction

2.1 The Certification Appeals Board obtains jurisdiction to hear an appeal ~~from~~ from an individual to whom ~~certification of~~ licensure has been denied, upon referral ~~pursuant to West Virginia Board of Education Policy 5202~~ from the ~~State~~ State ~~superintendent of schools~~ superintendent of schools. The Appeals Board does not have jurisdiction to review certificate revocations ordered by the state superintendent of schools.

2.2 ~~If--~~ The Certification Appeals Board may determines that extenuating circumstances exist and agree that current state board of education policy is detrimental to the quality of the professional personnel employed in West Virginia public schools, ~~it may~~ and base its decision on factors outside the current regulations. In such cases, the Certification Appeals Board must notify, in writing, the Council on Professional Education of its decision and the rationale for such decision. These decisions shall not be ~~considered changes in~~ considered changes in current operating procedure and regulations until such time as they are officially adopted by the ~~West Virginia state~~ state ~~board of~~ board of education.

Section 3. Appeal Process for Individuals

3.1 An individual who has been denied licensure by the West Virginia Department of Education or a recommendation for licensure by the designated recommending party may appeal in writing to the state superintendent of schools within thirty (30) days of the written notice for any of the following reasons:

- a. Acceptance of professional experience in lieu of the professional education performance assessment.
- b. Appropriateness of work experience when it is designated as a prerequisite for a specific specialization or license.
- c. Decisions on equivalency of out-of-state programs to West Virginia standards, and
- d. Decision based on state board of education policies related to the preparation and certification of educational personnel.

3.2 An individual whose opinion differs with the college's credential evaluation regarding the number of required program hours and/or competency assessment may appeal in writing to the college's established appeals panel. If the individual is not satisfied with the appeals panel's findings, he/she may appeal to the state superintendent of schools within thirty (30) days of the written decision.

Section 4. Definitions

4.1 "Appeal" shall mean a written request to the S state S superintendent of S schools submitted by an individual for: a) a review of erroneous a contested credential evaluation or interpretation of regulations in required courses or credit hour s requirements or b) a review of the competency assessment by a college + or c) a review of a perceived erroneous transcript analysis of credentials or interpretation of regulations by the West Virginia Department of Education; -or leading to a denial of certification-or licensure to teeah serve in the public schools of West Virginia, or d) the issuance of a lower level credential license alleging that certification-or than expected by the applicant. should be-granted-based-upon-appropriate-professional-experience-in lieu-of-the-professional-education-performance-assessment; prerequisite-teaching-experience;-and,-equivalency-to-West Virginia-Standards-for-individuals-from-out-of-state-and-or these-seeking-additional-endorsements-

4.2 "Appeals Board" shall mean the Certification Appeals Board.

4.3 "Day" shall mean a calendar day.

- 4.4 "Hearing" shall mean that part of a session devoted to the taking of evidence or presentation of argument during the Appeal Board's adjudication of an appeal.
- 4.5 "License" shall mean the term used to collectively recognize any or all of the documents issued by the S state S superintendent of S schools under the state law and regulations of the West Virginia--B state board of E education which empowers an individual to perform designated services within the public schools.
- 4.6 "Responding Party" means the West Virginia Department of Education or an I institution of H higher E education whose transcript analysis, or credential evaluation, or interpretation of state board of education regulations is contested by the appellant.
- 4.7 "Review of the record" shall mean the process of adjudicating an appeal on the basis of the request for review, the response of the responding party, and any other documentation submitted by the parties, without resort to a hearing, and entry of a written decision based upon the law, regulations and record, as a whole.
- 4.8 "Session" shall mean a formal meeting of the Appeals Board for the purpose of adjudicating one or more appeals by hearing or by review of the record, or for the purpose of conducting other business related to the mission of the Appeals Board.
- 4.9 "State Board of Education" shall mean the West Virginia Board of Education.

Section 5. Eligibility Certification Appeals Board Membership and Eligibility Criteria

- 5.1 Members of the Certification Appeals Board shall include: the president and president-elect of the West Virginia Council on Professional Education, one (1) college certification officer appointed by the West Virginia Board of Regents, Trustees or Directors; one (1) county personnel/certification officer appointed by the West---Virginia state B board of E education and five (5) teachers. The five (5) teachers shall be randomly selected by computer from the elected staff development council membership of each county,--t Three (3) teachers shall te represent general education [one (1) from each programmatic level] and one (1) each from special education and vocational education.
- 5.2 The president and president-elect of the West Virginia Council on Professional Education are ex-officio members of the Appeals Board.
- 5.3 A college certification officer must be presently serving as certification officer of a public college or university in West Virginia and be duly appointed by the West Virginia Board of Regents- Directors or Trustees.

5.4 A county personnel/certification officer must be presently serving as the personnel officer or certification officer of a county board of education in West Virginia and be duly appointed by the state board of education.

5.5 A Each teacher representative must be ~~a person who~~ possess es a valid professional teaching, service or vocational certificate, and be duly elected to the staff development council of his/her respective county.

Section 6. Terms of Members

6.1 The president and president-elect of the West Virginia Council of Professional Education, who serve as ex-officio members of the Appeals Board ~~ex-officio~~, shall continue as Appeals Board members for ~~so~~ as long as they hold their respective offices on the West Virginia Council on Professional Education.

6.2 Membership on the Appeals Board for the appointed members shall be for a three-year term ~~---Provided, however, that during the transitional period, the seven (7) appointed members shall be appointed for staggered terms in which two (2) members shall be appointed for one-year terms expiring June 30, 1989; two (2) members shall be appointed for two-year terms expiring June 30, 1990; and three (3) members shall be appointed for three-year terms expiring June 30, 1991. Thereafter, each appointee~~ The term shall commence a full three-year term beginning on July 1 of the then current year and continue ing until June 30 of the third (3rd) year thereafter.

6.3 Should any member of the Appeals Board die, resign or otherwise become ineligible to complete her/his term, the agency responsible for appointment of said member shall ~~appoint~~ appoint a replacement member with appropriate qualifications to replace ~~represent~~ the area or programmatic level of the member whose seat has been vacated for the remainder of the unexpired term of said member.

Section 7. Election of Chairperson

7.1 At its the initial meeting, ~~and at the first meeting of~~ each school year, ~~thereafter,~~ the members of the Appeals Board shall elect a chairperson from among themselves who shall serve for a term of one year, ~~beginning July 1, 1988, and~~ The chairperson's term will expire ing on June 30, 1989, of that school year. ~~or until the new chair is elected at the next scheduled meeting.~~

7.2 The chairperson may be reelected to a second consecutive term, but he/she is not eligible to serve as chairperson for a third consecutive term.

- 7.3 If the chairperson is unable to attend a session, or is ineligible to participate in the adjudication of an appeal involving his/her employer, the Appeals Board shall elect a temporary chairperson to preside over the session, hearing or review, as the case may be, in the absence of the regularly elected chairperson.

Section 8. Quorum

- 8.1 A majority ~~of the members~~ of the Appeals Board members eligible to participate must be present in order to convene a session of the Appeals Board or to take any official action. Normally, at least five (5) members must be present to constitute a quorum. However, if a member is ineligible to participate in an appeal because she/he is a party, that member's seat shall not be counted among the number of members eligible to participate, and shall not be considered in the calculation of a quorum. Vacant seats shall not be considered in the calculation of a quorum.

Section 9. Meetings

- 9.1 The Appeals Board shall meet in July or August of each school year to conduct business relating to its governance and to receive an orientation about legal procedures.
- 9.2 The Appeals Board shall meet in session every three months to conduct a review of the appeals referred to it by the S state S superintendent of S schools, and to conduct such other business as may be necessary for governance of the Appeals Board. The Appeals Board need not meet if no appeals are pending.
- 9.3 The Appeals Board may meet more frequently if reasonably necessary, upon the consent of a majority of the members, in order to adjudicate appeals by review of the record or to conduct hearings.

Section 10. Referral of Appeals and Acknowledgment

- 10.1 Once an appeal is filed with the S state S superintendent of S schools, it shall be referred ~~to the Appeals Board~~ by written notification to the elected chairperson of the Appeals Board.
- 10.2 An acknowledgment letter shall be sent by the state superintendent of schools at his/her designee to the appellant informing the individual that the appeal is being referred to the Appeals Board.

Section 11. Processing of Appeals

- 11.1 When an appeal is filed by an individual, ~~from the transcript analysis of the Department of Education,~~ the S state S superintendent of schools shall send a letter of notification to the responding party ~~Certification Unit~~ and ~~shall forward~~ a copy of the appeal, and ~~any~~ all attachments provided by the appellant. The ~~Department~~ responding party may file a written

response with the § state § superintendent of schools within ~~seventeen-(17)~~ twenty (20) days after receipt of from the date the notice of the appeal was sent to the responding party. A copy of the response from the responding party shall be forwarded to the appellant.

11.2 † The appellant may make file a written reply to said the response of the responding party, and within ten (10) days after receipt of of the date of the response. The appellant's response original shall go to the Appeals Board via the state superintendent of schools, and a copy shall be ~~forwarded~~ sent to the responding party.

11.3 After receipt of the appeal and any responding party documents, the chairperson shall set the appeal on the docket of cases scheduled for review ~~of the record~~ at the next quarterly session, except that appeals received within the thirty (30) days preceding a session of the Appeals Board shall be set on the docket of the next session thereafter. A letter shall be sent to the appellant informing him/her of the docket date for the review of the record in his/her appeal.

11.4 Notice of the session for review of the record or hearing of the appeal will be sent to each Appeals Board member at the earliest practicable date, including the date, time and place, and a list of the appeals to be considered. If the appeal is scheduled for hearing, notice shall be sent to the appellant advising her/him of the date, time and place of the hearing and the rights set out in Section 13 of these rules. If scheduled for review, appellant will be notified of the review date, and estimated decision due date.

11.5 Any member ~~of the~~ Appeals Board member who is involved in an ease appeal as an appellant or as an employee of a the responding party ~~or institution~~ may not participate in the consideration or adjudication of the case, ~~as a member of the Appeals Board.~~

## Section 12. Review of the Record

12.1 All appeals shall be first considered for adjudication by review of the record by the Appeals Board, and upon proper notice, the Appeals Board will convene to consider the appeal upon the administrative record furnished by the appellant and the responding party.

12.2 At the review session, the Appeals Board may determine that it is necessary to take evidence from witnesses, in addition to the evidence already contained in the record. In that event, the appeal will be rescheduled for hearing on the next available date, and notice thereof shall be given to the appellant and the responding party.

12.3 After reviewing the record, state law and § state B board of education regulations, the Appeals Board shall decide the appeal by voting on whether to: grant the appeal and reverse the decision of the responding party or uphold the decision of the responding party. To reverse the decision of a responding party, at least a majority of the members of the Appeals Board eligible to participate must vote in favor of the appellant. In the case of a tie vote, a second vote shall be taken. If the vote is tied a second time, the proposed motion fails.

12.4 The chairperson of the Appeals Board shall notify the § state § superintendent of § schools of the Appeals Board's decision which shall be made in writing within fourteen (14) days after the session. The decision shall include findings of fact and conclusions of law. Copies of the decision shall be sent to the appellant and the responding party. The original shall remain with the Office of the State Superintendent of Schools.

### Section 13. Hearings

13.1 If the Appeals Board determines that evidence outside the record is needed to decide the appeal, notice shall be sent to the parties as provided in Section 11 of these rules.

13.2 At a hearing, the appellant has the right to: be assisted by counsel or other person of appellant's choosing, but such person may not represent the appellant or make arguments as the appellant's representative; to receive a copy of all documents submitted to the Appeals Board; to have the hearing recorded, and to receive a transcript of the hearing at a reasonable cost which shall, from time to time, be set by the Appeals Board; and, to present witnesses and to cross-examine witnesses called by the responding party.

13.3 At a hearing, the responding party has the right to: be assisted by counsel or other person of responding party's choosing, but such person may not represent the responding party or make arguments as the responding party's representative; to receive a copy of all documents submitted to the Appeals Board; and, to present witnesses and to cross-examine witnesses called by the appellant.

13.4 The Board may take administrative notice of any official, record or document maintained by any state agency or subdivision thereof, if authenticated by the custodian thereof, or it may take administrative notice of any state law or regulation of a state agency.

13.5 At the hearing, the appellant shall have the right to present his/her case first, followed by the responding party. All witnesses and parties shall take an oath prior to testifying.

13.6 All hearings shall be closed unless an open hearing is requested by the appellant.

13.7 The formal rules of evidence shall be relaxed, but gross violations thereof may be restrained by the chairperson of the Appeals Board or by a person designated by the chairperson to rule on evidentiary questions.

13.8 After the hearing and at the same session, the Appeals Board shall decide the appeal upon consideration of the administrative record, the evidence, state law and § state § board of education regulations by voting on whether to grant the appeal and reverse the decision of the responding party or to uphold the decision of the responding party.

13.9 To reverse the decision of a responding party, at least a majority of the members of the Appeals Board eligible to participate must vote in favor of the appellant. In the case of a tie vote, a second vote shall be taken. If the vote is tied a second time, the proposed motion fails.

13.10 The chairperson of the Appeals Board shall notify the § state § superintendent of § schools of the Appeals Board's decision, which shall be made in writing within fourteen (14) days after the hearing. The decision shall include findings of fact and conclusions of law. Copies of the decision shall be sent to the appellant and to the responding party. The original shall remain with the § Office of the State Superintendent of Schools.

#### Section 14. Burden of Proof

14.1 In all reviews or hearings referred to the Appeals Board, the appellant shall bear the burden of proving that the transcript analysis or credential evaluation made by the responding party is erroneous, by a preponderance of the evidence.

#### Section 15. Liaison

The § state § superintendent of § schools shall appoint a liaison within the Department of Education who shall assist the Appeals Board by providing explanation of existing regulations, interpretations and practices of the § state § board of § education and the § state § superintendent of schools.

#### Section 16. Appeal To State Superintendent of Schools

Any party not satisfied with the decision of the Certification Appeals Board may appeal to the § state § superintendent of § schools, in writing, within sixty (60) days of the Appeals Board's decision.

Section 17. Appeal to Kanawha County Circuit Court

Any party not satisfied with the decision of the S state S superintendent of S schools may appeal to the Kanawha County Circuit Court within ~~four~~ ~~--(4)--~~ ~~months~~ 120 days of the date of the S superintendent's decision.

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DISCRIMINATION PROHIBITED: As required by federal laws and regulations, the West Virginia Department of Education does not discriminate on the basis of sex, race, color, religion, handicapping condition, marital status, or national origin in employment or in its education programs and activities. Inquiries may be referred to Dee Butler, Coordinator/Director of Elimination of Sex Discrimination Program, WV Department of Education, Capitol Complex, 1900 Kanawha Boulevard, E., B-252, Charleston, WV 25305-0001, Phone: 348-7864; or to Laura Craffey, Section 504 Coordinator, WV Department of Education, same address as above except B-321 and Phone: 348-2696; or to the U.S. Department of Education's Director of the Office for Civil Rights.

NOTE: State and Federal laws include Title IX, Education Amendments of 1972; Title VI, Civil Rights Act of 1964; Title VII, Civil Rights Act of 1964; Rehabilitation Act of 1973, Section 504; and other State and Federal Laws and regulations governing students and employees.

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1205e:040e/jbt:7-6-88

2181g:rk:1-2-90

3233q:se:3-18-91

RESPONSE FORM

Rules of Procedure for Certification Appeals Board  
Policy 5203

Direction: Please use this form in commenting on the proposed revisions to  
Rules of Procedure for Certification Appeals Board

Individual/Organization \_\_\_\_\_

Address \_\_\_\_\_

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1. General	
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3. Appeals Process for Individuals	
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5. Certification Appeals Board Membership and Eligibility Criteria	
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Section	Comments and Suggestions
15. Liaison	
16. Appeal to State Superintendent of Schools	
17. Appeal to Kanawha County Circuit Court	
General Comments	

Please submit comments by June 3, 1991 to:

Howard Kardatzke, Director  
Office of Professional Education  
WV Department of Education  
Capitol Complex, Room B337  
1900 Kanawha Blvd., E.  
Charleston, WV 25305-0001

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