

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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FILED
1991 SEP -5 AM 8 42
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: WEST VIRGINIA DEPARTMENT OF EDUCATION TITLE NUMBER: 126

CITE AUTHORITY: WV Code 18A-3-2 and 18A-3-3

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

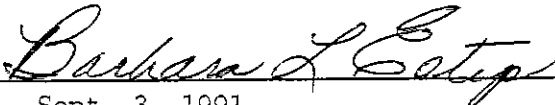
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 155

TITLE OF RULE BEING AMENDED: Rules of Procedure for Certification
Appeals Board (Policy 5203)

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS Oct. 5, 1991


Sept. 3, 1991

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: WEST VIRGINIA DEPARTMENT OF EDUCATION TITLE NUMBER: 126

CITE AUTHORITY: WV Code 18A-3-2 and 18A-3-3

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 155

TITLE OF RULE BEING AMENDED: Rules of Procedure for Certification
Appeals Board
(Policy 5203)

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS September 4, 1991

Barbara L. Cate
Sept. 3, 1991

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3A

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Filing Date

FILED

1991 JUL 29 PM 3:15

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE OVERSIGHT COMMISSION ON
EDUCATIONAL ACCOUNTABILITY

AGENCY: West Virginia Department of Education TITLE NUMBER: 126

CITE AUTHORITY: W.Va. Code 18A-3-2 and 18A-3-3

AMENDMENT TO AN EXISTING RULE: YES 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 RULE BEING FILED PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A
PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR
FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE OVERSIGHT COMMISSION
ON EDUCATIONAL ACCOUNTABILITY FOR THEIR REVIEW.

*Effective
9/4/91*

Charles S. Famer
Signature

July 23, 1991

Adopted July 12, 1991
(5203)

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 _____

TITLE 126
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF EDUCATION
CHAPTER 18A-3-2a
SERIES 155
POLICY 5203

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

Section 1. General

- 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-3-2a 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 - July 23, 1991
- 1.4 Effective Date - September 4, 1991
- 1.5 Repeal of Former Rule -

Section 2. Jurisdiction

- 2.1 The Certification Appeals Board has jurisdiction to hear an appeal based upon licensure issues following its referral from the state superintendent of schools. The Appeals Board does not have jurisdiction to review certificate revocations ordered by the state superintendent of schools.
- 2.2 The Certification Appeals Board may determine 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, therefore, it may 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 change current operating procedure and regulations until such time as they are officially adopted by the state board of education.

Section 3. Appeal Process for Individuals

3.1 An individual may file in writing an appeal for a review of the record by the Appeals Board through the state superintendent of schools provided:

3.11 Licensure was denied by the West Virginia Department of Education or a lower level credential than expected was granted.

OR

3.12 A recommendation for licensure was withheld by the designated recommending agency.

OR

3.13 An appeal instituted by individual with the recommending agency responsible for credential evaluation and/or state board of education policy interpretation was not resolved to the appellant's satisfaction through the agency's formal due process procedures. An individual may not file an appeal through the state superintendent of schools until such time as the appeal has been adjudicated at the local level.

3.2 An individual may file an appeal in writing with the state superintendent of schools if the appellant's appeal was denied by the Certification Appeals Board. (See Section 16.)

Section 4. Definitions

4.1 "Appeal" shall mean a written request submitted by an individual for a credential review based on one of the provisions stated in Section 3. The written request shall cite the basis for the appeal and shall include evidence supplied by the appellant to support his/her contention.

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 state superintendent of schools under the state law and regulations of the state board of education which empowers an individual to perform designated services within the public schools.
- 4.6 "Responding Party" means the West Virginia Department of Education, an institution of higher education, or other designated educational agency whose transcript analysis, 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. 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 alternately by the West Virginia Board of Trustees and Directors; one (1) county personnel/certification officer appointed by the state board of education; and five (5) teachers. The five (5) teachers shall be randomly selected from the elected staff development council membership. Three (3) teachers shall 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 on an alternate basis by the West Virginia Board of Trustees and Directors.

- 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 Each teacher representative must possess 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 shall continue as Appeals Board members for 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. The term shall commence July 1 and continue 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 a replacement member with appropriate qualifications to replace 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 the initial meeting each school year, the members of the Appeals Board shall elect a chairperson from among themselves who shall serve for a term of one year. The chairperson's term will expire on June 30 of that school year.
- 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 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 state superintendent of 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 state superintendent of schools, it shall be referred 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 or 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, the state superintendent of schools or his/her designee shall send a letter of notification to the responding party, a copy of the appeal, and all attachments provided by the appellant. The responding party may

file a written response with the state superintendent of schools within twenty (20) days 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 file a written reply to the response of the responding party within ten (10) days of the date of the response. The appellant's response shall go to the Appeals Board via the state superintendent of schools and a copy shall be 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 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 the appeal is scheduled for review of the record, the appellant will be notified of the review date.
- 11.5 Any Appeals Board member who is involved in an appeal as an appellant or as an employee of the responding party may not participate in the consideration or adjudication of the case.

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 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 to 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 appellant 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 state superintendent of schools and the responding party. The appeal documents 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; receive a copy of all documents submitted to the Appeals Board; 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, present witnesses and 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; receive a copy of all documents submitted to the Appeals Board; and, present witnesses and 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 appellant 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 state superintendent of schools and to the responding party. The appeals documents 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 judgement 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 state superintendent of schools may appeal to the Kanawha County Circuit Court within 120 days of the date of the superintendent's decision.

DISCRIMINATION PROHIBITED: The West Virginia Department of Education does not discriminate on the basis of sex, race, color, religion, handicapping condition, age and national origin in employment and in the administration of any of its education programs and activities. Inquiries may be directed to the Elimination of Sex Discrimination Program Coordinator, 348-7864; to the Section 504 Coordinator, 348-2696, WV Department of Education, Charleston, West Virginia, 25305; or to the U.S. Department of Education's Director of the Office for Civil Rights, 215-596-6795.

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2181g:rk:1-2-90
3233q:se:6-17-91
Revised 7-16-91



KEN HECHLER
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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

TO: Barbara Estep

AGENCY: Board of Education

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: August 27, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 155 TITLE: 126 Board of Education

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Barbara L. Estep

TITLE OF PERSON SIGNING: Exec Sec, WV Board of Educ.

DATE: September 17, 1992

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.