

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

RULE TYPE: Legislative; CITE AUTHORITY 18A-3

AMENDMENT TO AN EXISTING RULE: YES XX NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 155

TITLE OF RULE BEING AMENDED: Policy 5203: 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 April 4, 1990 AT 9:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Howard Kardatzke

Office of Professional Education

WV Dept. of Education

Building 6, Room B-337

1900 Kanawha Blvd., E.

Charleston, WV 25305-0001

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

Barbara L. City

February 20, 1990

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

HD NO _____ DRAFT NO _____ BILL NO _____ RESOLUTION NO _____

SUBJECT Policy 5203, Rules of Procedure, 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 Certification Appeals Board which hears appeals from individuals who have been denied West Virginia professional certification.

Background

The nine-member Certification Appeals Board was created in July 1988 to hear appeals on certification denials. The Board's review and decisions must be based on State Board regulations and/or State code provisions.

In its brief history, the Certification Appeals Board has heard cases which, on their merit, might have resulted in a different ruling than the ruling made due to statutory or policy requirements. Also, the current appellate route requires recourse to courts, if relief is desired after an adverse Certification Appeals Board ruling.

Recommended Revisions

The following revisions in Policy 5203 are proposed:

- 1) If the Certification Appeals Board determines that extenuating circumstances exist and agree that current policy is detrimental to the quality of the professional personnel employed in West Virginia public schools, 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 be considered changes in current operating procedure until such time as they are officially adopted by the West Virginia Board of Education.
- 2) Any party not satisfied with the decision may appeal to the State Superintendent of Schools, in writing, within sixty (60) days of the decision. If not satisfied with the State Superintendent's decision, any party may appeal to the Kanawha County Circuit Court within four (4) months of the date of that decision.

The West Virginia Council on Professional Education at its December, 1989 meeting, reviewed the proposed revisions and voted not to accept the second revision. A majority of council members supported the first revision.

The revisions to Policy 5203 were distributed for public comment after the February, 1990 meeting of the Board. A summary of comments received and a comment log is attached.

Impact

Instruction

None

Leadership Impact

By instituting these changes, the State Board would be permitting the Certification Appeals Board to make prudent, professional judgments regarding certification.

Financial Impact

None

Staff Development Impact

None

Administrative Impact

The proposed amendments introduce an additional administrative layer in the appeals process, specifically, the State Superintendent of Schools. This amendment would impact on the State Superintendent's workload.

HK:rk
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TITLE 126
PROCEDURAL RULE
WEST VIRGINIA BOARD OF EDUCATION
CHAPTER 18A-3
SERIES 155
POLICY 5203

Title: - Rules of Procedure for Certification Appeals Board

Section 1. General

1.1. Scope - These rules establish the procedures for filing and hearing an appeal when an individual is denied professional certification or licensure under West Virginia Board of Education Policy 5202 (Series 136). The Certification Appeals Board is designated to hear the appeals on behalf of the State Superintendent of Schools.

1.2 Authority - W.Va. Code 18A-3-2 and 18A-3-3.

1.3 Filing Date - April 23, 1990 .

1.4 Effective Date - June 7, 1990

Section 2. 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.

Section 3. Jurisdiction

The Certification Appeals Board obtains jurisdiction to hear an appeal, 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 Superintendent of Schools. The Appeals Board does not have jurisdiction to review certificate revocations ordered by the State Superintendent.

If the Certification Appeals Board determines that extenuating circumstances exist and agree that current policy is detrimental to the quality of the professional personnel employed in West Virginia public schools, 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 be considered changes in current operating procedure until such time as they are officially adopted by the West Virginia Board of Education.

Section 4. Definitions

4.1 "Appeal" shall mean a written request to the State Superintendent of Schools to review erroneous credential evaluation in required credit hours or competency assessment by a college; erroneous transcript analysis by the West Virginia Department of Education; or denial of certification or licensure to teach in the public schools of West Virginia, alleging that certification or licensure should be granted based upon:

- a. Appropriate professional experience in lieu of the professional education performance assessment;
- b. Prerequisite teaching experience;
- c. Equivalency to West Virginia Standards for individuals from out of state and/or those 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 State Superintendent of Schools under the state law and regulations of the West Virginia 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 or an Institution of Higher Education whose transcript analysis or credential evaluation 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" shall mean the West Virginia Board of Education.

Section 5. Eligibility

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 Board of Trustees or Directors, one (1) county personnel/certification officer

appointed by the West Virginia Board of 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, three (3) to 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 Trustees or 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.

5.5 A teacher must be a person who possesses 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 members of the Appeals Board ex-officio, shall continue as members for so 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 shall commence a full three-year term beginning on July 1 of the then-current year and continuing 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 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 Chair

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

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

7.3 If the chair 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 chair to preside over the session, hearing or review, as the case may be, in the absence of the regularly elected chair.

Section 8. Quorum

A majority of the members of the Appeals Board 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 or 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 of each year to conduct business relating to its governance and to receive 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 to the Appeals Board by written notification to the elected chair of the Appeals Board.

10.2 An acknowledgment letter shall be sent 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 from the transcript analysis of the Department of Education, the State Superintendent shall send a letter of notification to the Certification Unit and shall forward a copy of the appeal, and any attachments provided by the appellant. The Department may file a written response with the State Superintendent within seventeen (17) days after receipt of notice of the appeal. A copy of the response shall be forwarded to the appellant.

11.2 When an appeal is filed from the credential evaluation of an institution of higher education, the State Superintendent shall send a letter of notification to the responding institution and shall forward a copy of the appeal, and any attachments provided by the appellant. The responding institution may file a written response with the State Superintendent within seventeen (17) days after receipt of notice of the appeal. A copy of the response shall be forwarded to the appellant.

11.3 Within ten (10) days after receipt of the response, the appellant may make a written reply to said response. The original shall go to the Appeals Board via the State Superintendent, and a copy shall be forwarded to the responding party.

11.4 After receipt of the appeal, the chair 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.

11.5 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 date and estimated decision due date.

11.6 Any member of the Appeals Board who is involved in a case as an appellant or as an employee of a 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 Board regulations, the Appeals Board shall decide the appeal by voting on whether to grant the appeal and, reverse 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 chair 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:

- a. 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;
- b. To receive a copy of all documents submitted to the Appeals Board;
- c. 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

d. To present witnesses and to cross-examine witnesses called by the responding party.

13.3 At a hearing, the responding party has the right:

a. 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;

b. To receive a copy of all documents submitted to the Appeals Board; and

c. 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 chair of the Appeals Board or by a person designated by the chair 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 regulations by voting on whether to grant the appeal and reverse 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 chair 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 the responding party. The original shall remain with the office of the State Superintendent of Schools.

Section 14. Burden of Proof

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.

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. The State Superintendent shall notify the appellant within sixty (60) days of the Superintendent's decision. The Certification Appeal Board's decision is sustained if the Superintendent does not forward a timely notice of his/her decision to the appellant.

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 four (4) months of the date of the Superintendent's decision.

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.
