

WEST VIRGINIA
SECRETARY OF STATE

JOE MANCHIN III

ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark in this Box

MAILED
22 JUL 15 P 3:36
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: W. Va. Const., Article XII, § 2; W. Va. Code §§18A-4-10, 23-4-1 et seq., 23-5A-3 and 23-5A-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 158

TITLE OF RULE BEING AMENDED: Workers' Compensation Benefits (5612)

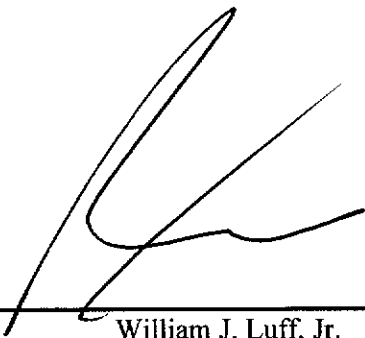
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

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 August 16, 2002 AT 4:45 p.m.. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Joseph Panetta, Executive Director
Office of School Finance
West Virginia Department of Education
Capitol Building 6, Room 215
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

THE ISSUES TO BE HEARD WILL BE LIMITED TO THIS PROPOSED RULE



William J. Luff, Jr.
Deputy State Superintendent of Schools

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED

\$5.40

EXECUTIVE SUMMARY
WEST VIRGINIA BOARD OF EDUCATION
Policy Number and Title: Policy 5612
Workers' Compensation Benefits

PUBLIC COMMENT PERIOD ENDING: August 16, 2002

BACKGROUND:

Policy 5612 was initially filed on November 20, 1989 to establish procedures for use by county boards of education to ensure that employees who sustain a work-related injury and are awarded workers' compensation benefits are not paid compensation, when added to the workers' compensation benefits, in excess of the compensation regularly paid the employee.

PURPOSE:

The purpose of the proposed revisions is to update the procedures to conform with applicable statutes and rules and regulations of the Workers' Compensation Division; to provide guidance to employees who sustain a work-related injury of their rights, duties, and responsibilities; to explain the compensation options available to these employees; and to provide more specific guidance to county boards of education in computing the amount of pay an employee is to receive when he/she is awarded workers' compensation benefits.

County board of education employees who sustain a work-related injury and are awarded workers' compensation benefits may choose from among three different payment options: temporary total disability (TTD) benefits from workers' compensation; leave compensation payments from their employer; or a combination of both, with the total payments not to exceed the employee's regular salary. This policy provides boards guidance on these issues. Since the changes are extensive, this policy repeals and replaces the previous version filed November 20, 1989.

PROPOSED REVISIONS:

The policy is being completely rewritten to provide the specific guidance being requested by county boards of education. The policy adds several new sections which: provide definitions of the terms used in the policy; explain the responsibilities of administering the policy; explain the compensation options available to employees who sustain a work-related injury and includes a standard form for use in indicating that selection; and explain the statutory prohibitions of employers discriminating against employees who sustain work-related compensable injuries.

IMPACT:

Provides more specific guidance to county boards of education so that the procedures used throughout the State for computing the amount of pay an employee who sustains a work-related injury compensable injury is to receive from the county board of education.

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FILED

TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

202 JUL 15 P 3: 36

WEST VIRGINIA
SECRETARY OF STATE

SERIES 158
Workers' Compensation Benefits (5612)

§126-158-1. General.

1.1. Purpose - The purpose of this policy is to establish procedures for compliance with West Virginia Code §18A-4-10 and §23-4-1 et seq., related to county board of education employees who sustain a work-related injury and are awarded Workers' Compensation benefits and to prohibit an employee from receiving compensation for personal and or annual leave in excess of the amount that is required, when added to the Workers' Compensation benefits, to equal the amount of compensation regularly paid the employee.

1.2. Authority - West Virginia Constitution, Article XII, §2 and West Virginia Code §§18A-4-10, 23-4-1 et seq., 23-5A-3 and 23-5A-4.

1.3. Filing Date -

1.4. Effective Date -

1.5. Repeal of Former Rule - This policy repeals and replaces 126CSR158, West Virginia Board of Education Policy 5612, filed November 30, 1989 and effective December 20, 1989.

§126-158-2. Applicability.

2.1. This policy applies to all county board of education employees who sustain a work-related injury and are awarded Workers' Compensation benefits.

§126-158-3. Definitions.

3.1. Eligible to receive TTD benefits - Having been ruled eligible by Workers' Compensation to receive Temporary Total Disability (TTD) benefits, regardless of whether the employee is actually receiving benefits or has opted to receive personal leave (or annual leave, if requested after having exhausted personal leave).

3.2. Medical professional - A person licensed according to the laws of the State of West Virginia to practice medicine or a medical practitioner approved by the Workers'

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Compensation Division.

3.3. Net value - Gross wages less employee deductions for state and federal income taxes, FICA and Medicare, and contributions to a teachers' retirement system.

3.4. Separate dischargeable offense - Misconduct by the injured employee wholly unrelated to the injury or the absence from work resulting from the injury. This shall not include absence resulting from the injury or from aggregation of absence due to the injury with any other absence from work.

3.5. Personal leave - An earned employee benefit of paid time off as specified in West Virginia Code §18A-4-10. Accrued annual leave, if requested by the employee, may be utilized in circumstances when personal leave is exhausted.

3.6. TTD benefits - Temporary Total Disability Benefits paid by Workers' Compensation.

3.7. Work-related injury - An injury or illness having been determined to be compensable by the Workers' Compensation Division.

§126-158-4. Administration.

4.1. County boards of education shall administer Workers' Compensation claims and employee leave in accordance with all applicable statutes, rules, regulations, procedures, and local policies.

4.2. An employee who sustains a work-related injury shall submit an Election of Options form (see Attachment 1) to the county board of education's payroll office within three (3) working days of the date of the injury. The Election of Option form will designate the employee's choice of receiving either TTD benefits only for the period of absence from work, personal leave compensation, or a combination of both. The payroll office shall attach the original Election of Option form to the Employer's Report of Injury form (WC-3) and forward both to the Workers' Compensation Division.

4.3. An employee who is incapacitated and unable to submit the Election of Option form shall be granted accrued personal leave, then accrued annual leave if the employee is entitled to annual leave, after exhausting personal leave. An Election of Option Form must be completed by an appropriate individual on behalf of the employee as prescribed by the employer.

4.4. If a previous compensable Workers' Compensation claim is reopened after the effective date of this policy and additional TTD benefits are paid, the procedures outlined

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in this policy will be in effect and the employee must complete a new Election of Option form.

§126-158-5. Election of Option.

5.1. Election to receive TTD benefits only:

5.1.1. A professional employee, as defined in West Virginia Code §18A-1-1, electing to receive TTD benefits only must apply to the county board of education for a leave of absence without pay from his or her employment in accordance with West Virginia Code §18A-2-2a. A service employee electing to receive TTD benefits only may, but shall not be required to, request a leave of absence without pay from his or her employment.

a. Employees of county boards of education continue to accrue seniority credit while receiving TTD benefits during absences from work due to a work-related, compensable injury, but do not accrue credit for years of experience.

b. Personal leave shall accrue while an employee is absent from work receiving TTD benefits, pursuant to the provisions of West Virginia Code §18-4-10.

c. Any legal school legal school holidays, election days, other noninstructional days such as outside school environment (OS), continuing professional development (CE), and teachers-pupil-parent conferences (TP), and inclement weather days occurring during the period when TTD benefits only are being received, will NOT be paid.

5.1.2. When an employee elects to receive TTD benefits only, paid personal leave may be utilized only until the initial benefit check is received.

5.1.3. When the initial TTD check is received, the employee must reimburse his employer the net value of personal leave benefits paid, according to the procedures presented in the *Accounting Procedures Manual for County Boards of Education* issued by the Office of School Finance. If payment is not made in full at the time the initial TTD check is received, the employee and the employing agency shall complete the Assignment of Future Wages form (Attachment 2). The number of days of paid leave shall be restored to the employee's leave balance as the repayments are made.

a. Any employee who refuses to reimburse the net value of the paid personal leave shall be subject to disciplinary action and deductions from subsequent paychecks shall be made until the total amount of paid leave used is reimbursed. The deductions will be made in accordance with the West Virginia Division of Labor regulations on wage payments and collections.

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b. When leave is restored to an employee, appropriate adjustments shall be made by the employing agency's payroll office to obtain credit for the agency's share of contributions for social security and retirement and for the deductions that were withheld from the employee's personal leave pay and to make any necessary adjustments in taxable wages, tax deductions, retirement contributions, FICA and Medicare deductions, and personal leave records.

5.2. Election to receive leave compensation only:

5.2.1. An employee electing to receive compensation for accumulated personal leave only, or annual leave if requested by the employee, instead of TTD benefits is treated the same as any other employee granted personal leave pursuant to West Virginia Code §18-4-10.

a. Employees of boards of education continue to accrue seniority credit while receiving leave compensation during absences from work due to a work-related, compensable injury, and accrue credit for years of experience.

b. Personal leave shall accrue while an employee is absent from work receiving TTD benefits, pursuant to the provisions of West Virginia Code §18-4-10.

c. Any legal school holidays, election days, other noninstructional days such as outside school environment (OS), continuing professional development (CE), and teachers-pupil-parent conferences (TP), and inclement weather days occurring during the period when leave compensation is being received will be paid.

5.2.2. After an employee exhausts his/her accrued personal leave, and accrued annual leave if requested, the employee may start receiving TTD benefits during the remaining absence from work due to a work-related, compensable injury, pursuant to West Virginia Code §23-4-6. The employee is responsible for contacting the Workers' Compensation Division to make this request.

5.2.3. After an employee exhausts his/her accrued personal leave, and accrued annual leave if requested, a professional employee, as defined in West Virginia Code §18A-1-1, must apply to the board of education for a leave of absence without pay from his or her employment in accordance with West Virginia Code §18A-2-2a. A service employee electing to receive leave compensation only instead of TTD benefits may, but shall not be required to, request a leave of absence without pay from his or her employment.

a. Employees of county boards of education continue to accrue seniority credit while receiving TTD benefits during absences from work due to a work-related, compensable injury, but do not accrue credit for years of experience.

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b. Personal leave shall accrue while an employee is absent from work receiving TTD benefits, pursuant to the provisions of West Virginia Code §18-4-10.

c. Any legal school holidays, election days, other noninstructional days such as outside school environment (OS), continuing professional development (CE), and teachers-pupil-parent conferences (TP), and inclement weather days occurring during the period when TTD benefits only are being received, will NOT be paid.

5.3. Election to receive a combination of TTD benefits and compensation for accrued leave:

5.3.1. An employee electing to receive a combination of TTD benefits and compensation for accrued personal leave, or accrued annual leave if requested, shall receive leave compensation only to the extent the leave compensation is required, when added to the TTD benefits, to equal the amount of gross wages regularly paid the employee.

5.3.2. Personal leave compensation equal to the employee's regular gross pay may be paid prior to the award of TTD benefits.

a. If the personal leave compensation paid to the employee prior to the award of TTD benefits, when added to the TTD benefits, is in excess of the employee's regular gross pay, the excess payment shall be deducted from the employee's subsequent pay, according to the procedures presented in the *Accounting Procedures Manual for County Boards of Education* issued by the Office of School Finance. The employee and the employing agency shall complete the Assignment of Future Wages form (Attachment 2). The number of days of paid leave shall be restored to the employee's leave balance as the deductions are made.

b. Any employee who refuses to have the excess payment deducted from the employee's subsequent pay until the total amount of the overpayment is recovered shall be subject to disciplinary action. Such deductions will be made in accordance with the West Virginia Division of Labor regulations on wage payments and collections.

c. When leave is restored to an employee, appropriate adjustments shall be made by the employing agency's payroll office to obtain credit for the agency's share of contributions for social security and retirement and for the deductions that were withheld from the employee's personal leave pay and to make any necessary adjustments in taxable wages, tax deductions, retirement contributions, FICA and Medicare deductions, and personal leave records.

5.3.3. The employee's accrued personal leave days shall be charged only for such days as equal the amount of personal leave compensation required to compensate the

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employee at the employee's regular gross rate of pay.

a. Employees of county boards of education continue to accrue seniority credit while receiving leave compensation during absences from work due to a work-related, compensable injury, and accrue credit for years of experience.

b. Personal leave shall accrue while an employee is absent from work receiving TTD benefits, pursuant to the provisions of West Virginia Code §18-4-10.

c. Any legal school holidays, election days, other noninstructional days such as outside school environment (OS), continuing professional development (CE), and teachers-pupil-parent conferences (TP), and inclement weather days occurring during the period when leave compensation is being received will be paid.

5.3.4. After an employee exhausts his/her accrued personal leave, and annual leave if requested, the employee may then receive TTD benefits only during the remaining absence from work due to the work-related, compensable injury, pursuant to West Virginia Code §23-4-6.

a. A professional employee, as defined in West Virginia Code §18A-1-1, must apply to the county board of education for a leave of absence without pay from his or her employment in accordance with West Virginia Code §18A-2-2a. A service employee electing to receive TTD benefits only may, but shall not be required to, request a leave of absence without pay from his or her employment.

b. Employees of county boards of education continue to accrue seniority credit while receiving TTD benefits during absences from work due to a work-related, compensable injury, but do not accrue credit for years of experience.

c. Personal leave shall accrue while an employee is absent from work receiving TTD benefits, pursuant to the provisions of West Virginia Code §18-4-10.

d. Any legal school holidays, election days, other noninstructional days such as outside school environment (OS), continuing professional development (CE), and teachers-pupil-parent conferences (TP), and inclement weather days occurring during the period when TTD benefits only are being received, will NOT be paid.

5.3.5. Nothing in this policy prohibits an employee from electing to request a medical leave of absence without pay instead of using personal/annual leave, even if an employee will not be receiving TTD benefits. For example, if an employee is absent from work for only three (3) calendar days due to a work-related, compensable injury, the employee is not eligible for TTD benefits. The employee may, if desired, choose not to use personal leave and instead, request a medical leave of absence without pay.

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§126-158-6. Return to Work Notice.

6.1. Workers' Compensation Form WC309, Return to Work Notice, must be completed by the employing agency and be forwarded to the Workers' Compensation Division when the employee returns to work, regardless of which of the preceding options the employee elected.

§126-158-7. Discriminatory Practices.

7.1. West Virginia Code §23-5A-1 et seq. provides that an employer shall not terminate an injured employee while the employee is absent from work due to a work-related, compensable injury and is receiving or is eligible to receive TTD benefits, unless the injured employee has committed a separate dischargeable offense.

7.1.1. A separate dischargeable offense shall mean misconduct by the injured employee wholly unrelated to the injury or the absence from work resulting from the work-related, compensable injury.

7.1.2. A separate dischargeable offense shall not include absence resulting from the injury or from the inclusion or aggregation of absence due to the injury with any other absence from work.

7.2. It shall be a discriminatory practice for an employer to fail to reinstate an employee who has sustained a work-related, compensable injury to the employee's former position of employment, upon demand for such reinstatement, provided that the position is available and the employee is not disabled from performing the duties of the position.

7.2.1. If the former position is not available, the employee shall be reinstated to another comparable available position with duties the employee is capable of performing. A comparable position shall mean a position which is comparable in wages, working conditions, and, to the extent reasonable practicable, duties to the position held at the time of injury.

7.2.2. A written statement from a medical professional approving the injured employee's return to regular employment shall be prima facie evidence that the employee is able to perform his/her duties.

7.2.3. In the event that neither the former position nor a comparable position is available, the injured employee shall have a right to preferential recall to any job which the employee is capable of performing which becomes available after the employee notifies his/her employer that reinstatement is desired.

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7.2.4. The right of preferential recall shall be in effect for one year from the day the injured employee notifies the employer that reinstatement is desired. The employee must provide the employer with a current mailing address during the one-year period.

**Workers' Compensation
Election of Option Form For
County Board of Education Employees**

Employee Name: _____	Date of Injury: _____
Social Security No: _____	Claim No. (If known.): _____
Employer: _____ (County Board)	Position and Location (School or Other) _____

To the employee: Please submit this form to your agency payroll office. If you are absent from work due to a work-related injury, you must complete this form within three (3) days of the injury and choose to (1) receive only Temporary Total Disability (TTD) benefits from workers' compensation, (2) receive only compensation for accrued personal leave, or (3) receive a combination of TTD benefits and compensation for accrued personal leave.

Please Note: You will only accrue retirement benefits for that portion of pay attributable to personal leave utilized and actual days worked.

Option 1- Election to receive only Total Temporary Disabilities (TTD) benefits:

I elect to receive only TTD benefits from workers' compensation for the period that I am absent from work due to a work-related compensable injury. I understand that by selecting this option, I will receive compensation for accrued personal leave **only until** I start receiving TTD benefits. I also understand that after I start receiving TTD benefits, I must reimburse the net value of the paid leave to my employer, who will then restore the personal leave for which I was paid as the repayments are made. Furthermore, I understand that if I fail to reimburse my employer for the net value of the paid leave used, I may be subject to disciplinary action and the amount will be deducted from my future wage payments. After I start receiving TTD benefits, I understand that I will be on a non-paid status. I understand that I will continue to accrue seniority while I am absent from work and receiving TTD due to a work related compensable injury. I will not accrue work-experience credit for incremental pay purposes. I will continue to earn personal leave as long as I remain under contract with the county board of education.

Option 2 - Election to receive only accrued personal leave compensation:

I elect to receive only personal leave compensation instead of Workers' Compensation TTD benefits for the period that I am absent from work due to a work-related compensable injury. While I am receiving paid leave benefits, I understand that I will continue to accrue personal leave and be paid for holidays, inclement weather days, or outside of school environment days that occur during this period. I also understand that while I am receiving paid benefits I will continue to accrue seniority and work-experience credit for incremental pay purposes. After I exhaust all of my personal leave, I understand that I am eligible to receive TTD benefits during any remaining period of absence from work due to a compensable injury, if so requested. I understand that if I choose to receive TTD benefits, I will revert to a non-paid status. I understand that I will continue to accrue seniority while I am absent from work and receiving TTD due to a work related compensable injury. I will not, however, continue to accrue work-experience credit for incremental pay purposes. Once I have been compensated for all of my accrued personal leave days, I am no longer entitled to compensation for any holidays, inclement weather days, and outside of school environment days which occur during the time when I am absent from work due to work-related injury. However, I will continue to earn personal leave as long as I remain under contract with the county board of education.

☐ Option 3 - Election to receive a combination of Temporary Total Disability (TTD) benefits and compensation for accrued personal leave:

I elect to receive a combination of TTD benefits from workers' compensation and personal leave compensation. I understand that I will receive compensation for accrued personal leave *until* I start receiving TTD benefits. Once I start receiving TTD benefits, I understand that I will receive personal leave compensation only to the extent that the compensation is required, when added to the workers' compensation benefits, to equal the amount of compensation that I am regularly paid. My accrued personal leave days will be charged only for the number of days, or portion thereof, that is required to compensate me at my regular rate of pay.

I also understand that any personal leave compensation that I received during the period prior to the award of TTD benefits, when added to the TTD benefits, that is in excess of my regular gross pay will be deducted from subsequent pays and that the appropriate amount of personal leave will be restored as the deductions are made. Furthermore, I understand that if I refuse to have the excess payment deducted from my subsequent pay, I may be subject to disciplinary action.

I understand that I will continue to accrue seniority while I am absent from work and receiving TTD due to a work-related compensable injury. I will not accrue work-experience credit for incremental pay purposes unless I receive payment from the county board of education totaling one hundred thirty-three full days of employment within an employment term. As long as I have a positive personal leave balance, I am entitled to compensation for all holidays, inclement weather days, and outside of school environment days which occur during the time which I am absent from work due to the work-related injury. Further, I will continue to earn personal leave as long as I remain under contract with the county board of education.

Employee's Statement: I understand that I must choose one of the above options when I am absent from work due to a work-related compensable injury.

Employee's Signature _____ **Date Submitted** _____

TO BE COMPLETED BY THE EMPLOYER - This document was received by:

Employer's Representative Signature _____ **Date Received** _____

ASSIGNMENT OF FUTURE WAGES

STATE OF WEST VIRGINIA
COUNTY OF _____

I, _____ hereby assign to _____
(Employee) (Employer)

future wages due me from _____ in the total amount of \$ _____
(Employer) (Numeric)
_____ Dollars,

which shall be deducted from my future pays in equal amounts of \$ _____ per pay period, with a
final deduction of \$ _____, until the total amount is repaid.

In accordance with the regulations of the Wage Pay and Collection Act, three-fourths of my earnings from each pay period,
less deductions, shall be exempt from wage assignments.

(Employee's signature)

Taken, sworn to, and subscribed before me on this _____ day of _____, 2_____.

(Notary Public)

My commission expires _____, 2_____.

Accepted by _____ on this, the _____ day of
_____, 2_____.

(Signature)

(Title)

(County Board of Education)

Note: The employer should retain the original and provide a copy to the employee.

FISCAL NOTE WORKSHEET
(Submit 4 Copies)

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

SUBJECT Policy 5612: Workers' Compensation Benefits FUND _____

SOURCE OF REVENUE: GENERAL FUND SPECIAL OTHER (SPECIFY) _____

COST OF 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 & 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	\$	\$	\$ See Below	\$ See Below	\$ See Below
PERSONAL SERVICES CURRENT EXPENSES	\$	\$	\$	\$	\$
REPAIRS/ ALTERATIONS EQUIPMENT OTHER					
2. ESTIMATED TOTAL REVENUES	\$	\$	\$	\$	\$

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

No additional costs will be incurred by the Department or county boards of education as a result of this policy.

DATE

AGENCY

6-14-02

Education

AP

AUTHORIZED REPRESENTATIVE

Policy 5612: Workers' Compensation Benefits

Comment Response Form

Please use this form when commenting on proposed Policy 5612. You may attach additional sheets if necessary.

Individual/Organization: _____

Title: _____

Street Address: _____ City/State/Zip _____

Comments/Suggestions

§126-158-1. General.

§126-158-2. Applicability.

§126-158-3. Definitions.

§126-158-4. Administration.

§126-158-5. Election of Option.

§126-158-6. Return to Work Notice.

§126-158-7. Discriminatory Practices.

Return comments by August 16, 2002 to:

**Joseph Panetta
Executive Director
Office of School Finance
West Virginia Department of Education
Building 6, Room 215
1900 Kanawha Boulevard, East
Charleston, WV 25305-9969
E-mail: jpanetta@access.k12.wv.us
FAX: (304) 558-8867**