

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #5

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1987 SEP -8 AM 8 25  
SECRETARY OF STATE

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

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

CITE AUTHORITY: W. Va. Code 18-2-5

RULE TYPE: PROCEDURAL  INTERPRETIVE \_\_\_\_\_

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

Chapter 29A-1-3

AMENDMENT TO AN EXISTING RULE: YES , NO \_\_\_\_\_

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 188

TITLE OF RULE BEING AMENDED: Appeals Procedure for Citizens

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 9, 1987

PROCEDURAL RULE  
WEST VIRGINIA BOARD OF EDUCATION  
CHAPTER 18-2  
SERIES 7211

Title: Appeals Procedure for Citizens

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Section 1. General

1.1 Scope - The purpose of this appeals procedure is to provide a way for citizens to work with county boards of education and administrative officials in seeking solutions to problems when there appears to be a failure to provide elements of a high-quality education that resources permit the school district to provide or for violation of any other legal duty. Both the schools and the citizenry of the community are better served when a sincere effort is made to find constructive solutions to problems that may arise. It is the intent of this procedure to provide a simple, straightforward and easily understood method for solving problems at the lowest possible administrative level, as fairly and as quickly as possible. However, the procedures set forth in the document are not deemed to be a precondition to seeking relief in some other forum.

1.2 Authority - W.Va. Code 18-2-5.

1.3 Filing Date - September 3, 1987.

1.4 Effective Date - November 2, 1987.

1.5 Repeal of former rule - None. This rule contains amendments in two sections which add procedures for public notice of this policy and change the hearing officer's authority at Level IV.

Section 2. Definitions

2.1 Appeal - An "appeal" is a claim by one or more citizens of a violation of state law or the policies, rules and regulations of the West Virginia Board of Education. The written appeal will identify the specific state law or state board policy, rule or regulation which is claimed to be violated, and shall include as much information as possible to describe the alleged violation. Copies of the policies, rules and regulations of the West Virginia Board of Education are to be available for public review at each county board of education office.

The term "appeal" shall not apply to any situation where the county board of education is without authority to act or where the method

of appeal is specifically established by law, such as appeals regarding the placement of exceptional children. Additionally, the term "appeal" shall not apply when a citizen has a personal complaint about a school employee. Each county board of education shall establish its own specific procedures to handle complaints about school employees and for other citizen complaints which are not governed by this policy.

2.2 Days - Days shall mean the days the business office of the county board of education is open. Such offices are generally closed on Saturdays, Sundays and official holidays. Concerns related to a single school only should be brought to the attention of the school principal during the school term.

2.3 State Law - State law shall mean the constitutional principles, statutory provisions, judicial law and administrative law of the State of West Virginia.

### Section 3. Procedure

3.1 Distribution of Appeals Procedure - Copies of this appeals procedure will be readily accessible to citizens at the office of the state superintendent of schools, the office of each county board of education and at each public school.

The principal at each public school will inform the parents annually at the beginning of the instructional term of this policy and its contents.

3.2 Appeal Forms - The state superintendent of schools shall prepare and distribute appropriate forms for each appeal level. Such forms shall be available at the office of the state superintendent of schools, the office of each county board of education and at each public school.

3.3 Filing of Appeals - The citizen making the written appeal shall provide as much information as possible at the time the appeal is filed; however, additional supportive information may be presented at any level. Once an appeal has been filed, the claim itself may not be altered greatly in content or wording. If such changes are necessary, a new appeal should be filed.

3.4 Time Limits - Since it is important that an appeal be processed as rapidly as possible, the number of days indicated at each level shall be considered the maximum. A time limit may, however, be extended by mutual agreement.

3.5 Meetings, Private/Public - All meetings and hearings shall be conducted in private, except that hearings before the county board of education or the state superintendent of schools or his/her designee may

be open at the request of either party. If, during an open hearing, the hearing officer(s) at the county or state level feels that either party is discussing matters of a personal nature, the hearing may then be closed for the period of time that such personal matters are being discussed.

3.6 Representation - The person or persons filing the appeal may have the assistance of as many as three representatives at conferences and meetings held at Levels I and II. Likewise, the administration at Levels I and II may be represented by no more than three persons. At Levels III and IV, any number of representatives may be present. If either party is to be represented by legal counsel, sufficient advance notice must be given the other party.

3.7 Written Decisions - Except at the informal level, all decisions rendered shall be in writing, setting forth the decision and the reasons therefor. The decision shall be transmitted promptly to all parties.

#### Section 4. Processing of Appeals

As the primary goal of the appeals procedure is to establish better communications between school officials and citizens, it is important for parents and citizens to discuss their problems with the proper school administrator, usually the school principal or the supervisor/director at the county office. Accordingly, citizens will first informally discuss their concerns with the proper administrator prior to filing a formal appeal under this procedure. If the matter cannot be resolved informally, the administrator shall provide the citizen with the proper appeal form.

4.1 Level I - In the event that the concern is not resolved informally, a formal, written appeal may be filed with the principal or school administrator by the citizen or by a group of citizens in behalf of themselves and all others so affected. The appeal shall be on the prescribed form and will be signed by all persons filing the appeal.

Should the principal or other administrator be without authority to act on the appeal, it may be filed directly with the county superintendent of schools. If, however, the county superintendent feels that the appeal can be resolved at Level I, it will immediately be referred to the proper administrator.

A written decision by the Level I administrator shall be made within ten days after receipt of the appeal. Should either party request a conference at this level, the Level I administrator will have five additional days to provide the written decision. When the decision is not in favor of the citizen(s), a copy of the Level II appeal form shall be included with the decision.

4.2 Level II - Within fifteen days after receiving the decision of the Level I administrator, the aggrieved citizen(s) may appeal the decision in writing on the prescribed form to the county superintendent of schools. The superintendent or his/her designee shall, within ten days, have a conference with the citizen(s) in an attempt to resolve the appeal. The superintendent or his/her designee shall issue a written decision within ten days following this conference. When the decision is not in favor of the citizen(s), a copy of the Level III appeal form shall be included with the decision.

4.3 Level III - Within fifteen days of receiving the decision of the county superintendent, the aggrieved citizen(s) may appeal the decision in writing on the prescribed form to the county board of education. The appeal shall be transmitted to the county superintendent who shall, within three days, provide a copy to each member of the county board of education. Copies of all prior decisions and all other written materials related to the grievance also will be provided board members.

A hearing on the appeal shall be held by the county board of education if requested by the aggrieved citizen(s) when filing the Level III appeal or if the board, itself, determines that a hearing shall be held.

For an appeals hearing held before a county board of education, the usual and customary procedures for administrative hearings will prevail, including proper notice of the hearing, the opportunity to be represented by counsel, the opportunity to present evidence and testimony, the opportunity to call witnesses and the opportunity to cross-examine adverse witnesses. A court reporter may be provided by either party.

When a hearing is held, the decision of the county board of education will be by majority vote of those members participating in the hearing and shall rest solely upon the evidence properly presented at the hearing.

A decision shall be rendered by the county board of education within twenty-five days following receipt of the Level III appeal. The board may affirm, modify or reverse the Level II decision and require such remedial action as it deems necessary. When the decision is not in favor of the citizen(s), a copy of the Level IV appeal form shall be included with the decision.

4.4 Level IV - If the aggrieved citizen(s) is not satisfied with the decision of the county board of education, the decision may be appealed to the state superintendent of schools. The appeal shall be submitted within thirty days of receiving the decision of the county board of education. A copy of the Level IV appeal and any supporting documents shall, at the same time, be transmitted to the county superintendent of schools.

of the citizen(s), a copy of the Level IV appeal form shall be included with the decision.

4.4 Level IV - If the aggrieved citizen(s) is not satisfied with the decision of the county board of education, the decision may be appealed to the state superintendent of schools. The appeal shall be submitted within thirty days of receiving the decision of the county board of education. A copy of the Level IV appeal and any supporting documents shall, at the same time, be transmitted to the county superintendent of schools.

At the request of either party, a hearing shall be conducted by an impartial review officer appointed by the state superintendent.

Both the citizen(s) and representatives of the county board of education shall be permitted to appear before the impartial review officer. The hearing shall be conducted in accordance with the usual and customary rules governing administrative hearings and shall be held at a place designated by the impartial review officer. Upon agreement of the parties, the impartial review officer may visit the county to secure additional facts and information related to the appeal.

The decision of the impartial review officer shall be issued within thirty days of receipt of the appeal and shall be final unless altered or set aside by a court of competent jurisdiction. The decision of the impartial review officer may be appealed to the appropriate court or review may be sought by original proceeding.