**126CSR4**

**TITLE 126**
**PROCEDURAL RULE**
**BOARD OF EDUCATION**

**SERIES 4**
**RULES OF PROCEDURE FOR ADMINISTRATIVE HEARINGS AND APPEALS (1340)**

## §126-4-1. General.

1.1. Scope. - The "Rules of Procedure for Administrative Hearings and Appeals" are promulgated to assure procedural due process and expeditious processing of administrative proceedings before the State Superintendent of Schools. Nothing herein should be interpreted to give rise to an action on the part of any county school personnel; all remedies which are allowable by a county board of education or county school superintendent should be exhausted before appealing to the State Superintendent to hear a controversy. Employee grievances are governed by the provisions of West Virginia Code §18-29-1, *et seq*.

1.2. Authority. - W.Va. Const., Article XII, §2; W.Va. Code §§6-9A-1 et seq., 18-2-5, 18-3-4, 18A-3-2a, and 18A-3-6.

1.3. Filing Date. - June 7, 2002.

1.4. Effective Date. - July 7, 2002.

1.5. Repeal of Former Rule. This procedural rule repeals and replaces Legislative Rule WV 126CSR4 "Rules of Procedure for Administrative Hearings and Appeals" filed February 15, 2002 and effective March 17, 2002.

## §126-4-2. Foreword.

2.1. This policy governs the disposition of all administrative proceedings as well as the hearing of appeals and the adjudication of controversies and disputes arising under school laws by the State Superintendent of Schools, including citizens' appeals under State Board Policy 7211.

## §126-4-3. General Rules.

3.1. Definition of “Designee.” As used in these rules, “Designee” shall mean that

employee of the West Virginia Department of Education (WVDE) designated by the Superintendent to hear and determine issues pursuant to the terms and conditions of this policy.

3.2. Definition of "Superintendent." As used in these rules, unless a different meaning appears from the context, "Superintendent" shall mean the State Superintendent of Schools.

3.3. Definition of "Party." "Party" shall mean petitioner, respondent, and/or intervener. "Party" shall also mean teacher to the extent pertinent.

3.4. All parties shall receive notice at least ten (10) days prior to the hearing. The notice of hearing shall include:

3.4.1. the date, time and place of the hearing,

3.4.2. a concise statement of the purpose,

3.4.3. mention that either the Superintendent or a designee of the Superintendent shall conduct the hearing.

3.5. A copy of this policy shall be provided to the parties to the hearing.

3.6. Appearance Pro Se. Any person may either appear in person or be represented by a representative or an attorney at law admitted and authorized to practice in this State.

3.7. Authority of Superintendent. The Superintendent shall have authority to administer oaths and affirmations; examine witnesses and receive evidence; rule upon offers of proof; issue subpoenas; take or cause depositions to be taken whenever the ends of justice would, in the Superintendent's opinion, be served thereby; regulate the course of the hearing; and dispose of procedural requests or similar matters. The authority of the Superintendent shall extend to his/her designee in all cases arising under this policy when the matter is heard by the designee at the request of the Superintendent.

3.7.1. The Superintendent may also call witnesses and question them. The Superintendent may limit the number of witnesses who will be called, within reason, and may also limit the length of oral argument.

3.7.2. A hearing may be adjourned from one day to another or to another place either by announcement by the Superintendent at the hearing or by appropriate notice.

3.7.3. The Superintendent may grant a continuance for good cause shown by the requesting party or upon his/her own motion.

3.8. Evidence. The formal rules of evidence shall be relaxed. Evidence will be admissible if it is material and relevant to the matter; however, irrelevant, immaterial or unduly repetitious evidence shall be excluded. All evidence, including any records, investigations, reports and documents which the Superintendent desires to consider as evidence in making a decision, shall be offered and made a part of the record in the proceeding. The Superintendent may take official notice of any fact which may be judicially noticed by a Court and, in addition, may take official notice of general, technical or scientific facts within the Superintendent's knowledge. Parties may be given a fair opportunity to refute the facts so noticed. The requirements of this rule shall not apply to cases in which the truth of the particular fact or matter is admitted or to a determination of appropriate relief.

3.9. Stenographic Transcript. Where there is available a stenographic transcript of proceedings before a county board of education, or before any court of record or other official or body whose action is called into question before the Superintendent, either party may, if at least ten (10) days' notice of intention to do so has been given to opposing parties or counsel, offer the transcript of testimony of any witness or witnesses named in said notice in lieu of producing said witness or witnesses at the hearing.

3.10. Briefs and Oral Argument. All parties shall have the opportunity to submit briefs on the matter, and to present oral argument if requested. Oral argument shall be limited to thirty (30) minutes for each party, unless the Superintendent shall otherwise order. Briefs, if any, shall be submitted within the time fixed by the Superintendent.

3.11. Failure to Cooperate. The Superintendent, on his or her own initiative or at the request of the designee, may institute judicial proceedings for punishment of persons for contemptuous conduct directed to the Superintendent or the designee, in the course of a proceeding.

3.12. Written Decision. Every determination shall be embodied in a written decision which shall contain both findings of fact and conclusions of law and an appropriate recommended order. Such decisions shall be issued by the Superintendent's designee. Upon receipt of the recommended order with findings and conclusions from such designee, the Superintendent shall review the same along with the record and issue an order adopting the findings, conclusions, and/or recommendations of the designee; rejecting the findings, conclusions and/or recommendations of the designee; or remanding the matter back to the designee with instructions for further evidence or findings, conclusions and/or recommendations. When the case is heard directly by the Superintendent, the Superintendent shall issue both a written decision, which shall set

forth findings of fact and conclusions of law, and an appropriate order. Said orders shall be filed in the office of the Superintendent and copies thereof shall be served or mailed to the parties of record affected thereby or their attorneys of record within thirty (30) days following the Superintendent's receipt of any recommendation from his or her designee or within thirty (30) days following the hearing when heard directly by the Superintendent.

3.13. Waiving of Rules. Any of the provisions of these rules relating to the presentation of his/her case or argument may be waived by any party or his/her attorney.

3.14. Hearings shall be recorded by electronic means or by a court reporter.

**§126-4-4. Rules for Hearings on Certification Suspension/Revocation/Denial for Cause.**

4.1. Definitions of terms used in this section.

4.1.1. "Hearing Officer." As used in these rules, unless a different meaning appears from the context, "Hearing Officer" shall mean the State Superintendent of Schools, the Professional Practice Panel, the Licensure Appeal Panel, or a WVDE employee designated by the Superintendent to hear and determine issues of teaching certificate suspension and/or revocation and/or denial for cause.

4.1.2. "Teacher." As used in these rules, the word "Teacher" (and its derivatives) shall mean any person certified or otherwise professionally licensed by the Superintendent pursuant to policy, rule, or regulation of the West Virginia Board of Education or pursuant to statute, including but not limited to administrators, professionals, paraprofessionals, coaches, and holders of service certificates.

4.1.3. "Applicant." As used in these rules, the word "Applicant" (and its derivatives) shall mean any person applying for a teacher license issued by the Superintendent pursuant to policy, rule, or regulation of the West Virginia Board of Education or pursuant to statute.

4.1.4. "Party." "Party" shall mean petitioner, respondent, and/or intervener. "Party" shall also mean teacher to the extent pertinent.

4.1.5. “Suspension.” “Suspension”, as used in these rules, shall mean a temporary revocation imposed for a fixed and definite period of time. After a period of suspension has expired, the affected individual must reapply for licensure.

4.1.6. “Professional Practice Panel.” "Professional Practice Panel" shall

mean the seven (7) individuals selected to hear and make recommendations to the Superintendent regarding revocation for cause of a teacher's license, pursuant to West Virginia Board of Education Policy 5050.

4.1.7. “Licensure Appeal Panel.” “Licensure Appeal Panel” shall mean the seven (7) individuals selected to hear and make recommendations to the Superintendent regarding denial for cause of a teacher’s license, pursuant to West Virginia Board of Education Policy 5050.

4.2. Grounds for Revocation or Suspension of Certificates. The Superintendent may, after ten (10) days' notice and upon proper evidence, revoke or suspend the certificate(s) of any teacher for drunkenness, untruthfulness, immorality, or for any physical, mental or moral defect which would render him/her unfit for the proper performance of his or her duties, or for any neglect of duty or refusal to perform the same, or for using fraudulent, unapproved, or insufficient credit; or for any other cause which would have justified the withholding of a certificate when the same was issued. (West Virginia Code §§18A-3-2a, 18A-3-6)

4.3. Grounds for Denial of Licensure for Cause. A certificate shall not be issued to any person who is not of good moral character and physically, mentally, and emotionally qualified to perform the duties for which the certification would be granted or for any other cause which would justify the revocation or suspension of certification. (West Virginia Code §§18A-3-2a, 18A-3-6)

4.4. Duty of County Superintendent. It shall be the duty of any county superintendent who knows of any immorality or neglect of duty on the part of any teacher, including student teachers, to report the same, together with all the facts and evidence, to the Superintendent for such action as may be proper. In the case of a student teacher, the county superintendent must also send the report to the appropriate teacher preparation institution. Failure to report such information, if willful, may be grounds for revocation of the certificate of the county superintendent.

4.5. Recalling Certificates for Correction. If a certificate has been granted through an error, oversight, or misinformation, the Superintendent shall have authority to recall the certificate and make such corrections as will conform to the requirements of law and State Board of Education policy.

4.6. Teaching Certificate Revocation and Suspension Proceedings; Notice. Teaching certificate revocation proceedings shall be conducted before the Hearing Officer. The teacher shall receive notice ten (10) days prior to the hearing.

4.6.1. The notice shall include:

4.6.1.a. the date, time and place of the hearing,

4.6.1.b. a concise statement of the charges,

4.6.1.c. indicate that the Superintendent or his/her designee shall conduct the hearing, and

4.6.1.d. the possible actions to be taken against the certificate of the teacher.

4.6.2. Upon timely request by the teacher, a more definite statement of the charges shall be received by the teacher at least ten (10) days prior to the hearing.

4. 6.3. Appearance Pro Se. Any person may either appear in person with or without a representative or an attorney at law admitted and authorized to practice in this State.

4.6.4. A quorum shall be required. A majority of Professional Practice Panel members shall constitute a quorum.

4.7. Denial for Cause Proceedings. Denial for cause proceedings shall be conducted before the Hearing Officer. The applicant may submit a written request for an appeal hearing within thirty (30) days of notification of a recommendation of a denial for cause from the Office of Professional Preparation. If no such hearing request is timely received, the application may be denied for cause by the Superintendent. If an appeal hearing request is received, the applicant shall receive notice ten (10) days prior to the hearing.

4. 7.1. The notice shall include:

4.7.1.a. the date, time and place of the hearing,

4.7.1.b. a concise statement of the reasons for the denial recommendation, and

4.7.1.c. indicate that the Superintendent or his/her designee shall conduct the hearing as the Hearing Officer.

4. 7.2. Appearance Pro Se. Any person may either appear in person with or without a representative or attorney at law admitted an authorized to practice in this State.

4.7.3. A quorum shall be required. A majority of Licensure Appeal Panel

members shall constitute a quorum.

4.8. Hearing on Teaching Certification. A teaching certificate suspension, revocation, or denial for cause hearing is a continuation of the Superintendent's investigation into whether a professional teaching or administrative certificate or lesser license, a paraprofessional certificate or lesser license, a service certificate or lesser license, or a coaching certificate or lesser license should be suspended revoked or denied for cause.

4.8.1. A teaching certificate suspension, revocation or denial for cause hearing shall be open to the public, unless the teacher or applicant requests that it be closed.

4. 8.2. The purpose of a teaching certificate suspension, revocation or denial for cause hearing is to allow the teacher or applicant due process regarding the asserted causes for revocation, suspension, or denial of the teaching certificate. The teacher or applicant may present his or her position through presentation of evidence, examination and cross-examination of witnesses, and oral argument.

4. 8.3. The Hearing Officer may also call witnesses and question them, as well as those called by the teacher or applicant. The Hearing Officer may limit the number of witnesses who will be called, within reason, and may also limit the length of oral argument.

4. 8.4. A hearing may be adjourned from one day to another or to another place either by announcement by the Hearing Officer at the hearing or by appropriate notice.

4. 8.5. The Superintendent or his or her designee may grant a continuance for good cause shown by the requesting party or upon his/her own motion.

4.9. Authority of Hearing Officer. The Hearing Officer shall have authority to administer oaths and affirmations; examine witnesses and receive evidence; rule upon offers of proof; issue subpoenas; take or cause depositions to be taken whenever the ends of justice would, in the Hearing Officer's opinion, be served thereby; regulate the course of the hearing; and dispose of procedural requests or similar matters.

4.9.1. The Hearing Officer shall have authority to recommend that a teacher's certificate be revoked, suspended, or denied for cause by the Superintendent.

4.10. Evidence. The formal rules of evidence shall be relaxed. Evidence will be admissible if it is material and relevant to the matter before the Hearing Officer; however,

irrelevant, immaterial or unduly repetitious evidence shall be excluded. All evidence, including any records, investigations, reports and documents which the Hearing Officer desires to consider as evidence in making a decision, shall be offered and made a part of the record in the proceeding. The Hearing Officer may take official notice of any fact which may be judicially noticed by a Court and, in addition, may take official notice of general, technical or scientific facts within the Hearing Officer's knowledge. Parties may be given a fair opportunity to refute the facts so noticed. The requirements of this rule shall not apply to cases in which the truth of the particular fact or matter is admitted, or to a determination of appropriate relief. Revocation, suspension, or other action against the certificate of a teacher in another jurisdiction or refusal by another jurisdiction to issue a teacher certificate shall be *prima facie* evidence of grounds for revocation, suspension, denial for cause or other action against the certificate in West Virginia.

4.11. Stenographic Transcript. Where there is available a stenographic transcript of proceedings before a county board of education, or before any court of record or other official or body concerning issues which form or support the basis for the hearing before the Hearing Officer, either party may provide to the Hearing Officer and the other party copies of said transcripts to be used as substantive evidence in the proceedings. The transcript of testimony of any witness or witnesses may be used in lieu of producing said witness or witnesses at the hearing. The use of transcripts may also be directed by the Hearing Officer in the interest of time.

4.12. Briefs and Oral Argument. All parties shall have the opportunity to submit briefs on the matter, and to present oral argument if requested. Oral argument shall be limited to thirty (30) minutes for each party, unless the Hearing Officer shall otherwise order. Briefs, if any, shall be submitted within the time fixed by the Hearing Officer.

4.13. Failure to Participate. Upon failure of a teacher or applicant to contest the asserted causes for revocation of a certificate or lesser license or for the denial for cause of a certificate or lesser license, or upon failure of a party respondent to appear and defend against the petitioner's claims, all of the allegations/claims duly made may be accepted by the Hearing Officer as confessed.

4.14. Failure to Cooperate. The Superintendent, on his or her own initiative or at the request of the designee, may institute judicial proceedings for punishment of persons for contemptuous conduct directed to the Hearing Officer in the course of a proceeding.

4.15. Written Decision. Every decision of the Hearing Officer shall be embodied in a written recommendation which shall contain both findings of fact and conclusions of law and an appropriate recommended order. Such written decisions shall be issued by the Hearing Officer to the Superintendent. An appropriate Order setting forth a decision

regarding revocation of certification, denial for cause or other action shall be issued by the Superintendent. The Order shall either adopt the recommendation of the Hearing Officer or contain a factual or legal basis for varying from the recommendation of the Hearing Officer. When the case is heard directly by the Superintendent, the Superintendent shall issue a written decision which shall set forth the findings of fact and conclusions of law and an appropriate order. Said Orders shall be filed in the office of the Superintendent and copies thereof shall be served or mailed to the parties of record affected thereby or their attorneys of record within thirty (30) days following the receipt of the recommendations by the Superintendent or within thirty (30) days of the hearing if the same was conducted by the Superintendent.

4.16. Waiving of Rules. Any of the provisions of these rules relating to the presentation of his/her case or argument may be waived by any party or his/her attorney.

4.17. Hearings shall be recorded by electronic means or by a court reporter.

**§126-4-5. Other Hearings.**

5.1. Hearing on Removal of a School Official. Hearings conducted for removal of a county school official shall be conducted following the general rules in §126-4-3 of this policy.

**§126-4-6. Appeal to Circuit Court.**

6.1. Any party not satisfied with the decision rendered by the Superintendent or his or her designee may appeal the same to the Circuit Court within 30 days of mailing of the order to the last known address of the party.

6.2. Upon the West Virginia Department of Education's receipt of notice of an appeal, a transcript of the proceedings held in accordance with the provisions of this policy shall be forwarded to all named parties at the expense of the West Virginia Department of Education.

**§126-4-7. Severability.**

7.1. If any provision of this rule or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this rule.