

**126CSR99**

**TITLE 126  
LEGISLATIVE RULE  
BOARD OF EDUCATION**

**SERIES 99  
STUDENT CODE OF CONDUCT (4373)**

**§126-99-1. General.**

1.1. Scope. -- This rule sets the requirements for the conduct of students in West Virginia schools in order to assure a nurturing and orderly, safe, drug-free, violence- and harassment-free learning environment that supports student academic achievement and personal-social development.

1.2. Authority. – W. Va. Constitution, Article XII, §2, and W. Va. Code §§16-9A-4, 16-9A-9, 17A-1-1, 18-2-5, 18-2-5a, 18-2-7b, 18-2-9, 18-2-33, 18-2C-1 et seq., 18-5-1, 18-5-13, 18-16-1, 18A-1-1, 18A-5-1, 18A-5-1a, 60A-1-101, 60A-7-11a, 61-2-15, 61-7-2, and 61-7-11a.

1.3. Filing Date. – December 16, 2002.

1.4. Effective Date. – July 1, 2003.

1.5. Repeal of Former Rule. -- This legislative rule revises W.Va. §126CSR99, “Student Code of Conduct” (Policy 4373) filed June 7, 2002 and effective July 7, 2002. This policy is to be read in conjunction with W.Va. §126CSR18, “Racial, Sexual, Religious/Ethnic Harassment and Violence Policy” (Policy 2421), and W.Va. §126CSR98, “Student Handbook - Student Rights and Responsibilities” (Policy 4372).

**§126-99-2. Purpose.**

2.1. The West Virginia Board of Education recognizes the need for students, teachers, administrators, and other school personnel to have a nurturing and orderly, safe, and stimulating educational environment. The purpose of these regulations is to provide West Virginia school districts with a policy of student conduct that will ensure an orderly and safe environment that is conducive to learning. These regulations also require that West Virginia’s public schools respond immediately and consistently to incidents of harassment, intimidation, bullying, substance abuse and/or violence or other Student Code

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of Conduct violations in a manner that effectively deters future incidents and affirms respect for individuals. These regulations require county boards to design and implement prevention and response programs, to outline investigatory and reporting procedures, and to delineate penalties for violations of this policy. The West Virginia Board of Education believes further that public schools should undertake proactive, preventive approaches to ensure a nurturing and orderly and safe school environment that fosters learning and personal-social development. Public schools must create, encourage, and maintain a safe, drug-free, and fear-free school environment in the classroom, on the playground, and at school-sponsored activities. Assuring such an educational environment requires a comprehensive program supported by everyone in the school organization, as well as parents/guardians, and the community. Any form of harassment, intimidation, bullying, substance abuse, violence, or other policy violation is unacceptable in West Virginia schools.

### **§126-99-3. Student Code of Conduct.**

3.1. All students enrolled in West Virginia public schools shall behave in a manner that promotes a school environment that is nurturing, orderly, safe and conducive to learning and personal-social development.

3.1.1. Students will help create an atmosphere free from bullying, intimidation and harassment.

3.1.2. Students will demonstrate honesty and trustworthiness.

3.1.3. Students will treat others with respect, deal peacefully with anger, use good manners and be considerate of the feelings of others.

3.1.4. Students will demonstrate responsibility, use self-control and be self-disciplined.

3.1.5. Students will demonstrate fairness, play by the rules, and will not take advantage of others.

3.1.6. Students will demonstrate compassion and caring.

3.1.7. Students will demonstrate good citizenship by obeying laws and rules, respecting authority, and by cooperating with others.

### **§126-99-4. Application.**

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4.1. These regulations apply to all students attending public schools in West Virginia during any education-sponsored event, whether in a classroom, elsewhere on school premises, on a school bus or other vehicle used for a school related event, or at a school-sponsored activity or event, whether or not it is held on school premises, in a building or other property used or operated by a county board of education, Regional Education Service Agency (RESA) or West Virginia Department of Education, or in another facility being used by any of those agencies.

4.1.1. Students who do not behave in a manner that promotes a nurturing, orderly, safe environment conducive to learning will be subject to the responses to violations as outlined in §126-99-7.

4.1.2. This policy does not supercede any rights granted to special education students by federal or state law or other West Virginia Board of Education policy.

### **§126-99-5. Planning by County Boards of Education.**

5.1. County boards of education shall develop a plan for the implementation of this policy. This plan shall reflect the particular needs of students and staff members to study, learn and work in an environment free from Student Code of Conduct violations. To the maximum extent possible, these plans shall be developed collaboratively with state and local agencies that share the purposes of this policy.

5.2. By July 1, 2003, each county board of education shall develop or revise its existing policies to address all forms of Student Code of Conduct violations. This document represents the minimum components needed in a Student Code of Conduct. Counties may add components to reflect county school system policy and procedures.

5.3. To ensure understanding of the Student Code of Conduct, each county board of education must develop and implement an education program for each grade level, as well as a program for all faculty and staff. The programs, at a minimum, must: raise awareness of the different types of Student Code of Conduct violations, how they are manifested, their devastating emotional and educational consequences, and their potential legal consequences. In addition, multicultural education programs must be developed and implemented for faculty, staff and students to foster an attitude of understanding and acceptance of all individuals.

### **§126-99-6. Attendance Policy.**

6.1. The West Virginia Board of Education emphasizes the value of regular attendance in enabling students to benefit from the school's education programs. W.Va.

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§126CSR81, West Virginia Board of Education Policy 4110, Attendance, places responsibility on students to attend school on a daily basis, and on each parent or guardian to send his/her child(ren) to school on a daily basis.

6.2. Recognizing that frequent absences and tardiness, for any reason, are certain to adversely affect the student's schoolwork, each county school system will implement an attendance policy that includes the policy components outlined in W.Va. §126CSR81, West Virginia Board of Education Policy 4110, Attendance, in order to communicate the expectation that students will be in school every day except when illness, injury, or some providential condition beyond the student's control prevents attendance.

6.3. Absences resulting from the mandatory suspension/expulsion of a student due to a violation of W.Va. Code §18A-5-1a (battery on a school employee, possession of a firearm or deadly weapon, or sale of a narcotic drug) shall not be calculated in the school's/county's attendance rate.

### **§126-99-7. Violations of the Student Code of Conduct.**

7.1. This policy classifies student violations of the Student Code of Conduct in four levels. County policies may reclassify specific violations as Level I, II, or III, depending on the severity or repetition of the violations and provided this reclassification assures that the treatment of the violations is consistent with W.Va. Code. W.Va. Code requires that the principal shall suspend a student who commits a violation classified as a Level IV in this policy. Level III and IV violations are to be referred directly to the appropriate administrator because of the serious and/or unlawful nature of the misconduct. County/school policies should identify responses and/or interventions that include, but are not limited to, examples provided in this policy to address Level I and II violations. Each county and/or school shall identify the individual who will receive complaints of violations of the Student Code of Conduct, and develop a procedure for acting upon those complaints. The specific procedures to be followed when any staff member observes any violations outlined in this policy should be outlined in county/school policies.

#### 7.1.1. Level I Violations.

a. Anti-Social Conduct. A student will not orally, in writing, electronically, or with photographs or drawings, direct profanity or insulting, obscene gestures toward another student that causes embarrassment, discomfort, or a reluctance to participate in school activities.

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b. Cheating/Academic Misconduct. A student will not plagiarize, cheat, gain unauthorized access to, or tamper with educational materials. The response to violations under this section may include academic sanctions in addition to other discipline.

c. Disorderly Conduct. A student will not harass another student or other person or misbehave in a manner that causes disruption or obstruction to the education process. Disruption caused by talking, making noises, throwing objects, or otherwise distracting another person, constitutes disorderly conduct. Behavior is considered disorderly if a teacher is prevented from starting an activity or lesson, or has to stop instruction to address the disruption.

d. Improper Operation of a Motor Vehicle. A student will not engage in improper parking of a motor vehicle on school property.

e. Inappropriate Displays of Affection. Students will not engage in inappropriate displays of affection, such as kissing or embraces of an intimate nature.

f. Inappropriate Dress and Grooming. A student will not dress or groom in a manner that disrupts the educational process or is detrimental to the health, safety or welfare of others. A student will not dress in a manner that is distractive or indecent, to the extent that it interferes with the teaching and learning process, including wearing any apparel that displays or promotes any drug-, alcohol- or tobacco-related product that is prohibited in school buildings, on school grounds, in school-leased or owned vehicles, and at all school-affiliated functions.

g. Leaving School Without Permission. A student will not leave the school building, classroom, cafeteria, assigned area, or campus without permission from authorized school personnel.

h. Possession of Inappropriate Personal Property. A student will not possess personal property that is prohibited by school rules or that is disruptive to teaching and learning.

i. Tardiness. A student will not fail to be in his/her place of instruction at the assigned time without a valid excuse.

j. Technology Abuse. A student will not violate the terms of W.Va. §126CSR41, West Virginia Board of Education Policy 2460, Safety and Acceptable Use of the Internet by Students and Educators.

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k. Tobacco. In accordance with W.Va. §126CSR66, West Virginia Board of Education Policy 2422.5A, Tobacco-Free Schools, a student will not smoke, use tobacco, or possess any substance containing tobacco in any building/area under the control of a county school system, including all activities or events sponsored by the county school district.

l. Trespassing. A student will not enter upon the premises of the county school system property, other than to the location to which the student is assigned, without authorization from proper school authorities. If removed, suspended, or expelled from school, a student will not return to the school premises without permission of the proper school authorities.

m. Truancy. In accordance with W.Va. §126CSR81, West Virginia Board of Education Policy 4110, Attendance, a student will not fail to report to the school's assigned class or activity without prior permission, knowledge or excuse by the school or by the parent/guardian.

### 7.1.2. School Responses to Level I Violations.

a. School administrators and staff may use appropriate intervention strategies, as determined by local policies, including, but not limited to, staff and student/parent conferences, auxiliary staff intervention and counseling programs, student programs for conflict resolution and peer mediation, and programs for anger management and violence prevention.

b. Any of the following intervention strategies and disciplinary actions may be used as appropriate in response to the violation:

- A. Administrator/student conference or reprimand,
- B. Administrator and teacher-parent/guardian conference,
- C. Referrals and conference to support staff or agencies,
- D. Referral to a tobacco cessation program,
- E. Daily/weekly progress reports,
- F. Behavioral contracts,
- G. Change in the student's class schedule,

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- H. School service assignment,
- I. Confiscation of inappropriate item,
- J. Restitution/restoration,
- K. Before and/or after-school detention,
- L. Denial of participation in class and/or school activities,
- M. Immediate exclusion by teacher from one class period of the school day,
- N. Weekend detention,
- O. In-school suspension,
- P. Out-of-school suspension for up to three days, or
- Q. Law enforcement notification.

### 7.1.3. Level II Violations.

a. **Bullying/Harassment/Intimidation.** A student will not bully/intimidate/harass another student. According to W.Va. Code §18-2C-2, “harassment, intimidation or bullying” means any intentional gesture, or any intentional written, verbal or physical act or threat that: (a) a reasonable person under the circumstances should know will have the effect of : (1) harming a student; (2) damaging a student’s property; (3) placing a student in reasonable fear of harm to his or her person; or (4) placing a student in reasonable fear of damage to his or her property; or (b) is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening or abusive educational environment for a student.

b. **Failure to Serve Assigned Detention.** A student will not fail to serve an assigned detention of which students and/or parents/guardian have been notified.

c. **False Identification.** A student will not use another person’s identification or give false identification to any school official with intent to deceive school personnel or falsely obtain money or property.

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d. Forgery. A student will not sign the name of another person for the purpose of defrauding school personnel or the county board of education.

e. Fraud. A student will not deceive another or cause another to be deceived by false or misleading information in order to obtain anything of value.

f. Gambling. A student will not engage in any game of chance or contest wherein money or other items of monetary value are awarded to the winner, except for those games and contests authorized as official school functions.

g. Gang Activity. A student will not, by use of violence, force, coercion, threat of violence, or gang activity, cause disruption or obstruction to the educational process. Gangs are defined as organized groups of students and/or adults who engage in activities that threaten the safety of the general populace, compromise the general community order, and/or interfere with the school district's education mission.

A. Gang activity includes:

(a) Wearing or displaying any clothing, jewelry, colors, or insignia that intentionally identifies the student as a member of a gang, or otherwise symbolizes support of a gang.

(b) Using any word, phrase, written symbol, or gesture that intentionally identifies a student as a member of gang, or otherwise symbolizes support of a gang.

(c) Gathering of two or more persons for purposes of engaging in activities or discussions promoting gangs.

(d) Recruiting student(s) for gangs.

h. Insubordination/Unruly Conduct. A student will not ignore or refuse to comply with directions or instructions given by school authorities. Refusing to open a book, complete an assignment, work with another student, work in a group, take a test or do any other class- or school-related activity not listed herein, refusing to leave a hallway when requested by a school staff member, or running away from school staff when told to stop, all constitute insubordination/unruly conduct.

i. Loitering. A student will not remain or linger on school property without a legitimate purpose and/or proper authority.

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j. Theft or Possession of Stolen Property. A student will not, without permission of the owner or custodian of the property, take property or have in his or her possession property valued less than \$100.00 which does not belong to the student.

7.1.4. School Responses to Level II Violations. The county school system may modify this list in accordance with alternatives available to the district, such as conflict resolution or peer mediation programs. Intervention strategies may include, but are not limited to, the following intervention strategies and disciplinary actions:

- a. Any Level I response.
- b. Out-of-school suspension for up to ten (10) days.

7.1.5. Level III Violations. Violations in the Level III category are consistent with those addressed in W.Va. Code §18A-5-1a(b) and (c) and shall be reported immediately to the principal of the school in which the student is enrolled. The principal will address the violation following the procedures outlined in W.Va. Code §18A-5-1a, subsections (b) through (h).

a. Alcohol. A student will not possess, distribute or be under the influence of alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function.

b. Defacing School Property. A student will not willfully cause defacement of, or damage to, property of the school or others. Actions such as writing in school textbooks or library books, writing on desks or walls, carving into woodwork, desks, or tables, and spray painting surfaces are acts of defacement. Examples of damage to school property include, but are not limited to, ruining bulletin boards, intentionally clogging the plumbing system, breaking light bulbs or fixtures, and damaging school equipment to the point where repair is necessary.

c. Disobeying a Teacher in a Willful Manner. A student will not willfully disobey a teacher.

d. Hazing. A student will not haze or conspire to engage in the hazing of another person. "Hazing" means to cause any action or situation which recklessly or intentionally endangers the mental or physical health or safety of another person or persons to destroy or remove public or private property for the purpose of initiation or admission into or affiliation with, or as a condition for continued membership in, any activity or organization, including both co-curricular and extra-curricular activities.

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e. Improper or Negligent Operation of a Motor Vehicle. A student will not intentionally or recklessly operate a motor vehicle, on the grounds of any educational facility, parking lot, or at any school-sponsored activity, so as to endanger the safety, health or welfare of others.

f. Marijuana (Simple Possession). A student will not possess or be under the influence of marijuana in an educational facility, on school grounds, a school bus or at any school-sponsored function.

g. Physical Altercation. A student will not participate in a physical altercation with another person while under the authority of school personnel.

h. Profane Language. A student will not use profane language directed at a school employee or a student. Using profane language may include, but is not limited to, verbally, in writing, electronically, or with photographs or drawings, direct profanity or insulting, obscene gestures toward any school employee or student.

i. Theft. A student will not, without permission of the owner or custodian of the property, take property or have in his or her possession, property valued at between \$100 and \$999.

j. Threat of Injury or Injury. A student will not threaten to injure another student, a teacher, administrator or other school personnel. [This includes assault on a school employee defined in W.Va. Code 61-2-15(a)].

k. Violation of School Rules or Policies. A student will not habitually, as defined by the county, violate school rules or policies.

### 7.1.6. School Responses to Level III Violations.

a. A principal may suspend a student from school, or transportation to or from the school on any school bus, if the student, in the determination of the principal, after an informal hearing pursuant to W.Va. Code §18A-5-1(d), has committed any Level III Violations.

b. If a student has been suspended pursuant to W.Va. Code §18A-5-1a(b) or (c), the principal may request that the superintendent recommend to the county board that the student be expelled following the provisions in subsections (b) through (l) of W.Va. Code §18A-5-1a.

c. Any school responses to Level I and II Violations.

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d. Agency notification, such as the West Virginia Department of Health and Human Resources.

7.1.7. Level IV Violations. Violations in the Level IV category are consistent with those addressed in W.Va. Code §18A-5-1a(a) and (b). Level IV violations in this policy are aligned with definitions in W.Va. Code §§61-6-17, 61-6-24, and 18A-5-1, and in the Gun-Free Schools Act of 1994 (the reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA), Public Law 103-382, and require that the principal of the school in which the student is enrolled shall address the violation following the procedures outlined in W.Va. Code §18A-5-1a(a) and (b).

a. Battery on a School Employee. A student will not commit a battery by unlawfully and intentionally making physical contact of an insulting or provoking nature with the person of a school employee as outlined in W.Va. Code §61-2-15(b).

b. Felony. A student will not commit an act or engage in conduct that would constitute a felony under the laws of this state if committed by an adult as outlined in W.Va. Code §18A-5-1a(b)(i). Such acts that would constitute a felony include, but are not limited to, arson (W.Va. Code §61-3-1), malicious wounding and unlawful wounding (W.Va. Code §61-2-9), bomb threat (W.Va. Code §61-6-17), sexual assault (W.Va. Code §61-8B-3), terrorist act or false information about a terrorist act, hoax terrorist act (W.Va. Code §61-6-24), burglary (W.Va. Code §61-3-11), robbery (W.Va. Code §61-2-12), and grand larceny (W.Va. Code §61-3-13).

c. Possession of a Controlled Substance. According to W.Va. Code §18A-5-1a(b)(ii), a student will not possess, distribute, or be under the influence of a controlled substance governed by the Uniform Controlled Substances Act as described in W.Va. Code §60A-1-101, et seq., on the premises of an educational facility, at a school-sponsored function or on a school bus.

d. Possession of a Firearm or Deadly Weapon. According to W.Va. Code §18A-5-1a(a), a student will not possess a firearm or deadly weapon as defined in W.Va. Code §61-7-2, on any school bus as defined in W.Va. Code §17A-1-1, or in or on any public or private primary or secondary education building, structure, facility or grounds thereof, including any vocational education building, structure, facility or grounds thereof, or at any school-sponsored function as defined in W.Va. Code §61-7-11a.

A. As defined in W.Va. Code §61-7-2, a “dangerous weapon” means any device intended to cause injury or bodily harm, any device used in a threatening manner that could cause injury or bodily harm, or any device that is primarily used for self-

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protection. Dangerous weapons include, but are not limited to, blackjack, gravity knife, knife, switchblade knife, nunchuka, metallic or false knuckles, pistol, or revolver. A dangerous weapon may also include the use of a legitimate tool, instrument, or equipment as a weapon including, but not limited to, pens, pencils, compasses, or combs, with the intent to harm another. A pocket knife with a blade of three and one-half inches or less shall not be included in the definition of knife as defined in W.Va. Code §61-7-2 unless such knife is knowingly used or intended to be used to produce serious bodily injury or death.

e. Sale of a Narcotic Drug. According to W.Va. Code §18A-5-1a, a student will not sell a narcotic drug, as defined in W.Va. Code §60A-1-101, on the premises of an educational facility, at a school-sponsored function or on a school bus.

7.1.8. School/County Responses to Level IV Violations. Level IV Violations in this policy are those violations addressed in W.Va. Code §18A-5-1a that require the mandatory suspension of the student by the principal from school, or from transportation to or from the school on any school bus, after an informal hearing pursuant to subsection (d) of W.Va. Code §18A-5-1a.

a. Pursuant to W.Va. Code §18A-5-1a(b), if a student has been suspended for committing an act or engaging in conduct that would constitute a felony under the laws of this state if committed by an adult; or unlawfully possessing a controlled substance governed by the Uniform Controlled Substances Act as described in W.Va. Code §§60A-1-101 et seq., on the premises of an educational facility, at a school-sponsored function, or on a school bus, the principal may request that the superintendent recommend to the county board that the student be expelled.

b. If a student has been suspended for battery on a school employee, possession of a firearm or deadly weapon, or sale of a narcotic drug pursuant to W.Va. Code §18A-5-1a, the principal shall, within twenty-four hours, request that the county superintendent recommend to the county board that the student be expelled.

c. Upon such request of the superintendent by a principal, the county superintendent shall recommend to the county board that the student be expelled.

d. Upon such recommendation to the county board by the superintendent, the county board shall conduct a hearing in accordance with W.Va. Code §18A-5-1a subsections (e), (f), and (g), to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board shall expel the student.

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e. Students may be expelled pursuant to W.Va. Code §18A-5-1a for a period not to exceed one school year, provided that a county superintendent may lessen the mandatory one-year period of expulsion if the circumstances of the pupil's case demonstrably warrant such a reduction following the guidelines provided in W.Va. Code §18A-5-1a (i).

f. A county board of education that expels a student, may attempt to establish the student as a "dangerous student" as defined in W.Va. Code §18A-5-1a, at a hearing to determine the expulsion of the student. In a notice to the parent/guardian, the county board shall state clearly whether the board will attempt to establish the student as a "dangerous student" and will include any evidence to support its claim in this notice of the hearing date and time.

g. W.Va. Code §18A-5-1a defines a "dangerous student" as a student who is substantially likely to cause serious bodily injury to himself, herself or another individual within that student's educational environment, which may include any alternative education environment as W.Va. §126CSR20, West Virginia Board of Education Policy 2418, Alternative Education Programs for Disruptive Students, as evidenced by a pattern or series of violent behavior exhibited by the student, and documented in writing by the school, with the documentation provided to the student and parent or guardian at the time of any offense.

h. A county board that expels a student, and finds that the student is a dangerous student, may refuse to provide alternative education pursuant to the conditions outlined in W.Va. Code §18A-5-1a but must re-evaluate this decision at least every three months.

i. With regard to students with disabilities, nothing in this policy may be construed to be in conflict with the federal provisions of the individuals with Disabilities Education Act (IDEA) Amendments of 1997 (Public Law 105-17), or with W.Va. §126CSR16, West Virginia Board of Education Policy 2419, Regulations for the Education of Exceptional Students.

### **§126-99-8. Guidelines for Suspension and Expulsion.**

8.1. Suspension is considered a temporary solution to a violation of the Student Code of Conduct until the problem that caused the suspension is corrected. The length of a suspension should be short, usually one (1) to three (3) school days, but may extend to ten (10) school days. A student is entitled to an informal hearing when faced with a suspension of ten (10) days or less. At this hearing, the principal must explain why the student is being suspended, and the student must be given the opportunity to present

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reasons why s/he should not be suspended. However, a student whose conduct is detrimental to the progress and general conduct of the school may be suspended immediately and a hearing held as soon as practical after the suspension. A student may not participate in any school-sponsored activities, or be permitted on school grounds during the period of suspension without permission of school officials. Other procedures the school must follow when dealing with suspensions are outlined in W.Va. Code §18A-5-1 and §18A-5-1a.

8.2. A suspension of more than ten (ten) days requires a formal hearing before the county board of education. Procedures the school and county must follow when dealing with suspensions of more than ten (10) days are outlined in W.Va. Code §18A-5-1 and §18A-5-1a.

8.3. The county superintendent, upon recommendation by the principal, may recommend that a county board of education expel a student from school if the student's conduct is judged to be detrimental to the progress and general conduct of the school. In all cases involving expulsion, the student is entitled to formal due process procedures if the county board of education agrees to act upon recommendations to expel a student from school. These procedures are outlined in W.Va. Code §18A-5-1 and §18A-5-1a.

8.4. W.Va. Code §18A-5-1 and §18A-5-1a require mandatory suspension by the principal and mandatory expulsion for a period of not less than twelve (12) consecutive months by the county board of education for: possession of a deadly weapon, battery of a school employee, or sale of a narcotic drug. Procedures that must be followed when dealing with an expulsion are outlined in W.Va. Code §18A-5-1 and §18A-5-1a.

8.5. According to W.Va. Code §18A-5-1, a teacher or bus driver may exclude from a classroom or bus any student who: is guilty of disorderly conduct; interferes with an orderly education process; threatens, abuses, intimidates or attempts to intimidate a school employee or student; willfully disobeys a school employee; or uses profane or abusive language toward a school employee. Once a student is excluded from the classroom or bus, the student must be referred to the appropriate administrator who will take disciplinary action, notify the parent/guardian in writing of the disciplinary action taken, and provide a copy to the teacher or bus driver before the student is readmitted to class or to the bus.

### **§126-99-9. Complaint Procedures.**

9.1. All violations of the Student Code of Conduct observed by school employees or by students must be reported to the appropriate personnel for appropriate action to be taken as specified in this policy. Each county/school policy shall designate the

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individual(s) who will receive complaints about violations of the Student Code of Conduct as indicated in §126-99-7, above. Employee failure to report a violation is addressed in W.Va. Code §126CSR142, West Virginia Board of Education Policy 5310, Performance Evaluation of School Personnel.

9.2. County boards of education shall develop procedures to assure that any person who believes he or she has been the victim of a Student Code of Conduct violation or any person with knowledge or belief of conduct which may constitute a violation of the Student Code of Conduct has an identified mechanism to report the alleged acts immediately to an appropriate official designated by the county's policy. Nothing in this policy shall prevent any person from reporting violations directly to the county superintendent, as appropriate, or to the West Virginia Human Rights Commission, or to a law enforcement agency.

9.3. County Boards of Education shall develop appropriate procedures for investigating, reporting, responding, and devising consequences for the failure of the employee to appropriately respond to violations of W.Va. §126CSR99, West Virginia Board of Education Policy 4373, Student Code of Conduct, in accordance with W.Va. §126CSR142, West Virginia Board of Education Policy 5310, Performance Evaluation of School Personnel, in a manner that promotes understanding and respect.

### **§126-99-10. Investigation Procedures.**

10.1. The individual(s) designated by the school to investigate, shall upon receipt of a report or complaint immediately undertake or authorize an investigation. The investigation may be conducted by school/school system officials, or by a third party designated by the school system, in accordance with this policy and the procedures developed pursuant to §126-99-9, above.

10.2. The investigation must, at a minimum, consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and review of circumstances deemed pertinent by the investigator. When any student is to be interviewed in connection with an investigation pursuant to a Level IV violation, a reasonable effort shall be made to contact the student's parent, custodian, or guardian and invite them to be present during such interview, provided such parental notification does not compromise overall school/student safety. Parental notification is encouraged at Levels II and III and discretionary at Level I.

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10.3. The principal shall immediately take such reasonable steps as necessary, to protect the complainant, students, teachers, administrators or other personnel pending completion of an investigation of an alleged policy violation.

10.4. The principal shall determine whether the alleged conduct constitutes a violation of this policy or W.Va. Code §18A-5-1a.

10.5. In determining the appropriate response and/or punishment for a Level I, II, or III violation, the principal, superintendent or local board of education should consider the surrounding circumstances, the nature of the behavior, past incidents or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.

10.6. The investigation will be completed as soon as practicable but no later than ten school days following the reported violation, unless permission has been requested and granted by the West Virginia Department of Education to extend the investigation period. The investigator shall make a report to the principal upon completion of the investigation. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy. County procedures must be developed for the recording and filing of these reports at the local level.

10.7. The result of the investigation of each complaint filed under these procedures will be reported in writing to the complainant or his/her legal guardian by the principal or his/her designee.

10.8. Confidentiality of the filing of complaints, the identity of subjects and witnesses of any complaint and of any action taken as a result of such complaint is essential to the effectiveness of this policy. Only those individuals necessary for the investigation and resolution of the complaint shall be given information about it. Therefore, the right of confidentiality of complainants, subjects, witnesses, and investigators will be vigorously protected and violations of such confidentiality may itself be grounds for disciplinary action.

### **§126-99-11. County Board of Education Action and Reporting.**

11.1. Upon receipt of a report substantiated by staff observation or by the investigation, the principal, superintendent or local board of education will take appropriate

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action against those found to have violated §126-99-6 pursuant to W.Va. Code §18A-1-1 and §18A-5-1a.

11.2. The principal or superintendent shall also initiate such other action as is appropriate to ease tensions and to affirm the values of respect and understanding, in accordance with the county's plan developed pursuant to §126-99-5, above.

11.3. The principal, superintendent or designee shall promptly enter the required disciplinary data into the West Virginia Education Information System (WVEIS) in order to file the required information with the West Virginia Department of Education of all substantiated reports of all violations of the Student Code of Conduct.

### **§126-99-12. Reprisal.**

12.1. The county board of education will develop discipline procedures to take appropriate action against any student who retaliates against any person who reports alleged violations or any person who testifies, assists or participates in an investigation, or who testifies, assists or participates in a proceeding or hearing relating to such violations. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment. The county board of education will develop a discipline process to take appropriate action against any student, administrator or other school personnel who falsely reports violations of this policy.

### **§126-99-13. Right to Alternative Complaint Procedures.**

13.1. These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the West Virginia Human Rights Commission, initiating civil action or seeking redress under the state criminal statutes and/or federal law.

### **§126-99-14. Dissemination of Policy and Training.**

14.1. This policy or a summary shall be conspicuously posted throughout each county's/school's facilities in areas accessible to students and staff members.

14.2. This policy, or a summary, shall appear in the student handbook and if no handbook is available, a copy will be distributed to all students, faculty, staff and parents.

14.3. When a student enters middle/junior high/high school for the first time, the student and his/her parent/guardian will be requested to sign and return a contract agreeing to abide by the stipulations in the policy and consequences associated with violations.

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14.4. The county board of education will develop and implement training for students and staff on these regulations and on means for effectively promoting the goals of this policy. The county shall review their policy at least bi-annually for compliance with state and federal law and West Virginia Board of Education policy.

### **§126-99-15. Assessment of Effectiveness.**

15.1. The West Virginia Department of Education will prepare an annual report to the West Virginia Board of Education to include: reported and substantiated incidents of Student Code of Conduct violations; action taken in response to incidents; and training and staff development offered by the counties and other agencies.

### **126-99-16. Identification of and Classification as a Persistently Dangerous School.**

16.1. As required by H.R. 1, Title IX, Part E, Subpart 2 (9531) (No Child Left Behind), West Virginia will use the criteria set forth in section 16.2 of this policy to determine whether a school will be classified as a Persistently Dangerous School. Beginning with the 2002-2003 school year, and in each subsequent year, data indicating the number of substantiated violations at each school as set forth in section 16.2 of this policy will be collected using the West Virginia Education Information System (WVEIS) in order to identify and classify a school as persistently dangerous.

16.2. A West Virginia public school will be classified as a Persistently Dangerous School on or before July 1, beginning in 2003, and in each subsequent year, if the school has, for two consecutive years, substantiated violations of the following offenses that exceed five percent (5%) of the total number of students enrolled in the school based on the school's second month enrollment:

- a. Battery on a school employee [W.Va. Code §61-2-15(b)].
- b. Commission of an act or conduct that would constitute a felony under the laws of the state.
- c. Possession of a firearm or deadly weapon as defined in W.Va. Code §61-7-2 on any school bus as defined in W.Va. Code §17A-1-1, or in any public or private primary or secondary education building, structure, facility or grounds thereof, or at any school-sponsored function as defined in W.Va. Code §61-7-11a.
- d. Sale of a narcotic drug as defined in W.Va. Code §60A-1-101 on the premises of an educational facility, at a school sponsored function or on a school bus.

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16.3. Beginning with the 2003-2004 school year, county school systems must provide targeted technical assistance to any school that has, for two consecutive years, substantiated violations of the offenses set forth in section 16.2 of this policy that exceed three percent (3%) of the total number of students enrolled in the school, based on the school's second month enrollment.

16.4. Beginning with the 2003-2004 school year, the West Virginia Department of Education must provide targeted technical assistance to any school that has, for two consecutive years, substantiated violations of the offenses set forth in section 16.2 of this policy that exceed three and seventh-five one hundredths percent (3.75%) of the total number of students enrolled in the school, based on the school's second month enrollment.

16.5. Beginning with the 2003-2004 school year, a student attending a Persistently Dangerous School, as defined by the state, or who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public school that the student attends, shall be allowed to attend an alternate safe public school within the Local Education Agency (LEA).]

16.6. Beginning with the 2003-2004 school year, a LEA that has one or more schools identified as persistently dangerous must, in a timely manner, notify parents of each student attending the school that the state has identified the school as persistently dangerous; offer students the opportunity to transfer to a safe public school within the LEA; and, for those students who accept the offer, complete the transfer.

16.7. A LEA that has one or more schools identified as persistently dangerous must also develop a corrective action plan, submit it to the West Virginia Department of Education, and implement that plan in a timely manner.

### **§126-99-17. Prevention and Intervention Training.**

17.1. The West Virginia Department of Education, RESAs, and LEAs shall provide training, technical assistance in research-based, effective models for violence prevention education (including the prevention of bullying, harassment, and intimidation), substance abuse prevention, as well as other programs and initiatives that include, but are not limited to, conflict resolution, peer mediation, responsible students program, and character education. Training, technical assistance and support shall also be provided in the effective use of student assistance teams to identify students who are at risk and to develop interventions to assure school success for these students.

### **§126-99-18. Severability.**

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