



**WEST VIRGINIA
SECRETARY OF STATE**

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 5 -- NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR
A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY

Education

TITLE NUMBER

126

RULE TYPE

AMENDMENT TO EXISTING RULE

CITE AUTHORITY

Legislative Exempt

Yes

W. Va. Code §§29A-3B-1, et

seq.; W. Va. Board of

Education v. Hechler, 180

W. Va. 451; 376 S.E.2d 839

(1988)

SERIES NUMBER OF RULE BEING AMENDED 051

RULE IS LEGISLATIVE EXEMPT

Yes

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839 (1988)

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE, THE EFFECTIVE DATE OF THIS RULE IS

Monday, July 16, 2012

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Charles K Heinlein -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 126-051



Rule Id: 8589



Document 23780

**TITLE 126
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF EDUCATION**

**SERIES 51
COMMUNICABLE DISEASE CONTROL (2423)**

§126-51-1. General.

1.1. Scope. - The legislative rule requires establishment of county policies related to communicable disease control.

1.2. Authority. – West Virginia Constitution, Article XII, §2, W. Va. Code §§16-3-4, 16-3-4a, 16-3-5, 16-3C-1 through 16-3C-9, 18-2-5, 18-5-9, 18-5-22, 18-5-34 and 18A-5-1.

1.3. Filing Date. - June 15, 2012.

1.4. Effective Date. - July 16, 2012.

1.5. Repeal of Former Rules. - This rule amends W. Va. 126CSR51 “Communicable Disease Control (2423),” September 4, 2007 and effective October 15, 2007.

§126-51-2. Purpose.

2.1. Good health and safety are essential to student learning. The education and monitoring of communicable diseases during the school year is necessary to keep students healthy and learning. This policy establishes the standards that must be placed in county policy for addressing issues and educating students and school personnel on communicable diseases. The knowledge of standard/universal precautions, transmission, prevention and treatment of communicable diseases will enhance health education, prevention and equality for all.

2.2. The objective of this policy is to allow for procedures to be in place for detection of potential communicable diseases, inclusion and exclusion, standard/universal precautions and enhancement of knowledge to ensure preventative measures occur for students and school personnel. This policy will assist in developing a working relationship with school personnel, parents/guardians, the students’ medical home and the local health department while decreasing duplication of health services offered by the school and the medical home and/or the community serving the students.

§126-51-3. Application.

3.1. County boards of education shall develop or amend communicable disease policies to reflect understanding of disease transmission in the school setting and to reflect understanding of student/staff rights to attend school or remain employed. The goal of the policy is to protect individual students, staff members and the school population in general.

3.2. The potential for unnecessary exclusion from the school setting is cause for concern. This problem makes it necessary for counties to develop a policy that is protective of the educational process and the health and safety rights of students and staff.

3.3. Each county should seek the assistance of school nurses, school personnel, parents and guardians, public health, medical personnel and community leaders in developing the communicable disease policy. Technical assistance will be provided by the West Virginia Department of Education to any county upon request.

3.4. The county school system will work cooperatively with the local health department to enforce and adhere to the W. Va. Code §§18A-5-1, 16-3-4, 16-3D-1, 16-3-5, 16-3C-1 through 16-3C-9, 18-2-5, 18-5-9, 18-5-22, and 18-5-34 for prevention, control and containment of communicable disease in schools.

§126-51-4. Definitions.

4.1. ACIP is defined as the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention in the U.S. Department of Health and Human Services, which is the principal agency in the United States government for protecting the health and safety of all Americans and for providing essential human services, especially for those people who are least able to help themselves. CDC remains at the forefront of public health efforts to prevent and control infectious and chronic diseases, injuries, workplace hazards, disabilities and environmental health threats.

4.2. Airborne Pathogens are defined as the transmission of infectious agents through either airborne droplet nuclei (small-particle residue [five μm or smaller in size] of evaporated droplets that may remain suspended in the air for long periods of time) or dust particles containing infectious agents. These pathogens include but are not limited to tuberculosis (TB), rubella (measles) and varicella (chickenpox).

4.3. Airborne Precautions are not normally utilized in the school setting. It is defined as the isolation of an airborne pathogen to reduce the risk of airborne transmission of infectious agents. Airborne precautions entail wearing a respiratory protection mask (N95 respirator) when entering the room of a student receiving home/hospital instruction with known or suspected disease transmitted via airborne droplet nuclei, student placement in private hospital room with negative air pressure and placing a mask on the student for hospital transporting.

4.4. American Academy of Pediatrics also known as the AAP, is defined as a national organization of pediatricians, founded in 1930, committed to the attainment of optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults.

4.5. Blood Borne Pathogens means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, human immunodeficiency virus (HIV), acquired immunodeficiency syndrome (AIDS), hepatitis B virus (HBV) and hepatitis C virus (HCV).

4.6. Bureau is defined as the Bureau for Public Health in the West Virginia Department of Health and Human Resources and the State Agency responsible for establishing vaccine requirements for students.

4.7. Casual Contact means day-to-day interaction between individuals and others in the home, at school or in the work place. It does not include intimate contact, such as sexual or drug use interactions, and it implies closer contact than chance passing in the hallway or sharing a lunch table.

4.8. Centers for Disease Control and Prevention also known as CDC, is defined as one of the thirteen major operating components of the United States Department of Health and Human Services (USDHHS), which is the principal agency in the United States government for protecting the health and safety of all Americans and for providing essential human services, especially for those people who are least able to help themselves. CDC remains at the forefront of public health efforts to prevent and control infectious and chronic diseases, injuries, workplace hazards, disabilities and environmental health threats.

4.9. Commissioner is defined as the Bureau for Public Health official who serves as State Health Officer as defined in WV Code § 16-1-2, or his or her designee.

4.10. Communicable Disease means a disease that may be transmitted directly or indirectly from one individual to another.

4.11. Direct Contact means a disease that is spread through the exposure of blood and/or body fluids to mucus membranes, open skin wounds, semen or intravenous transfusion. HIV/AIDS is spread by direct blood transmission into the blood stream of another and by semen or vaginal fluid contact. Hepatitis A can be spread by direct or indirect contact with feces while Hepatitis B and C can be spread by direct contact with semen and blood. These diseases do not pose a risk in school if body fluids such as blood and feces are handled using standard/universal precautions.

4.12. “Droplet Contact means contact of the conjunctivae or the mucous membranes of the nose or mouth of a susceptible person with large-particle droplets (larger than five μm in size) containing microorganisms generated from a person who has a clinical disease or who is a carrier of the microorganism. Droplets are generated from the source person primarily during coughing, sneezing, or talking and during the performance of certain procedures such as suctioning. Transmission via large-particle droplets requires close contact between source and recipient persons, because droplets do not remain suspended in the air and generally travel only short distances, usually three feet or less, through the air. These pathogens include, but are not limited to, bacterial infections, such as Pertussis (whooping cough), streptococcal (group A) pharyngitis, pneumonia or scarlet fever, Diphtheria (pharyngeal), Haemophilus influenzae type b and Neisseria meningitis disease, including meningitis, pneumonia and sepsis. Serious viral infections spread by droplet contact include but are not limited to adenovirus, influenza (flu), mumps and rubella (German measles).

4.13. Droplet Precautions is defined as droplet pathogen isolation utilized around individuals known or suspected to be infected with microorganisms transmitted by droplets

(large-particle droplets [larger than five μm in size] that can be generated by the person during coughing, sneezing, talking, or the performance of procedures). Droplet precautions entail being in the a private environment, like the student's home, wearing a mask while within three feet of the individual infected and utilizing standard/universal precautions. Because droplets do not remain suspended in the air, special air handling and ventilation are not required to prevent droplet transmission. Masks may be worn to protect the health of a student who is immunocompromised.

4.14. Health or Safety Emergency Situation is determined on a case-by-case basis, and is defined as a specific situation that presents imminent danger or threat to students or other members of the community, or requires an immediate need for information in order to avert or diffuse serious threats to the safety or health of a student or other individuals. Any release of confidential medical information must be narrowly tailored considering the immediacy and magnitude of the emergency and must be made only to parties who can address the specific emergency in question. This exception is temporally limited to the period of the emergency and generally does not allow a blanket release of personally identifiable information from a student's education records to comply with general requirements under state law. Certainly an outbreak of diseases, but not limited to, measles, rubella, mumps, and polio, that not only pose threat of permanent disability or death for the individual, but have historically presented themselves as epidemic in nature. Thus, disclosure of personally identifiable information from students' education records to state health officials for an outbreak of a communicable disease is permitted under Family Educational Rights and Privacy Act's (FERPA) health or safety emergency provisions.

4.15. Immunocompromised is defined as reduced immune response due to immunosuppressive drugs, radiation, disease or malnutrition.

4.16. Legitimate Educational Reason is defined as school officials who have been determined to have genuine concern related to the student's educational achievement and performance allowing access and review pertinent educational records including medical and health information. A record of disclosure must be maintained and include: (1) the parties who have requested the information from the education records, and (2) the legitimate interests the parties had in requesting or obtaining the information.

4.17. Occupational Safety and Health Administration (OSHA) is defined as a division of the United States Department of Labor that provides standards and guidelines for the health and safety of America's workers by setting and enforcing standards; providing training, outreach, and education; establishing partnerships; and encouraging continual improvement in workplace safety and health.

4.18. School Nurse is defined as a registered professional nurse, licensed by the West Virginia Board of Examiners for Registered Professional Nurses (W. Va. Code §30-7-1, et seq.), who has completed a West Virginia Department of Education (WVDE) approved program as defined in 126CSR114 West Virginia Board of Education (WVBE) Policy 5100, Approval of Educational Personnel Preparation Programs and meets the requirements for certification contained in 126CSR136 WVBE Policy 5202, Minimum Requirements for the Licensure of

Professional/Paraprofessional Personnel and Advanced Salary Classification. The school nurse must be employed by the county board of education or as specified in W. Va. Code §18-5-22.

4.19. Standard/Universal Precautions is a body substance isolation approach to infection control. Standard Precautions apply to 1) blood; 2) all body fluids, secretions, and excretions, except sweat, regardless of whether or not they contain visible blood; 3) non-intact skin; and 4) mucous membranes. According to the concept of standard/universal precautions, all human blood and all other human body fluids are treated as if known to be infectious for HIV, HBV, and other bloodborne pathogens. There are three types of transmission: contact, airborne and droplet.

4.20. West Virginia Department of Health and Human Resources (WVDHHR) is the lead public health agency in West Virginia working to help shape the environments within which people and communities can be safe and healthy.

4.21. West Virginia Statewide Immunization Information System (WVSIIS) is a statewide electronic data system for reporting and tracking administrations of vaccines for use by health care practitioners. This system was created to consolidate individuals' immunization records, forecast recommended vaccinations, generate reminder notices due to overdue immunizations, identify improper vaccine administrations, conduct inventory management and systematic accountability, and provide general immunization practice management functions. Health care providers are required to report all administrations of vaccines as defined in W.Va. Code §16-3-4 and Bureau for Public Health Rule, 64CSR7 and 64CSR95.

§126-51-5. Disease Prevention Measures.

5.1. All county boards of education must incorporate hand washing, as defined and outlined in The Basic and Specialized Health Care Procedures Manual for West Virginia Public Schools that accompanies 126CSR25A, WVBE Policy 2422.7, Standards For Basic and Specialized Health Care Procedures, into the county board of education communicable disease policy. It is best practice to wash the hands with soap and clean running water for twenty seconds. However, if soap and clean water are not available, use an alcohol-based product to clean the hands. Alcohol-based hand rubs significantly reduce the number of germs on skin and are fast acting. Good hand hygiene is the single most effective procedure to prevent the spread of communicable disease in the school setting. An allowance for hand washing should be incorporated into the daily routine of all students in West Virginia public schools, especially before eating, after blowing the nose, coughing, or sneezing, after going to the bathroom and as deemed necessary by the school.

5.2. Students must be in compliance with the required immunization schedule as set forth by the Bureau Commissioner. The Commissioner, or his/her designee (local health officer) shall make the final determination in cases in which an authorized medical practitioner's written medical exemption is challenged by school personnel as inappropriate or invalid, as defined in West Virginia Bureau for Public Health Interpretive Rule, §64-95-10. The immunization record shall be a public health record and provided to the local health department and/or the Bureau to be entered and reviewed annually into the West Virginia Statewide Immunization Information System (WVSIIS).

5.2.1. All children entering prekindergarten (Pre-k), kindergarten and a West Virginia public school for the first time must have immunizations and show proof upon enrollment as defined by W.Va. Code §16-3-4 and 64CSR95. All Pre-k students shall also meet requirements in 126CSR28 WVBE Policy 2525, West Virginia's Universal Access to a Quality Early Education System.

5.2.2. Beginning in the school year 2012-2013, two additional vaccine requirements shall be added for students entering the 7th and the 12th grades, in accordance with the guidance from the Advisory Committee on Immunization Practices (ACIP) and the revised rule of the West Virginia Bureau for Public Health, 64CSR95. Proof of Tdap and Meningococcal vaccinations shall be presented upon entry to seventh and twelfth grade as indicated in Interpretive Rule, Immunization Requirements and Recommendations for New School Enterers, 64CSR95. Immunization records for each student entering grades seven and twelve shall be examined for the age appropriate doses of these two vaccines. The information shall be entered into WVSIS in order to ensure that updated immunization information is readily available to health officials in the event of a communicable disease outbreak that presents an imminent danger to students or other members of the community.

5.2.2. a. Tdap vaccine is recommended for children age 11-12 years who have completed the recommended childhood DTP/DTaP vaccine series and have not already received a tetanus and diphtheria (Td) booster dose at middle school entry. Proof of Tdap vaccination is required to be presented upon entry to the 7th grade.

5.2.2.b. Adolescents age 13-18 who missed the 11-12 year old Tdap/Td dose and who have completed the primary DTP/DTaP series shall be required to get a dose of Tdap vaccine prior to entry to the 12th grade.

5.2.2.c. Meningococcal Vaccination shall be required in accordance with ACIP guidance. Current ACIP guidance for Meningococcal vaccine is to administer a first dose to children at 11 or 12 years old and a booster dose at 16-18 years of age. All children who receive a first dose of MCV vaccine before the age of 16 are recommended to receive a booster dose at 16-18 years of age. Proof of age appropriate MCV vaccination shall be presented upon entry to the 7th grade. Proof of the second dose of MCV shall be presented upon entry to the 12th grade for all children who received the 1st dose before 16 years of age. Only one dose of MCV is required if the first dose was administered after 16 years of age for 12th grade entry.

5.3. Instruction on the principle modes by which communicable diseases, including, but not limited to, human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS) are prevented, spread and transmitted shall be taught to students as outlined in 126CSR44E WVBE Policy 2520.5, Next Generation Health Education Content Standards and Objectives. An opportunity shall be afforded to the parent or guardian of a child subject to instruction in the prevention, transmission and spread of HIV/AIDS and other sexually transmitted diseases to examine the course curriculum requirements and materials to be used in such instruction. The parent or guardian may exempt such child from participation in such instruction by giving notice to that effect in writing to the school principal as set forth in W. Va. Code §18-2-9.

5.4. An educational in-service on the prevention, transmission and treatment of current communicable diseases shall include, but not limited to, human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS), shall be provided to all school personnel every two years by the county boards of education, as specified in W. Va. Code §18-2-9 and §18-5-15d.

5.5 West Virginia continues to be a state with low incidence rates of tuberculosis. In order to ensure tuberculosis rates remain low, W.Va. Code §16-3D-3 requires tuberculosis screening test for students transferring from an out-of-state school or enrolling for the first time from outside the state and new school personnel starting employment in a West Virginia school, including new school volunteers and student teachers. The completion of the tuberculin skin test must be furnished as a certification from a licensed physician and completed within four months prior to the beginning of the students or new employees first day at a West Virginia school. Should the student(s) move in and out of the West Virginia public school system to other states, they shall be provided with a four month grace period to return without the requirement of a tuberculin skin test. After the four month timeframe, a tuberculin skin test would be required to reenter into the West Virginia school system. Anytime spent in another country or students and staff visiting from another country constitutes the requirement of a completed tuberculin skin test through certification from a licensed physician upon return or entry into the West Virginia school system.

§126-51-6. Disease Control Measures.

6.1. Distinctions will be made related to diseases that are communicable in the school setting versus those known not to be spread by casual contact e.g. AIDS, Hepatitis B, Hepatitis C and other like diseases.

6.2. Each reported case of disease known not to be spread by casual contact will be validated by a designated individual such as a school nurse (W. Va. §18A-5-1 and W. Va. §18-5-22).

6.3. The administrator or school nurse shall exclude from the school any pupil or pupils known to have or suspected of having any infectious disease known to be spread by casual contact and is considered to be a health threat to the school population. The superintendent has the authority to exclude a staff member from school when reliable evidence or information from a qualified source confirms him/her of having a potential communicable disease that is known to be spread by any form of casual contact and is considered a health threat to the school population. Such a student or staff member shall be excluded in accordance with guidelines of American Academy of Pediatrics, Centers for Disease Control (CDC) and West Virginia Department of Health and Human Resources (WVDHHR) unless his/her physician approves school attendance and the condition is no longer considered contagious. All reportable communicable diseases will be referred to the local health department, as set forth in West Virginia Bureau for Public Health Legislative Rule 64CSR7, Reportable Diseases, Events and Conditions. In the event of a suspected communicable disease outbreak as defined by the Commissioner, public schools and/or county boards of education shall release student personally

identifiable information to appropriate public health officials as allowable by FERPA's Health and Safety Emergency Disclosure and 126CSR94, WVBE Policy 4350, Procedures for the Collection, Maintenance and Disclosure of Student Data. The local health department is able to provide reportable communicable disease guidance or go to <http://www.wvdhhr.org/idep/#Disease%20%20Reporting>.

6.4. The West Virginia Bureau for Public Health Legislative Rule, Reportable Diseases, Events and Conditions, 64CSR7, establishes procedures governing the reporting of certain diseases and conditions, unusual health events and clusters or outbreaks of disease to the Bureau. It establishes the responsibility of school administrators, school nurses and other health care providers working in schools to report, assist with or manage the outbreak and any necessary contact investigation and management including implementation of control methods to limit the spread of communicable disease. This process frequently occurs as a simple surveillance report of possible communicable disease cases within the school facility without personal identifiable information as requested by the local public health department or regional Epidemiologist. After review of the information, in some cases (e.g. foodborne outbreak, respiratory outbreak, case or outbreak of a reportable condition such as vaccine preventable disease, hepatitis, meningitis and encephalitis) the state, regional and/or local public health department, along with the BPH Commissioner and staff, may request student or staff personal identifiable information (name, address, and phone number) for cases and contacts of cases based on surveillance data to fully investigate a case or outbreak of communicable disease, including the complete and accurate tracing of contacts for the purpose of recommending and/or providing appropriate post-exposure prophylaxis in an effort to prevent additional cases. The investigation of any communicable disease outbreak is based on scientific grounds and utilizes follow-up information to verify line list data and information on risk factors to protect the health and safety of the public including those currently experiencing the disease. Risk factors might include classroom, participation in school activities and transportation, behaviors and exposures to environmental sources or other persons. This release of personal identifiable information to public health officials is classified as a Health and Safety Emergency in the FERPA rule allowing schools to release the information needed for protection of public health.

6.5. Mandatory screening for communicable diseases that are known not to be spread by casual contact is not warranted as a condition for school entry or for employment or continued employment, nor is it legal based on W. Va. Code §16-3C-1. All screenings performed in the public school setting should be age appropriate deemed effective and necessary through evidence-based and scientific researched-based practice utilizing standard procedures and with the Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. §1232h. W. Va. Code §18-5-22 allows county boards to provide proper medical and dental inspections for all students attending school and gives authority to take any other necessary actions to protect students from infectious diseases.

6.6. Irrespective of the disease presence, standard/universal precautions shall be used and adequate sanitation facilities will be available for handling blood or body fluids within the school setting or school buses. Blood and body fluids from any person in the school setting shall be treated with standard/universal precautions; no exception shall be made when handling blood and body fluids. School personnel will be trained in standard/universal precautions as set forth by

the Occupational Safety and Health Administration recommendations and guidelines at <http://www.osha.gov/>.

§126-51-7. Confidentiality.

7.1. All persons privileged with any medical information that pertains to students or staff members shall be required to treat all proceedings, discussions and documents as confidential information. Before any medical information is shared with anyone in the school setting a “legitimate educational reason” or “health or safety emergency situation” must exist, all other releases of confidential medical and health information shall be released only with the consent of the parent/guardian, student if over 18, employee or their representative as outlined in 126CSR94, WVBE Policy 4350, Procedures for the Collection, Maintenance and Disclosure of Student Data, Family Educational Rights and Privacy Act of 1988 and Family Educational Rights and Privacy: Final Regulations. Part II, 34 CFR Part 99.

7.2. Information from health records is part of the educational record and should be shared with the child’s parents/guardians and pass freely among the school and medical home/health care provider to enhance student health and prevent duplication of services, only after permission is obtained from the student’s parent/guardian.

§126-51-8. Severability.

8.1. 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.