



**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**

RULE TYPE **Legislative Exempt** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **126-**

RULE NAME **Attendance (4110)** **081**

CITE AUTHORITY **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)**

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 11, 2016

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

Yes

Jill M Newman -- 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: 126-081



Rule Id: 10110



Document: 27582

126CSR81

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 81
ATTENDANCE (4110)**

§126-81-1. General.

1.1. Scope. - This rule provides guidelines for the development of local county attendance policies.

1.2. Authority. - West Virginia Constitution, Article XII, §2, W. Va. Code §§16-3-14, 17B-2-3, 17B-2-5, 18-2-5, 18-5-15, 18-8-1, 18-8-2, 18-8-3, 18-8-4, 18-8-5, 18-8-11 and Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) (hereinafter, McKinney-Vento Act).

1.3. Filing Date. - June 9, 2016.

1.4. Effective Date. - July 11, 2016.

1.5. Repeal of Former Rule. - This legislative rule amends W. Va. 126CSR81 West Virginia Board of Education (hereinafter, WVBE) Policy 4110, Attendance, filed September 9, 2010 and effective October 12, 2010.

§126-81-2. Rationale.

2.1. The WVBE recognizes that a direct relationship exists between students' daily school attendance and academic performance, graduation, and good work habits. This attendance policy promotes students' daily school attendance. Each county shall be required to develop and implement a county attendance policy in accordance with this policy. Daily attendance is necessary for students to meet their schools' academic program standards as each day's learning builds on the work previously completed. While students and parents/guardians have the ultimate responsibility for daily school attendance, the laws of West Virginia require school administrators to enforce compulsory school attendance, and to provide an environment conducive to, and encouraging of, attendance.

§126-81-3. Policy Development.

3.1. Each county must provide for input from teachers, principals, attendance directors, parents/guardians, and community leaders when developing or revising the attendance policy. County policies will be reviewed by the Office of Education Performance Audits' on-site review teams to ensure compliance with this policy.

§126-81-4. Definitions.

4.1. Absence - Not being physically present in the school facility for any reason.

4.2. Allowable Deductions for Schools - Beginning with the 2016-2017 school year, the only allowable deductions will be absences that result from school approved curricular/co-curricular

126CSR81

activities, failure of the bus to run/hazardous conditions, students not in attendance due to disciplinary measures and school/county directed placements outside the traditional classroom environment including but not limited to homebound placement and in-school suspension.

4.3. Attendance - For statistical purposes, attendance will be reported and aggregated to the nearest half day according to the definitions in §126-81-4.3.a. and §126-81-4.3.b.

4.3.a. Full-day attendance means being present at least .74 of the school day.

4.3.b. Half-day attendance means being present at least .50 of the school day.

4.4. Attendance Rate - The number of days present divided by the number of days of membership, multiplied by one hundred, equals attendance rate for students on the attendance registers in grades K-12.

4.5. Awaiting Foster Care Placement - Any child or youth who: 1) is in the custody of the West Virginia Department of Health and Human Resources, 2) has been placed in out-of-home care, and 3) is not in a permanent placement. This includes, but is not limited to, children and youth in family foster care, kinship care, emergency shelter care, or in a residential group home.

4.6. Dropout - A dropout is a student who:

4.6.a. was enrolled in school at some time during the previous school year and was not enrolled on October 1 of the current school year; or

4.6.b. was not enrolled on October 1 of the previous school year although expected to be in membership (i.e., was not reported as a dropout the year before); and

4.6.c. has not graduated from high school, obtained a Test Assessing Secondary Completion (hereinafter, TASC) diploma, or completed a state- or district-approved education program; and

4.6.d. does not meet any of the following exclusionary conditions:

4.6.d.1. transfer to another public school district, private school, home school, or state or district approved education program;

4.6.d.2. temporary school-recognized absence due to suspension or illness; or

4.6.d.3. death.

4.7. Dropout Date - The school day after the dropout's last day of attendance.

4.8. Enrollment - A student is officially enrolled when one of the following conditions occur:

4.8.a. student was enrolled the previous year;

4.8.b. student appears at school to enroll with or without a parent/guardian; or

4.8.c. student and/or parent/guardian appears at school to enroll with or without records.

4.9. Enrollment Count - A status count that reports the number of students on the attendance register as required by the West Virginia Department of Education (hereinafter, WVDE).

4.10. Excused Student Absences - Excused Student Absences include:

4.10.a. Absences that result from school-approved curricular/co-curricular activities; failure of the bus to run/hazardous conditions, SAT Plan, IEP or 504 Plan meetings; and other county board approved excused absences.

4.10.b. Personal illness or injury of the student or in the family.

4.10.c. Medical or dental appointment with written excuse from physician or dentist.

4.10.d. Documented chronic medical conditions that may require multiple or regular absences. These conditions must be documented annually with a valid physician's note that explains the condition and anticipated impact on attendance. The necessity for the absences must be approved and reviewed quarterly by the SAT, IEP, or 504 team (See §126-81-5.3.c.4.).

4.10.e. Participation in homebound or hospital instruction due to an illness or injury or other extraordinary circumstances that warrants home or hospital confinement.

4.10.f. Documented disabilities consisting of any mental or physical impairments that substantially limit one or more major life activities and are documented annually with a valid physician's note that explains the disability and the anticipated impact on attendance. The necessity for the absences must be approved and reviewed quarterly by the SAT, IEP, or 504 team (See §126-81-5.3.c.4.).

4.10.g. Calamity, such as fire or flood.

4.10.h. Death in the family.

4.10.i. Judicial obligation or court appearance involving the student.

4.10.j. Military requirements for students enlisted or enlisting in the military.

4.10.k. Personal or academic circumstances approved by the principal, and

4.10.l. Such other situations as may be further determined by the county board: *Provided*, That absences of students with disabilities shall be in accordance with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in compliance therewith.

4.11. Unexcused absence shall be any absence not specifically included in the definition of "excused absence".

4.12. Homeless Children and Youths - As defined in the McKinney-Vento Act means individuals who lack a fixed, regular, and adequate nighttime residence and includes:

4.12a. children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

4.12.b. children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

4.12.c. children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

4.12.d. migratory children who qualify as homeless because the children or youth are living in circumstances as described in the above descriptions.

4.13. Membership Days - The days present plus the days absent.

4.14. School of Origin - As defined in the McKinney-Vento Act is the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled.

4.15. Transfer - A process by which a student ends enrollment or attendance in one location and begins enrollment or attendance in a second location (e.g., within a county, between counties, or out-of-state). This can be evidenced through a transcript request or other documentation that the student is continuing elementary or secondary education.

§126-81-5. Responsibilities.

5.1. The WVBE has the responsibility to encourage daily attendance and mandate that county school systems adequately address student absences including tardiness.

5.2. The WVBE has responsibility for defining allowable deductions for purposes of state attendance reports and statistics. Schools shall not be held accountable for absences resulting from allowable deductions. These absences shall not be calculated in the school's/county's attendance rate.

5.3. Each county board of education shall:

5.3.a. employ a certified county director of school attendance as required by W. Va. Code §18-8-3.

5.3.b. support and require the county attendance director to implement and execute the duties as defined in W. Va. Code §18-8-4:

5.3.b.1. The county attendance director and his/her assistants shall diligently promote regular school attendance. They shall ascertain reasons for unexcused absences from school of students of compulsory school age and students who remain enrolled beyond the compulsory school age and take such steps as are, in their discretion, best calculated to encourage the attendance of students and to impart upon the parents and guardians the importance of attendance and the seriousness of failing to attend school regularly.

5.3.b.2. In the case of three (3) total unexcused absences of a student during a school year, the attendance director or assistant shall serve written notice to the parent, guardian, or custodian of the student that the attendance of the student at school is required and that if the student has five (5) unexcused absences, a conference with the principal or other designated representative will be required.

5.3.b.3. In the case five (5) total unexcused absences, the attendance director or assistant shall serve written notice to the parent, guardian or custodian of the student that within five (5) days of receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report in person to the school the student attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the unexcused absences of the student, including the adjustment of unexcused absences based upon such meeting.

5.3.b.4. In the case of ten (10) total unexcused absences of a student during a school year, the attendance director or assistant shall make complaint against the parent, guardian, or custodian before a magistrate of the county. If it appears from the complaint that there is a probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent, guardian or custodian may be charged in a complaint. Initial service of the summons or warrant issued pursuant to the provisions of W. Va. Code §18-8-4 shall be attempted within ten (10) calendar days of the receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

5.3.b.5. When calculating unexcused absences for the purpose of making complaints against a parent, guardian, or custodian before a magistrate, unexcused absences resulting from suspensions or expulsions from school shall not be considered.

5.3.b.6. The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in W. Va. Code §50-1-8, shall assign the case to a magistrate within ten (10) days of execution of the summons or warrant. The hearing shall be held within twenty (20) days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least ten (10) days advance notice of the date, time, and place of the hearing.

5.3.b.7. When any doubt exists as to the age of a student absent from school, the attendance director has authority to require a properly attested birth certificate or an affidavit from the parent, guardian, or custodian of the student, stating age of the student. In the performance of his or her duties, the county attendance director has authority to take without warrant any student absent from school in violation of the provisions of this article and to place the student in the school in which he or she is or should be enrolled.

5.3.b.8. All attendance directors hired for more than two-hundred days (200) may be assigned other duties determined by the superintendent during the period in excess of two-hundred (200) days. The county attendance director is responsible under direction of the county superintendent for efficiently administering school attendance in the county.

5.3.b.9. In addition to those duties directly relating to the administration of attendance, the county attendance director and assistant director also shall perform the following duties: 1) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law; 2) Confer with principals and teachers on the comparison of school census and enrollment for the detection of possible non-enrollees; 3) Cooperate with existing state and federal agencies charged with enforcing child labor laws; 4) Promote attendance in the county by compiling data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct; 5) Participate in school teachers' conferences with parents and students; 6) Assist in such other ways as the county superintendent may direct for improving school attendance; and 7) Make home visits of students who have excessive unexcused absences, as provided above, or if requested by the chief administrator, principal, or assistant principal.

5.3.b.10. The attendance director shall serve as the liaison for homeless children and youth as defined in W. Va. Code §18-8-4. As defined in McKinney-Vento Act, as the liaison for homeless children and youth, the attendance director is required to:

5.3.b.10.A. ensure that public notice of the educational rights of students in homeless situations is disseminated where children and youths receive services.

5.3.b.10.B. ensure that parents or guardians are informed of educational and related opportunities available to their children, and are provided with meaningful opportunities to participate in the education of their children.

5.3.b.10.C. ensure that parents or guardians are informed of, and assisted in accessing, all transportation services for their children, including to the school of origin.

5.3.b.10.D. help unaccompanied youth choose and enroll in a school, after considering the youth's wishes, and provide the youth with notice of his or her right to appeal the school district's decision.

5.3.b.10.E. immediately assist in obtaining immunizations or record of immunizations or other medical records for those students who do not have them, and assure that students are enrolled in school while the records are being obtained.

5.3.b.10.F. ensure that homeless children and youths are identified by school personnel and through coordination activities with other entities and agencies.

5.3.b.10.G. ensure that homeless children and youths enroll in, and have a full and equal opportunity to succeed in, schools of that local educational agency.

5.3.b.10.H. ensure that homeless families, children, and youths receive educational services for which such families, children, and youths are eligible,; including Head Start and Even Start programs and preschool programs administered by the local educational agency, and referrals to health care services, dental services, mental health services, and other appropriate services.

5.3.b.10.I. ensure that enrollment disputes are mediated as outlined in Paragraph (3)(E) of the McKinney-Vento Act.

5.3.b.11. The attendance director shall file with the county superintendent and county board of education, at the close of each month, a report showing activities of the school attendance office and the status of attendance in the county at the time due to provisions in W. Va. Code §18-8-4.

5.3.c. support and require the school principal to implement and execute the duties as defined in W. Va. Code §18-8-5:

5.3.c.1. The principal shall compare school numbers with school enrollment monthly.

5.3.c.2. In the case five (5) total unexcused absences, the attendance director or assistant shall serve written notice to the parent, guardian or custodian of the student that within five (5) days of receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report in person to the school the student attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the unexcused absences of the student, including the adjustment of unexcused absences based upon such meeting.

5.3.c.3. It shall be the duty of the principal, administrative head, or other chief administrator of each school, whether public or private, to make prompt reports to the county attendance director, or proper assistant, of all cases of unexcused absences arising within the school which require the services of an attendance worker.

5.3.c.4. A student whose educational services are guided by an existing SAT plan, IEP, or 504 plan may warrant special consideration when a pattern of multiple, single, or chronic absences exist. The child's current status should be reviewed by the SAT, IEP, or 504 team as deemed appropriate and in accordance with state and federal laws.

5.4. Each parent, guardian, or custodian be responsible for fully cooperating in and completing the enrollment process by providing: immunization documentation (W. Va. Code §16-3-4), copy of a certified birth certificate or affidavit (W. Va. Code §18-2-5c), signed suspension and expulsion document (W. Va. Code §18-5-15), and any other documents required by federal, state, and/or local policies or code.

5.5. Jurisdiction to enforce compulsory school attendance law lies in the county in which a student resides and in the county where the school at which the student is enrolled is located. When the county of residence and enrollment are different, an action to enforce compulsory school attendance may be brought in either county and the magistrates and circuit courts of either county have noncurrent jurisdiction for the trial of offenses arising under W. Va. Code §18-8-4.

§126-81-6. County Attendance Policy Components.

6.1. Each county's attendance policy shall address the following components:

6.1.a. Philosophy: A philosophy declaring the board's intent to increase attendance by:

6.1.a.1. creating a positive safe environment conducive to learning and committed to helping students develop responsibility, self-discipline, and other good work habits.

126CSR81

6.1.a.2. developing a system enlisting parental/guardian support for daily school attendance by students.

6.1.b. Principles of Operation: County school districts are responsible for:

6.1.b.1. appointing a designated school attendance coordinator (principal, or designee) who collects classroom attendance data and makes appropriate referrals to the county attendance director.

6.1.b.2. reporting student attendance information which reflects the allowable deductions as defined by the WVBE.

6.1.b.3. defining excused and unexcused absences in compliance with W. Va. Code §18-8-1 and §18-8-2 and attendance in W. Va. 126CSR42, WVBE Policy 2510, Assuring the Quality of Education: Regulations for Education Programs (hereinafter Policy 2510); provided, however, that no county may require more than a parental excuse for absences resulting from a documented chronic medical condition or a documented disability as defined in §126-81-4.10.d. and §126-81-4.10.e.

6.1.b.4. defining extenuating circumstances for absences which may require homebound/hospital instruction as outlined in Policy 2510.

6.1.b.5. setting reasonable preventive measures and consequences for student tardiness.

6.1.b.6. submitting each revision of the county attendance policy to the WVDE for approval.

6.1.b.7. assuring that a student may not be suspended solely for failure to attend class. Other methods of discipline may include, but are not limited to, detention, extra class time, or alternative class settings.

6.1.b.8. reporting all school dropouts to the WVDE.

6.1.c. Development of Processes and Procedures: County school districts are responsible for:

6.1.c.1. developing a process to notify students and their parents/guardians of the county attendance policy and their responsibility and accountability for regular school attendance.

6.1.c.2. developing procedures and reasonable timelines requiring students with excused and unexcused absences to make up school work.

6.1.c.3. requiring a student maintain satisfactory attendance (satisfactory being defined as no unexcused absences) during one complete semester following the revocation of his/her driver's license.

6.1.c.4. developing an attendance appeal process for students and parents/guardians.

6.1.d. Maintenance of Records: Accurate attendance records and related documentation shall be maintained for every student enrolled in public school.

6.1.d.1. An up-to-date daily register/record of attendance for every student must be

maintained.

6.1.d.2. There must be written procedures for: 1) notifying parents/guardians about absences, 2) monitoring absences, and 3) notifying the county attendance director.

6.1.d.3. Students who are physically absent from school must be documented as absent. This record may become a legal document.

6.1.e. Preventive and Corrective Measures: designed to meet the developmental needs of students, preventive, and corrective measures should include:

6.1.e.1. developing preventive and educational procedures including: incentives, to maintain and improve attendance and reduce tardiness.

6.1.e.2. procedures for notification of parents/guardians of absences and procedures for securing parent/guardian involvement to improve student attendance.

6.1.e.3. procedures for providing adequate counseling for problems related to attendance.

6.1.e.4. procedures for interagency involvement.

6.1.e.5. alternative plans and programs that are positive in nature and encourage improved school attendance.

6.1.e.6. assurances that students with a pattern of excessive absenteeism are referred to appropriate student assistance teams/programs (Policy 2510 and W. Va. 126CSR13, WVBE Policy 2320, Process for Improving Education: Performance Based Accreditation System) for appropriate intervention(s), and that these interventions have been reviewed to determine effectiveness.

§126-81-7. Severability.

7.1. 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.