



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

9/9/2020 3:53:47 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Education TITLE-SERIES: 126-026

RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Participation in Extracurricular Activities  
(2436.10)

CITE STATUTORY 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); and, W. Va. Bd. of Educ. V. Bd. of  
Educ., 239 W. Va. 705, 806 S.E. 2d 136 (2017)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 10/13/2020 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Sarah Stewart, Government Affairs Counsel

ADDRESS: WVDE Office of Legal Services

1900 Kanawha Blvd. E, Capitol Bldg. 6, Room 362

EMAIL: sarah.a.stewart@k12.wv.us

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

W. Va. 126CSR26, Policy 2436.10 sets forth the requirements for participation in extracurricular activities

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

W. Va. 126CSR26, Policy 2436.10 is being amended to incorporate requirements set forth in W. Va. Code §18 25(d).

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

No costs or revenue will be impacted by the proposed amendment of W. Va. 126CSR26, Policy 2436.10.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

No costs or revenue will be impacted by the proposed amendment of W. Va. 126CSR26, Policy 2436.10.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

There will be no economic impact to the state or its residents as a result of the proposed amendment of W. Va. 126CSR26, Policy 2436.10.

D. FISCAL NOTE DETAIL:

| Effect of Proposal                 | Fiscal Year                            |  |  |
|------------------------------------|--|--|--|
|                                    | 2020<br>Increase/Decrease<br>(use "-") | 2021<br>Increase/Decrease<br>(use "-") | Fiscal Year (Upon<br>Full<br>Implementation) |
| <b>1. Estimated Total Cost</b>     | 0                                      | 0                                      | 0  |
| Personal Services                  | 0                                      | 0                                      | 0  |
| Current Expenses                   | 0                                      | 0                                      | 0  |
| Repairs and Alterations            | 0                                      | 0                                      | 0  |
| Assets                             | 0                                      | 0                                      | 0  |
| Other                              | 0                                      | 0                                      | 0  |
| <b>2. Estimated Total Revenues</b> | 0                                      |  |  |

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

No costs, revenue, or economic impact to the state or its residents will result from the proposed amendment of W. Va. 126CSR26, Policy 2436.10.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

**William C Burch -- 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.**

Policy 2436.10, Participation in Extracurricular Activities  
Executive Summary

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West Virginia Department of Education  
Office of Legal Services

**Policy Cycle:**  30 day Comment Period  Adoption of Policy

**Policy Process:**  Revision  Repeal and Replace  New

**Introduction:** Policy 2436.10 is being amended to incorporate requirements set forth in W. Va. Code §18-2-25(d).

**Impact:** Per W. Va. Code §18-2-25(d), language has been added to Policy 2436.10 regarding the eligibility of homeschooled students for participation in interscholastic athletics.

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**Action:**

- Release for 30 day public comment.
  - Approved by WVBE with effective date of \_\_\_/\_\_\_/20\_\_
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**Policy 2346.10, Participation in Extracurricular Activities  
List of Stakeholders**

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**West Virginia Department of Education**

**External Stakeholder**

- Bernie Dolan, Executive Director, West Virginia Secondary School Activities Commission

**Internal Stakeholders**

- Heather L. Hutchens, General Counsel, West Virginia Department of Education and West Virginia Board of Education, Office of Legal Services
- Sarah A. Stewart, Government Affairs Counsel, Office of Legal Services

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

SERIES 26  
PARTICIPATION IN EXTRACURRICULAR ACTIVITIES (2436.10)

**§126-26-1. General.**

1.1. Scope. -- This legislative rule establishes academic eligibility of students to participate in extracurricular activities both during and after normal school hours in West Virginia public schools.

1.2. Authority. -- W. Va. Constitution, Article XII, §2 and W. Va. Code §18-2-5 and §18-2-25(d).

1.3. Filing Date. -- ~~May 16, 2008~~.

1.4. Effective Date. -- ~~June 16, 2008~~.

1.5. Repeal of Former Rule. -- This legislative rule amends W. Va. 126CSR26, West Virginia Board of Education (WVBE) Policy 2436.10, Participation in Extracurricular Activities, filed ~~August 10, 1984~~ May 16, 2008, and effective ~~September 10, 1984~~ June 16, 2008.

**§126-26-2. Applicability.**

2.1. This policy applies only to interscholastic athletics, student government, and class officers in grades 6-12. Excluded from this policy are co-curricular activities which are closely related to identifiable academic programs/areas of study and which serve to complement academic curricular activities such as vocational, linguistic, mathematic, scientific, forensic, theatrical, musical, journalistic, and other similar academic cocurricular activities.

**§126-26-3. Eligibility.**

3.1. In order to participate in the extracurricular activities to which this policy applies, a student must meet all state and local attendance requirements and:

3.1.a. Maintain a 2.0 average.

3.1.a.1. A 2.0 average is defined as a grade-point average (GPA) of 2.0 or better on a scale where an "A" mark earns 4 points, a "B" is awarded 3 points, a "C" is worth 2 points, a "D" is given a value of 1 point, and an "F" is worth 0 points.

3.1.a.2. For purposes of achieving the clearest and most uniform application of the policy for those schools which use a numerical grading system, all numerical grades shall be converted to the corresponding letter grade. Each letter grade shall be assigned the appropriate value as set forth above, and the average thereof computed to determine whether the student is eligible. No enhanced value should be given for a "plus" or "minus" designation, such as "B+" or "C-"; all grades with the same letter designation have the same numerical value in the 4.0 scale.

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3.1.a.3. In computing a student's "grade point average" (GPA) for purposes of this policy, all subjects undertaken by the student and for which a final grade is recorded are to be considered. Athletic practice may not be counted as a subject. The total number of classes taken is divided into the total number of "grade points" earned to determine the GPA. Classes for which a pass/fail is awarded will be included in computing the GPA only if the student failed the class.

3.1.a.4. A student's eligibility will be determined for each semester by his or her GPA the previous semester (or, in schools which do not use the traditional semester approach, during the previous ~~eighteen~~ 18 week period).

3.1.a.5. If a student does not maintain a 2.0 average for the semester, he or she will be ineligible for participation for the following semester. Students not meeting eligibility requirements shall be reviewed at the mid-point of the second semester (the nine week point) to determine whether the student has achieved a 2.0 average.

3.1.a.6. If a student does not earn a 2.0 average by the end of the second semester, he or she may attend summer school to raise the GPA so that he or she is eligible for participation at the beginning of the next school year. For purposes of computing the GPA after summer school, all of the student's grades from the second semester plus his or her grade from the summer school will be used to determine the GPA.

3.1.a.7. A student who has not achieved a 2.0 GPA for the previous semester may have his or her eligibility reinstated at midsemester if the student has attained at least a 2.0 GPA. In schools and/or counties where the traditional semester approach is not used, the nine week point shall be utilized in place of the midsemester.

3.1.a.8. In the case of students with exceptionalities as set forth in W. Va. 126CSR16, ~~West Virginia Board of Education~~ WVBE Policy 2419, Regulations for the Education of Students with Exceptionalities (~~W. Va. 126CSR16~~), if grades are given, all grades received from placements in regular classrooms and special education classrooms should be included when computing the GPA. Exceptional students placed in ungraded programs will be eligible for participation in extracurricular activities if their records indicate that they are making satisfactory progress in meeting the objectives of their individualized education program (IEP).

3.1.a.9. Students who have had a break in public school attendance for any reason may be required to establish eligibility after re-enrollment in the public school. If the county school system accepts the transfer of credits/grades earned in the non-public setting, then those credits/grades shall be used in determining academic eligibility. If the county school system does not accept the transfer of credits/grades earned in the non-public setting, then eligibility must be established after re-enrollment in the public school setting. Eligibility shall be gained at midsemester (nine week point) if the student has attained at least a 2.0 GPA. In schools and/or counties where the traditional semester approach is not used, the nine week point shall be utilized in place of the midsemester.

3.1.a.10. Students who are entering public schools or other West Virginia Secondary Schools Activities Commission (WVSSAC) member schools for the first time will be eligible for participation as follows:

3.1.a.10.A. Students who have not earned grades that the receiving school will accept

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for credit upon transfer will be eligible upon enrollment and must have a 2.0 GPA at the end of the semester in which they enroll to remain eligible.

3.1.a.10.B. Students who have earned grades that the receiving school will accept for credit upon transfer must have earned a 2.0 GPA in the previous semester to be eligible upon enrollment. If not eligible upon enrollment, the student shall become eligible at the midsemester (nine week point) if the student has attained at least a 2.0 GPA.

3.1.a.11. Homeschooled students participating in interscholastic athletics pursuant to W. Va. Code §18-2-25(d) will be eligible for participation, provided that the student:

3.1.a.11.A. complies with the rules promulgated by the West Virginia Secondary School Activities Commission;

3.1.a.11.B. has demonstrated satisfactory evidence of academic progress for the immediate preceding year and that the student's average test results for the immediate preceding year are within or above the fourth stanine in all subject areas; and

3.1.a.11.C. is enrolled in at least one virtual instructional course per semester, consistent with the applicable virtual instruction policies of the county board in which the homeschooled student lives and the applicable virtual instruction policies of the WVBE. A homeschooled student who fails to receive a "C" grade or higher at the conclusion of the virtual instruction course or semester, whichever is earliest, shall be ineligible to continue participation and remain ineligible for the following semester.

**§126-26-4. Severability.**

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



**W. Va. 126CSR26, Policy 2436.10, Participation in Extracurricular Activities  
Comment Response Form**

**Comment Period Ends: October 13, 2020**

**NOTICE:** *Comments, as submitted, shall be filed with the West Virginia Secretary of State's Office and open for public inspection and copying for a period of not less than five years.*

The following form is provided to assist those who choose to comment on **Policy 2436.10, Participation in Extracurricular Activities**. Additional sheets may be attached, if necessary.

Name: \_\_\_\_\_ Organization: \_\_\_\_\_

Title: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Please check the box below that best describes your role.

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Superintendent             | <input type="checkbox"/> Higher Educator   | <input type="checkbox"/> Parent/Family    |
| <input type="checkbox"/> Principal                  | <input type="checkbox"/> Teacher           | <input type="checkbox"/> Community Member |
| <input type="checkbox"/> Professional Support Staff | <input type="checkbox"/> Service Personnel | <input type="checkbox"/> Other            |

| COMMENTS/SUGGESTIONS             |
|----------------------------------|
| §126-26-3.1.a.11. Eligibility.   |
| §126-26-3.1.a.11.A. Eligibility. |
| §126-26-3.1.a.11.B. Eligibility. |
| §126-26-3.1.a.11.C. Eligibility. |
| §126-26-4. Severability.         |

Please direct all comments to:

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