



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

8/16/2021 9:18:21 AM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Education TITLE-SERIES: 126-189  
RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: Intercounty Student Transfer Appeal (7212)  
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: 09/15/2021 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Heather Hutchens, General Counsel  
ADDRESS: WVDE Legal Services, Capitol Bldg. 6, Room 362  
1900 Kanawha Blvd., E, Charleston, WV 25305  
EMAIL: hhutchens@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:

Policy 7212 outlines the intercounty transfer process that is to be followed when a student residing in one county seeks to attend school in another county.

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

Policy 7212 is being amended to reflect changes in W. Va. Code §18-5-16 that were passed by the West Virginia Legislature during the 2019 and 2021 legislative sessions.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There is no estimated economic impact on revenues of state government as a result of the proposed amendment of 126CSR189, Policy 7212.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There is no estimated economic impact on special revenue accounts as a result of the proposed amendment of 126CSR189, Policy 7212.

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

If a student is approved to attend school outside of the students county of residence pursuant to W. Va. Code §18-5-16 and 126CSR189, Policy 7212, Intercounty Student Transfer Appeal, there could be a corresponding increase and decrease in state aid funding to the county where the student is attending school and the students county of residence. Although the funding will be reallocated among counties, the total appropriation for state aid funding statewide will not be impacted.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full 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	0	0

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

There is no estimated economic impact on revenues of state government, special revenue accounts, or the state or its residents as a result of the proposed amendment of 126CSR189, Policy 7212.

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

Yes

**Michele L Blatt -- 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 7212, Intercounty Student Transfer Appeal  
Executive Summary**

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**West Virginia Department of Education  
Superintendent / Legal Services**

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

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

**Introduction:** Policy 7212 is being amended to reflect changes in W. Va. Code §18-5-16 that were passed by the West Virginia Legislature during the 2019 and 2021 legislative sessions.

**Background:** Policy 7212 was adopted by the West Virginia Board of Education and filed with the Secretary of State’s Office in February 2000. The policy outlines the intercounty transfer process that is to be followed when a student residing in one county seeks to attend school in another county.

**Proposed Changes:**

- Adds a definition section to provide clarity to the persons/entities generally involved in an intercounty transfer request: the sending county, the receiving county, and the nonresident student.
- Mirrors statute to require all counties adopt an open enrollment policy clearly outlining the application process for nonresident students to apply to attend school out of county.
- Authorizes certain preferences that may be included in a county’s open enrollment policy.
- Provides that counties accepting students are not required to provide transportation to nonresident students, unless a nonresident student’s IEP specifies transportation is necessary for fulfillment of the IEP.
- Provides that transfer applications may only be denied for two reasons: 1) lack of grade level capacity; and 2) improper completion of application.
- Requires transfer application denials to be in writing and sent to both the parents/guardians of the nonresident student and the State Superintendent of Schools within three days of the denial decision.
- Provides for appellate review by the State Superintendent of transfer application denials.

**Impact:** The revisions will bring the policy in compliance with current statutory law relating to intercounty student transfer requests.

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**Action:**

- Release for 30 day public comment
- Approve by WVBE with effective date of \_\_\_\_/\_\_\_\_/20\_\_

**Policy 7212, Intercounty Student Transfer Appeal  
List of Stakeholders**

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**West Virginia Department of Education**

**External Stakeholders**

- Scott Cochran, Superintendent, Webster County Schools
- Charles Hedrick, Superintendent, Pendleton County, Schools
- William Hosaflook, Superintendent, Wood County Schools
- John Hudson, Superintendent, Putnam County Schools
- Jeff Kelley, Superintendent, Lincoln County Schools
- Christine Miller, Superintendent, Taylor County, Schools
- Kim Miller, Superintendent, Ohio County Schools
- David Price, Superintendent, Raleigh County, Schools
- Terry Lynn Queen, Attendance Director, Wayne County Schools

**Internal Stakeholders**

- Heather Hutchens, WVDE General Counsel
- Melanie Purkey, WVDE Federal Programs Officer
- Sarah Stewart, WVDE Government Affairs Counsel
- Amy Willard, WVDE School Operations Officer

126CSR189

TITLE 126  
LEGISLATIVE RULE  
BOARD OF EDUCATION

SERIES 189  
INTERCOUNTY STUDENT TRANSFER APPEAL (7212)

**§126-189-1. General.**

1.1. Scope. -- This legislative rule applies to every county board of education (county) and to every student attending public school within West Virginia.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; W. Va. Code §§ 18-2-5, 18-3-3, 18-3-4, 18-3-10 and 18-5-16.

1.3. Filing Date. -- .

1.4. Effective Date. -- .

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces W. Va. 126CSR189, Policy 7212, Intercounty Student Transfer Appeal, filed January 11, 2000, and effective February 10, 2000.

**§126-189-2. Definitions.**

2.1. Nonresident student. A student who resides in this state and who is enrolled or is seeking enrollment in a county other than the county in which the student resides.

2.2. Receiving county. The county in which the nonresident student is seeking to enroll.

2.3. Sending county. The county of residence of the nonresident student.

2.4. Transfer application. The application a nonresident student submits to the receiving county to enroll and attend a school within the receiving county's jurisdiction.

**§126-189-3. County Board Open Enrollment Policy.**

3.1. All counties are statutorily required to adopt an open enrollment policy that clearly outlines the application process for nonresident students to submit a transfer application to enroll and attend school in the receiving county.

3.2. The county open enrollment policy may include the preferences for students meeting any of the following criteria:

3.2.a. Siblings of students already enrolled through the receiving county's open enrollment policy.

3.2.b. Secondary students who have completed grade 10 and, due to family relocation, become nonresident students, but express the desire to remain in a specific school within the receiving county to

complete their education.

3.2.c. Students who are children, grandchildren, or legal wards of employees of the nonresident county.

3.2.d. Students whose legal residences, though geographically within the sending county, are more proximate to a school within the receiving county, whether calculated by miles or transportation time.

3.2.e. Students who reside in a portion of a sending county where topography, impassable roads, long bus rides, or other conditions prevent practicable transportation of the nonresident student to a school within the sending county, and a school within the receiving county is more easily accessible.

3.3. The receiving county may, but is not required, to provide transportation to a nonresident student's residence, subject to the following.

3.3.a. The receiving county does not have to uniformly provide transportation to nonresident students.

3.3.b. For nonresident students with an individualized education program that specifies transportation is necessary for fulfillment of the program, the receiving county shall either:

3.3.b.1. Provide transportation to and from the school the nonresident student is attending and the nonresident student's residence; or

3.3.b.2. Provide transportation to and from an agreed upon pickup point on a regular transportation route within the receiving county; or

3.3.b.3. Provide payment in lieu of transportation for the total miles traveled each day to and from the school the nonresident student is attending and the nonresident student's residence.

3.3.c. The receiving county may only deny a transfer application for the following reasons.

3.3.c.1. There is a lack of grade level capacity in the receiving county.

3.3.c.1.A. Lack of grade level capacity means if approval of the transfer request would result in the receiving county being required to employ additional staff or compensate a classroom teacher pursuant to W. Va. Code §18-5-18a.

3.3.c.2. The nonresident student failed to submit the transfer application correctly.

3.4. All denials of transfer applications shall be in writing, and include an explanation for the denial and information on how the denial may be appealed to the State Superintendent of Schools (State Superintendent). The written denial shall be provided to the parents/guardians of the nonresident student and the State Superintendent within three business days of the date the receiving county denied the transfer application.

**§126-189-4. Transfer Application Appeals.**

4.1. Any nonresident student whose transfer application is denied may file an appeal with the State Superintendent.

4.2. The State Superintendent must receive the transfer application appeal within 30 days of the date the receiving county denied the transfer application.

4.3. The State Superintendent shall review the transfer application and the receiving county's denial decision and may hold a hearing if warranted.

4.4. The State Superintendent shall issue a decision on the appeal no later than five days prior to the start of a semester. If the transfer application appeal was not received in time for the State Superintendent to meet this deadline, the State Superintendent will issue a decision as soon as practicably possible.

4.5. A decision issued by the State Superintendent shall be final.

**§126-189-5. Funding for Nonresident Students.**

5.1. If a nonresident student begins attending school in the receiving county after the second month of the school year, the receiving county may issue, in the following fiscal year, an invoice to the sending county for the pro rata amount the receiving county would have received under the state basic foundation program had the nonresident student been included in the receiving county's net enrollment for the prior year. The sending county shall reimburse the receiving county the amount of the invoice.

5.2. If a nonresident student begins attending school in the receiving county after the second month of the school year, the receiving county may issue, in the following fiscal year, an invoice to the sending county for the pro rata amount the receiving county would have received under aid to exceptional students had the nonresident student been included in the receiving county's net enrollment for the prior year. The sending county shall reimburse the receiving county the amount of the invoice.

5.3. If a nonresident pre-k student begins attending school in the receiving county after the child count of exceptional students is certified for a school year, the receiving county may issue, in the following fiscal year, an invoice to the sending county for the pro rata amount the receiving county would have received under aid to exceptional students had the nonresident student been included in the receiving county's net enrollment for the prior year. The sending county shall reimburse the receiving county the amount of the invoice.

**§126-189-6. Severability.**

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



**W. Va. 126CSR189, Policy 7212, Intercounty Student Transfer Appeal  
Comment Response Form**

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**Comment Period Ends:** September 15, 2021

**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 7212, Intercounty Student Transfer Appeal**. Additional sheets may be attached, if necessary.

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

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

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

Please check the box below that best describes your role.

Please check the box below that best describes your role.

- |   |   |  |   |
|---|---|--|---|
| <input type="checkbox"/> County Board Member  | <input type="checkbox"/> Professional Support Staff | <input type="checkbox"/> Service Personnel | <input type="checkbox"/> Higher Education |
| <input type="checkbox"/> Superintendent       | <input type="checkbox"/> Principal                  | <input type="checkbox"/> Parent/Family     | <input type="checkbox"/> Legislator       |
| <input type="checkbox"/> Central Office Staff | <input type="checkbox"/> Teacher                    | <input type="checkbox"/> Community Member  | <input type="checkbox"/> Other            |

COMMENTS/SUGGESTIONS
§126-189-1. General.
§126-189-2. Definitions.
§126-189-3. County Board Open Enrollment Policy.
§126-189-4. Transfer Application Appeals.
§126-189-5. Funding for Nonresident Students.
§126-189-6. Severability.

Please direct all comments to:

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Charleston, West Virginia 25305-0330  
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