

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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APR 28 12 56 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES TITLE NUMBER: 127

COMMISSION

RULE TYPE: LEGISLATIVE RULES; CITE AUTHORITY WV CODE 18-2-25

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 09-127-2-7 (7.23)

TITLE OF RULE BEING AMENDED: RESIDENCE-TRANSFER

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON JUNE 14, 1994 AT 5:00 PM

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

WVSSAC

ROUTE #9, BOX 76

PARKERSBURG, WV 26101

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

TITLE 127
LEGISLATIVE RULES
WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION
SERIES 2
ATHLETICS, PROVISIONS GOVERNING ELIGIBILITY

***09 SECTION 127-2-1 - General.**

1.1 **Scope** - These rules establish the provisions governing student eligibility to participate in interscholastic athletics.

1.2 **Authority** - WV Code 18-2-25

1.3 **Filing Date** -

1.4 **Effective Date** - July 1, 1987

1.5 **Addition to Current Rule**

Proposal 6

Amend *09 §127-2-7 - **Residence-Transfer** - (pg. 26) by adding the following:

7.22 If a student transfers for athletic reasons, he/she will be ineligible for 365 days from the date of enrollment.

Proposal 7

Amend *09 §127-2-7 - **Residence-Transfer** - (pg. 26) by adding the following:

7.23 If a student is released and accepted by formal actions of County Boards of Education or similar governing bodies of a non-public school, said student will be granted immediate eligibility, provided all other rules are met. This will be a one-time transfer while in grades 7-12 and must occur upon completion of the highest grade of the present school or upon entering the lowest grade of another school. Should a second transfer occur, said student will be subject to the strictest interpretation of all other rules stated in 127-2-7.

***09 §127-2-7 Part B - Transfer**

7.16 A student becomes immediately eligible, providing he is otherwise eligible, when parents make a bona fide change of residence to a new school zone. Change of residence is defined as an actual physical relocation of the family to a different residence with the intent to reside indefinitely and terminate all occupancy of their previous residence.

7.17 If a student transfers from a secondary school in one zone to a secondary school in another zone, said student shall be ineligible for a period of 365 calendar days unless the parents become residents of the district to which the student transfers. Students transferring out of attendance zone shall immediately forfeit eligibility in their home zone.

7.18 Students who transfer to or from a member school shall be ineligible for a period not to exceed three hundred sixty-five (365) calendar days unless the parents move from one public school zone to another public school zone in conjunction with transfer of schools. Students may, during this bona fide change in residence, transfer to either a member public or a member non-public school without penalty. However, if the transfer is from a non-member private school to a public school in the zone where the student's parents reside, a student is eligible providing: (1) the student is enrolling in a member school for the first time and (2) the principals of both private and public schools involved concur that undue influence is not involved with the transfer.

7.19 A student may be transferred from one school zone to another zone within the same county by a county Board of Education and maintain eligibility. The transfer must be initiated by County Board of Education personnel to fulfill certain special education programs(s) not available in the school zone from which the student is transferred. A WVSSAC transfer form must be completed on the student, indicating approval by the principals of the involved schools. Upon the completion of the special program, the student must return to the school zone of his residence.

7.20 The Commission does not recognize emancipated status as relates to transfer except as might occur in marriage and relocation to another school zone.

7.21 "The Board of Appeals is authorized to grant exceptions to the Residence and Transfer Rule when it feels the rule fails to accomplish the purpose for which it is intended and when the rule works extreme and undue hardship upon the student."

7.22 If a student transfers for athletic reasons, he/she will be ineligible for 365 days from the date of enrollment.

7.23 If a student is released and accepted by formal actions of County Boards of Education or similar governing bodies of a non-public school, said student will be granted immediate eligibility, provided all other rules are met. This will be a one-time transfer while in grades 7-12 and must occur upon completion of the highest grade of the present school or upon entering the lowest grade of another school. Should a second transfer occur, said student will be subject to the strictest interpretation of all other rules stated in 127-2-7.

Rationale:

127-2-7.22: This is an addition to the Residence and Transfer rule, clarifying the current interpretation. This does not create a change.

127-2-7.23: This is an attempt to allow a more liberal transfer rule. The intent is to allow students to be eligible for athletics if they are attending a school outside of zone or county, if the transfer is for any kind of academic programming. The choice needs to be made at the lowest grade of the school or completing the highest grade. This allows for a smooth transition for the student and allows for the continuity set by the county board of education. This one time transfer will allow eligibility without going through the appeal process.

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1.5 **Addition to Current Rule**

Proposal 8

Amend *09 §127-2-8 - Adoption Guardianship - (pg. 27) by adding the following:

8.8 Legal guardianship should not be changed for athletic reasons. If this should occur, the student will be ineligible for 365 days from the date of enrollment in the new member school.

***09 §127-2-8 Adoption Guardianship**

8.1 The residence of parents by adoption shall constitute the residence of their adopted child for the purpose of these rules when, and only when, the student is legally adopted.

8.2 The residence of a testamentary guardian shall constitute the residence of his ward when, and only when, (1) such testamentary guardian has been duly appointed by the last will and testament of the student's last surviving natural parent; (2) said testamentary guardian has duly qualified as such before the proper tribunal in West Virginia; and (3) the student is actually residing in the household of his testamentary guardian at the time of his sports participation.

8.3 The residence of a guardian shall constitute the residence of his ward when, and only when, (1) the guardian has been appointed or approved as such by order of a circuit court of West Virginia or by a court of record in some other state; (2) such circuit court or court of record in some other state has in addition to such appointment or approval awarded or approved the awarding of the legal custody of such student to his guardian; and (3) the student is actually residing in the household of his guardian/custodian at the time of his sports participation.

8.4 Except as provided in 7.9 (Residence), the residence of a person exercising the position of guardian but not custodian of a student or exercising the position of custodian but not guardian of a student shall not constitute the residence of such student under these rules.

8.5 Effective retroactively orders of any circuit court or court of record of any other state shall not have the effect of retroactively establishing residence of a student under these rules.

8.6 A person shall not be considered the guardian of a student for the purpose of these rules until he has qualified as such guardian by meeting all the prerequisites therefore as prescribed by law and the order of the appointing court of record.

8.7 A student may not compete for his school in any sport on the basis of the residence of his guardian/custodian unless written evidence of (1) a court record appointment or approval of his guardian, and (2) an order awarding custody or approving the awarding of custody to such guardian is furnished to the Executive Secretary of the West Virginia Secondary School Activities Commission before such sports participation. When a student has complied with the provisions of this rule, he becomes eligible immediately.

8.8 Legal guardianship should not be changed for athletic reasons. If this should occur, the student will be ineligible for 365 days from the date of enrollment in the new member school.

Rationale:

Students should not be transferring for athletic purposes. Academics need to be stressed. This rule prohibits the transfer of guardianship of a student with the underlying reason being athletics.