

**Amended (7-14-17) Policy: 4110 Attendance
Comment Log
Beginning 7-14-17 & Ending 8-14-17 Comment Period**

Action Type
 N: No Response - Negative
 NA: Not Accepted + Positive
 A: Accepted o Neutral

Date	Individual/Organization	Comments	Action/ Type	Rationale
		§126-81-1 General		
2017-07-14 17:43:23	Marianne M Annie KCS Principal Chesapeake, WV	Students with an identified behavioral or emotional disorder should be excluded from having their suspensions count against our attendance. Their behavior is often a threat to themselves, their classmates and the teacher and then suspension is the only viable option. Chesapeake has the only BD/ED class for the entire eastern end of Kanawha County and thus we would be unfairly penalized.	A/-	To keep policy consistent with State Code §18-8-4 Clarifications were made for how suspensions were counted.
2017-07-19 12:01:50	Boyd Mynes Cabell County Schools Principal Barboursville, WV	The attendance policy does not address students' tardy arrivals. I have students who are tardy daily. They often important instructions on a consistent basis. Offering incentives helps us to be proactive and encourage being to school on time. However, we have very little that can be used to leverage parents' assistance in this area. It would be helpful to schools if the policy added something to address this need.	NA/-	Policy 4110 requires LEAs to address tardiness and states, " 126-81-6. County Attendance Policy Components. 6.1.b.5 setting reasonable preventive measures and consequences for student tardiness." Counties are required to address tardies in their local attendance policy.

2017-07-20 16:27:36	Stephen W. Loftis Jr. Riverside High School AAP Belle, WV Principal	I believe that Level 2 and 3 violations of the discipline code should be an allowable deduction. Violent issues such as fights are safety issues and if students are not sent out of the building cause a safety issue for them as well as other students.	A/-	To keep policy consistent with State Code §18-8-4
2017-07-25 06:56:05	A. Kangisser Professional Support	Please address tardies and make them mean something for children with chronic tardies.	NA/-	Policy 4110 requires LEAs to address tardiness and states, " 126-81-6. County Attendance Policy Components. 6.1.b.5 setting reasonable preventive measures and consequences for student tardiness." Counties are required to address tardies in their local attendance policy.
2017-08-13 15:43:30	Joseph Triplett Teacher Harts, WV	Suspension should be kept in place as is since there are usually fewer discipline options on the high school level than middle and elementary school. At the high school level many students will not respond and actually refuse other types of discipline. This policy further ties the hand of administrators and teachers.	A/-	To keep policy consistent with State Code §18-8-4
2017-08-14 11:10:45	Neil Heard AFT Morgantown, WV Community Member	By changing this policy, this will only hurt the schools. This will empower superintendents to leave students in school when an out of school suspension is needed. These discipline issues that arise should not be swept under the rug. We cannot put blinders on to discipline issues.	A/-	To keep policy consistent with State Code §18-8-4
2017-08-14 13:00:04	Shawn Dempsey Fayetteville, WV Parent-Family	I am against the change to this policy. Most schools do not have the capacity to handle multiple students in an in-school suspension setting. I feel if this policy is changed, schools will have no way of disciplining disruptive students in fear of harming their	A/-	To keep policy consistent with State Code §18-8-4

		attendance rates. You will then see basically nothing done to combat disruptions. Once again, the children who want to learn Will be held back by those who do not.		
		§126-81-4 Policy Development		
2017-08-03 14:16:15	Christy Black WV Development Disabilities Council Advocacy Specialist Charleston, WV Business-Industry	4.9.g states 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 (WV code 126-81-5.3.c.4). see comment under 126-81-5	NA/-	This was not a proposed change to policy.
2017-08-14 15:19:01	Heather Glasko-Tully BSB, RN Summersville, WV Business-Industry	<p>American society & West Virginia culture place high levels of significance to individual rights, personal autonomy, and the need for privacy. Many sources, legal and ethical, obligate health care providers to maintain confidentiality with respect to records—medical and otherwise. Confidentiality is a cornerstone of provider-patient relationships, professional codes of ethics, state and federal statutes, case law, and constitutional provisions. Each of the health professions has a code of ethics or set of standards of professional responsibility. Most professional codes contain a provision outlining the expectation for confidentiality. While the codes are not legally binding, they may be legally relevant in practice.</p> <p>Accordingly, surveys show that medical privacy is a major concern for many in our society today. Medical records can include some of the most intimate details</p>	A/-	<p>Wording in the executive summary with regards to absence in family as an excused absence will be changed to exact wording in from House Bill 2702:</p> <p>“Personal illness or injury of the student’s parent, guardian, custodian, or family member: <i>Provided</i>, That the excuse must provide a reasonable explanation for why the student’s absence was necessary and caused by the illness or injury in the family”</p>

		<p>about an individual's life. Medical records document a patient's physical and mental health. Records held by health care providers can include information on social behaviors, personal relationships, and financial status.</p> <p>Health Information Portability Accountability Act (HIPAA). Health care providers are required by law to protect the privacy of the individuals they treat. In 1996, Congress enacted the Health Information Portability Accountability Act (HIPAA) to improve the efficiency and effectiveness of the health care system through the establishment of national standards and requirements for electronic health care transactions and to protect the privacy and security of individually identifiable health information. Healthcare practices & management of patient information are governed by stringent guidelines set forth by HIPAA.</p> <p>HIPAA's Privacy Rule governs the use and disclosure of patient protected health information (PHI) placed in the medical record by physicians, nurses, and other health care providers. The HIPAA Privacy Rule protects all "individually identifiable health information" held or transmitted by a covered entity (including health care providers) or its business associate, in any form or media, whether electronic, paper, or oral. PHI is defined as individually identifiable health information relating to the individual's past, present or future physical or mental health or condition, the provision of health care to the individual, or the past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. Health care provider is</p>		
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		<p>defined broadly to include any person who, in the normal course of business, furnishes, bills, and/or is paid for health care. The term health care is also defined quite broadly and includes counseling, physical assessment, and diagnostic, therapeutic, and rehabilitative care.</p> <p>A major purpose of the Privacy Rule is to define and limit the circumstances in which an individual's protected health information may be used or disclosed by covered entities. A covered entity may not use or disclose protected health information, except either: (1) as the Privacy Rule permits or requires; or (2) as the individual who is the subject of the information (or the individual's personal representative) authorizes in writing.</p> <p>HIPAA Required Disclosures. A covered entity must disclose protected health information in only two situations: (a) to individuals (or their personal representatives) specifically when they request access to, or an accounting of disclosures of, their protected health information; and (b) to HHS when it is undertaking a compliance investigation or review or enforcement action.</p> <p>HIPAA Permitted Uses and Disclosures. A covered entity is permitted, but not required, to use and disclose protected health information, without an individual's authorization, for the following purposes or situations: (1) To the Individual (unless required for access or accounting of disclosures); (2) Treatment, Payment, and Health Care Operations; (3) Opportunity to Agree or Object; (4) Incident to an otherwise permitted use and disclosure; (5) Public Interest and</p>		
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		<p>information, expiration, right to revoke in writing, and other data.</p> <p>Federal Education Records Protection Act (FERPA). By contrast, most educational records are governed by FERPA. FERPA is a federal law that protects the privacy of student education records. This law applies to all schools receiving funds from the U.S. Department of Education. Most public schools and school districts are subject to FERPA. FERPA requires the written consent of a parent or an eligible student (18 years old OR attends a postsecondary institution at any age) prior to the disclosure of education records, or release of personally identifiable information from the records. Education records are records that directly relate to a student and are maintained by an educational agency or institution or by a party acting for the agency/ institution. Elementary or secondary school level health records (including immunization records) are considered education records.</p> <p>Information covered under FERPA can be shared without prior consent from the parent or eligible student in some scenarios, including release to school officials who have been determined to have a "legitimate educational interest" in the information. However, the school must have identified those individuals (administrators, teachers, coaches, etc.) and inform the parent of who might have access to the information. Information can also be released without consent to schools in which the student intends to enroll, in connection with financial aid for which the student has applied or which the student has receive, to postsecondary institutions, for health or safety emergency, & in compliance with a judicial</p>		
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		<p>order or a lawfully issued subpoena.</p> <p>Areas of Concern</p> <p>WV House Bill 2702 states an excused absence includes: “...(ii) Personal illness or injury of the student’s parent, guardian, custodian, or family member: Provided, That the excuse must provide a reasonable explanation for why the student’s absence was necessary and caused by the illness or injury in the family...”</p> <p>The Executive Summary drafted by the attorney for the West Virginia Department of Education, as provided to the WV Secretary of State indicates, “The legislation also updates the requirements of the excused absence for personal illness or injury of the student’s parent, guardian, custodian, or family member to give the principle discretion to request documentation from a medical, osteopathic, or chiropractic physician, physician’s assistant, or nurse practitioner as to why the student’s absence was necessitated by the family member’s illness or injury...” The Executive Summary by the West Virginia Department of Education further states proposed revisions [to Policy 4110] will also give school principles flexibility to request documentation in deciding whether a student’s absence necessary due to the illness or injury of a family member.</p> <p>MAJOR CONCERN: If the Executive Summary drafted by the West Virginia Department of Education & as submitted to the WV Secretary of State is accurate, major concerns exists for health care providers due to this policy revision. As written, the Executive Summary</p>		
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		<p>on Policy 4110 drafted by the West Virginia Department of Education is broad & overreaching. Many legal challenges will ensue if changes are not made.</p> <p>Since the majority of health care providers in the state are not employees or contractors of school districts, then the medical records of their patients are governed by HIPAA, NOT FERPA. These records are not “educational records” pursuant to FERPA. These records, therefore, are NOT specifically excluded from the definition of “protected health information” pursuant to HIPAA. See, 45 C.F.R. §160.103(2). As such, a provider that is demanded or requested to provide these records by a school principle & does so without proper authorization by the patient/guardian is at risk for running afoul of HIPAA & is subject to hefty penalties.</p> <p>School systems that wish to allow “principle discretion to request documentation from a medical, osteopathic, or chiropractic physician, physician’s assistant, or nurse practitioner as to why the student’s absence was necessitated by the family member’s illness or injury...” should be responsible for drafting a uniform authorization for release of records, to be provided to & signed by the patient or party that is the subject of the records request, PRIOR to contact of the medical professional. Failure of the WVDE to draft policies & procedures to address this authorization/consent issue places an undue administrative burden on medical providers in this state—may of whom are already working with minimal resources. Medical providers should not be responsible for securing authorization or gaining</p>		
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		<p>consent for information that is requested by the school system.</p> <p>It unsound that a principle, with little or no formal medical education, should be allowed to ultimately judge “if a student’s absence was necessitated by the family member’s illness or injury.”</p> <p>Perhaps a general form, given to the student/guardian to be signed by the medical provider that states the following without seeking specific details would be a HIPAA compliant compromise: “It is in my professional opinion that the absence of (student’s name) from school on (dates) was necessary for the physical or mental wellbeing of the student or their family member.” Signed: _____.</p> <p>If more extensive information is sought from medical providers, how will that information be stored & disseminated? Has a Privacy Impact Assessment or a Privacy Threshold Analysis been completed on these proposed changes?</p> <p>Were medical professionals (outside of the WVDE, WV BOE, or school systems) consulted for their input?</p> <p>Also, please note the House Bill 2702 was only referred to the House Education Committee. It was never examined by Judiciary or Health & Human Services in the legislature, which would have been prudent.</p>		
		<p>§126-81-5 Responsibilities</p>		

<p>2017-08-03 14:16:15</p>	<p>Christy Black WV Development Disabilities Council Advocacy Specialist Charleston, WV Business-Industry</p>	<p>5.3.4.c states a student whose education 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. -This section should be consistent with 126-81-4.9.g under definitions, and state that approved and reviewed quarterly by the SAT, IEP, or 504 team, or 126-81-4.9.g should state should be approved and reviewed as deemed appropriate.</p>	<p>NA/-</p>	<p>This was not a proposed change to policy.</p>
		<p>§126-81-6 County Attendance Policy Components</p>		
<p>2017-08-10 15:19:45</p>	<p>James Green Marion County BOE Assistant Principal Fairmont, WV Principal</p>	<p>The allowable deduction component of the attendance policy fails to take into account those students who receive a medical release from their provider. If a student were to have the flu for 5 days, or to break a leg and need surgery and recuperation time, they would be considered truant under the new allowable deductions. Also, many students who are protected by a 504 plan or an IEP that makes accommodations for their attendance due to a disability are not receiving their full protection from that federal document. As a school administrator and parent of multiple students in the WV educational system, I do not want students who have a contagious disease to come in contact with other students causing a widespread outbreak of whatever virus they are forced to come to school with so as not to be considered truant. Are we not taking into standing of the doctor or related clinician who is supervising the medical care of our students? They have a duty!</p>	<p>A/-</p>	<p>To keep policy consistent with State Code §18-8-4 Allowable deductions for schools/districts should not be confused with excused/unexcused absences for students.</p>

		to not only care for and supervise their patient, but also to the greater community to which they serve so epidemics are not generated through return to public spaces by infected people. No allowances for "calamity" when there is dramatic flooding in an area, fire decimates a household or a family member passes away? Based on the new standard for "allowable deduction" a senior student cannot even attend a college visit without being penalized. But for some odd reason a bus failure to run is allowable. Odd priorities are set forth in this policy.		

Action		Type	
N	No Response	-	Negative
NA	Not Accepted	+	Positive
A	Accepted	o	Neutral

DATE	INDIVIDUAL ORGANIZATION	COMMENTS	ACTION/TYPE	RATIONALE
§126-81-1 General				
2017-07-14 17:43:23	Marianne M Annie Principal KCS Chesapeake WV	Students with an identified behavioral or emotional disorder should be excluded from having their suspensions count against our attendance. Their behavior is often a threat to themselves, their classmates and the teacher and then suspension is the only viable option. Chesapeake has the only BD/ED class for the entire eastern end of Kanawha County and thus we would be unfairly penalized.		
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2017-08-14 15:19:01	Heather Glasko-Tully BSN, RN Summersville WV	Full comments emailed to Ms. Reeves & Ms. Harris		
§126-81-4 Policy Development				
2017-08-03 14:16:15	Christy Black Advocacy Specialist WV Developmental Disabilities Council Charleston WV	4.9.g states 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 physicians 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 (WV code 126-81-5.3.c.4). see comment under 126-81-5		
§126-81-5 Responsibilities				
2017-08-03 14:16:15	Christy Black Advocacy Specialist WV Developmental Disabilities Council Charleston WV	5.3.4.c states a student whose education 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 childs current status should be reviewed by the SAT, IEP, or 504 team as deemed appropriate and in accordance with state and federal laws. -This section should be consistent with 126-81-4.9.g under definitions, and state that approved and reviewed quarterly by the SAT, IEP, or 504 team, or 126-81-4.9.g should state should be approved and reviewed as deemed appropriate.		
§126-81-6 County Attendance Policy Components				
2017-08-10 15:19:45	James Green Assistant Principal Marion County BOE Fairmont WV	The allowable deduction component of the attendance policy fails to take into account those students who receive a medical release from their provider. If a student were to have the flu for 5 days, or to break a leg and need surgery and recuperation time, they would be considered truant under the new allowable deductions. Also, many students who are protected by a 504 plan or an IEP that makes accommodations for their attendance due to a disability are not receiving their full protection from that federal document. As a school administrator and parent of multiple students in the WV educational system, I do not want students who have a contagious disease to come in contact with other students causing a widespread outbreak of whatever virus they are forced to come to school with so as not to be considered truant. Are we not taking into		

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