



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

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**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL  
RULE**

AGENCY: Education TITLE-SERIES: 126-086

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

RULE NAME: Standards for School Nutrition (4321.1)

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)

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

November 13, 2018

**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.**

126CSR86

TITLE 126  
LEGISLATIVE RULE  
BOARD OF EDUCATION

SERIES 86  
STANDARDS FOR SCHOOL NUTRITION (4321.1)

**§126-86-1. General.**

1.1. Scope. -- This legislative rule establishes and affirms nutrition standards for child nutrition programs.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; W. Va. Code §§18-2-5, 18-5D-1, 18-5D-2, 18-5D-3, 18-5D-4, 18-5D-5, Healthy, Hunger-Free Kids Act 42 U.S.C. 1779 et seq., W. Va. 126CSR136, West Virginia Board of Education (WVBE) Policy 5202, Minimum Requirements for the Licensure of Professional/Paraprofessional Personnel and Advanced Salary Classifications (Policy 5202), and W. Va. 126CSR25A, WVBE Policy 2422.7, Standards for Basic and Specialized Health Care Procedures (Policy 2422.7).

1.3. Filing Date. -- October 11, 2018.

1.4. Effective Date. -- November 13, 2018.

1.5. Repeal of Former Rule. -- This legislative rule amends W. Va. 126CSR86, WVBE Policy 4321.1, Standards for School Nutrition, filed August 10, 2017, and effective January 2, 2018.

**§126-86-2. Purpose.**

2.1. In West Virginia public schools, federally-funded school nutrition programs are available to provide nutritious food to all students. It is intended that these child nutrition programs remain the main source of foods and beverages available at school. These federal programs have specific requirements to ensure that adequate nutrients are offered to promote health. The Office of Child Nutrition (OCN) is the administering state agency in West Virginia for the United States Department of Agriculture's (USDA) Child Nutrition Programs. The West Virginia Department of Education (WVDE) will maintain a federal-state agreement with the USDA to operate child nutrition programs, through the OCN. Within the WVDE, the OCN will be tasked with the implementation, oversight, monitoring, provision of technical assistance, and related duties as they pertain to child nutrition programs. WVDE will abide by statutory regulations set forth by USDA and the federal government related to the operation of federally-funded child nutrition programs. In order to preserve high standards of health and wellness for West Virginia students, the OCN will review any federal changes to child nutrition programs and identify areas to maintain or strengthen standards. This policy also provides guidelines and best practices supporting good nutrition and food safety that will help schools take a comprehensive approach toward health and wellness in their school community.

**§126-86-3. Operational Definitions.**

3.1. Bottled Water or Water. Plain natural water with or without carbonation and containing no

additives.

3.2. Beverages and allowable limits. Determined and defined by USDA Smart Snacks guidelines, with the exception of caffeine. Caffeine is prohibited from being sold, served, or distributed in West Virginia public schools.

3.3. Child Nutrition Director. The person responsible for administering, planning, directing, assessing, implementing, and evaluating child nutrition programs in order to meet the nutritional and educational needs of students, as they relate to the child nutrition program; may also be titled as “Food Service Director or School Nutrition Director.

3.4. Competitive Foods. Any food item that is sold in competition to the reimbursable school meal.

3.5. Food Service Area. Any area on school premises where reimbursable meals are served and/or consumed by students.

3.6. School Day. As defined by USDA guidelines, the period from midnight before, to 30 minutes after the end of the official school day.

3.7. School Campus. A collection of buildings and grounds that belong to a given academic institution.

**§126-86-4. Nutrition Standards for Child Nutrition Programs.**

4.1. Nutrition standards for federally-funded school and child nutrition programs are determined at the federal level. The WVDE is responsible for technical assistance and compliance monitoring related to program implementation at the local level.

**§126-86-5. Nutrition Standards for Competitive Foods and Beverages.**

5.1. The Smart Snacks in School nutrition standards apply to any foods sold to students during the school day on the school campus, including foods sold as fundraisers. Foods that do not meet these federal standards cannot be sold to students on the school campus during the school day. Standards do not apply during non-school hours, on weekends, and at off school campus fundraising events, though local wellness policies may still apply. These standards apply to foods sold outside the National School Lunch Program (NSLP) and the School Breakfast Program (SBP).

5.2. Food and beverage contracts must comply with W. Va. 126CSR202, WVBE Policy 8200, Purchasing Procedures for Local Educational Agencies.

5.3. Except for foods served in school nutrition programs, no food or beverage shall be sold, served, or distributed to students on elementary school campuses from the time the first child arrives at school until 20 minutes after all students are served lunch.

5.4. Foods and beverages may not be sold, served, or distributed in competition with federal child nutrition programs in school campus food service areas during the meal service periods.

5.5. In addition to caffeine, the sale, service, or distribution of any foods or beverages containing non-nutritive/artificial sweeteners is prohibited.

**§126-86-6. A La Carte Sales.**

6.1. To operate school-based nutrition programs as efficiently as possible, while maximizing federal reimbursement and minimizing the overall cost to the county, all meals must be priced and served as a unit. Only fluid milk and bottled water may be sold as a la carte items for breakfast and lunch at any grade level.

**§126-86-7. Availability of Drinking Water.**

7.1. Schools participating in the NSLP must make potable water available to children at no charge where meals are served during the meal service. Schools shall make available water throughout the school day at no charge.

**§126-86-8. Adequate Time for Student Meal Consumption.**

8.1. Adequate time is necessary for student meal consumption. Each student shall be allowed a minimum of ten minutes for breakfast and 20 minutes for lunch after the student received the meal.

**§126-86-9. Staffing.**

9.1. School Nutrition Directors are those individuals directly responsible for the management of the day-to-day operations of school food service for all participating schools under the jurisdiction of the school food authority (Local Educational Agency (LEA) participating in school nutrition programs). Requirements for certification include the following:

9.1.a. Initial Temporary Authorization for School Nutrition Director. The applicant for licensure must provide evidence of satisfying the following:

9.1.a.1. Degree. At a minimum, hold a bachelor's degree and a minimum 2.5 grade point average including six semester hours of coursework related to nutrition, food, and/or food service management or WVDE-approved training as provided by the OCN. The six semester hours or approved training must be completed within 90 days of the start date; and

9.1.a.2. Food Safety Training. The applicant for licensure must provide evidence of at least eight hours of food safety training obtained no more than five years prior to or within 30 days of start date; and

9.1.a.3. Recommendation of the County Superintendent. Receive the recommendation of the county superintendent in the county in which the applicant is employed verifying that the applicant is the most qualified candidate for the position; and

9.1.a.4. Validity Period. The temporary authorization for School Nutrition Director shall be valid for three years.

9.1.b. Renewal of the Temporary Authorization for School Nutrition Director. The applicant for licensure must provide evidence of satisfying the following:

9.1.b.1. Professional Development Activities. Completion of 12 clock hours of job-specific training each year related to child nutrition programs; and

9.1.b.2. USDA Required Food Safety Training. School Nutrition Director must maintain a valid food safety certification while employed in the school meal program.

**§126-86-10. Local Wellness Policy.**

10.1. Each LEA must establish a local wellness policy for all schools participating in the NSLP and/or SBP under the jurisdiction of the LEA. The local wellness policy is a federal requirement that must include methods to promote student wellness; prevent and reduce childhood obesity; and provide assurance that school meals and other foods and beverages sold and otherwise made available on the school campus during the school day are consistent with applicable federal and state standards. Local wellness policies must include specific goals for nutrition promotion and education, physical activity, and other school-based activities that are designed to promote student wellness; standards and nutrition guidelines for all foods and beverages sold to students on the school campus during the school day that are consistent with federal regulations; standards for all foods and beverages provided, but not sold to students during the school day; policies for food and beverage marketing that allow marketing and advertising of only those foods and beverages that meet federal nutrition standards; and a description of the public involvement, public updates, policy leadership, and evaluation plan. Provisions in the final federal rule regulate that LEAs must establish wellness policy leadership of one or more LEA and/or school official(s) who have the authority and responsibility to ensure each school complies with the policy. Every school or county participating in the NSLP and/or SBP will inform the public about the content and implementation of the local school wellness policy. At a minimum, LEAs must permit participation by the general public and the school community (including parents, students, representatives of the school food authorities, teachers of physical education, school health professionals, the school board, and school administrators) in the wellness policy process. The final rule requires state agencies to assess compliance with the wellness policy requirements as part of the general areas of the administrative review every three years. LEAs must conduct an assessment of the wellness policy every three years, at a minimum. This assessment will determine compliance with the wellness policy, how the wellness policy compares to model wellness policies, and progress made in attaining the goals of the wellness policy. The USDA does not specify the frequency of updates to the local school wellness policy, as the need to update will vary based upon the content and structure of each LEA's policy.

**§126-86-11. Special Dietary Considerations and Food Allergies.**

11.1. Special care and consideration must be taken regarding any and all scenarios where students with special dietary needs and food allergies are present.

11.2. Only a parent, guardian, or designee as provided in writing to the school, may deliver outside foods and beverages to their own student at school. This does not apply to food that is provided for a special event inclusive of all students in the class.

11.3. Local wellness policies that are set and maintained at the LEA are a federal requirement. Snacks provided to students during the school day will meet standards set by the county in accordance with their local wellness policies. If the county chooses to allow outside foods to be made available for the general student population, they will communicate with parents/guardians acceptable foods and beverages that meet nutrition and safety standards for classroom snacks and celebrations. Students with special dietary

needs and food allergies must be considered at all times when outside foods are provided in a general setting. Schools should operate with the utmost care and caution when allowing outside foods to be provided to students. Counties must use their local wellness policies to identify their plan to accommodate students with special dietary needs and food allergies when choosing to allow outside snacks to be provided. School health teams can serve as resources.

11.4. Students with disabilities who have chronic conditions, including but not limited to asthma, diabetes, gastrointestinal disorders, cardiac disorders, and known food allergies, are eligible for a locally-developed Individualized Health Care Plan prepared by the certified school nurse; a Section 504 Plan; or an Individualized Education Program inclusive of a Medical Statement for Special Dietary Needs.

11.5. As directed in Policy 2422.7, all public schools are required to report any reactions resulting in the administration of epinephrine injections and administration of naloxone in their county. Other food safety concerns including contaminants such as drugs, chemicals, microorganisms and unknown substances, allergic reactions, medication incidents, etc., shall also be reported. The incidents shall be reported to the West Virginia Poison Center by calling 1-800-222-1222 after emergency medical services has transported the student or staff member to acute care. The notification should include the name of the student, the student's age and gender, date and the approximate time the incident occurred, symptoms observed, who administered the injection, the name of the school the student attends, a contact telephone number, if appropriate the rationale for administering the injection, the response to the epinephrine administration, the dose of epinephrine administered, and any other necessary elements to provide a complete report for the individual situation. The West Virginia Poison Center will provide the expertise during a potential concern, and will work collaboratively with schools and parents/guardians and provide data upon request to the public schools, LEA, and annually to the State Superintendent of Schools.

**§126-86-12. Accountability and Compliance.**

12.1. As required by the Healthy and Hunger-Free Kids Act of 2010, the administrative review process in the NSLP and SBP has been established to utilize a unified accountability system designed to ensure that school food authorities offering school meals comply with program requirements. Additionally, this act requires state agencies to publicly disclose a summary of the administrative review results. These elements are expected to strengthen program integrity through a more robust, effective, and transparent process for monitoring school nutrition programs.

**§126-86-13. Feed to Achieve – Innovative Breakfast Delivery Strategies.**

13.1. Each LEA shall establish and operate school nutrition programs under which, at a minimum, a nutritious breakfast and lunch are made available to all students enrolled in the schools of the county in accordance with WVBE standards. All West Virginia public schools are required to collaborate with the OCN to develop strategies and methods to increase the percentage of students participating in the school breakfast and lunch nutrition programs and to adopt a delivery system approved by the OCN to ensure that all students are given an opportunity to eat breakfast. These approved systems shall include, but are not limited to: Grab-and-Go Breakfasts, Breakfast in the Classroom, or Breakfast After First Period.

13.2. The OCN will maintain and communicate applicable federal and state guidelines regarding best practices in food waste reduction initiatives. Among these initiatives, shared table guidelines will be provided for LEA to successfully implement programs in their schools.

**§126-86-14. Rewards and Penalties.**

14.1. LEA are prohibited from penalizing students due to unpaid and/or outstanding meal debt. This includes, but is not limited to: denial of meals, prohibition of participating in extracurricular activities, the denial of participation in graduation, and/or the refusal of transcript requests. Students shall not be denied a meal or served an alternative meal as a result of unpaid meal debt. All communication addressing financial matters shall be directed to parents/guardians. Practices, including but not limited to, putting stickers or wristbands on children to remind parents/guardians to pay unpaid fees, are prohibited. Schools are prohibited from identifying or stigmatizing students with meal debt or requiring them to complete chores or work in exchange for meals.

14.2. Food and beverages shall not be offered as a reward and/or used as a means of punishment or disciplinary action for any student during the school day.

**§126-86-15. West Virginia Department of Education Nutrition Advisory Council.**

15.1. The WVDE Nutrition Advisory Council, comprised of state and local administrators, educators, health professionals, food service personnel, and lay citizens, will remain apprised of current research findings in nutrition and assessing potential implications of findings for program development and implementation.

**§126-86-16. Severability.**

16.1. 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.