



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

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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: 126-081

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

RULE NAME: Attendance (Policy 4110)

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:

January 15, 2021

**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.**

**126CSR81**

**TITLE 126  
LEGISLATIVE RULE  
BOARD OF EDUCATION**

**SERIES 81  
ATTENDANCE (4110)**

**§126-81-1. General.**

1.1. Scope. -- This legislative rule establishes guidelines for the development of county attendance policies.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; W. Va. Code §§16-3-4, 17B-2-3, 17B-2-5, 18-2-5, 18-2-5c, 18-5-15, 18-8-1, 18-8-2, 18-8-3, 18-8-4, 18-8-5, 18-8-11, 50-1-8; and, Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et seq. (McKinney-Vento Act).

1.3. Filing Date. -- December 16, 2020.

1.4. Effective Date. -- January 15, 2021.

1.5. Repeal of Former Rule. -- This legislative rule amends W. Va. 126CSR81, West Virginia Board of Education (WVBE) Policy 4110, Attendance, filed October 12, 2017, and effective November 13, 2017.

**§126-81-2. Purpose.**

2.1. The WVBE recognizes that a direct relationship exists between students' daily school attendance and academic performance, graduation, and the development of good work habits. This attendance policy promotes students' daily school attendance. Each county shall be required to develop and implement a county attendance policy in accordance with this policy. Daily attendance is necessary for students to meet their schools' academic program standards as each day's learning builds on the work previously completed. While students and parents/guardians/custodians have the ultimate responsibility for daily school attendance, the laws of West Virginia require school administrators to enforce regular attendance of compulsory school aged students, and to provide a school environment conducive to, and encouraging of, attendance.

**§126-81-3. Definitions.**

3.1. Absence. Not being physically present in the school facility for any reason or failing to engage in virtual or remote learning in accordance with county attendance policy.

3.1.a. All documentation relating to absences shall be provided to the school not later than three instructional days after the first day the student returns to school; failure to submit documentation shall result in an Unexcused Absence.

3.2. Allowable Deductions for Schools. Beginning with the 2016-2017 school year, absences that result from school approved curricular/co-curricular activities, failure of the bus to run/hazardous conditions, students not in attendance due to disciplinary measures, and school/county directed

placements outside the traditional classroom environment including but not limited to homebound placement and in-school suspension.

3.3. Attendance. Attendance reported and aggregated to the nearest half day according to the definitions in section 3.3.a. and section 3.3.b.

3.3.a. Full-day attendance: Being present at least .74 of the school day.

3.3.b. Half-day attendance: Being present at least .50 of the school day.

3.4. Attendance Rate. The number of days present divided by the number of days of membership, multiplied by 100.

3.5. Compulsory School Age. Begins with the school year in which the sixth birthday is reached prior to July 1 of such year or upon enrolling in a publicly supported kindergarten program and continues to the seventeenth birthday for as long as the student continues to be enrolled in a school system after the seventeenth birthday.

3.6. Dropout. A student who:

3.6.a. was enrolled in school at some time during the previous school year and was not enrolled on October 1 of the current school year; or

3.6.b. was not enrolled on October 1 of the previous school year although expected to be in membership (i.e., was not reported as a dropout the year before); and

3.6.c. has not graduated from high school, obtained a Test Assessing Secondary Completion (TASC) diploma, or completed a state- or county-approved education program; and

3.6.d. does not meet any of the following exclusionary conditions:

3.6.d.1. transfer to another in- or out-of-state public school system, private school, home school, or state- or county-approved education program; or

3.6.d.2. temporary school-recognized absence due to suspension or illness; or

3.6.d.3. death.

3.7. Dropout Date. The school day following the dropout's last day of attendance.

3.8. Enrollment. A student who is officially enrolled when one of the following conditions occur:

3.8.a. was enrolled the previous year; or

3.8.b. appears at school to enroll with or without a parent/guardian/custodian; or

3.8.c. appears at school to enroll with or without a parent/guardian/custodian and with or without records.

3.9. Enrollment Count. A status count that reports the number of students on the attendance register as required by the West Virginia Department of Education (WVDE).

3.10. Excused Student Absences. Absences include:

3.10.a. Absences that result from school-approved curricular/co-curricular/extracurricular activities; failure of the bus to run/hazardous conditions; Student Assistance Team (SAT) Plan, Individualized Education Program (IEP), or Section 504 Plan meetings; and other county board-approved Excused Absences.

3.10.b. Personal illness or injury of the student.

3.10.c. Personal illness or injury of the student's parent/guardian/custodian, or family member.

3.10.c.1. The excuse must provide a reasonable explanation for the student's absence caused by the illness or injury in the family.

3.10.d. Medical or dental appointment with a valid written excuse from the physician or dentist.

3.10.e. Documented chronic medical conditions that may require multiple or regular absences. These conditions must be documented annually with a valid physician's note that explains the condition and anticipated impact on attendance. The necessity for the absences must be approved and reviewed quarterly by the SAT, IEP, or Section 504 team (see section 4.3.d.4).

3.10.f. Participation in homebound or hospital instruction due to an illness or injury or other extraordinary circumstances that warrant home or hospital confinement.

3.10.g. 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 Section 504 team (see section 4.3.d.4).

3.10.h. Calamity, such as fire or flood.

3.10.i. Death in the family.

3.10.j. Judicial obligation or court appearance involving the student.

3.10.k. Military requirements for students enlisted or enlisting in the military.

3.10.l. Personal or academic circumstances approved by the principal.

3.10.m. Such other situations as may be further determined by the county board, provided that absences of students with disabilities shall be in accordance with the Individuals with Disabilities Education Improvement Act of 2004, Public Law 108-446 (IDEA) and the federal and state regulations adopted in compliance therewith.

3.11. Unexcused Absence. Any absence not specifically included in the definition of Excused Absence.

3.12. Homeless Children and Youth (McKinney-Vento Act). Individuals who lack a fixed, regular, and adequate nighttime residence and includes:

3.12.a. children and youth who share the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, camping grounds, due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; and/or are abandoned in hospitals or other locations;

3.12.b. children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation;

3.12.c. children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

3.12.d. migratory children who qualify as homeless because the children or youth are living in circumstances as described in the above descriptions.

3.13. Meaningful Contact. Process whereby an attendance director, assistant director, or building level administrator shall make meaningful contact with the parent/guardian/custodian to ascertain the reason(s) for Unexcused Absences and what measures the school may employ to assist the student in attending and not incurring additional Unexcused Absences.

3.14. Membership Days. The days present plus the days absent.

3.15. School of Origin (McKinney-Vento Act). The school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled.

3.16. Transfer. A process by which a student ends enrollment or attendance in one location and begins enrollment or attendance in a second location (e.g., within a county, between counties, or out-of-state). This process can be evidenced through a transcript request or other documentation that the student is continuing elementary or secondary education.

**§126-81-4. Responsibilities.**

4.1. The WVBE shall encourage daily attendance and mandate that county school systems adequately address student absences including tardiness.

4.2. The WVBE shall define allowable deductions for purposes of state attendance reports and statistics. Schools shall not be held accountable for absences resulting from allowable deductions. These absences shall not be calculated in the school's/county's attendance rate.

4.3. Each county board of education shall:

4.3.a. establish an attendance policy as described in section 6.

4.3.b. employ a certified county director of school attendance as required by W. Va. Code

§18-8-3.

4.3.c. support and require the county attendance director to implement and execute the duties as defined in W. Va. Code §18-8-4:

4.3.c.1. The attendance director and assistant director shall diligently promote regular school attendance through meaningful contact. They shall ascertain reasons for unexcused absences from school of students of compulsory school age and students who remain enrolled beyond the compulsory school age. They shall take such steps as are, in their discretion, best calculated to encourage the attendance of students and to impart upon the parents/guardians/custodians the importance of attendance and the seriousness of failing to attend school regularly.

4.3.c.2. In the case of three total Unexcused Absences of a student during a school year, the attendance director, assistant director, or principal shall make meaningful contact with the parent/guardian/custodian of the student to ascertain the reasons for the Unexcused Absences and what measures the school may employ to assist the student in attending and not incurring any additional Unexcused Absences.

4.3.c.3. In the case of five total Unexcused Absences, the attendance director or assistant director or principal shall again make meaningful contact with the parent/guardian/custodian of the student to ascertain the reasons for the Unexcused Absences and what measures the school may employ to assist the student in attending school and not incurring any additional Unexcused Absences.

4.3.c.4. In the case of 10 total Unexcused Absences of a student during a school year, the attendance director or assistant director may make complaint against the parent/guardian/custodian before a magistrate of the county. If it appears from the complaint that there is a probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent/guardian/custodian may be charged in a complaint. Initial service of the summons or warrant issued pursuant to the provisions of W. Va. Code §18-8-4 shall be attempted within 10 calendar days of the receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

4.3.c.5. When calculating Unexcused Absences for the purpose of making complaints against a parent/guardian/custodian before a magistrate, Unexcused Absences resulting from suspensions or expulsions from school shall not be considered.

4.3.c.6. The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in W. Va. Code §50-1-8, shall assign the case to a magistrate within 10 days of execution of the summons or warrant. The hearing shall be held within 20 days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least 10 days advance notice of the date, time, and place of the hearing.

4.3.c.7. When any doubt exists as to the age of a student absent from school, the attendance director or assistant director has authority to require a properly attested birth certificate or an affidavit from the parent/guardian/custodian of the student, stating age of the student. In the performance of their duties, the attendance director or assistant director has authority to take without warrant any

student absent from school in violation of the provisions of this article and to place the student in the school in which the student is or should be enrolled.

4.3.c.8. All attendance directors and assistant directors hired for more than 200 days may be assigned other duties determined by the superintendent during the period in excess of 200 days. The county attendance director is responsible under direction of the superintendent for efficiently administering school attendance in the county.

4.3.c.9. In addition to those duties directly relating to the administration of attendance, the attendance director and assistant director shall:

4.3.c.9.A. assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

4.3.c.9.B. confer with principals and teachers on the comparison of school census and enrollment for the detection of possible non-enrollees;

4.3.c.9.C. cooperate with existing state and federal agencies charged with enforcing child labor laws;

4.3.c.9.D. promote attendance in the county by compiling data for schools and by furnishing suggestions and recommendations for publication through media, or in such manner as the superintendent may direct;

4.3.c.9.E. participate in teachers' conferences with parents/guardians/custodians and students;

4.3.c.9.F. assist in such other ways as the superintendent may direct for improving school attendance; and

4.3.c.9.G. make home visits of students who have excessive Unexcused Absences or if requested by the chief administrator, principal, or assistant principal.

4.3.c.10. The attendance director shall serve as the liaison for homeless children and youth as defined in W. Va. Code §18-8-4 and defined in McKinney-Vento Act. The attendance director shall:

4.3.c.10.A. ensure that public notice of the educational rights of students in homeless situations is disseminated where children and youth receive services;

4.3.c.10.B. ensure that parents/guardians/custodians are informed of educational and related opportunities available to their children, and are provided with meaningful opportunities to participate in the education of their children;

4.3.c.10.C. ensure that parents/guardians/custodians are informed of, and assisted in accessing, all transportation services for their children, including to the school of origin;

4.3.c.10.D. help unaccompanied youth choose and enroll in a school, after considering the youth's wishes, and provide the youth with notice of the right to appeal the county's decision;

4.3.c.10.E. immediately assist in obtaining immunizations or record of immunizations or other medical records for those students who do not have them, and assure that students are enrolled in school while the records are being obtained;

4.3.c.10.F. ensure that homeless children and youths are identified by school personnel and through coordination activities with other entities and agencies;

4.3.c.10.G. ensure that homeless children and youths enroll in, and have a full and equal opportunity to succeed in, schools of that county;

4.3.c.10.H. ensure that homeless families, children, and youth receive educational services for which such families, children, and youths are eligible including Head Start and preschool programs administered by the local educational agency, and referrals to health care services, dental services, mental health services, and other appropriate services; and

4.3.c.10.I. ensure that enrollment disputes are mediated as outlined in Paragraph (3)(E) of the McKinney-Vento Act.

4.3.c.11. The attendance director shall file with the superintendent and county board of education, at the close of each month, a report showing activities of the attendance office and the status of attendance in the county at the time due to provisions in W. Va. Code §18-8-4.

4.3.d. support and require the principal to implement and execute the duties as defined in W. Va. Code §18-8-5:

4.3.d.1. The principal shall compare school numbers with school enrollment monthly.

4.3.d.2. In the case of five total Unexcused Absences, the attendance director or assistant director or principal shall make meaningful contact with the parent/guardian/custodian of the student to ascertain the reasons for the Unexcused Absences and what measures the school may employ to assist the student in attending and not incurring any additional Unexcused Absences.

4.3.d.3. It shall be the duty of the principal of each school, whether public or private, to make meaningful contact and provide prompt reports to the attendance director, or proper assistant director, of all cases of Unexcused Absences arising within the school which require the services of an attendance worker.

4.3.d.4. A student whose educational services are guided by an existing SAT Plan, IEP, or Section 504 Plan may warrant special consideration when a pattern of single, multiple, or chronic absences exist. The student's current status should be reviewed by the SAT, IEP, or Section 504 Plan team as deemed appropriate and in accordance with state and federal laws.

4.4. Each parent/guardian/custodian is responsible for fully cooperating in and completing the enrollment process by providing:

4.4.a. immunization documentation (W. Va. Code §16-3-4),



- 4.4.b. copy of a certified birth certificate or affidavit (W. Va. Code §18-2-5c),
- 4.4.c. signed suspension and expulsion document (W. Va. Code §18-5-15), and
- 4.4.d. any other documents required by federal, state, and/or local policies or code.

4.5. Jurisdiction to enforce compulsory school attendance law lies in the county in which a student resides and in the county where the school in which the student is enrolled is located. When the county of residence and enrollment are different, an action to enforce compulsory school attendance may be brought in either county and the magistrates and circuit courts of either county have noncurrent jurisdiction for the trial of offenses arising under W. Va. Code §18-8-4.

4.6. Nothing in this policy is intended to limit the ability of a person having knowledge of a student's habitual absence from school from filing a petition with the circuit court pursuant to W. Va. Code §49-4-704.

**§126-81-5. County Attendance Policy.**

5.1. County central office staff shall:

5.1.a. provide opportunities for input from teachers, principals, attendance directors, parents/guardians/custodians, and community leaders when developing or revising the attendance policy.

5.2. Each county's attendance policy shall address the following components:

5.2.a. a philosophy declaring the county board's intent to increase attendance by:

5.2.a.1. creating a positive safe environment conducive to learning and committed to helping students develop responsibility, self-discipline, and other good work habits.

5.2.a.2. developing a system enlisting parent/guardian/custodian support for daily school attendance by students.

5.2.b. County school systems are responsible for:

5.2.b.1. appointing a designated school attendance coordinator (principal or designee) who collects classroom attendance data and makes appropriate referrals to the attendance director.

5.2.b.2. reporting student attendance information which reflects the allowable deductions as defined by the WVBE.

5.2.b.3. defining excused and unexcused absences in compliance with W. Va. Code §18-8-1 and §18-8-2, and attendance in W. Va. 126CSR42, Policy 2510, Assuring the Quality of Education: Regulations for Education Programs (Policy 2510); provided, however, that no county may require more than a parent/guardian/custodian excuse for absences resulting from a documented chronic medical condition or a documented disability as defined in section 3.10.e and section 3.10.g.

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5.2.b.4. defining extenuating circumstances for absences which may require homebound/hospital instruction as outlined in Policy 2510.

5.2.b.5. setting reasonable preventive measures and consequences for student tardiness.

5.2.b.6. ensuring that the county attendance policy will be posted on the county school system's website and readily available to the public.

5.2.b.7. assuring that a student may not be suspended solely for failure to attend class. Other methods of discipline may include, but are not limited to, detention, extra class time, or alternative class settings.

5.2.b.8. reporting all school dropouts to the WVDE.

5.2.c. County school systems are responsible for:

5.2.c.1. developing a process to notify students and their parents/guardians/custodians of the county attendance policy and their responsibility and accountability for regular school attendance.

5.2.c.2. developing, implementing, and monitoring procedures and reasonable timelines requiring students with Excused and Unexcused Absences and to make up school work.

5.2.c.3. requiring a student maintain satisfactory attendance (satisfactory being defined as no Unexcused Absences) during one complete semester following the revocation of the student's driver's license.

5.2.c.4. developing an attendance appeal process for students and parents/guardians/custodians.

5.2.d. Maintenance of Records: Accurate attendance records and related documentation shall be maintained for every student enrolled in public school.

5.2.d.1. An up-to-date daily record of attendance for every student shall be maintained.

5.2.d.2. There shall be written procedures for: 1) notifying parents/guardians/custodians about absences; 2) monitoring absences; and 3) notifying the attendance director of an Unexcused Absence.

5.2.d.3. Students who are physically absent from school must be documented as absent. This record may become a legal document.

5.2.e. Preventive and Corrective Measures: To meet the developmental needs of students, preventive and corrective measures should include developing:

5.2.e.1. preventive and educational procedures including incentives to maintain and improve attendance and reduce tardiness.

5.2.e.2. procedures for notification of parents/guardians/custodians of absences and

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procedures for securing parent/guardian/custodian involvement to improve student attendance.

5.2.e.3. procedures for providing adequate counseling for issues related to attendance.

5.2.e.4. procedures for interagency involvement.

5.2.e.5. alternative plans and programs that are positive in nature and encourage improved school attendance.

5.2.e.6. assurances that students with a pattern of excessive absenteeism are referred to appropriate SAT/programs (Policy 2510) for appropriate intervention(s), and that these interventions have been reviewed to determine effectiveness.

### **§126-81-6. Severability.**

6.1. 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.