



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Education TITLE-SERIES: 126-084

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

RULE NAME: Student Driver Eligibility Certificate (4150)

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:

July 1, 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.

126CSR84

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 84
STUDENT DRIVER ELIGIBILITY CERTIFICATE (4150)**

§126-84-1. General.

1.1. Scope. -- This legislative rule provides guidelines for the uniform implementation of driver eligibility criteria for students at least 15 but less than 18 years of age.

1.2. Authority. -- West Virginia Constitution, Article XII, §2, and W. Va. Code §§17B-2-3a, 17B-3-6, 18-2-5, and 18-8-11.

1.3. Filing Date. -- May 13, 2021.

1.4. Effective Date. -- July 1, 2021.

1.5. Repeal of Former Rule. -- This legislative rule amends W. Va. 126CSR84, Policy 4150, Student Driver Eligibility Certificate, filed August 15, 2008, and effective September 15, 2008.

§126-84-2. Purpose.

2.1. The West Virginia Board of Education (WVBE) recognizes that driving a vehicle is a privilege and that W. Va. Code requires young people, at least 15 but less than 18 years of age, to maintain specified driver eligibility requirements related to school attendance, personal behavior, and academic progress in order to obtain and maintain a West Virginia license or instruction permit for the operation of a motor vehicle. While the West Virginia Department of Motor Vehicles (WVDMV) has the authority to deny and suspend a license or instruction permit for the operation of a motor vehicle, W. Va. Code places certain responsibilities on school administrators to identify students who do not meet any or all of the driver eligibility requirements and to communicate this information to the WVDMV. The identification of students not meeting the driver eligibility requirements must be performed using uniform measures across the 55 counties; the definitions provided in this policy have been designed to assure consistent application of driver eligibility throughout West Virginia.

§126-84-3. Definitions.

3.1. Circumstances Beyond the Control of the Student. Circumstances shall include, but not be limited to, medical reasons, familial responsibilities, and the necessity of supporting oneself or another. Suspension or expulsion from school or imprisonment in a jail or a West Virginia correctional facility is not a circumstance beyond the control of the student and shall be considered an unexcused absence.

3.2. Driver's Eligibility Certificate. Documentation provided by the county to the student verifying that the student has met the attendance, behavioral, and academic expectations set forth by W. Va. Code §18-8-11 that are required to obtain a license or instruction permit to drive a motor vehicle.

3.3. Satisfactory Academic Progress. Attaining and maintaining grades sufficient to allow graduation

and coursework in an amount sufficient to permit graduation in five years or by age 19, whichever is earlier.

3.3.a. This calculation includes the minimum annual earning of five credits to be on track to graduate in five years based on the graduation requirements set forth in W. Va. §126CSR42, Policy 2510, Assuring the Quality of Education: Regulations for Education Programs (Policy 2510).

3.3.b. Three of the five credits earned annually must be from the graduation requirements identified in Policy 2510.

3.4. Withdrawal. For the purpose of driver's license eligibility, withdrawal is defined as the following reasons for which the county board of education shall deny or revoke a Driver's Eligibility Certificate from any student at least 15 but less than 18 years of age:

3.4.a. more than 10 consecutive or 15 total days unexcused absences during a school year.

3.4.b. suspensions pursuant to W. Va. Code §18A-5-1a and §18A-5-1b which include the following behaviors when committed on the premises of an educational facility, at a school-sponsored function, or on a school bus: assault and/or battery on school employees; possessing deadly weapons; sale of a narcotic drug; committing an act or engaging in conduct that would constitute a felony under W. Va. Code if committed by an adult; and/or unlawfully possessing a control substance governed by the uniform controlled substances act as described in W. Va. Code §60A-1-101, et seq.

§126-84-4. Responsibilities.

4.1. WVBE responsibilities.

4.1.a. Encourage daily attendance and appropriate student conduct, set academic graduation requirements for public schools, and mandate that county school systems collect and report student performance data regarding these student behaviors.

4.1.b. Define Driver's Eligibility Certificate criteria in uniform quantifiable measures to assure that the process is applied equally to all students ages 15 to 18 who are enrolled in West Virginia public schools.

4.2. County board of education responsibilities.

4.2.a. Support and require the county attendance director and all school administrators to implement and execute the duties defined in W. Va. §126CSR81, Policy 4110, Attendance (Policy 4110).

4.2.b. Incorporate the appropriate components of this policy into existing county attendance, student code of conduct, and academic requirement policies.

4.2.c. Support and require the county attendance director and all school administrators to implement and execute the following duties defined in W. Va. Code §18-8-11 regarding driver's eligibility for a license or instruction permit to operate a motor vehicle:

4.2.c.1. provide, upon request, a Driver's Eligibility Certificate on a form (hard-copy or electronic) approved by West Virginia Department of Education (WVDE) to any student at least 15 but less than 18 years of age who is in satisfactory standing with regard to attendance, behavior, and academic

progress in a school under the jurisdiction of the official for presentation to the WVDMV on application for or reinstatement of an instruction permit or license to operate a motor vehicle.

4.2.c.2. provide notification to the WVDMV when a student, at least 15 but less than 18 years of age, withdraws from school, is suspended pursuant to W. Va. Code §18A-5-1a and §18A-5-1b, section 3.4.b, and/or fails to maintain satisfactory academic progress, except when the withdrawal or failure to make satisfactory academic progress is due to circumstances outside the control of the student. Notification must be provided to the WVDMV no later than five days from the date of the withdrawal and/or suspension. Notification must be provided to the WVDMV no later than five days from the end of the school year for failure to maintain satisfactory academic progress.

4.2.c.3. provide the opportunity, upon request, for a student who has been denied a Driver's Eligibility Certificate or has received a revocation notice, to have a hearing before the county superintendent of schools or designee concerning whether the student's withdrawal from school or failure to make satisfactory academic progress was due to a circumstance or circumstances beyond the control of the student. The county superintendent, with the assistance of appropriate staff, shall be the sole judge of whether any of the grounds for denial or suspension of a license or instruction permit are due to a circumstance or circumstances beyond the control of the student.

4.2.d. provide a review process that allows students to have their Driver's Eligibility Certificate reinstated upon demonstration of satisfactory progress as follows:

4.2.d.1. reinstatement requests related to withdrawal for unexcused absences shall be reviewed, as outlined in Policy 4110, at the end of the semester following that in which the withdrawal occurred.

4.2.d.2. reinstatement requests related to failure to make satisfactory academic progress shall be reviewed at the end of each school year for the purpose of reinstating the Driver's Eligibility Certificate.

4.2.d.3. reinstatement requests related to withdrawal for suspension pursuant to W. Va. Code §18A-5-1a and §18A-5-1b shall be reviewed after all disciplinary sentences have been served for the purpose of reinstating the Driver's Eligibility Certificate.

§126-84-5. Severability.

5.1. 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.