



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: 126-146

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

RULE NAME: Service Personnel Classification, Competency Testing, and Professional Learning (5314)

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:

August 16, 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.

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**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 146
SERVICE PERSONNEL CLASSIFICATION, COMPETENCY TESTING,
AND PROFESSIONAL LEARNING (5314)**

§126-146-1. General.

1.1. Scope. -- This legislative rule defines service personnel classification and competency testing as well as establishes minimum performance standards and the Service Personnel Staff Development Council (Council). This rule applies to county boards of education (county), career technical education (CTE) centers, multi-county CTE centers, the West Virginia Schools for the Deaf and the Blind, and schools under the supervision of West Virginia Schools of Diversion and Transition.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; and W. Va. Code §§18-2-5, 18-2E-5, 18-9E-3, 18-9E-4, 18A-2, 18A-3-9, and 18A-4.

1.3. Filing Date. -- July 14, 2021.

1.4. Effective Date. -- August 16, 2021.

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces W. Va. 126CSR146, Policy 5314, Service Personnel Responsibilities and Performance Standards, filed January 22, 1985, and effective March 22, 1985; and repeals W. Va. 126CSR150A, Policy 5500.02, County Service Personnel Staff Development Council, filed August 27, 1992, and effective September 26, 1992; W. Va. 126CSR133, Policy 5141, Approved College Credit for Aide IV Classification, filed November 2, 1984, and effective January 2, 1985; W. Va. 126CSR163, Policy 5301, College Hours or Comparable Training in a Trade or Vocational School, filed April 11, 2013, and effective May 13, 2013; and W. Va. 126CSR146A, Policy 5314.01, Autism Mentor, filed April 11, 2013, and effective May 13, 2013.

§126-146-2. Purpose.

2.1. This policy outlines the service personnel classification, competency test requirements, and testing procedures while establishing the Council to provide school service personnel with job-relevant and needs-based professional learning opportunities to ensure students are provided with vital learning environments.

§126-146-3. Definitions.

3.1. Approved institution. CTE center, trade, vocational, business, or similar institution approved by a state or national institution, specialized accrediting agency, or the Council on Occupational Education (COE).

3.2. College hours or comparable training obtained in an approved institution shall be defined to include any combination of the following:

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3.3.a. Semester hour. Definition found in W. Va. 126CSR136, Policy 5202, Minimum Requirements for the Licensure of Professional/Paraprofessional Personnel and Advanced Salary Classifications, section 4 (Policy 5202).

3.3.b. Quarter hour. Definition found in Policy 5202, section 4.

3.3.c. Comparable credit obtained in an approved institution. Each fifteen contact hours of training obtained in a postsecondary program from an approved institution shall be equivalent to one semester hour of college credit. Comparable credit for such contact hours should still be granted even if the contact hours are also counted towards meeting annual professional learning requirements.

3.4. Institution of higher education (IHE). Definition found in Policy 5202, section 4.

3.5. Test administrator. Individual who is designated to administer competency tests while maintaining test security and integrity (W. Va. Code §18A-4-8e).

§126-146-4. Service Personnel Defined.

4.1. As defined in W. Va. Code §18A-1-1(e), a service personnel is a nonteaching school employee who is not included in the meaning of teacher as defined by state code and who services the school(s) in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school nutrition, and aides.

4.1.a. When posting a vacancy for a service personnel position, a county must use one of the service personnel classifications identified in W. Va. Code §18A-4-8.

4.2. Performance standards shall be developed by each county and clearly defined to enable all employees to understand their job performance expectations. Service personnel shall, at a minimum, be evaluated on the following performance standards:

4.2.a. work habits: observation of work hours, attendance, safety practices, meeting deadlines, flexibility, taking the initiative, and positive attitude;

4.2.b. performance: work judgment, planning and organizing, quality of work, taking responsibility, following instructions, efficiency under stress, and the operation and care of equipment; and

4.2.c. professional learning: knowledge of job responsibilities and participation in job-related trainings.

4.3. Each county shall review each service personnel employee's job classification annually and reclassify all service persons as required by the job classification (W. Va. Code §18A-4-8).

4.3.a. The county's review of the service personnel employee's job duties and responsibilities may determine that the employee is performing duties and/or responsibilities outside of the current classification. To reclassify this service personnel employee, the county may either remove the identified job duties and/or responsibilities that are not part of the employee's current classification, or the

employee must complete the competency test for the reclassification title for which they are already performing the duties and/or responsibilities to show that the employee is qualified to hold the reclassification title.

4.3.b. A service personnel employee may not be reclassified without the employee's written consent (W. Va. Code §18A-4-8).

§126-146-5. Service Personnel Classifications.

5.1. A detailed list of service personnel classifications and definitions can be found in W. Va. Code §18A-4-8.

5.2. Additional specific requirements for service personnel classifications.

5.2.a. Aide IV.

5.2.a.1. An Aide IV must complete 18 hours of WVBE-approved College credit at an IHE or approved institution; or 15 hours of WVBE-approved college credit at an IHE and has successfully completed an in-service training program determined at the county level to be the equivalent of three hours of college credit.

5.2.a.1.A. The approved college credit shall be related to basic skills including reading, writing, speaking, and mathematics; or career development as approved by the county.

5.2.a.1.B. If the Aide IV chooses to do the 15 hours of college credit and in-service training program, then the aide must develop an individual in-service plan with the aide's immediate supervisor, the principal of the building, and the county superintendent/designee.

5.2.a.2. The Aide IV classification is a salary classification and the final decision on eligibility rests with the employing county superintendent and county. No application or credentialing process is necessary through the West Virginia Department of Education (WVDE).

5.2.b. Autism Mentor.

5.2.b.1. To be classified as an autism mentor, an employee must first classify as an Aide III as defined in W. Va. Code §18A-4-8.

5.2.b.2. The aide must successfully complete a professional learning program related to providing instructional support to students with autism as determined and verified by the WVDE.

5.2.b.2.A. For each hour of training completed, one-half point per hour will be awarded.

5.2.b.2.B. A minimum of 15 points or 30 hours of training must be earned and verified for a candidate to meet this requirement.

5.2.b.2.C. Training is required on the use of restraints and must include prevention and de-escalation techniques with alternatives to the use of restraint. The WVDE Office of Special Education will determine the points awarded for this training after approval of properly documented training.

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5.2.b.2.C.1. Training must have been completed within three years and documentation submitted to the WVDE Office of Special Education for review and consideration. Training older than three years will not be considered.

5.2.b.2.C.2. Training documentation shall include, at a minimum, the name of the training, the date of training, the number of hours, the agency providing the training, and the training sponsor's or designee's signature.

5.2.b.2.D. Upon completion of the documentation analysis, the candidate and the employing county's personnel director will receive a letter verifying whether the state requirements have been met.

5.2.b.3. The employing county is responsible for verifying:

5.2.b.3.A. two years of successful experience providing classroom instructional supports to a student with autism under the supervision of a fully certified special education teacher.

5.2.b.3.A.1. A year is defined as a minimum of 133 instructional days in any one school year and is verified at the end of the school year.

5.2.b.3.A.2. The student must be an eligible student with autism for the time the aide provided instructional supports for the experience to be counted. The student's eligibility is determined and documented by an eligibility committee in accordance with W. Va. 126CSR16, Policy 2419, Regulations for the Education of Students with Exceptionalities.

5.2.b.3.A.3. If the eligibility committee's determination for a student's eligibility has changed while the aide was providing instructional supports, the aide will receive credit only for the experience during the time the student was deemed eligible. To receive credit, the dates for the time period the aide was working with the eligible student must be documented and kept in the aide's personnel file.

5.2.b.3.B. Physical ability and stamina are necessary to complete all job tasks, including tasks related to ensuring student safety. Documentation proving physical ability and stamina will be kept in the aide's personnel file.

5.2.b.4. Upon meeting all training, experience, and physical requirements, the aide is eligible to apply for the position of autism mentor.

5.2.b.5. An employee who works with autistic students and meets the standards and experience set forth above qualifies for the autism mentor classifications.

5.2.c. Aide V, Aide VI, Early Childhood Classroom Assistant Teacher (ECCAT), Paraprofessional are addressed in Policy 5202.

§126-146-6. Education Equivalency for Service Personnel.

6.1. Educational equivalency is used to determine additional monthly pay as specified in W. Va. Code §18A-4-8a for service personnel who have earned college hours through an accredited IHE or comparable training in an approved institution; or who have earned an associate's, a bachelor's, a master's, or a doctorate degree.

6.2. College hours or comparable training, for the purposes of this policy, are defined by any combination of the following:

6.2.a. Semester hour. An hour of college credit from an accredited IHE on the semester system.

6.2.b. Quarter hour. An hour of college credit from an accredited IHE on the quarter system. One quarter hour is equivalent to two-thirds of a semester hour.

6.2.c. Comparable credit. Each 15 contact hours of training obtained in a postsecondary program from an approved trade, vocational, technology, business, or similar institution shall be equivalent to one semester hour of college credit. Comparable credit shall be granted even if those contact hours are also counted toward meeting annual professional learning requirements.

6.2.c.1. Associate's. An associate or two-year degree earned from an accredited IHE.

6.2.c.2. Bachelor's. A four-year degree earned from an accredited IHE.

6.2.c.3. Bachelor's plus 15. A bachelor's degree plus 15 hours of undergraduate/graduate work is also earned from an accredited IHE. The undergraduate hours must have been completed after the bachelor's degree was awarded.

6.2.c.4. Master's. A master's degree earned from an accredited IHE approved to do graduate work.

6.2.c.5. Master's plus 15. A master's degree plus 15 hours of undergraduate/graduate work is also earned from an accredited IHE. This classification requires 45 hours including a master's degree, of which 15 hours may be undergraduate hours completed after the bachelor's degree was awarded.

6.2.c.6. Master's plus 30. A master's degree plus 30 hours of undergraduate/graduate work is also earned from an accredited IHE. This classification requires 60 hours including a master's degree, of which 15 hours may be undergraduate hours completed after the bachelor's degree was awarded.

6.2.c.7. Master's plus 45. A master's degree plus 45 hours of undergraduate/graduate work is also earned from an accredited IHE. This classification requires 75 hours including a master's degree, of which 15 hours may be undergraduate hours completed after the bachelor's degree was awarded.

6.2.c.8. Master's plus 60. A master's degree plus 60 hours of undergraduate/graduate work is also earned from an accredited IHE. This classification requires 90 hours including a master's degree, of which 15 hours may be undergraduate hours completed after the bachelor's degree was awarded.

6.2.c.9. Doctorate. A doctorate's degree earned from an accredited IHE qualified and approved to confer such a degree.

6.3. Official transcripts are used to verify earned credits from an accredited IHE or a grade report of completed contact hours in a postsecondary program from an approved and accredited institution. Employees are responsible for obtaining and providing official transcripts to their employer.

6.4. Counties are responsible for verifying the number of hours completed by their respective service employees for additional pay purposes.

§126-146-7. Competency Testing.

7.1. Competency tests are used to determine the qualifications of new applicants seeking initial employment in a classification as either a regular or substitute employee or an existing employee applying for employment in another classification (W. Va. Code §18A-4-8e). These tests shall not be used to evaluate currently classified employees.

7.2. The county must use the state-approved competency test in its entirety with no additions to the test. Counties are not permitted to require additional testing for classifications or use county-developed tests. Counties may consider job-related factors in addition to the statutory qualification, if necessary, for the successful performance of the posted vacancy.

7.3. Competency tests are based on classifications and include a combination of written and performance tests. The written test provides the county with the applicant's knowledge of the classification's job duties and responsibilities. The performance test demonstrates the applicant's ability to perform tasks related to the classification.

7.4. Competency tests align with the classification definition in W. Va. Code §18A-4-8 and section 5.

7.4.a. For multiclassified positions, the applicant must be able to pass all relevant competency tests.

7.4.b. CTE students who complete a program of study that aligns to a service personnel classification may take the competency test. The CTE administrator should schedule testing with the county.

7.5. A valid license/certificate from a reputable agency or institution is also acceptable for certain classifications as found in the WVDE's Service Personnel Manual located on the WVDE's website. Applicants holding a valid license/certification in certain classifications are not required to take a competency test.

7.6. Competency Testing Process.

7.6.a. All counties and multi-county CTE centers shall designate a person to fill this role. The test administrator, designee, test reader, and/or the performance test evaluator shall sign a test security agreement as indicated by the WVDE before testing materials are released or testing can occur.

7.6.a.1. The county test administrator cannot administer the performance test for bus operator classification. For information on bus operator competency testing and/or professional learning, see W. Va. 126CSR92, Policy 4336, West Virginia School Bus Transportation Regulations, Procedures, and Specifications for The Design and Equipment of School Buses.

7.6.b. Competency tests shall be administered to all applicants who are interested in the posted vacancy. Testing shall occur in a uniform manner under uniform testing conditions. Counties shall notify all applicants of the date, time, and location of the competency test. If the applicant is a county employee whose schedule conflicts with the date and time of the test, then the applicant is excused from work without loss of pay to test (W. Va. Code §18A-4-8e). A county may allow an alternative testing date which must be open to all applicants.

7.6.c. Applicants must provide documentation to prove their identity and that they meet W. Va. Code §18A-2-5 by either holding a high school diploma or equivalent or are enrolled in a state-approved high school equivalency program by the date of employment. Employment is contingent upon the applicant's continued enrollment or successful completion of said program.

7.6.d. The written competency test will be administered using an online testing platform.

7.6.e. If requested, an applicant may take the written test orally. The testing platform will read the written competency test to the applicant. Applicants will use the testing platform to record their responses.

7.6.f. If applicants have any disabilities that prevent them from taking the test in its original format and setting, then reasonable accommodations should be made as long as the integrity of the test is maintained. Refer to the WVDE's Service Personnel Manual located on the WVDE's website for guidance on reasonable accommodations.

7.6.g. The test administrator shall maintain a record of what test was administered; who administered the test; the location, date, and time of the test; and the name, address, and phone number of each tested applicant.

7.6.h. The written competency tests will be scored by the testing platform.

7.6.i. If the test administrator is not qualified to evaluate the performance competency test, then the test administrator will appoint an evaluator. The performance test evaluator must be a qualified county employee who has signed a test security agreement. The performance test evaluator or test administrator shall enter the performance test results into the testing platform.

7.6.j. Applicants will receive their scores from each written and/or performance test completed.

7.6.j.1. Achieving a passing score shall conclusively demonstrate the qualifications of an applicant for a classification title. Once an applicant has passed the competency test for a classification title, that applicant maintains the classification title.

7.6.j.1.A. Applicants will receive a certificate verifying that they completed and passed the classification competency test. If the applicant is hired, then a copy of the certificate should be maintained in the employee's personnel file.

7.6.j.2. If an applicant does not achieve a passing score, then the applicant shall be given every opportunity to pass the competency test when applying for each posted vacancy within the

classification. If the applicant previously passed the written and/or portions of the performance test, then the applicant is only required to take the portion of the test not passed.

7.6.j.2.A. No specific test questions may be shared, but applicants may be told that they did not pass the written test. If there is a performance test, then the applicant may be told what section of the performance test was not passed.

7.6.k. In the event an applicant has already completed/passed a competency test, the applicant must provide a copy of the certificate and the county shall verify the certificate.

§126-146-8. Service Personnel Staff Development Council (Council).

8.1. County responsibilities.

8.1.a. The county shall establish a Council that shall develop and/or propose a professional learning program for service personnel.

8.1.b. The county superintendent/designee shall supervise objectives of the Council; coordinate implementation of the professional learning program; disseminate information concerning program objectives, location and time, prerequisites, etc., about the program offerings; and maintain records of enrollment, scheduling, and evaluation of service personnel.

8.1.c. Professional learning shall be based on predetermined needs; reflect the state and county's goals and policies; include activities that provide for individual and group needs; incorporate individual-, school-, and county-level learning opportunities; and provide a systematic evaluation process.

8.1.c.1. The county must schedule a minimum of 18 hours of annual job-related, needs-based professional learning with the first 12 hours occurring before January 1 for all service personnel. An exception to this schedule may be granted by the county superintendent.

8.1.d. The county shall approve the professional learning program before implementation.

8.1.e. Two or more counties may elect to cooperate in the same professional learning program.

8.1.f. The county shall make available 1/10 of one percent of the amount provided according to W. Va. Code §18-9A-5 and credit such funds to an account to be used by the Council to fulfill its objectives. The county shall have the final approval of all disbursements and may consider other funding sources.

8.1.g. At the end of each fiscal year, the county shall report to the staff development chairperson the total amount and balance of the Council account(s), the amount appropriated for the recent fiscal year, the amount of funds used by the Council, and the amount of funds carried over into the next fiscal year. These funds can be carried forward for a maximum of three years. If the funds still have not been spent by the end of that period, the remaining balance shall revert to the county's general current expense fund.

8.1.h. At the end of the fiscal year, the county shall provide to the State Superintendent of Schools/designee a list of Council members including the offices held by members, the number of

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meetings held to plan the professional learning, and the number of hours that service personnel employees were provided to implement professional learning programs (W. Va. Code §18A-3-9(c)).

8.2. Council responsibilities.

8.2.a. The Council shall be comprised of the county superintendent/designee who shall hold an advisory, nonvoting role; and two employees from each service personnel category (secretarial, custodial, maintenance, transportation, food service, and aides).

8.2.a.1. The Council shall elect a chairperson.

8.2.b. The current Council members shall submit nominations for membership to the county superintendent in a staggered three-year election cycle. The county superintendent shall prepare and distribute the ballots and tabulate the votes.

8.2.c. Service personnel employees in concert with their immediate supervisor may develop an individual professional learning plan to be used in their professional learning activities. An employee's performance evaluation must be used in this process. An employee's performance evaluation shall be confidential.

8.3. The Council shall evaluate annually the effectiveness of the professional learning program and activities.

8.4. Monitoring and evaluation of the professional learning program shall be conducted in compliance with W. Va. Code §18-2E-5.

§126-146-9. Severability.

9.1. 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.