



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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10/14/2021 12:22 PM

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: 126-189

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

RULE NAME: Intercounty Student Transfer Appeal (7212)

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 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.

126CSR189

TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

SERIES 189
INTERCOUNTY STUDENT TRANSFER APPEAL (7212)

§126-189-1. General.

1.1. Scope. -- This legislative rule applies to every county board of education (county) and to every student attending public school within West Virginia.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; W. Va. Code §§ 18-2-5, 18-3-3, 18-3-4, 18-3-10 and 18-5-16.

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

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

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces W. Va. 126CSR189, Policy 7212, Intercounty Student Transfer Appeal, filed January 11, 2000, and effective February 10, 2000.

§126-189-2. Definitions.

2.1. Nonresident student. A student who resides in this state and who is enrolled or is seeking enrollment in a county other than the county in which the student resides.

2.2. Receiving county. The county in which the nonresident student is seeking to enroll.

2.3. Sending county. The county of residence of the nonresident student.

2.4. Transfer application. The application a nonresident student submits to the receiving county to enroll and attend a school within the receiving county's jurisdiction.

§126-189-3. County Board Open Enrollment Policy.

3.1. All counties are statutorily required to adopt an open enrollment policy that clearly outlines the application process for nonresident students to submit a transfer application to enroll and attend school in the receiving county.

3.2. The county open enrollment policy may include the preferences for students meeting any of the following criteria:

3.2.a. Siblings of students already enrolled through the receiving county's open enrollment policy.

3.2.b. Secondary students who have completed grade 10 and, due to family relocation, become nonresident students, but express the desire to remain in a specific school within the receiving county to

complete their education.

3.2.c. Students who are children, grandchildren, or legal wards of employees of the nonresident county.

3.2.d. Students whose legal residences, though geographically within the sending county, are more proximate to a school within the receiving county, whether calculated by miles or transportation time.

3.2.e. Students who reside in a portion of a sending county where topography, impassable roads, long bus rides, or other conditions prevent practicable transportation of the nonresident student to a school within the sending county, and a school within the receiving county is more easily accessible.

3.3. The receiving county may, but is not required, to provide transportation to a nonresident student's residence, subject to the following.

3.3.a. The receiving county does not have to uniformly provide transportation to nonresident students.

3.3.b. For nonresident students with an individualized education program that specifies transportation is necessary for fulfillment of the program, the receiving county shall either:

3.3.b.1. Provide transportation to and from the school the nonresident student is attending and the nonresident student's residence; or

3.3.b.2. Provide transportation to and from an agreed upon pickup point on a regular transportation route within the receiving county; or

3.3.b.3. Provide payment in lieu of transportation for the total miles traveled each day to and from the school the nonresident student is attending and the nonresident student's residence.

3.3.c. The receiving county may only deny a transfer application for the following reasons.

3.3.c.1. There is a lack of grade level capacity in the receiving county.

3.3.c.1.A. Lack of grade level capacity means if approval of the transfer request would result in the receiving county being required to employ additional staff or compensate a classroom teacher pursuant to W. Va. Code §18-5-18a.

3.3.c.2. The nonresident student failed to submit the transfer application correctly.

3.4. All denials of transfer applications shall be in writing, and include an explanation for the denial and information on how the denial may be appealed to the State Superintendent of Schools (State Superintendent). The written denial shall be provided to the parents/guardians of the nonresident student and the State Superintendent within three business days of the date the receiving county denied the transfer application.

§126-189-4. Transfer Application Appeals.

4.1. Any nonresident student whose transfer application is denied may file an appeal with the State Superintendent.

4.2. The State Superintendent must receive the transfer application appeal within 30 days of the date the receiving county denied the transfer application.

4.3. The State Superintendent shall review the transfer application and the receiving county's denial decision and may hold a hearing if warranted.

4.4. The State Superintendent shall issue a decision on the appeal no later than five days prior to the start of a semester. If the transfer application appeal was not received in time for the State Superintendent to meet this deadline, the State Superintendent will issue a decision as soon as practicably possible.

4.5. A decision issued by the State Superintendent shall be final.

§126-189-5. Funding for Nonresident Students.

5.1. If a nonresident student begins attending school in the receiving county after the second month of the school year, the receiving county may issue, in the following fiscal year, an invoice to the sending county for the pro rata amount the receiving county would have received under the state basic foundation program had the nonresident student been included in the receiving county's net enrollment for the prior year. The sending county shall reimburse the receiving county the amount of the invoice.

5.2. If a nonresident student begins attending school in the receiving county after the second month of the school year, the receiving county may issue, in the following fiscal year, an invoice to the sending county for the pro rata amount the receiving county would have received under aid to exceptional students had the nonresident student been included in the receiving county's net enrollment for the prior year. The sending county shall reimburse the receiving county the amount of the invoice.

5.3. If a nonresident pre-k student begins attending school in the receiving county after the child count of exceptional students is certified for a school year, the receiving county may issue, in the following fiscal year, an invoice to the sending county for the pro rata amount the receiving county would have received under aid to exceptional students had the nonresident student been included in the receiving county's net enrollment for the prior year. The sending county shall reimburse the receiving county the amount of the invoice.

§126-189-6. Severability.

6.1. If any provision of this policy or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this policy.