



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

12/9/2021 10:16:53 AM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Education TITLE-SERIES: 126-185

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

RULE NAME: Intercounty Transfer Arrangements (7200)

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)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 01/10/2022 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Heather Hutchens, General Counsel

ADDRESS: WVDE Legal Services, Capitol Bldg. 6, Suite 650  
1900 Kanawha Blvd., E, Charleston, WV 25305

EMAIL: hhutchens@k12.wv.us

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Policy 7200 governs the operation of intercounty transfer arrangements under which students from one or more counties attend school in a county other than their county of residence.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Policy 7200 is being amended to update code and clarify to local school districts what is meant by appropriate amount with regard to the WVDE calculation.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There will be no economic impact on revenues of state government as a result of the proposed amendment of 126CSR185, Policy 7200.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There will be no economic impact on special revenue accounts as a result of the proposed amendment of 126CSR185, Policy 7200.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

There will be no economic impact on the state or its residents as a result of the proposed amendment of 126CSR185, Policy 7200.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

There will be no economic impact on revenues of state government, special revenue accounts, or the state or its residents as a result of the proposed amendment of 126CSR185, Policy 7200.

**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.**



**Policy 7200, Intercounty Transfer Arrangements  
List of Stakeholders**

**West Virginia Department of Education**

**External Stakeholders**

- Paula Fridley, Treasurer, Fayette County
- Melanie Meadows, Treasurer, Kanawha County

**Internal Stakeholders**

- Heather Hutchens, General Counsel, Legal Services, Office of the State Superintendent
- Stephanie Abraham, Attorney, Legal Services, Office of the State Superintendent
- Jan Barth, Assistant Superintendent, Office of the State Superintendent
- Amy Willard, School Operations Officer, Office of School Operations and Finance
- Charlene Coburn, Accountability Officer, Office of Support and Accountability
- Uriah Cummings, Manager, School Finance Services, Office of School Operations and Finance

126CSR185

TITLE 126  
LEGISLATIVE RULE  
BOARD OF EDUCATION

SERIES 185  
INTERCOUNTY TRANSFER ARRANGEMENTS (7200)

**§126-185-1. General.**

1.1. Scope. -- ~~These~~is rules governs the operation of intercounty transfer arrangements under which students from one or more counties attend school in a county other than their county of residence.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; and W. Va. Code §§18-2-5, 18-5-13(~~19s~~), 18-9A-14, and 18A-4-8i.

1.3. Filing Date. -- ~~April 13, 1998.~~

1.4. Effective Date. -- ~~May 13, 1998.~~

1.5. Repeal of Former Rule. -- This rule amends W. Va. 126CSR185, Policy 7200, Intercounty Transfer Arrangements (Policy 7200), filed April 13, 1998, and effective May 13, 1998.

**§126-185-2. Purpose.**

2.1. ~~These~~is rules policy establishes the framework for implementing intercounty transfer arrangements.

**§126-185-3. Definitions.**

3.1. "Intercounty Transfer Arrangement" means those cases in which Arrangements mutually determined by counties in which students are required to attend school in a county other than the county of their residence.

3.2. "Receiving county" means~~+~~The county, other than the county of residence, where students are required to attend school.

3.3. "Sending county" means~~+~~The county of residence of the student(s) involved in intercounty transfer arrangements.

**§126-185-4. Authorization for Intercounty Transfer Arrangements.**

4.1. County boards of education are encouraged to fully utilize their existing school facilities and to cooperate in planning for new school facilities in order to reduce the need for school facilities and to reduce transportation times for students by entering into intercounty transfer arrangements.

4.2. County boards of education are authorized to enter into agreements with one another, subject to ~~State Board~~ West Virginia Board of Education (WVBE) approval, for the transfer and receipt of any and all

funds determined to be fair when students are permitted or required to attend school in a county other than the county of their residence. W. Va. Code §18-5-13(19s).

4.3. A proposed Intercounty Transfer Arrangement must be approved by the county boards of education of both the sending and receiving counties prior to the time it is sent to the ~~State Board~~ WVBE for approval.

4.4. Intercounty transfer arrangements may be entered into for the purpose of submitting an application for funding to the School Building Authority of West Virginia.

**§126-185-5. Transfer of Funds and Allowance for Funds in Intercounty Transfer Arrangements pursuant to W. Va. Code §18-9A-14.**

5.1. Intercounty transfer arrangements must contain (a) provision(s) detailing any financial considerations pertaining to the arrangement, including the amount of any funds to be transferred by the sending county to the receiving county. Any amount to be transferred on a per-pupil basis shall not exceed the per pupil allocation in the state aid formula received by the sending county in the fiscal year in which the intercounty transfer takes place.

5.2. Subject to appropriations by the Legislature, funds equal to the amount agreed upon in the Intercounty Transfer Arrangement under 5.1 ~~above~~ will be provided to the sending county in the year in which the transfer of students occurs. ~~W. Va. Code §18-9A-14.~~

5.3. Subject to appropriations by the Legislature, funds equal to one-half of the amount agreed upon in the Intercounty Transfer arrangement under 5.1 ~~above~~ will be provided to the sending county in the first year after the transfer occurs. ~~W. Va. Code §18-9A-14.~~

5.4. Subject to appropriations by the Legislature, funds equal to one-fourth of the amount agreed upon in the Intercounty Transfer Arrangement under 5.1 ~~above~~ will be provided to the sending county in the second year after the transfer occurs. ~~W. Va. Code §18-9A-14.~~

5.5. Any amount otherwise payable to the sending county under sections 5.2, 5.3 and 5.4 ~~above~~ shall be reduced by the ~~State Board~~ WVBE by an appropriate amount should professional or service personnel obtain full-time employment pursuant to the terms of W. Va. §18A-4-8i. ~~W. Va. Code §18-9A-14.~~

5.5.a. The appropriate amount shall be calculated as 50 percent of the amount otherwise payable for the year.

**§126-185-6. Determination of Number of Positions to be Created in Facilities Affected by an Intercounty Transfer Arrangement pursuant to W. Va. Code §18A-4-8i.**

6.1. Should two or more counties enter into an Intercounty Transfer Arrangement, the ~~State Board~~ WVBE shall determine the number of professional educator and school service personnel positions to be created in any facility receiving students or in any facility affected by the Intercounty Transfer Arrangement.

6.2. Once the ~~State Board~~ WVBE has determined the number of professional educator and school service personnel positions to be created, the ~~State Board~~ WVBE shall embody those positions in a “certified list of positions” needed to implement the Intercounty Transfer Arrangement. This certified list of positions

shall be forwarded to each sending and receiving county involved in the intercounty transfer arrangement.

**§126-185-7. Preparation of Certified List of Employees Whose Employment Has Been Terminated as a Result of an Intercounty Transfer Arrangement pursuant to W. Va. Code §18A-4-8i.**

7.1. Should two or more counties enter into an Intercounty Transfer Arrangement, the ~~State Board~~ WVBE shall prepare a “certified list of employees” containing the names and seniority of the professional educators and service personnel whose employment in a sending county was terminated as a result of the Intercounty Transfer Arrangement.

7.2. Inclusion in the “certified list of employees” is limited to:

7.2.1a. those persons whose positions were eliminated as a direct result of the Intercounty Transfer Arrangement and

7.2.a.1. who choose not to exercise their right to displace another employee with lesser seniority, or

7.2.a.2. whose seniority is insufficient to allow them to displace other employees; and

7.2.2b. those persons, as determined by the ~~State Board~~ WVBE, who would have retained a position with a sending county if the Intercounty Transfer Arrangement had not occurred.

**§126-185-8. Filling Positions Created by an Intercounty Transfer Arrangement pursuant to W. Va. Code §18A-4-8i.**

8.1. A receiving county may not act to fill any position created by the Intercounty Transfer Arrangement until it has received from the ~~State Board~~ WVBE both the certified list of positions and the certified list of employees.

8.2. Once a receiving county has received both the certified list of positions and the certified list of employees, it may begin filling positions created by the Intercounty Transfer Arrangement by selecting employees from the certified list.

8.2.1a. In filling positions, the receiving county shall comply with all provisions of law relevant to the filling of professional educator or service personnel vacancies.

8.2.2b. For the remainder of the school year immediately following the effective date of the intercounty transfer arrangement, but in no case for a period of less than six months, the receiving county may fill positions on the certified list of positions only by selecting employees from the certified list of employees.

**§126-185-9. Seniority Rights for Professional Educators and School Service Personnel in Cases of Intercounty Transfer Arrangements pursuant to W. Va. Code §18A-4-8i.**

9.1. Professional educators and service personnel whose names appear on the certified list of employees and who are hired by a receiving county shall accrue seniority in both the sending and the receiving county during the time in which they continue to be employed by the receiving county.

**§126-185-10. Severability.**

10.1. 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.

**W. Va. 126CSR185, Policy 7200, Intercounty Transfer Arrangements  
Comment Response Form**

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**Comment Period Ends: January 10, 2022**

**NOTICE:** *Comments, as submitted, shall be filed with the West Virginia Secretary of State's Office and open for public inspection and copying for a period of not less than five years.*

The following form is provided to assist those who choose to comment on **Policy 7200, Intercounty Transfer Arrangements**. Additional sheets may be attached, if necessary.

Name: \_\_\_\_\_ Organization: \_\_\_\_\_

Title: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Please check the box below that best describes your role.

Please check the box below that best describes your role.

- |   |   |  |   |
|---|---|--|---|
| <input type="checkbox"/> County Board Member  | <input type="checkbox"/> Professional Support Staff | <input type="checkbox"/> Service Personnel | <input type="checkbox"/> Higher Education |
| <input type="checkbox"/> Superintendent       | <input type="checkbox"/> Principal                  | <input type="checkbox"/> Parent/Family     | <input type="checkbox"/> Legislator       |
| <input type="checkbox"/> Central Office Staff | <input type="checkbox"/> Teacher                    | <input type="checkbox"/> Community Member  | <input type="checkbox"/> Other            |

COMMENTS/SUGGESTIONS
§126-185-1. General.
§126-185-2. Purpose.
§126-185-3. Definitions.
§126-185-4. Authorization for Intercounty Transfer Arrangements.
§126-185-5. Transfer of Funds and Allowance for Funds in Intercounty Transfer Arrangements pursuant to W. Va. Code §18-9A-14.
§126-185-6. Determination of Number of Positions to be Created in Facilities Affected by an Intercounty Transfer Arrangement pursuant to W. Va. Code §18A-4-8i.

**W. Va. 126CSR185, Policy 7200, Intercounty Transfer Arrangements  
Comment Response Form**

**§126-185-7. Preparation of Certified List of Employees Whose Employment Has Been Terminated as a Result of an Intercounty Transfer Arrangement pursuant to W. Va. Code §18A-4-8i.**

**§126-185-8. Filling Positions Created by an Intercounty Transfer Arrangement pursuant to W. Va. Code §18A-4-8i.**

**§126-185-9. Seniority Rights for Professional Educators and School Service Personnel in Cases of Intercounty Transfer Arrangements pursuant to W. Va. Code §18A-4-8i.**

**§126-185-10. Severability.**

Please direct all comments to:

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1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0330  
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