



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: 126-185
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)

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

July 1, 2022

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.

126CSR185

TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

SERIES 185
INTERCOUNTY TRANSFER ARRANGEMENTS (7200)

§126-185-1. General.

1.1. Scope. -- This rule 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(s), 18-9A-14, and 18A-4-8i.

1.3. Filing Date. -- February 10, 2022.

1.4. Effective Date. -- July 1, 2022.

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

§126-185-2. Purpose.

2.1. This policy establishes the framework for implementing intercounty transfer arrangements.

§126-185-3. Definitions.

3.1. Intercounty Transfer Arrangement. 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. The county, other than the county of residence, where students are required to attend school.

3.3. Sending county. 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 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(s).

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 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 section 5.1 will be provided to the sending county in the year in which the transfer of students occurs.

5.3. Subject to appropriations by the Legislature, funds equal to one-half of the amount agreed upon in the Intercounty Transfer arrangement under section 5.1 will be provided to the sending county in the first year after the transfer occurs.

5.4. Subject to appropriations by the Legislature, funds equal to one-fourth of the amount agreed upon in the Intercounty Transfer Arrangement under section 5.1 will be provided to the sending county in the second year after the transfer occurs.

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

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 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 WVBE has determined the number of professional educator and school service personnel positions to be created, the 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 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.a. 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.b. those persons, as determined by the 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 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.a. 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.b. 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.