



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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8/11/2022 12:32 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: 126-022
RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Regulations for Driver Education and Student Licensing (2422.2)
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:

September 12, 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.

126CSR22

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 22
REGULATIONS FOR DRIVER EDUCATION AND STUDENT LICENSING (2422.2)**

§126-22-1. General.

1.1. Scope. -- This legislative rule establishes the standards and guidelines for driver education programs in West Virginia.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; and W. Va. Code §§18-2-5, 18-6-1, and 18-8-11, et seq.

1.3. Filing Date. -- August 11, 2022.

1.4. Effective Date. -- September 12, 2022.

1.5. Repeal of Former Rule. -- This legislative rule amends W. Va. §126CSR22, Policy 2422.2, Driver Education Regulations, filed October 14, 2021, and effective November 15, 2021, and repeals W. Va. 126CSR84, Policy 4150, Student Driver Eligibility Certificate, filed May 13, 2021, and effective July 1, 2021.

§126-22-2. Applicability.

2.1. W. Va. Code §18-6-4, et seq., authorizes the West Virginia Board of Education (WVBE), with the advice of the State Superintendent of Schools (State Superintendent), to promulgate rules governing the establishment, conduct, and scope of driver education in public, private, and parochial secondary schools located within the state, subject to the requirements and exceptions set forth in W. Va. Code.

2.2. There shall be offered in all public secondary schools within the state, without charge to the students, an approved, comprehensive course in driver education. The course may be offered in summer school in addition to the regular instructional term. Before graduating from a secondary school, students shall be provided an opportunity and encouraged to successfully complete a driver education course approved by the WVBE. In those counties where, sufficient public secondary school driver education courses are not available to meet all requests for the course, county boards of education (county board) shall, as quickly as possible, make sufficient courses available to fill those requests.

2.3. The following standards shall be applicable for all driver education courses offered and made available to students within the state, regardless of whether the courses are offered by public, private, or parochial schools.

2.4. W. Va. Code §18-8-11, authorizes the WVBE, to promulgate a rule outlining compulsory school attendance and academic progress as a condition of licensing for the privilege of operation of a motor vehicle.

§126-22-3. Standards for an Approved Course.

3.1. The driver education course shall be organized and designed in such a manner that is equivalent to or surpasses the following requirements.

3.1.a. Minimum and preferred requirements of the driver education course:

3.1.a.1. classroom instruction of 50 hours (66 hours preferred);

3.1.a.2. in-car observation of 10 hours (18 hours preferred); and

3.1.a.3. in-car practice driving of six hours or the equivalent according to the established and universally recognized ratio when simulation and multiple car instruction ranges are utilized.

3.2. At a minimum, driver education shall be scheduled as a one-semester program consisting of both classroom and laboratory instructional phases. In the case of schools using a block schedule of 90 minutes, the program may be scheduled as a nine-week program.

3.3. The course shall provide a minimum of one-half unit of credit.

3.4. Student on-street practice driving lessons shall be provided in an automobile equipped with a dual control brake, and a dual control clutch pedal for vehicles with manual shift transmissions. An approved/certified driver education teacher shall occupy the seat beside the student.

3.5. Classroom instruction shall not exceed the school's typical instructional course timeframe.

3.6. Student in-car practice driving lessons shall be scheduled so that students will receive not more than one-half hour behind-the-wheel instruction per session and not more than one hour during any 24-hour period.

3.7. Along with the driver education teacher, a minimum of two and a maximum of four students shall occupy the driver education vehicle during on-street practice driving/instruction lessons.

3.8. Only eligible students shall participate in the laboratory (practice driving) part of the course. An eligible student is defined as one who is 15 years of age and older and is in grades 9-12 during the period of enrollment in the course. The student must not have a known mental or physical disability that would prevent the student from qualifying for an operator's license, unless the disability is controlled or corrected so the student could so qualify. (W. Va. Code §18-6-3 and §18-6-5.)

3.9. Students at least 15 years of age or older may enroll in driver education and receive instruction and practical training in the operation of a motor vehicle on public streets and highways. Students who will not reach 15 years of age before completion of the driver education course may enroll, if space is available, after giving priority to those students who are already 15 years of age or older; instruction shall be limited to the classroom only.

3.10. Any student who is at least 15 years of age or older may enroll in driver education and operate a motor vehicle on West Virginia roadways without a Level I Instructional Permit while accompanied by

an approved/certified driver education teacher occupying a seat beside the student and in an automobile equipped with dual controls. However, it is encouraged that a student possess a Level I Instructional Permit at the time the student enrolls in the course and begins the behind-the-wheel driving instruction.

3.11. Course content shall be taught in the driver education program as required in W. Va. Code §18-6-3 and W. Va. 126CSR44H, Policy 2520.8, West Virginia Driver Education Standards.

3.12. Multiple-vehicle driving range instruction/practice driving may substitute for a portion of the time required for on-street driving practice at a 2:1 ratio. However, such instruction shall be supplemented with a minimum of two hours of practice driving per student under actual traffic conditions. A minimum program would consist of eight hours practice driving on the range and two hours on-street driving.

3.13. Simulator instruction programs shall provide not more than one-half of the six hours on-street practice driving requirements at a 4:1 ratio. Therefore, a minimum program would be three hours of practice driving in real traffic conditions coupled with 12 hours of simulation.

3.14. In the scheduling of students for the course, a minimum of six hours driving practice/instruction is required for each enrolled student. The amount of practice driving instruction required by licensed students will vary depending on their individual skills and experience. Therefore, licensed students shall receive a minimum of three hours in-car practice driving/instruction, testing, and evaluation in a variety of highway and traffic conditions. If the student, in the best judgment of the driver education teacher, requires additional driving instruction to hone skills and improve driving performance, such time shall be provided. Any instructional time that is not utilized by the licensed student shall be applied to providing additional in-car practice driving to the less experienced students enrolled in the course.

§126-22-4. Standards for an Approved Teacher.

4.1. The State Superintendent may issue a professional teaching certificate in driver education to applicants and teachers who meet the requirements for licensure and employment as an approved driver education teacher, as set forth in W. Va. §126CSR136, Policy 5202, Minimum Requirements for the Licensure of Professional/Paraprofessional Personnel and Advanced Salary Classifications. Failure to meet any of the conditions specified below may result in refusal, recall, suspension, or revocation by the State Superintendent.

4.1.a. An educator possessing a professional teaching certificate in driver education:

4.1.a.1. has held a valid motor vehicle operator's license for the past five years without interruption;

4.1.a.2. possesses good health and is free from impairments that would adversely affect the safety of students and the general public;

4.1.a.3. demonstrates a satisfactory driving record by submitting a certified copy of the driving record from the Department of Motor Vehicles in each state where the teacher has been licensed during the past five years;

4.1.a.4. has not accumulated more than nine points on the applicant's driving record at any time during the past five years; and

4.1.a.5. has not been convicted and/or had a driving suspension or revocation of license on a charge of operating a motor vehicle while under the influence of alcohol, controlled substance, any other drugs, or the combination thereof; or by clear and convincing evidence, including but not limited to, and has not operated a motor vehicle while under the influence of same as established by a preponderance of evidence, such as a positive breath or blood test, or field sobriety test, notwithstanding the lack of a conviction or driving license suspension or revocation;

4.1.a.5.A. such individual shall not be licensed to teach driver education for at least two years subsequent to the first instance of conduct set forth in section 4.1.a.5. For the second instance, licensure shall be refused permanently.

4.1.a.6. waivers are not applicable to section 4.1.a.

4.2. Prior to employment as a driver education teacher in a West Virginia, the county superintendent shall verify that the applicant is an approved driver education teacher. Application for licensure must be made to the West Virginia Department of Education (WVDE).

4.3. An individual holding a First-Class/Full-Time Permit or Out-of-Field Authorization for Driver Education shall only be eligible to teach the course in the classroom and shall not be eligible to instruct students in the in-car practice driving.

§126-22-5. Driver Education Temporary Permit.

5.1. The State Superintendent may issue a temporary permit or other certificate for the purpose of providing instruction in driver education to an individual who does not qualify for a professional certificate under section 4.1 subject to the requirements found in W. Va. Code §18-6-2.

§126-22-6. Standards for Summer Driver Education Courses.

6.1. A summer driver education program shall consist of the same structured learning experiences required during the regular school term. All driver education regulations are applicable to the summer program with the exception that the summer program shall be conducted over a period of not less than five weeks.

§126-22-7. Duty to Report.

7.1. A county superintendent who knows of any acts on the part of a driver education instructor for which a certificate or permit may be revoked shall report the same, together with all facts and evidence, to the State Superintendent.

§126-22-8. Accidents.

8.1. Any accident involving the driver education vehicle shall be reported by the driver education teacher and handled by the county board immediately. If the incident involves student and/or teacher

injury, it shall be reported to the WVDE Legal Services unit as soon as possible. All accidents shall be reported within five days to the WVDE Legal Services unit. In the event the driver education teacher is incapacitated and cannot report, the principal or principal's designee shall fulfill this responsibility.

§126-22-9. Insurance.

9.1. Driver education teachers and cars shall be covered by county board secured liability coverage in an amount proportionate to coverage for its school bus fleet and school bus operators.

§126-22-10. Student Transfers Prior to Course Completion.

10.1. When a student transfers to another school within the state prior to completing the course, appropriate records shall be forwarded to the new school. These records shall include course content/units of instruction completed and driving time and performance records. An out-of-state student shall provide documentation, on the sending school's letterhead, specifying the nature and hours of instruction, observation, behind-the-wheel driving, and whether satisfactory performance in each was attained by the student.

§126-22-11. Commercial Driving Schools and Courses from Other States.

11.1. As provided in W. Va. Code §18-6-8, commercial driving schools and courses from other states may be accepted by the WVBE if the requirements of section 3 are met.

11.2. The county board is not required to offer driver education to a student who has successfully completed a WVBE-approved driver education course.

§126-22-12. Students with Physical Disabilities.

12.1. When students with physical disabilities are eligible for the laboratory phase of the course, driver education vehicles and simulators in the schools when they are used shall be equipped with appropriate devices to enable the students to successfully accommodate their physical disability.

§126-22-13. Program Reports.

13.1. Certain data and information pertinent to the effective administration of the driver education program, the needs of other relevant and cooperating state agencies and national organizations shall, when requested, be reported to the WVDE.

§126-22-14. Driver Education Certificates.

14.1. High School Driver Education Certificates and Adult Driver Education Certificates shall, in the judgment of the driver education teacher, be awarded to students demonstrating mastery of recommended course skills and content and a satisfactory level of driving performance.

§126-22-15. Use of Driver Education Vehicles.

15.1. Those county boards securing dealer-loaned or leased vehicles shall use such vehicles only in compliance with an approved contract between the county board and car dealer. Dealer-secured

vehicles shall be used for driver education purposes only.

15.2. County boards owning their driver education vehicle(s) shall establish a policy regarding the use of the driver education vehicle for any purpose other than teaching driver education during the school day or hours of the school day that the driver education program is scheduled. If the vehicle is used for any purpose other than driver education, any identification as a Student Driver or Driver Education shall either be covered or removed.

§126-22-16. Specifications for Identification of Driver Education Cars.

16.1. Identification on any driver education car shall be visible to other drivers from all directions. It should indicate clearly that the car is being used for driver education and/or being operated by a student driver.

§126-22-17. Motor Vehicle Driver's License Restrictions.

17.1. School Attendance. When a student at least 15 but less than 17 years of age withdraws from school or fails to maintain satisfactory academic progress, the attendance director or chief administrator shall notify the West Virginia Division of Motor Vehicles (DMV) of the student's withdrawal no later than five days from the date of the withdrawal.

17.1.a. Withdrawal from School. When a student accrues more than 10 consecutive days or 15 total days of unexcused absences during a school year or is suspended from school pursuant to W.Va. Code §18A-5-1a and §18A-5-1a(b).

17.1.b. Satisfactory Academic Progress. Student attains and maintains grades that will allow graduation and course work in an amount of time sufficient to allow graduation in five years or by age 19, whichever is earlier. 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). Three of the five credits earned annually must be from the graduation requirements identified in Policy 2510.

17.2. When withdrawal from school or unsatisfactory academic progress is determined to be beyond the student's control, or withdrawal from school is for the purpose of transferring to another school, and is documented by a parent or guardian, no notice shall be sent to the DMV to restrict the student's license. If a student is applying for a license, the attendance director or chief administrator shall provide that student with documentation to present to the DMV to excuse the student from all of the above provisions.

17.3. Circumstances beyond the control of the student 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 West Virginia Division of Corrections and Rehabilitation facility is not a circumstance beyond the control of the student and shall be considered an unexcused absence for purposes of reporting withdrawals pursuant to this policy.

17.3.a. The county superintendent, or appropriate school official of any private secondary school, with the assistance of the attendance director and any other staff or school personnel, shall be the sole judge of whether any of the grounds for restriction of a license as provided by this policy are

due to circumstances beyond the control of the student.

17.4. Notice to DMV. Restriction of Student's Instruction Permit or License.

17.4.a. Within five days of receipt of the notice, the DMV shall send notice to the student that the student's instruction permit or license to operate a motor vehicle will be restricted to driving for: 1) work, 2) medical purposes, 3) educational pursuits, and/or 4) religious pursuits.

17.4.a.1. The notice shall advise student that the student is entitled to a hearing before the county superintendent of schools or designee or before the appropriate private school official concerning whether the student's withdrawal from school was due to a circumstance beyond the control of the student.

17.4.a.2. If the student's instruction permit or license is restricted, the DMV may not reinstate the instruction permit or license until the student returns to school and shows satisfactory academic progress or until the student turns 17 years of age.

§126-22-18. Severability.

18.1. 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.