



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: 126-176
RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: School Closings or Consolidations (6204)
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 14, 2023

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Stephanie Abraham -- 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 176
SCHOOL CLOSINGS OR CONSOLIDATIONS (6204)**

§126-176-1. General.

1.1. Scope. -- This legislative rule sets the requirements for county boards of education (county) in proceeding with a potential school closing or consolidation.

1.2. Authority. -- W. Va. Constitution, Article XII, §2, and W. Va. Code §§18-2-5, 18-5-13, 18-5-13a, and 18A-2-7(d).

1.3. Filing Date. -- July 12, 2023.

1.4. Effective Date. -- August 14, 2023.

1.5. Repeal of Former Rule. -- This legislative rule amends W. Va. §126CSR176, Policy 6204, School Closings or Consolidations (Policy 6204), filed September 9, 2021, and effective October 12, 2021.

§126-176-2. School Closures.

2.1. For the purpose of school closure procedures, a school is defined by its population and educational mission and not just the physical facility.

2.2. When a county proposes an action that would terminate the educational mission of a school and whereby that school becomes defined by another population or educational mission, the school closure procedures set forth by this policy shall apply.

2.3. The following situations are not considered school closures and the procedures set forth in this policy shall not apply to them:

2.3.a. moving a single school population into a new, existing, or renovated facility where its educational mission would continue without termination; or

2.3.b. moving a single school population into a facility that houses another school population and each school maintains its own separate operation and assigned educational mission without termination; or

2.3.c. cases in which a county's voters passed a construction bond issue that specifically stated the school(s) planned for closure or consolidation, and the county's approved Comprehensive Educational Facilities Plan (CEFP) also specified the same action(s). The county shall apply to the West Virginia Board of Education (WVBE) for a CEFP amendment if the approved CEFP did not contain the voter-approved closure or consolidation; or

2.3.d. cases in which a county reconfigures the location and structure of grades along a population's natural path of vertical progression and whereby the educational mission of any affected school population

may be slightly altered but not terminated.

§126-176-3. County Procedures.

3.1. The county shall prepare and submit an impact statement and supporting data concerning proposed school closings or consolidations to the WVBE for approval in accordance with this policy and W. Va. Code §18-5-13a. The impact statement and supporting data shall:

3.1.a. be available for public inspection in the office of the county superintendent during the 30 days preceding the date of the public hearing; and

3.1.b. be delivered in duplicate to the:

3.1.b.1. principal of a school that is proposed to be closed or consolidated, and of any school which the county designates to receive the students who are relocated as a result of the closure or consolidation; and

3.1.b.2. chair of the local school improvement council (LSIC) representing a school that is proposed to be closed or consolidated, and any school that the county designates to receive the students who are relocated as a result of the closure or consolidation.

3.1.c. The county shall give the impact statement and supporting data substantial weight when deciding on any proposal to close or consolidate a school.

3.1.d. The impact statement and supporting data shall be provided to the West Virginia Department of Education (WVDE) Office of School Facilities at least 10 business days prior to the period for public posting for the purpose of review and coordination.

3.2. An impact statement shall be prepared on the following items that will summarize the county's supporting data with page references, as defined in section 3.1.

3.2.a. Enrollment.

3.2.a.1. Student enrollment trends:

3.2.a.1.A. trends in student population growth or decline in the county for the previous 10 years; and

3.2.a.1.B. trends in student population growth or decline in the attendance area of the school targeted for closure or consolidation for the previous 10 years; and

3.2.a.1.C. trends in student population growth or decline in attendance area of the school or schools which the county designates to receive the students affected for the previous 10 years;

3.2.a.1.C.1. population data and characteristics for the county. At a minimum, the data shall include the total population, number of births, number of deaths, and age composition of the county for the previous ten years. The requisite information shall be cited and may be obtained from local, state, and national agencies for health and statistics; and

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3.2.a.1.C.2. projections of enrollment, by grade and school, in the affected attendance area, for the next ten years; and

3.2.a.1.C.3. explanation of the projection method utilized addressing the relationship among the most recent Certified October Enrollment, the Certified October Enrollment for the previous three years, and the most recent census data for the county.

3.2.b. Facilities.

3.2.b.1. General reference maps showing prominent natural and manmade features where the location of school(s) targeted for closure or consolidation and the school(s) that the county designates to receive the students are highlighted.

3.2.b.1.A. Charts shall be provided indicating the grade configuration, student enrollment, utilization percentage, and mileage between each school on the map.

3.2.b.2. Written description of the physical condition of the school targeted for closure or consolidation and the school or schools which the county designates to receive the students. This description shall include age, number of buildings, general condition, and adequacy of structural, electrical, and mechanical systems to provide a safe and healthy environment.

3.2.b.3. Evaluation of the school targeted for closure or consolidation and the school or schools that the county designates to receive the students in regard to the school(s) adaptability to the present and proposed educational programs, and the provisions of related student services.

3.2.b.4. Measure of the enrollment and utilization of the school(s) targeted for closure or consolidation and the school(s) which the county has designated to receive the students. The School Building Authority of West Virginia's (SBA) Worksheet on Building Program Utilization shall be submitted.

3.2.b.5. Comparison of the school(s) targeted for closure or consolidation and the school(s) which the county has designated to receive the students in regard to providing the required services and barrier-free environments to students with disabilities.

3.2.b.6. Elaboration on the effect the proposed school closing or consolidation will have on the school system's future plans regarding grade configuration, educational programs, and facility requirements.

3.2.b.7. Elaboration on the planned facility additions, renovations, or replacements that are required by the county to accommodate the proposed closing and consolidation.

3.2.b.8. Elaboration on the future use or disposal of facilities designated by the county for closure.

3.2.b.9. Attachment of the most recent SBA facility evaluation form for each school affected and an updated form if the most recent SBA facility evaluation form is five years old or older.

3.2.c. Finance.

3.2.c.1. Itemization of the anticipated cost or savings the county will experience in all areas as a result of the proposed school closure or consolidation. Such itemization shall be in the form of a table

indicating the following:

3.2.c.1.A. the current annual cost at the school(s) to be closed and for the receiving school(s), if applicable, for: a) utilities, b) personnel, c) maintenance, d) transportation, e) other factors as deemed relevant by the county superintendent, and f) the total cost of the above-listed items;

3.2.c.1.B. the anticipated total annual cost at the school(s) designated by the county to be receiving students after acceptance of the new students for: a) utilities, b) personnel, c) maintenance, d) transportation, e) other factors as deemed relevant by the county superintendent, and f) the total cost of the above-listed items; and

3.2.c.1.C. the net cost or savings of the school(s) to be closed and the school(s) designated by the county to be receiving students for: a) utilities, b) personnel, c) maintenance, d) transportation, e) other factors as deemed relevant by the county superintendent, and f) the total cost of the above-listed items.

3.2.c.2. Cost of any renovation or addition resulting from the proposed school closure or consolidation, including all proposed funding sources.

3.2.c.3. Five-year history of the county's unrestricted general current expense fund balance and that balance as a percentage of the county's approved levy estimate.

3.2.d. Personnel. An analysis of the effect the proposed school closure or consolidation will have on professional and service personnel. The analysis shall include, at a minimum, the following data regarding the anticipated increases or decreases in employment as a result of the proposed closure or consolidation:

3.2.d.1. number service personnel currently employed at the affected school(s);

3.2.d.2. number professional personnel currently employed at the affected school(s);

3.2.d.3. number of service personnel who are anticipated to be employed at the affected school(s) upon the completion of the closure or consolidation;

3.2.d.4. number of professional personnel who are anticipated to be employed at the affected school(s) upon the completion of the closure or consolidation;

3.2.d.5. the anticipated net change in service personnel due to the proposed closure or consolidation including any decrease that will occur through attrition or reduction in force; and

3.2.d.6. the anticipated net change in professional personnel due to the proposed closure or consolidation including any decrease that will occur through attrition or reduction in force.

3.2.e. Student Transportation. Explain any variances of W. Va. 126CSR92, Policy 4336, West Virginia School Bus Transportation Regulations, Procedures, and Specifications for the Design and Equipment of School Buses (Policy 4336), section 15, Guidelines for Bus Routing, and the effects the variances may have on transportation. Provide the following bus route data and travel times:

3.2.e.1. list the current travel time by bus route for students in the communities of the schools

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planned for closure or consolidation and the estimated increase or decrease in travel time as a result of the closure; and

3.2.e.2. list all anticipated bus routes after the proposed closure or consolidation with the estimated total one-way travel time for each route. Clearly identify any bus routes that exceed the recommended travel times and any routes which will require a waiver of Policy 4336; and

3.2.e.3. identify and provide the travel time to any neighboring county public schools that could serve the population of the closing school(s) where travel time to the identified out-of-county school is less than or equal to the school(s) designated by the county to receive students.

3.2.f. Student Educational Program. Complete a projected educational program improvement analysis which includes a statement of assurance that the following have been considered:

3.2.f.1. W. Va. 126CSR16, Policy 2419, Regulations for the Education of Students with Exceptionalities,

3.2.f.2. W. Va. 126CSR42, Policy 2510, Assuring the Quality of Education: Regulations for Education Programs,

3.2.f.3. W. Va. 126CSR44 et al., Policy 2520, Content Standards and Objectives for West Virginia Schools,

3.2.f.4. W. Va. 126CSR172, Policy 6200, Handbook on Planning School Facilities (Policy 6200),
and

3.2.f.5. Policy 6204.

3.2.g. Community. An impact statement regarding the effect the proposed school closure or consolidation will have on the affected communities and their students. Where schools and their respective communities are all defined by their own unique relationships, each proposed action will result in varying types and degrees of community impact. To better understand this diverse relational dynamic, the impact statement shall describe:

3.2.g.1. the known relationships that exist among the affected schools and their communities;

3.2.g.2. how the existing known relationships could be impacted by the proposed action; and

3.2.g.3. the potential for new relationships that could be developed under the proposed action.

3.3. The county must provide notice for all public hearing(s) required by section 3.4.a.1. All public hearing notices shall be advertised through a Class III legal advertisement for three weeks prior to the date of the hearing in a newspaper in general circulation in the locality of any school to be closed or consolidated and in the locality of any school that has been designated by the county to receive students from the schools to be closed or consolidated. The notice also shall be posted in all schools as provided in section 3.3.e at least 30 days prior to the date of hearing.

3.3.a. The notice shall contain the date, time, and place of the hearing(s) and the proposed action of the county.

3.3.b. The notice shall contain the statement that the hearing(s) location is subject to change if, at the time the meeting is called to order, it is determined that the meeting location is of insufficient size.

3.3.c. The notice shall contain a statement regarding an alternate date should the hearing require additional time or be unable to be held on the scheduled date due to inclement weather or other factors beyond the control of the county.

3.3.d. The notice shall contain a date certain deadline for the submission of written material to be reviewed by the county, in no event later than the close of the public hearing to provide the county time to consider the material before the vote.

3.3.e. A copy of the notice shall be posted at all schools, bus garages, and maintenance areas in the county in conspicuous working areas, for all professional and service personnel to observe.

3.4. Counties must complete the procedures outlined below for all proposed school closures or consolidations. If the county will be applying for SBA funding, the procedures must be completed before the SBA will consider a project for funding, as further outlined in section 6. If the county will be utilizing local funding for a construction project related to the closure or consolidation, the procedures must be completed prior to the initiation of construction. For all other closures and consolidations, counties must complete the procedures on or before December 31st of the calendar year prior to the calendar year in which the closures or consolidations are to be effective.

3.4.a. Conduct a public meeting/hearing, in the county wherein the proposed action is to occur, which meets the following criteria.

3.4.a.1. A separate hearing shall be held for each school proposed to be closed or consolidated and shall also be held for each school that has been designated by the county to receive students from the schools proposed to be closed or consolidated. Primary consideration should be given to conducting the hearing(s) at the affected schools.

3.4.a.2. More than one hearing may be held during any one day.

3.4.a.3. The hearing(s) shall be held in a facility of sufficient size to accommodate all those who desire to attend. Consideration should be given to the accessibility of the location, parking at the location, occupant capacity, and other similar factors.

3.4.a.4. The hearing(s) shall be scheduled to last a reasonable amount of time, but in no event shall it be scheduled to begin before 9:00 a.m., nor continue beyond 11:00 p.m., but may recess and continue from day-to-day until concluded.

3.4.a.5. If, at the time the hearing(s) is called to order, it is determined by the county that insufficient space is available to accommodate all those who desire to attend, the hearing(s) shall be recessed and moved to a new location of sufficient size to accommodate all those who desire to attend. If the meeting location is changed due to insufficient capacity, the county shall cause the new meeting location to be posted at the original meeting location.

3.4.a.6. Members of the public are encouraged to attend, submit statements and testimony, and question county school officials at the public hearings.

3.4.a.6.A. In the interests of time and efficiency, oral statements may be limited in duration to a period of not less than three minutes each and may be supplemented with written comments, timely submitted, in accordance with the notice deadline as outlined in section 3.3.d, which shall not be included in the calculation of the time limitation.

3.4.a.7. At least the county superintendent and a quorum of the county board members from the county wherein an affected school is located shall attend the public hearing(s).

3.4.a.8. Responses by the county superintendent or other designated school officials may occur during individual oral presentations, or at the conclusion of the individual's oral presentation, and shall not be included in the calculation of the time limitation as outlined above.

3.4.a.9. Receive and review findings and recommendations, timely submitted in accordance with the notice deadline as outlined in section 3.3.d, from any LSIC representing an affected school.

3.4.a.10. Receive and review copies of any other written submissions and statements, timely submitted, in accordance with the notice deadline as outlined in section 3.3.d.

3.5. After all above provisions have been completed, counties must take a formal vote on the school closure(s) or consolidation(s).

3.5.a. This vote may take place at the conclusion of the final public hearing, or

3.5.b. This vote may take place at a separate duly scheduled and noticed meeting of the county board of education.

3.6. After the vote and following compliance with sections 3.4 and 3.5, and prior to the implementation of any school closure or consolidation and following compliance with all statutory and regulatory provisions, the county must file a request for school closure and/or consolidation with the WVBE for approval and this request must:

3.6.a. be signed by the county superintendent and give the date the action was taken by the county;

3.6.b. contain assurances that applicable sections of the W. Va. Code §18-5-13 and §18-5-13a, and Policies 6200 and 6204 have been addressed;

3.6.c. contain justification for the proposed consolidation or school closing. This justification must include and be supported by the impact statement and supporting data described in section 3.2;

3.6.d. contain documentation of all hearings, motions, written public comments, a synopsis or transcript of verbal public comments, and other actions concerning the proposed school closings and consolidations;

3.6.e. contain proof that the hearings were properly advertised with a Class III legal advertisement. Such proof can be satisfied with:

3.6.e.1. a notarized letter from the county's qualified newspaper(s) for legal notices, as defined by the West Virginia Secretary of State, that specifically states the three dates on which the newspaper ran

the county's public hearing notification; or

3.6.e.2. a digital reproduction of all three required legal advertisements from the county's qualified newspaper(s) for legal notices, as defined by the West Virginia Secretary of State, where the full legal notification and date of publication are provided and legible;

3.6.f. contain a statement identifying if the proposed school closing or consolidation was included in the county's approved CEFPP; and

3.6.g. contain a statement identifying if the proposed school closing or consolidation is contingent upon receiving funding from the SBA.

3.7. If the county's approved CEFPP did not contain the proposed closure or consolidation, the county must also submit a request to amend their CEFPP. The required CEFPP amendment forms shall be submitted to the WVDE Office of School Facilities staff simultaneously with the impact statement and supporting data that will be prepared for consideration by the WVBE. The CEFPP amendment may be considered by the WVBE concurrently with the closure or consolidation request.

§126-176-4. Emergency School Closure.

4.1. The State Superintendent of Schools may make a declaration that there is a need for an emergency school closure.

4.2. Once the State Superintendent of Schools has declared a need for an emergency school closure, consideration should be given to the following when determining the school(s) to which the displaced students will be transferred.

4.2.a. Educational program. Educational opportunities are equal to or greater for students at the school designated by the county to be a receiving school.

4.2.b. Transportation. Proposed routing schedule does not result in undue time in transit for students according to recommended age-appropriate travel times.

4.2.c. Exceptional students. Programmatic offerings and educational spaces are appropriately accessible to students with exceptionalities.

4.2.d. Health/safety. Transfer of students would not result in any health/safety concerns which would adversely affect students and staff.

4.2.e. Capacity. The school designated by the county to be a receiving school has the capacity to adequately house projected enrollment.

4.3. Following the emergency need declaration and transfer of students, the county shall proceed with the school closure procedure as outlined in section 3 and shall include additional data regarding the circumstances giving rise to the emergency in the impact statement and supporting data.

§126-176-5. Technical Assistance.

5.1. Upon request, technical assistance regarding school closures and consolidations shall be provided

by WVDE Office of School Facilities staff.

5.2. Technical assistance by WVDE Office of School Facilities staff shall not supplant or replace legal assistance provided by counsel engaged to represent the county.

5.3. It is recommended that counties request technical assistance from WVDE Office of School Facilities staff when the county is initially considering writing a proposal to close or consolidate a school.

§126-176-6. Closures Contingent Upon SBA Funding.

6.1. A county that submits a capital improvement funding request to the SBA, which incorporates the closure of a school, shall have said closure approved by the county and WVBE before being eligible for a grant award from the SBA. Rejection of the closure request by the county or WVBE renders the funding request disqualified from the current SBA funding cycle.

6.2. A WVBE-approved closure that is contingent upon the awarding of capital improvement funds from the SBA has an expiration date of two-years from the date of initial approval of the closure by the WVBE to be awarded funding. In such case that the two-year period elapses, and the county has not been awarded SBA funding for the project, the WVBE closure approval becomes null-and-void and the school(s) shall remain in operation.

6.3. A county has the right to void its previously approved school closure at any time before the two-year expiration date by notifying the WVBE in writing of its intent to keep the school(s) open.

6.4. If a county wishes to close the applicable school(s) after the two-year expiration date, the county shall be required to complete the full closure process as outlined in this policy and to make all necessary data current for consideration.

6.5. When the SBA cancels a funding cycle or extends the cycle dates beyond the two-year period a county had planned for SBA grant application eligibility, the county may apply to the WVBE for a closure period extension. Requested extensions are considered by the WVBE on a case-by-case basis and only provide the county with eligibility that was lost due to funding cycle changes. An extension shall only be considered when circumstances occur that are beyond a county's control and will not be used to provide a remedy to the county for improper planning. The WVBE-approved extension does not guarantee or imply an award of funding from the SBA.

§126-176-7. Severability.

7.1. 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.