

**WEST VIRGINIA  
SECRETARY OF STATE**

**JOE MANCHIN, III**

**ADMINISTRATIVE LAW DIVISION**

Form #5

Do Not Mark In This Box

FILED

2002 NOV 15 P 4:55

WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

CITE AUTHORITY: W.Va. Constitution, Article XII, §2, W.Va. Code §18-2-5 and §18-6-1, et seq.

RULE TYPE: PROCEDURAL \_\_\_\_\_ INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE  X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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).

AMENDMENT TO AN EXISTING RULE: YES  X  NO \_\_\_\_\_

IF YES, SERIES NUMBER OF RULE BEING AMENDED:  22

TITLE OF RULE BEING AMENDED:  Driver Education Regulations (2422.2)

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS  December 15, 2002

  
\_\_\_\_\_  
William J. Luff, Jr.

Deputy State Superintendent of Schools

SCANNED

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POLICY 2422.2  
WEST VIRGINIA BOARD OF EDUCATION  
DRIVER EDUCATION REGULATIONS

**EXECUTIVE SUMMARY**

**Background:**

Policy 2422.2 Driver Education Regulations was last revised in 2001. This policy promulgates rules governing the establishment, conduct and scope of driver education in West Virginia schools. West Virginia Code §18-6-1 through §18-6-10 authorizes the establishment of these guidelines.

**Purpose:**

The purpose of this Board item is to seek approval for Policy 2422.2 as it has been revised.

**Summary of Comments:**

The single comment received was rejected because it contradicted the legislated mandate to provide driver education in public schools.

**Action Requested:**

The West Virginia Department of Education respectfully requests that Policy 2422.2 be approved and adopted.

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FILED

TITLE 126  
PROCEDURAL RULE  
BOARD OF EDUCATION  
SERIES 22

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WEST VIRGINIA  
SECRETARY OF STATE

**DRIVER EDUCATION REGULATIONS: (POLICY 2422.2)**

**§126-22-1. General.**

1.1. Scope. -- These rules establish the standards and guidelines for approved driver education programs in West Virginia.

1.2. Authority. -- W.Va. Const., Article XII, §2 and W.Va. Code §18-2-5 and §18-6-1, et seq.

1.3. Filing Date. -- November 15, 2002.

1.4. Effective Date. -- December 15, 2002.

1.5. Repeal of Former Rule. -- This legislative rule revises and supercedes all previous regulations governing driver education in West Virginia.

**§126-22-2. Applicability.**

2.1. West Virginia Code §18-6-1, et seq., authorized the West Virginia Board of Education, with the advice of the State Superintendent of Schools and the Superintendent of the Department of Public Safety, to promulgate rules governing the establishment, conduct and scope of driver education in public, private, parochial and denominational secondary schools of West Virginia subject to certain exceptions set forth in the West Virginia Code.

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

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

3.1. The driver education course shall be organized and designed in such a manner that it does not preclude the ability to provide a program equivalent to or surpassing the following requirements (exclusive of the time required to pass between classes).

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3.1.1. The minimum and preferred requirements of the driver education course.

a. Classroom instruction of 50 hours (66 hours preferred) including a minimum of eight hours in a standard defensive driving course.

b. In-car observation of 10 hours (18 hours preferred).

c. 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. As 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 (also a dual control clutch pedal for vehicles with manual shift transmissions) and an approved driver education teacher shall occupy the seat beside the pupil.

3.5. Classroom instruction shall not exceed two hours during any 24-hour period.

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. A minimum of two and a maximum of four students shall occupy the driver education vehicle during secondary school 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. The student must not have a known mental or physical disability that would prevent the person from qualifying for an operator's license, unless the disability is controlled or corrected so the person could so qualify. (West Virginia 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 the public streets and highways. Students who will not reach the age of 15 years before

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completion of the driver education course may enroll, if space is available, giving priority to those students that are already 15 years of age or older, but 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 the roadways of West Virginia without a Level I Instructional Permit while accompanied by a certified driver education teacher occupying a seat beside the student and in an automobile equipped with dual controls. However, it is encouraged a student have a Level I Instructional Permit at the time the student enrolls in the course and begins the behind-the-wheel driving instruction.

3.11. All course content as required in West Virginia Code §18-6-3 is taught in the driver education program: the development of positive social interactions; basic and advanced driving techniques; emergency driving situations, traffic regulations and laws; natural laws which affect driving; preventive maintenance of critical vehicle parts and systems; highway, community and environmental features that aid the driver in avoiding accidents; signs, signals and highway markings that facilitate the safe operation of motor vehicles; the characteristics of urban and rural driving, including the use of interstates and other modern highway systems; pedestrian safety concepts; alcohol and other drugs and their relationship to traffic accidents and/or traffic safety; role of emotions and personality characteristics in relationship to traffic safety; discussions/activities regarding the scope of traffic accident causes and accident prevention measures; fuel and energy conservation; impact of safety belt/restraining systems on injuries and fatalities; first-aid instruction; and motorcycle safety awareness in a program which shall include, but not be limited to, ensuring that the driver has knowledge and awareness of motorcycles sharing the roads of this state for the safety of motorcyclists.

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 requirement 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 for each enrolled student is required. Some students licensed before January 1, 2001, however, may not require the full amount of allotted time while other students may require considerable additional instruction and practice driving before

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attaining and consistently demonstrating safe driving performance. 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 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. Applicants and teachers who meet the following requisites are eligible for licensure and employment as an approved driver education teacher. Failure to meet any of the conditions specified below may result in refusal, recall, suspension or revocation by either the Superintendent of the Department of Public Safety or the State Superintendent.

#### 4.1.1. An approved teacher:

- a. has a valid West Virginia high school certificate;
- b. is licensed by the West Virginia Department of Education to teach driver education;
- c. has held a valid motor vehicle operator's license for the past three years;
- d. possesses good health and is free from impairments that would adversely affect the safety of pupils and the general public;
- e. has a satisfactory driving record confirmed and approved through the state coordinator of driver education with the West Virginia Department of Education through the Accident Prevention Bureau, West Virginia Department of Public Safety and/or West Virginia Department of Motor Vehicles;
- f. has not accumulated more than nine points on his/her Department of Motor Vehicles (DMV) record.
- g. has not been convicted of and/or has not had DMV suspension or revocation of license on a charge of operating a motor vehicle while under the influence of alcohol, drugs or narcotics, or clear and convincing evidence presented,

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such as positive breath or blood test, of operating a motor vehicle while under the influence of same;

A. the applicant/teacher shall not be licensed to teach driver education for at least two years subsequent to the first offense for conviction or DMV suspension/revocation. For the second offense licensure shall be refused permanently; and

h. has completed training in defensive driving.

### **§126-22-5. Emergency Licensure.**

5.1. In emergency situations created by the loss of a fully licensed driver education teacher, county boards of education may employ teachers to provide driver education on a permit if qualified personnel are not available.

5.2. A letter documenting efforts to find a licensed teacher shall be provided by the county superintendent to the State Superintendent. Such documentation shall include: a) newspaper advertisement, b) letters to West Virginia college officials where driver education teacher preparation programs are offered, and c) notification to the state coordinator of driver education.

5.2.1. Teachers employed on permit shall have completed six semester hours of credit within an approved safety education program. One of the courses shall include an approved basic teacher preparatory course for teaching students behind-the-wheel practice driving.

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

6.1. Summer driver education programs shall be conducted over a period of not less than five weeks. The course shall consist of the same structured learning experiences required during the regular school term. Otherwise, all driver education regulations are applicable to the summer program.

### **§126-22-7. Standards for Adult and Out-of-School Youth Courses.**

7.1. Program time requirements for adults and out-of-school youth over 18 years of age shall include 20 hours of classroom instruction, 10 hours of assigned independent study and a minimum of six hours of actual driving practice or the equivalent where multiple car driving ranges and simulator programs are used. (See Section 3.14 for licensed drivers.)

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### **§126-22-8. Incapacitated Instructor.**

8.1. In the event of death, extended illness, dismissal, serious injury, or other reasons which would prevent the instructor from performing duties normally associated with teaching driver education, the principal shall notify the state driver education coordinator at the West Virginia Department of Education, Office of Instructional Services, Building 6, Room 330, Charleston, WV 25305, Telephone Number 304-558-7805 within 10 days.

### **§126-22-9. Accidents.**

9.1. Any accident involving the driver education vehicle shall be handled by the county and reported within five days to the state driver education coordinator. In the event the teacher is incapacitated, the principal or principal's designee shall fulfill this responsibility.

### **§126-22-10. Insurance.**

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

### **§126-22-11. Student Transfers.**

11.1. 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, driving performance records and a record of the student's driving time and performance. Out-of-state students shall provide documentation on the sending school's letterhead, specifying the nature and hours of instruction, observation, behind-the-wheel driving, and whether or not satisfactory performance in each was attained by the transfer student.

### **§126-22-12. Students with 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 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

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and national organizations shall, when requested, be reported to the state driver education coordinator on official forms provided through the West Virginia Department of Education.

### **§126-22-14. Driver Education Certificates.**

14.1. High School Driver Education Certificates, Form I-DE-4, and Adult Driver Education Certificates, Form I-DE-5, shall, in the judgment of the teacher, be awarded only to students demonstrating mastery of recommended course content and a satisfactory level of driving performance, i.e., student ability to consistently control the speed and direction of the vehicle and to safely operate the motor vehicle on the public streets and highways.

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

15.1. Those counties securing dealer loaned or leased vehicles shall use such vehicles only in compliance with an Official Contract Between School Boards and Car Dealers. 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. Commercial Driver Education Schools.**

17.1. The West Virginia Department of Education shall provide an official form to issue licenses to commercial driver education schools.

17.1.1. Initial license applications may be obtained by submitting a request to the West Virginia Department of Education, Office of Instructional Services, Building 6, Room 330, Charleston, WV 25305, Telephone Number 304-558-7805.

17.1.2. Licenses shall be granted only when the State Superintendent is satisfied that the school offers a course of driver education which complies with the

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requirements approved by the West Virginia Board of Education. The requirements and quality of the course of instruction prescribed for commercial driver education schools shall be as outlined in §126-22-3 and §126-22-4, above.

17.1.3. Licenses will be issued on a fiscal year basis of July 1<sup>st</sup> through June 30<sup>th</sup>.

17.1.4. Licenses shall be renewable annually upon submission of a new current application form and a fee of \$50.00 so long as the licensee complies with the requirements of this policy.

17.2. Completed applications accompanied by a refundable license fee of \$50.00 are to be remitted to the same address no later than June 1<sup>st</sup> preceding the fiscal year for which the license is requested.

17.2.1. The license fee will be \$50.00 per year, regardless of the length of time the license is valid.

17.2.2. Payment of license fees is to be made by check or money order, payable to the West Virginia Department of Education.

17.2.3. Cash payments will not be accepted.

17.2.4. When payment is remitted by other than a certified check or money order, a 14-day waiting period will be observed before licenses are issued in order to provide sufficient time for the check to clear the bank.

17.2.5. If a check is returned by a bank for insufficient funds, the check and application will be returned to the applicant unprocessed, and a \$20.00 returned check fee will be charged on the re-submission of the application.

17.2.6. License fees shall be credited to an account of the West Virginia Department of Education for the administration of the driver education program.

17.2.7. If a license is not granted, the \$50.00 license fee will be refunded.

17.3. Licenses shall be posted in a conspicuous place at the school location designated on the license and shall not be valid at any location other than the location therein designated.

17.4. Tuition charged by a licensed commercial driver education school shall not exceed \$100.00 for each person enrolled therein.

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17.5. Persons operating a licensed school shall issue to persons completing the school's driver education course a certificate of program completion.

17.5.1. The certificate of program completion shall be set forth upon an official form prescribed and supplied by the West Virginia Department of Education.

17.5.2. A record of every certificate so issued shall be maintained by all commercial driver education schools licensed by the State Superintendent as long as the school exists.

17.6. The State Superintendent's designee shall periodically inspect all licensed schools to ensure that the driver education course is in conformity with the requirements approved by the state board.

17.6.1. If the State Superintendent determines that a licensed commercial driver education school is out of compliance with the requirements set forth in this policy, the school shall have a period of 60 days after receipt of written notification of the deficiency/noncompliance, which notification shall be sent via certified mail, to provide evidence to refute the finding or that the identified deficiency/noncompliance has been remedied or cured.

17.6.2. If the deficiency/non-compliance is not remedied or cured within 60 days of notification thereof, the State Superintendent shall revoke and require the surrender of the license of any school that fails to achieve and maintain the minimum course standards set forth in §126-22-3 and §126-22-4, above.

17.6.3. The commercial driver education school may appeal a revocation of its license by submitting a request, in writing, to the State Superintendent within 10 days of receipt of the notification of revocation. The decision of the State Superintendent shall be final.

17.7. The West Virginia Department of Education shall maintain, file and make available, at its offices and at other places selected, current lists of all public and nonpublic schools offering approved courses of driver education, all commercial driver education schools holding licenses; and all public, non-public, and commercial driver education schools whose licenses have been revoked.

17.7.1. The State Superintendent shall annually cause a copy of the list to be furnished the Commissioner of the Department of Motor Vehicles and to the Commissioner of the Insurance Commission.

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**§126-4-18. Severability**

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

## FISCAL NOTE WORKSHEET

(Submit 4 Copies)

HD NO \_\_\_\_\_ DRAFT NO \_\_\_\_\_ BILL NO \_\_\_\_\_ RESOLUTION NO \_\_\_\_\_

SUBJECT Policy 2422.2: Driver Education Regulations FUND \_\_\_\_\_

SOURCE OF REVENUE:  GENERAL FUND  SPECIAL  OTHER (SPECIFY) \_\_\_\_\_

COST OF ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) \_\_\_\_\_

INCOME ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) \_\_\_\_\_

**SHOW OVER-ALL EFFECT IN ITEMS 1 AND 2 & GIVE EXPLANATION OF BREAKDOWN BY FISCAL YEAR INCLUDING LONG-RANGE EFFECT**

EFFECT OF PROPOSAL	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
1. ESTIMATED TOTAL COST	\$63,000		\$0.00	\$63,000	
PERSONAL SERVICES CURRENT EXPENSES REPAIRS/ALTERATIONS EQUIPMENT OTHER	\$68,000		\$0.00	\$68,000	
2. ESTIMATED TOTAL REVENUES	\$5,000		\$0.00	\$5,000	

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

Estimates are base on the need to hire .5 FTE and associated expenses.  
 Revenues are based on 100 commercial driver education schools submitting annual license fees of \$50 each.  
 Implementation would not occur until January 2003. Expenses and revenues are estimated to be constant thereafter.

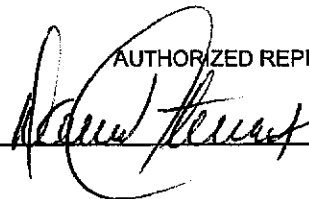
DATE

AGENCY

August 1, 2002

West Virginia Department of Education

AUTHORIZED REPRESENTATIVE



**Policy 2422.2 West Virginia Board of Education Regulations:  
Driver Education  
Comment Log  
August 9, 2002 - October 13, 2002**

**TYPE**

**ACTION**

- N: No Response
- N/A: Not Accepted
- A: Accepted
- Negative
- + Positive
- o Neutral

Date	Individual/Organization	Comments	Action/Type	Rationale
<b>§126-22-1. General.</b>				
8/30/02	Glen Karlen Superintendent Randolph County Board of Education	I am very happy to see the section on commercial drivers education schools added to the policy. In a time of declining enrollment and rifting of teachers, it becomes very difficult to support drivers education in public schools. We have added graduation requirements which we must staff and we have no funds in the state aide formula. I would recommend removing driver education from the public-school system. Many other states have done this.	N/o	It contradicts the State Code requiring the offering of Driver Education.

<b>§126-22-2. Applicability.</b>				

**Policy 2422.2 West Virginia Board of Education Regulations:**  
**Driver Education**  
**Comment Log**  
**August 9, 2002 - October 13, 2002**

**ACTION** \_\_\_\_\_ **TYPE** \_\_\_\_\_

- N: No Response      - Negative
- N/A: Not Accepted    + Positive
- A: Accepted          o Neutral

Date	Individual/Organization	Comments	Action/Type	Rationale
§126-22-3. Standards for an Approved Course.				

§126-22-3.9. Standards for an Approved Course.				

**Policy 2422.2 West Virginia Board of Education Regulations:**  
**Driver Education**  
**Comment Log**  
**August 9, 2002 - October 13, 2002**

**TYPE**

**ACTION**

- N: No Response      - Negative  
 N/A: Not Accepted    + Positive  
 A: Accepted          o Neutral

Date	Individual/Organization	Comments	Action/Type	Rationale
§126-22-3.10. Standards for an Approved Course.				

§126-22-3.11 Standards for an Approved Course.				

Policy 2422.2 West Virginia Board of Education Regulations:  
Driver Education

Comment Log

August 9, 2002 - October 13, 2002

TYPE

ACTION

- N: No Response
- N/A: Not Accepted
- A: Accepted
- Negative
- + Positive
- o Neutral

Date	Individual/Organization	Comments	Action/Type	Rationale
§126-22-3.14. Standards for an Approved Course.				

§126-22-4.1.1. Commercial Driver Education Schools.				

**Policy 2422.2 West Virginia Board of Education Regulations:**  
**Driver Education**  
**Comment Log**  
**August 9, 2002 - October 13, 2002**

**ACTION**      **TYPE**  
 N: No Response      - Negative  
 N/A: Not Accepted      + Positive  
 A: Accepted      o Neutral

Date	Individual/Organization	Comments	Action/Type	Rationale
§126-22-7. Standards for an Adult and Out-of-School Youth Courses.				
§126-22-16. Specifications for Identification of Driver Education Cars.				

**Policy 2422.2 West Virginia Board of Education Regulations:  
Driver Education  
Comment Log  
August 9, 2002 - October 13, 2002**

**ACTION**      **TYPE**  
 N: No Response      - Negative  
 N/A: Not Accepted    + Positive  
 A: Accepted          o Neutral

Date	Individual/Organization	Comments	Action/Type	Rationale
§126-22-3.17 Commercial Driver Education Schools.				

Please return comments to:  
 West Virginia Department of Education  
 Dennis J. Kennedy, Coordinator  
 Office of Instructional Services  
 Building 6, Room 330  
 1900 Kanawha Boulevard, East  
 Charleston, WV 25301

FAX: (304) 558-0459  
 Email: dkennedy@access.k12.wv.us

REC'D AUG 30 2002

**POLICY 2422.2: Driver Education Regulations.**

**Comment Response Form**

Please use this form when commenting on proposed Policy 2422.2. You may attach additional sheets if necessary.

Individual/Organization:

Glen Karlen

Title:

Superintendent

Street Address: 40 Eleventh Street City/State/Zip: ELKINS, WV 26241

§126-22-1. General.

*I am very happy to see the section on commercial drivers Education schools added to the policy. In a time of declining enrollment and ripping of teachers, it becomes very difficult to support drivers Ed in public schools. We have added graduation requirement which we must staff and we have no funds in the state aid formula. I would recommend removing driver Education from the public school system. Many other state have done this -*

§126-22-2. Applicability.

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