



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: 126-030
RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Tiered System of Support for Early Literacy and Numeracy (2512)
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:

November 13, 2023

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

Yes

Kelli D Talbott -- 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 30
TIERED SYSTEM OF SUPPORT FOR EARLY LITERACY AND NUMERACY (2512)**

§126-30-1. General.

1.1. Scope. This legislative rule effectuates the provisions of W. Va. Code §18-2E-10, Third Grade Success Act.

1.2. Authority. W. Va. Constitution, Article XII, §2; and W. Va. Code §18-2-5 and §18-2E-10.

1.3. Filing Date. -- October 11, 2023.

1.4. Effective Date. -- November 13, 2023.

1.5. Repeal of Former Rule. This legislative rule amends W. Va. 126CSR30, Policy 2512, Transformative System of Support for Early Literacy (Policy 2512), filed June 9, 2021, and effective July 12, 2021.

§126-30-2. Purpose.

2.1. This policy establishes standards to support students reaching grade-level proficiency in reading and mathematics by the end of grade three. Using a multi-tiered system of support for early literacy and mathematics in kindergarten through grade three, this approach shall be coordinated by the school student assistance team (SAT) focusing on the early learning years. Schools and engaged communities are mobilized to remove barriers, expand opportunities, and assist families in fulfilling their roles and responsibilities to serve as full partners in the success of their children.

§126-30-3. Definitions.

3.1. Early Learning Reporting System (ELRS). A data reporting system based on the formative assessment process which allows pre-k through second grade educators the opportunity to gauge the extent to which students develop proficiency across standards. This system is required for pre-k and kindergarten and optional for first and second grades.

3.2. Extended Learning. The primary acquisition of knowledge and skills through instruction or study outside of the traditional classroom. Extended learning includes instructional support for students to ensure grade-level proficiency and to prevent summer learning loss.

3.3. School Readiness. The process of assuring children have access to the best available resources prior to entering first grade. Available resources support children and their families and focus on maximizing children's holistic development from birth. Acknowledging that each child's development is significantly impacted by previous experiences, school readiness also entails the capacity of schools and programs to welcome families and be prepared to serve all children effectively within the developmental

domains of health and physical development, social and emotional development, language and communication, cognition and general knowledge, and individual approaches to learning.

3.4. Science of Reading. Evidence-based reading instruction practices that address the acquisition of language, phonological and phonemic awareness, phonics and spelling, fluency, vocabulary, oral language, comprehension, and writing that can be differentiated to meet the needs of individual students.

3.5. West Virginia Early Literacy and Numeracy Network of Support. This includes stakeholders dedicated to assisting counties in the implementation of a tiered system of support for early literacy and numeracy (TSSELN). These stakeholders are responsible for communicating the requirements of this policy and providing professional learning to assist in reaching early literacy and mathematics goals.

§126-30-4. General Responsibilities.

4.1. The West Virginia Board of Education (WVBE) has the responsibility of generating policy including rules to effectuate the provisions of W. Va. Code §18-2E-10 that includes at least the following:

4.1.a. developing a statewide comprehensive, systemic approach to close reading and mathematics achievement gaps by grade three, targeting school readiness, the attendance gap, science of reading, mathematics instruction, summer learning loss, the use of screeners and/or benchmark assessments in English language arts and mathematics for students in grades kindergarten through three, and a multi-tiered system of support for all students;

4.1.b. ensuring all West Virginia children have access to high-quality early learning experiences which focus on physically and emotionally healthy learners as part of the school readiness model, resulting in increased populations of children on target for healthy development prior to entering first grade;

4.1.c. encouraging regular school attendance for children in the early grades in order to develop positive attendance habits and minimize chronic absences;

4.1.d. providing assistance to county boards with the training and implementation of the science of reading for all kindergarten through grade three educators, early childhood classroom assistant teachers (ECCATs), aides, paraprofessionals, and/or interventionists:

4.1.d.1. for grades one through three, counties may choose to employ interventionists instead of ECCATs, aides, or paraprofessionals pursuant to W. Va. Code §18-5-18a(b);

4.1.e. assisting county central office staff in establishing and operating targeted, sustained extended day and extended year literacy and mathematics programs to ensure grade-level proficiency and prevent summer learning loss;

4.1.f. establishing an approved list of screeners and/or benchmark assessments in English language arts and mathematics for students in grades kindergarten through three for the purpose of identifying students with a significant reading and/or mathematics deficiency. The screener and/or benchmark assessments shall be given in the first 30 school days of the school year and repeated at mid-year and at the end of the school year to determine student progress in reading and mathematics in kindergarten through grade three;

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4.1.g. establishing an approved list of dyslexia screeners to be administered to students no less than twice per year in kindergarten through grade three and any time students with identified deficiencies are not responding to interventions;

4.1.h. maximizing family engagement to result in the development of a culture of literacy and numeracy from birth through grade three;

4.1.i. supporting high-quality schools and a workforce prepared to address early literacy and numeracy through professional learning for administrators, kindergarten, first, second, and third grade teachers inclusive of the following:

4.1.i.1. the approved benchmark assessment(s) and/or screener(s) including the administration, data analysis, using the data to inform instruction, and identifying students with substantial deficiencies;

4.1.i.2. the science of reading and numeracy to include ECCATs, aides, paraprofessionals, and interventionists pursuant to W. Va. Code §18-5-18a(b);

4.1.i.3. characteristics of dyslexia and dyscalculia and instructional strategies for those students identified; and

4.1.i.4. job-embedded, on-site training on evidence-based reading and mathematics instruction and data-driven decision-making that provides kindergarten through grade three teachers with immediate feedback for improving instruction;

4.1.j. ensuring the employment of qualified teachers and service personnel in accordance with W. Va. Code §18-5-39 and §18a-4-7c to provide instruction to students enrolled in early literacy and numeracy programs including, but not limited to, ensuring that educator preparation programs prepare candidates seeking licensure for elementary education with training and instruction to:

4.1.j.1. include instruction in state-adopted grade-level content standards, foundational reading and mathematics skills, and how to implement reading instruction using high-quality instructional materials;

4.1.j.2. provide effective instruction and intervention for students with reading and math deficiencies, including students with characteristics of dyslexia or dyscalculia; and

4.1.j.3. understand and use student data to make instructional decisions;

4.1.k. ensuring a formula-based program for the distribution of funds appropriated specifically for the purposes of this section or otherwise available for the support of a targeted, multi-tiered system of support for early literacy and numeracy;

4.1.l. providing support for supervision, transportation, and provision of healthy foods for students required to attend extended learning programs for early literacy and numeracy instructional support at the school accommodating the typical work schedules of families; and

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4.1.m. receiving from county central office staff applications and annual reports required by state policy.

4.2. The West Virginia Department of Education (WVDE) has the primary responsibility for providing leadership in:

4.2.a. developing guidance, processes, and protocol resources to support the design and delivery of the TSSELN at the county level including:

4.2.a.1. definitions associated with, and an overview of the TSSELN, which is aligned to efforts to support school readiness based on West Virginia's Comprehensive Framework for School Readiness; efforts to promote school attendance during the early years to establish positive habits and deter chronic absenteeism; and efforts to ensure a multi-tiered system of support for early literacy and numeracy proficiency;

4.2.a.2. recommendations to assist counties in maximizing sources of funding, including but not limited to, Public Law 92-318, Elementary and Secondary Education Act of 1965 (ESEA) (as amended by Public Law 114-95, Every Student Succeeds Act of 2015) Title I, Improving Basic Programs Operated by State and Local Educational Agencies; ESEA Title II, Preparing, Training, and Recruiting High-Quality Teachers, Principals, and Other School Leaders; Public Law 108-446, Individuals with Disabilities Education Improvement Act (IDEA) of 2004; and 21st Century Community Learning Centers (21st CCLC) to support literacy and numeracy proficiency;

4.2.a.3. recommendations for increasing family engagement;

4.2.a.4. support for the collection of data and reporting annually about early literacy and numeracy intervention programs, including their implementation and outcomes;

4.2.a.5. guidance to support completion of required annual reports, as applicable, to be submitted to the WVBE, Legislature, and Governor;

4.2.b. guidance to support the use of the ELRS based on the formative assessment process to gauge students' ongoing progress toward grade-level proficiency, including English language arts and mathematics, which provides:

4.2.b.1. a mechanism to generate classroom, school, county, and state-level reports to indicate progress toward closing the literacy and numeracy achievement gap in West Virginia in pre-k through grade two, as applicable per W. Va. 126CSR42, Policy 2510, Assuring the Quality of Education: Regulations for Education Programs;

4.2.b.2. the capability to generate individualized student reports for families to better understand students' progress toward proficiency across standards;

4.2.b.3. the capability to examine outcome data for students over multiple years to gauge progress toward proficiency across standards; and

4.2.b.4. a resource and recommendation guide for the use of reports from the ELRS to base literacy and numeracy intervention and targeted, sustained extended day and extended year program design and implementation.

4.3. The West Virginia Early Literacy and Numeracy Network of Support shall assist in the implementation of WVBE policy requirements at the county level through the following responsibilities:

4.3.a. provide technical assistance to counties to assist with implementation of the TSSELN;

4.3.b. provide high-quality professional learning opportunities to support teachers, teacher assistants, and other county central office or school staff in the delivery of a comprehensive approach to early learning; and

4.3.c. facilitate coordination and cooperation among county central office staff and community partners in the design and delivery of ongoing support.

4.4. It is the responsibility of county central office staff to plan, deliver, and evaluate the implementation of multi-tiered literacy and numeracy instructional programs in accordance with WVBE policy and WVDE guidance resources. In carrying out this responsibility the county central office staff must address the following established processes that meet the requirements of the TSSELN:

4.4.a. a county plan that includes a needs assessment to determine the potential capacity requirements for a multi-tiered system of support for early learners which includes components outlined in W. Va. Code §18-2E-10 including:

4.4.a.1. development of a comprehensive, systematic approach to ensure all students achieve reading and mathematics proficiency by the end of grade three, which targets school readiness, chronic absence, extended learning, and high-quality instruction to include a multi-tiered system of support for all students;

4.4.a.2. ensuring all West Virginia children have access to high-quality early learning experiences that focus on creating physically and emotionally healthy learners as part of the school readiness model, resulting in increased populations of children on target for healthy development prior to entering first grade;

4.4.a.3. encouraging regular school attendance for children in the early grades in order to develop positive attendance habits and minimize chronic absences;

4.4.b. delivery and monitoring of research-based instructional support/interventions before, during, and after school, and in the summer;

4.4.c. maximization of funding resources, which may include Title I, Title II, IDEA, and 21st CCLC funds to support instructional intervention in pre-k through grade three:

4.4.c.1. a county may determine how to implement the TSSELN by distributing funding and initiatives equally across pre-k through grade three or by selecting specific grade levels for implementation based on needs including, but not limited to the following:

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4.4.c.1.A. any student in kindergarten or grades one through three who exhibits a deficiency in reading and/or mathematics at any time, based upon the screeners and/or benchmark assessments, and/or the comprehensive statewide student assessment, and any fourth-grade student promoted for good cause shall receive an individual improvement plan no later than 30 school days after the identification of the reading and/or mathematics deficiency:

4.4.c.1.A.1. the improvement plan shall be created by the teacher, principal, other pertinent school personnel, and the parent(s) or guardians, and shall describe the research-based reading and mathematics intervention services the student will receive to remedy the reading and/or mathematics deficit;

4.4.c.1.A.2. each student shall receive intensive reading and/or mathematics intervention until the student no longer has a deficiency; and

4.4.c.1.A.3. the reading interventions shall include evidence-based strategies frequently used to remediate reading and/or mathematics deficiencies and includes, but is not limited to, individual instruction, small-group instruction, tutoring, mentoring, or the use of technology that targets specific reading and/or mathematics skills and abilities;

4.4.d. employment and training of highly qualified teachers and service personnel for the delivery of instruction and support including, but not limited to;

4.4.d.1. training in literacy, numeracy, and behavior management techniques;

4.4.d.2. training to gain a strong understanding of how to best utilize the ECCATs, aides, paraprofessionals, or interventionists during classroom instruction and other periods of the day;

4.4.e. family engagement programs supporting early literacy and numeracy development including, but not limited to the following:

4.4.e.1. providing parents and/or guardians with regular updates to inform them of their child's progress toward proficiency in reading and mathematics;

4.4.e.2. ensuring parents and/or guardians are informed of and have access to resources which they may utilize to improve their child's literacy and numeracy skills;

4.4.e.3. ensuring the parents and/or guardians are informed of the importance of students' being able to demonstrate grade level reading and mathematics skills by the end of grade three and the supports available to improve the reading and mathematics skills of children who are not meeting the standards; and

4.4.e.4. the parent and/or guardian of any student in kindergarten through grade three who exhibits a deficiency in reading or mathematics at any time during the school year must be notified in writing no later than 15 school days after the identification of the deficiency. The written notification must include the following:

4.4.e.4.A. the student has been identified as having a deficiency in reading and/or mathematics;

4.4.e.4.B. a description of the proposed research-based reading and/or mathematics interventions and/or supplemental instructional services and supports that will be provided to the student to address the identified area(s) of deficiency;

4.4.e.4.C. strategies for parents and/or guardians to use at home to help increase reading and/or mathematics achievement; and

4.4.e.4.D. that if the student's reading or mathematics deficiency is not corrected by the end of grade three, the student may not be promoted to grade four unless an exemption, as outlined in section 4.6, is met;

4.4.f. provision of high-quality educational facilities, equipment, and services to support literacy and numeracy instructional support programs established pursuant to this section. Extended year programs may be provided at a central location for kindergarten through grade three who qualify for the program. Counties may not charge tuition for enrollment in literacy and numeracy instructional support programs established pursuant to this section;

4.4.g. adoption of high-quality instructional materials grounded in scientifically based reading research and aligned to state standards which shall not include practices aligned with the three cueing system of teaching decoding; and

4.4.h. support for supervision, transportation, and provision of healthy foods for students required to attend extended learning programs for early literacy and numeracy at the school accommodating the typical work schedules of families.

4.5. A student in kindergarten through grade three shall be required to attend an extended year early literacy and numeracy instructional support program as a condition for promotion if:

4.5.a. the student has been provided additional academic assistance through interventions offered during the school day or after-school in early literacy and numeracy instructional support programs and, prior to the end of the school year, the SAT or the student's classroom teacher recommends that additional academic help is needed for the student to be successful at the next grade level; and

4.5.b. the county central office staff has established literacy and numeracy instructional support programs during the extended year for the student's grade level.

4.5.c. Section 4.5 may not be construed to prohibit a classroom teacher from recommending the grade level retention of a student in kindergarten through grade three based upon the student's lack of mastery of the subject matter, nor may this section be construed to affect a student's Individualized Education Program (IEP) providing:

4.5.c.1. benchmark and/or screener data is used to inform such recommendation of the classroom teacher.

4.6. Effective for the school year beginning July 1, 2026, and thereafter, a public school student who generally demonstrates a minimal understanding and ability to apply grade level English language arts or

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mathematics knowledge, skills, and abilities, or both, as indicated on the West Virginia General Summative Assessment relative to the West Virginia College- and Career-Readiness Standards at the end of grade three, shall upon the recommendation of the teacher and the SAT be retained in grade three for the ensuing school year subject to the following exceptions:

4.6.a. a student with disabilities whose IEP indicates participation in the statewide alternate summative assessment;

4.6.b. a student identified as an English language learner who has had less than three years instruction in English as a second language;

4.6.c. a student with disabilities who participates in the statewide summative assessment, has an IEP or Section 504 plan (Public Law 110-325, Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act) that reflects that the student has received intensive intervention for more than two years and still demonstrates a deficiency or who was previously retained in kindergarten through grade three;

4.6.d. a student who is in the process of a special education referral or evaluation for placement in special education, has been diagnosed as having a significant impairment, including dyslexia or dyscalculia, or is a child with a disability if the student's individualized education program team and the student's parent or guardian agree that promotion is appropriate based on the student's IEP;

4.6.e. a student who has received intensive intervention for two or more years, still demonstrates a deficiency, and who was previously retained in any of the grades kindergarten through grade three for a total of two years: provided, that the student shall continue to receive intensive intervention in grade four;

4.6.f. a student who demonstrates an acceptable level of performance on an alternative standardized assessment approved by the WVBE;

4.6.g. a student who attends an extended year learning program following grade three and has attained proficiency; and

4.6.h. a student whose parent or guardian has requested a good cause exemption within the time period established by the county board and the superintendent, or his or her designee, determines that the good cause exemption is in the best interests of the child: provided, that a good cause exemption may not prohibit the grade level retention of a student by a classroom teacher based upon the student's lack of mastery of the subject matter and preparation for the subject matter at the next grade level.

§126-30-5. Severability.

5.1. 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.