



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Education TITLE-SERIES: 126-189
RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Nonresident and Resident Student Transfers (7212)
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)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 05/13/2024 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Margaret Williamson, Director
ADDRESS: WVDE Office of District and School Improvement, Capitol Bldg. 6, Room 500
1900 Kanawha Blvd., E, Charleston, WV 25305
EMAIL: mgwillia@k12.wv.us

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Policy 7212 applies to transfers of West Virginia students who are enrolled or are seeking enrollment in a school that is outside of the students attendance zone within the students county of residence and to transfers of West Virginia students who are enrolled or are seeking enrollment in a county school district other than the county school district in which the student resides.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Policy 7212 is being amended to address changes to the statute pertaining to transfers between counties and transfers within a county from a school in the students attendance zone to another school outside of the students attendance zone.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There will be no economic impact on revenues of state government as a result of the proposed amendment of 126CSR189, Policy 7212.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There will be no economic impact on special revenue accounts as a result of the proposed amendment of 126CSR189, Policy 7212.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

There will be no economic impact on the state or its residents as a result of the proposed amendment of 126CSR189, Policy 7212.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2024 Increase/Decrease (use "-")	2025 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

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

There will be no economic impact on revenues of state government, special revenue accounts, or the state or its residents as a result of the proposed amendment of 126CSR189, Policy 7212.

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.

**Policy 7212, Nonresident and Resident Student Transfers
Executive Summary**

**West Virginia Department of Education
Office of District and School Improvement**

Policy Cycle: 30-day Comment Period Adoption of Policy

Policy Process: Revision Repeal and Replace New

Introduction: Policy 7212 is being revised to add definitions and provide clarification for county school districts regarding nonresident and resident student transfers.

Background: Policy 7212 was first enacted in 1992 to deal only with transfers of students between counties and has been limited to that topic through amendments in 2000 and 2021.

Proposed Changes: The amendments proposed in this draft are intended to address changes to the statute pertaining to transfers between counties and transfers within a county from a school in the student's attendance zone to another school outside of the student's attendance zone.

Impact: This policy allows counties to establish rules for nonresident and resident student transfers.

Action:

- Release for 30-day public comment.
 - Approve by WVBE with effective date of ____/____/20__.
-

Policy 7212, Nonresident and Resident Student Transfers
List of Stakeholders

West Virginia Department of Education

External Stakeholders

- Melandee Heaster, Attendance Director, Greenbrier County
- Tricia Maxwell, Attendance Director, Marion County
- Terri Lynn Queen, Attendance Director, Wayne County
- Aaron Radcliff, Attendance Director, Lewis County
- Hal Van Metre, Attendance Director, Berkeley County

Internal Stakeholders

- Jeffery Kelley, Assistant Superintendent, District and School Accountability
- Stacey Losh, Coordinator, District and School Improvement
- Kelli Talbott, General Counsel, Legal Services
- Dr. Sonya White, Deputy Superintendent
- Margaret Williamson, Director, District and School Improvement

TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

SERIES 189
INTERCOUNTY NONRESIDENT AND RESIDENT STUDENT TRANSFERS APPEAL (7212)

§126-189-1. General.

1.1. Scope. -- This legislative rule applies to ~~every county board of education (county) and to every student attending public school within West Virginia~~ transfers of West Virginia students who are enrolled or are seeking enrollment in a school that is outside of the student's attendance zone within the student's county of residence and to transfers of West Virginia students who are enrolled or are seeking enrollment in a county school district other than the county school district in which the student resides.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; W. Va. Code §§18-2-5, 18-3-3, 18-3-4, 18-3-10, and 18-5-16.

1.3. Filing Date. -- ~~October 14, 2021.~~

1.4. Effective Date. -- ~~November 15, 2021.~~

1.5. Repeal of Former Rule. -- This legislative rule ~~repeals and replaces~~ amends W. Va. 126CSR189, Policy 7212, Intercounty Student Transfer Appeal, filed ~~January 11, 2000~~ October 14, 2021, and effective ~~February 10, 2000~~ November 15, 2021.

§126-189-2. Definitions.

2.1. Attendance Zone. The geographical area within a county school district established by a county board of education (county board) to designate where resident students typically attend school.

2.2. Lack of Grade Level Capacity. The circumstance that would exist upon approval of a transfer application which results in a receiving county being required to employ additional staff or compensate a classroom teacher because of the maximum teacher-pupil ratio requirements set forth in W. Va. Code §18-5-18a.

~~2.3.~~ Nonresident student. A student who resides in this state and who is enrolled or is seeking enrollment in a county other than the county in which the student resides.

2.4. Open Enrollment. A process for which a county board shall adopt and implement a policy to allow nonresident students to seek to enroll in any school within the county school district.

~~2.5.~~ Receiving county. The county in which the nonresident student is seeking to enroll.

2.6. Receiving school. The school in which the resident student is seeking to enroll that lies outside of the attendance zone in which the student resides.

2.7. Resident student. A student who resides in a county and who is enrolled or is seeking enrollment in a school that is outside of the of the student's attendance zone within the county school district.

~~2.8.~~ Sending county. The county of residence of the nonresident student.

2.9. Sending school. The school assigned to the attendance zone of the resident student.

~~2.410.~~ Transfer application. ~~The application a nonresident student submits to the receiving county to enroll and attend a school within the receiving county's jurisdiction.~~ A written request submitted to a county board that seeks approval to allow:

2.10.a. a nonresident student to enroll in and attend school in a county other than the county in which the student resides; or

2.10.b. a resident student to enroll in and attend a school that lies outside of the attendance zone in the county in which the student resides.

§126-189-3. County Board Nonresident Student Transfer Open Enrollment Policy.

~~3.1. All counties are statutorily required to adopt an open enrollment policy that clearly outlines the application process for nonresident students to submit a transfer application to enroll and attend school in the receiving county.~~ County boards shall establish and implement an open enrollment policy for nonresident students that is subject to the following requirements.

3.1.a. The policy shall establish an open enrollment process and enrollment application period for nonresident students to enroll in any schools within the county school district.

3.1.b. The policy shall be clearly publicized to parents/guardians and the general public, including dates, processes, and timelines, and shall be made available on the county board's website.

3.1.c. The policy shall establish a process for nonresident students to enroll in any schools within the county school district on a case-by-case basis at any time during the academic year as long as all other requirements are met including that the student has not previously transferred within the same school year.

3.1.d. The policy may allow for circumstances under which an out of county placement may be revoked due to chronic absenteeism, tardiness, behavioral infractions categorized as level three or four as defined in W. Va. 126CSR99, Policy 4373, Expected Behavior in Safe and Supportive Schools (Policy 4373), or failure to comply with agreed upon conditions of the transfer as established between the parents/guardians and the county school district.

3.1.e. The policy shall not be discriminatory against nonresident students on the basis of their residential address or disability status.

3.1.f. The policy shall not allow for refusal of a nonresident student transfer because the student seeks to transfer from a private, parochial, church, or religious school located in the sending county and holding an exemption approved pursuant to W. Va. Code §18-8-1(k).

3.21.g. The ~~county open enrollment~~ policy may include the preferences for students meeting any of the following criteria:

~~3.2-a1.g.1.~~ §siblings of students already enrolled through the receiving county's open enrollment policy;

~~3.2-b1.g.2.~~ §secondary students who have completed grade 10 and, due to family relocation, become nonresident students, but express the desire to remain in a specific school within the receiving county to complete their education;

~~3.2-c1.g.3.~~ §students who are children, grandchildren, or legal wards of employees of the ~~nonresident~~ receiving county;

~~3.2-d1.g.4.~~ §students whose legal residences, though geographically within the sending county, are more proximate to a school within the receiving county, whether calculated by miles or transportation time; and/or

~~3.2-e1.g.5.~~ §students who reside in a portion of a sending county where topography, impassable roads, long bus rides, or other conditions prevent practicable transportation of the ~~nonresident~~ student to a school within the sending county, and a school within the receiving county is more easily accessible.

§126-189-4. Nonresident Student Transportation.

~~3.3-4.1.~~ The receiving county may, but is not required, to provide transportation ~~to~~ for a nonresident student's ~~residence~~ whose transfer application has been approved, subject to the following.

~~3.3-4.1.a.~~ The receiving county does not have to uniformly provide transportation to nonresident students.

4.1.b. In determining whether to provide transportation to a nonresident student, the receiving county may consider whether the nonresident student meets the eligibility criteria for free or reduced price lunch and milk established within the Richard B. Russell National School Act (42 U.S.C. § 1758).

~~3.3-b-4.1.c.~~ For nonresident students with an individualized education program (IEP) that specifies transportation is necessary for fulfillment of the program, the receiving county shall either:

~~3.3-b-4.1.c.1.~~ Provide transportation to and from the school the nonresident student is attending and the nonresident student's residence; or

~~3.3-b-4.1.c.2.~~ Provide transportation to and from an agreed upon pickup point on a regular transportation route within the receiving county; or

~~3.3-b-4.1.c.3.~~ Provide payment in lieu of transportation for the total miles traveled each day to and from the school the nonresident student is attending and the nonresident student's residence.

§126-189-5. Denials of Nonresident Student Transfer Applications.

~~3.3.c.5.1.~~ The receiving county board may only deny a nonresident transfer application for the following reasons.

~~3.3.c.1.5.1.a.~~ There is a lack of grade level capacity in the receiving county.

~~3.3.c.1.A.~~ Lack of grade level capacity means if approval of the transfer request would result in the receiving county being required to employ additional staff or compensate a classroom teacher pursuant to W. Va. Code §18-5-18a.

~~3.3.c.2.~~ The nonresident student failed to submit the transfer application correctly.

5.1.b. There is a lack of programs or services due to areas identified in the receiving county's critical need and shortage policy adopted pursuant to W. Va. Code §18A-2-3.

5.1.c. The nonresident student has committed a level 3 or level 4 behavior as defined by Policy 4373 within the last calendar year.

5.2. If a nonresident student fails to fill out or submit a transfer application correctly, county board staff shall provide an explanation to the student that will assist the student with correcting the application and submitting it for approval.

~~3.4.5.3.~~ All denials of transfer applications shall be in writing; include an explanation for the denial; and, include information on how the denial may be appealed to the State Superintendent of Schools (State Superintendent). The written denial shall be provided to the parents/guardians of the nonresident student and the State Superintendent within three business days of the date the receiving county denied the transfer application.

§126-189-~~5.6.~~ Funding for Nonresident Students.

6.1. County boards may enter into agreements with other county boards for the transfer and receipt of any funds determined to be fair when students are permitted or required to attend school in a county school district other than the county school district of their residence. These agreements are subject to the approval of the West Virginia Board of Education.

~~5.16.2.~~ If a nonresident student begins attending school in the receiving county after the second month of the school year, the receiving county may issue, in the following fiscal year, an invoice to the sending county for the pro rata amount the receiving county would have received under the state basic foundation program had the nonresident student been included in the receiving county's net enrollment for the prior year. The sending county shall reimburse the receiving county the amount of the invoice.

~~5.26.3.~~ If a nonresident student begins attending school in the receiving county after the second month of the school year, the receiving county may issue, in the following fiscal year, an invoice to the sending county for the pro rata amount the receiving county would have received under aid to exceptional students had the nonresident student been included in the receiving county's net enrollment for the prior year. The sending county shall reimburse the receiving county the amount of the invoice.

~~5.36.4.~~ If a nonresident pre-k student begins attending school in the receiving county after the child count of exceptional students is certified for a school year, the receiving county may issue, in the following

fiscal year, an invoice to the sending county for the pro rata amount the receiving county would have received under aid to exceptional students had the nonresident student been included in the receiving county's net enrollment for the prior year. The sending county shall reimburse the receiving county the amount of the invoice.

§126-189-7. Resident Student Transfer Policy.

7.1. County boards shall establish and implement a policy to allow resident students to request a transfer to enroll in and attend a school outside of their assigned attendance zone within the county. The policy may include the following provisions.

7.1.a. The terms and conditions that students must meet in order to maintain the out of attendance zone placement;

7.1.b. The circumstances under which an out of attendance zone placement may be revoked due to:

7.1.b.1. chronic absenteeism;

7.1.b.2. tardiness;

7.1.b.3. behavioral infractions categorized as level three or four as defined in Policy 4373, provided that appropriate interventions and accommodations as outlined in W. Va. 126CSR16, Policy 2419, Regulations for the Education of Students with Exceptionalities, have been followed; and/or

7.1.b.4. failure to comply with agreed upon conditions of the transfer as established between the parents or guardians and the county school district.

7.1.c. Preferences for students that meet any of the following criteria:

7.1.c.1. siblings of students already enrolled at the school outside of their assigned attendance zone;

7.1.c.2. secondary students who have completed grade 10 and, due to family relocation, express desire to remain in a specific school within the county school district but outside of their assigned attendance zone;

7.1.c.3. students who are children, grandchildren, or legal wards of employees who work in a school outside of the student's assigned attendance zone; and/or

7.1.c.4. students who reside in a portion of an attendance zone where topography, impassable roads, long bus rides, or other conditions prevent practicable transportation of the student to a school within their assigned attendance zone, and a school in an adjoining attendance zone within the county school district that is more easily accessible.

§126-189-8. Resident Student Transportation.

8.1. A county board may, but is not required to, provide transportation for a resident student whose

transfer application has been approved.

§126-189-9. Denials of Resident Student Transfer Applications.

9.1. A county board may consider, but is not limited to, the following in determining whether to grant or deny a resident student transfer application:

9.1.a. there is grade level capacity in the receiving school;

9.1.b. there are programs and services available in the receiving school;

9.1.c. there exists a critical need and shortage policy that identifies staffing shortages in the grade, program service, or content area that is relevant to the resident's transfer application; and/or

9.1.d. there exists appropriate staff, resources, services, and programs to meet the disability needs of a resident student seeking a transfer at the requested school.

§126-189-410. Transfer Application Appeals.

410.1. Any nonresident or resident student whose transfer application is denied may file an appeal with the State Superintendent of Schools (State Superintendent).

410.2. The State Superintendent must receive the transfer application appeal within 30 calendar days of the date ~~the receiving county denied~~ the transfer application was denied.

410.3. The State Superintendent shall review the transfer application and the ~~receiving county's~~ denial decision and may hold a hearing if warranted.

410.4. If a transfer application appeal is timely filed prior to the start of a semester, ~~the~~ State Superintendent shall issue a decision on the appeal no later than five business days prior to the start of a semester. If the transfer application appeal ~~was~~ is not received in time for the State Superintendent to meet this deadline, the State Superintendent will issue a decision as soon as practicably possible.

410.5. A decision issued by the State Superintendent shall be final.

§126-189-11. Reporting.

11.1. Each county board shall report annually to the West Virginia Department of Education the number of nonresident and resident student transfers approved by the county board for the preceding school calendar year, as well as the number of nonresident and resident student transfer applications denied and the reasons for those denials prior to January 1.

11.2. Each county board shall provide information on its website regarding the annual number of resident and nonresident student transfer approvals and denials for the preceding school calendar year prior to January 1.

§126-189-~~6~~12. Severability.

126CSR189

612.1. 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.

**W. Va. 126CSR189, Policy 7212, Nonresident and Resident Student Transfers
Comment Response Form**

Comment Period Ends: May 13, 2024

NOTICE: *Comments, as submitted, shall be filed with the West Virginia Secretary of State's Office and open for public inspection and copying for a period of not less than five years.*

The following form is provided to assist those who choose to comment on Policy 7212, Nonresident and Resident Student Transfers. Additional sheets may be attached, if necessary.

Name: _____ Organization: _____

Title: _____

City: _____ State: _____

Please check the box below that best describes your role.

Please check the box below that best describes your role.

- | | | | |
|---|---|--|---|
| <input type="checkbox"/> County Board Member | <input type="checkbox"/> Professional Support Staff | <input type="checkbox"/> Service Personnel | <input type="checkbox"/> Higher Education |
| <input type="checkbox"/> Superintendent | <input type="checkbox"/> Principal | <input type="checkbox"/> Parent/Family | <input type="checkbox"/> Legislator |
| <input type="checkbox"/> Central Office Staff | <input type="checkbox"/> Teacher | <input type="checkbox"/> Community Member | <input type="checkbox"/> Other |

COMMENTS/SUGGESTIONS
§126-189-1. General.
§126-189-2. Definitions.
§126-189-3. Nonresident Student Transfer Open Enrollment Policy.
§126-189-4. Nonresident Student Transportation.
§126-189-5. Denials of Nonresident Student Transfer Applications.
§126-189-6. Funding for Nonresident Students.
§126-189-7. Resident Student Transfer Policy.

**W. Va. 126CSR189, Policy 7212, Nonresident and Resident Student Transfers
Comment Response Form**

§126-189-8. Resident Student Transportation.
§126-189-9. Denials of Resident Student Transfer Applications.
§126-189-10. Transfer Application Appeals.
§126-189-11. Reporting.
§126-189-12. Severability.

Please direct all comments to:

Margaret Williamson, Director
Office of District and School Improvement
West Virginia Department of Education
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1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
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