



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

5/8/2024 11:30:35 AM

Office of West Virginia  
Secretary Of State

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**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Education TITLE-SERIES: 126-207  
RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: Increased Enrollment (8224)  
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: 06/10/2024 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Uriah Cummings, School Financial Operations Officer  
ADDRESS: WVDE Office of School Operations and Finance, Capitol Bldg. 6, Suite 650  
1900 Kanawha Blvd., E, Charleston, West Virginia 25305  
EMAIL: uriah.cummings@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 8224, Increased Enrollment (formerly titled Projection of Net Enrollment Increases), establishes an objective method for projecting an increase in net enrollment for each public school district to determine the amount of funding required to fully fund the provisions of W. Va. Code §18-9A-15.

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

Policy 8224 has been revised to incorporate statutory changes since the policy's last revision in 2005. Other revisions include language pertaining to the addition of charter public schools and the computed appropriation request of increased enrollment funding.

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 126CSR207, Policy 8224.

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 126CSR207, Policy 8224.

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 126CSR207, Policy 8224.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2024 Increase/Decrease (use "-")	2025 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	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
<b>2. Estimated Total Revenues</b>	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 126CSR207, Policy 8224.

**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.**



**West Virginia Department of Education**

**External Stakeholders**

- Nicole Kemper, Chief School Business Official, Monongalia County
- Laura Matheny, Chief School Business Official, Jackson County
- Dr. James Paul, Executive Director, West Virginia Professional Charter School Board

**Internal Stakeholders**

- Uriah Cummings, School Financial Operations Officer, Office of School Operations and Finance
- Lori Elliott, Coordinator of School Finance, Office of School Operations and Finance
- Justin Hannah, Coordinator of School Finance, Office of School Operations and Finance
- Joshua Harner, Manager of School Finance, Office of School Operations and Finance
- Dr. Sonya White, Deputy Superintendent

126CSR207

TITLE 126  
LEGISLATIVE RULE  
BOARD OF EDUCATION

SERIES 207

~~PROJECTION OF NET INCREASED ENROLLMENT INCREASES (8224)~~

**§126-207-1. General.**

1.1. Purpose. -- The purpose of this ~~policy~~ legislative rule is to establish an objective method for projecting an increase in net enrollment for each public school district to determine the amount of funding required to fully fund the provisions of W. Va. Code §18-9A-15.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; and W. Va. Code §§11B-2-3, 18-2-5, 18-5G et. seq., 18-9A-2, and 18-9A-15.

1.3. Filing Date. -- ~~August 12, 2005.~~

1.4. Effective Date. -- ~~September 11, 2005.~~

1.5. Repeal of former rule. -- This legislative rule amends W. Va. 126CSR207, ~~West Virginia Board of Education Policy 8224, Six Percent Loss Cap Waiver~~ Projection of Net Enrollment Increases, filed ~~November 17, 1989~~ August 12, 2005, and effective ~~December 29, 1989~~ September 11, 2005.

**§126-207-2. Applicability.**

2.1. This policy applies to the West Virginia Department of Education (WVDE), Office of School Finance, charter public schools, and all county boards of education.

**126-207-3. Definitions.**

3.1. Birth data. Annual birth information for each county in the state.

3.2. Cohort survival. ~~The percentage of students in a certain grade that advance~~ Student advancement to the next grade level.

3.3. Enrollment history. ~~The five-year history of student (headcount) enrollment for each county~~ public school district, based upon second month enrollment.

3.4. Net enrollment. ~~the~~ Number of pupils enrolled in early childhood education programs (ages 3-5), special education programs, kindergarten programs, and grades one ~~to~~ through twelve 12, and special education programs inclusive of the in the public schools of the school district. Net enrollment shall include adults enrolled in regular secondary vocational career technical education programs and shall include no more than ~~one thousand~~ 2,500 such adults counted on the basis of full-time equivalency and apportioned annually to each county in proportion to the adults participating in vocational career technical education programs in the prior year counted on the basis of full-time equivalency. ~~No tuition or special fees beyond that required of the regular secondary vocational student is charged for such adult students (W. Va. Code §18-9A-2).~~

3.5. ~~Net enrollment adjustment factor—Five year average percentage difference between the number of students enrolled in each school district and the number of students reported in net enrollment. Public school district. For the purpose of this policy, public school district means county board of education or charter public school.~~

3.6. Survival ratio. Percentage of students that advance from one grade level to the next.

3.7. Economic adjustment factor. Estimated factor based on economic development projects announced by state and local government officials. An adjustment percentage is formulated based on available data points such as the number of jobs created due to economic development such as the start-up or shutdown of a major employer, causing a material improvement or deterioration of the job market.

3.8. Grade adjustment factor. Estimated factor used when a public school district is adding or removing grade levels from the previous year.

**§126-207-4. Administration.**

4.1. The WVDE, Office of School Finance, on behalf of the State Superintendent of Schools (~~hereinafter~~ State Superintendent), shall be responsible for administering and complying with the requirements of this policy.

**§126-207-5. Projections of Net Enrollment - County Boards of Education.**

5.1. There are a variety of methods available to forecast student enrollment. A method that has proven reliable over a number of years of use is the cohort survival method. This method fares well even when compared with more sophisticated methods that employ multiple regression analysis. It is this reliability and relative simplicity that has led to its historical use by the ~~Association of School Business Officials, International,~~ National Center for Education Statistics for similar enrollment-type projections and is the reason for adoption as the objective method employed by the WVDE for projecting net enrollment increases.

5.2. The basic concept behind cohort survival is that it is known, from historical records, what percentage of students in a cohort, or grade level, are promoted to the next grade level. This information can be used to objectively project future enrollments.

5.3. For the purpose of this policy, five years of net enrollment historical data of all students enrolled in the public schools of this state in pre-kindergarten through grade 12 will be aggregated for each county board of education and an average survival rate determined for each grade level to project the total net enrollment of each county board for the upcoming school year.

5.4. To project pre-kindergarten enrollment, birth data from four years earlier will be used.

~~5.5 Due to large increases in student enrollment certain districts have experience in recent years due to substantial growth in residential housing, annual changes in housing starts will be used to modify the cohort survival percentages, determined in the preceding paragraphs, proportionally in relationship to the change in housing starts. An adjustment will be made to each county board of education's enrollment projection due to economic factors impacting the county.~~

5.6. The survival ratios will be further modified in situations where significant changes have occurred or are about to occur in the economic climate of a particular county, such as the start up or shutdown of a major employer, causing a material improvement or deterioration of the job market. A final adjustment will be made to each county board of education's enrollment projection due to charter public school enrollment projections as detailed in section 6.

**§126-207-6. Projections of Net Enrollment - Charter Public Schools.**

6.1. Charter public schools can enroll students from multiple counties, therefore, the cohort survival methodology would not provide a reasonable means for forecasting student enrollment. To ensure both new and existing charter public schools receive appropriate funding based on increased net enrollment, the WVDE will employ the following method for projecting net enrollment increases.

6.1.a. In the initial year of operations for a charter public school, projected net enrollment will be based on projected enrollment data required to be certified to the WVDE by April 15 of the preceding year in accordance with 126CSR79, Policy 3300, Charter Public Schools.

6.1.b. In the second through fifth year of operations of a charter public school, it is necessary for a charter public school to report a preliminary projected enrollment count to WVDE to be used in the computation of a partial increased enrollment distribution as permitted by section 8.1 of this policy. The projected count must be provided to WVDE by December 1.

6.1.c. In all subsequent years of operations for a charter public school, projected net enrollment will be based on full-time equivalency (FTE) enrollment trend data over a five-year period. Until a full five-year trend is available, FTE enrollment data from inception-to-date will be utilized in the trend calculation.

6.2. An adjustment will be made to each charter public school's enrollment projection due to economic factors impacting the proportional county of residence for the student base of the public school district.

6.3. A grade adjustment factor will be utilized if the public school district is adding or removing grades levels in the succeeding year.

**§126-207-~~6~~7. Computations of Required Funding.**

~~6~~7.1. To determine the amount of funding to request for increased enrollment, the projected net enrollment for each public school district for which an increase in net enrollment is projected for the upcoming school year will be multiplied by the average state aid per pupil for that public school district for the latest year for which the data is available. In the case of charter public school districts, the average state aid per pupil will be calculated using a weighted average based on the school district in which each student physically resides. Average state aid per pupil for county boards of education is net of local share wherein average state aid per pupil for charter public schools does not include a local share adjustment.

7.1.a. In the initial year of operations, only those students not included in the October 1 certified enrollment count of a West Virginia public school district in the preceding year are to be included in the charter public school's increase in net enrollment computation for the school year.

~~67.2.~~ To ensure that adequate funding is requested for increased enrollment, a modification factor will be determined using historical data to adjust the aggregate amount determined in the preceding steps, as outlined in §§126-207 5.5. and 5.6.

~~67.3.~~ The total amount determined from the above steps computation outlined above will be the basis for the appropriation request for increased enrollment submitted by the State Superintendent to the West Virginia Legislature and the Governor, pursuant to the provisions of W. Va. Code §11B-2-3.

#### **§126-207-78. Distribution of Funds Appropriated.**

~~78.1.~~ Of the total amount appropriated for increased enrollment for a particular year, sixty percent (60%) will be distributed proportionally by September 1 of each year to each district that has been projected to experience an increase in net enrollment, based on the projected enrollments. At the request of a public school district, the State Superintendent may advance a partial distribution to the public school district of up to 60 percent of its estimated share based on its projected increased enrollment before the actual increase in net enrollment is available.

~~78.2.~~ After the actual enrollments are determined and certified by each county superintendent each year, the actual allocation of increased enrollment funds will be determined for each school district that has experienced an increase in net enrollment by multiplying the district's actual increase in net enrollment by the same average state aid per pupil as used in the projections. If the amount distributed to a public school district is greater than the total amount to which a district is entitled to receive for the year, the district shall refund the difference to the WVDE on or before June 30 of the fiscal year in which the excess distribution is made.

~~7.2.1.~~ An adjustment will be made to the funds distributed to each school district based on the projected allocations so that the total amount allocated to each school district for the year equals the total amount of the actual allocation, as determined in the preceding step. The balance of the increased enrollment funds to which each school district is entitled will be distributed by December 31 of the year in which the increased enrollment occurred.

~~7.2.2.~~ If the amount distributed to a school district during the first distribution is greater than the total amount to which a district is entitled for the year, the school district will be notified and the district will be required to refund the difference to the WVDE on or before June 30 of the fiscal year in which the excess distribution was made.

~~78.3.~~ If the total amount appropriated by the Legislature for increased enrollment is not adequate to provide full funding to all school districts that experienced an increase in net enrollment, each district's allocation will be reduced proportionally so that the total amount allocated equals the amount appropriated. The WVDE shall notify the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability whenever an advanced partial distribution is made.

~~7.3.1.~~ In this case, the State Superintendent will submit a request for a supplemental appropriation for the year to the Governor, and the Governor, pursuant to the provisions of W. Va. Code §18-9A-15 will forward the request to the Legislature during the next legislative session.

~~78.4.~~ If the amount appropriated by the Legislature for increased enrollment is greater than the amount needed to provide full funding to all of the school districts that experienced an increase in net

~~enrollment, the balance will be either expired at the end of the fiscal year, or reappropriated for increased enrollment for the next ensuing fiscal year.~~ In the event that a partial distribution of increased enrollment funding is not requested, the State Superintendent shall distribute each public school district's share of the appropriation on or before December 31 of each year.

8.5. If the amount of the appropriation for increased enrollment is not sufficient to provide payment in full for the total of these allocations, each public school district allocation shall be reduced to an amount which is proportionate to the appropriation compared to the total of the allocations and the allocations as thus adjusted shall be distributed to the public school district.

8.5.a. In this case, the Governor shall request a supplemental appropriation at the next legislative session for the reduced amount.

**§126-207-~~89~~. Severability.**

~~89.1. If any part provision of this policy or the application thereof to any person or circumstances is declared unconstitutional or held invalid, such by a court of competent jurisdiction, such decision shall not affect the invalidity of the remaining shall not affect other provisions or applicaitons of this policy, or the policy in its entirety.~~

**W. Va. 126CSR207, Policy 8224, Increased Enrollment  
Comment Response Form**

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**Comment Period Ends: June 10, 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 8224, Increased Enrollment. 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
§126-207-1. General.
§126-207-2. Applicability.
§126-207-3. Definitions.
§126-207-4. Administration.
§126-207-5. Projections of Net Enrollment – County Boards of Education.
§126-207-6. Projections of Net Enrollment – Charter Public Schools.
§126-207-7. Computations of Required Funding.

**W. Va. 126CSR207, Policy 8224, Increased Enrollment  
Comment Response Form**

**§126-207-8. Distribution of Funds Appropriated.**

**§126-207-9. Severability.**

Please direct all comments to:

Uriah Cummings, School Financial Operations Officer  
Office of School Operations and Finance  
West Virginia Department of Education  
Capitol Building 6, Suite 650  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0330  
E-Mail Address: [uriah.cummings@k12.wv.us](mailto:uriah.cummings@k12.wv.us)  
Telephone No.: 304.558.6300.