



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: 126-189
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)

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

July 15, 2024

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.

126CSR189

TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

SERIES 189
NONRESIDENT AND RESIDENT STUDENT TRANSFERS (7212)

§126-189-1. General.

1.1. Scope. -- This legislative rule applies to 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; and W. Va. Code §§18-2-5, 18-3-3, 18-3-4, 18-3-10, and 18-5-16.

1.3. Filing Date. -- June 12, 2024.

1.4. Effective Date. -- July 15, 2024.

1.5. Repeal of Former Rule. -- This legislative rule amends W. Va. 126CSR189, Policy 7212, Intercounty Student Transfer Appeal, filed October 14, 2021, and effective 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.

2.10. Transfer application. 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. Nonresident Student Transfer Open Enrollment Policy.

3.1. 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).

3.1.g. The policy may include preferences for students meeting any of the following criteria:

3.1.g.1. siblings of students already enrolled through the receiving county's open enrollment policy;

3.1.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;

3.1.g.3. students who are children, grandchildren, or legal wards of employees of the receiving county;

3.1.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

3.1.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 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.

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

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).

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:

4.1.c.1. provide transportation to and from the school the nonresident student is attending and the nonresident student's residence; or

4.1.c.2. provide transportation to and from an agreed upon pickup point on a regular transportation route within the receiving county; or

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.

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

5.1.a. There is a lack of grade level capacity in the receiving county.

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.

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.

§126-189-6. 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.

6.2. 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.

6.3. 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.

6.4. 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.

§126-189-10. Transfer Application Appeals.

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

10.2. The State Superintendent must receive the transfer application appeal within 30 calendar days of the date the transfer application was denied.

10.3. The State Superintendent shall review the transfer application and the denial decision and may hold a hearing if warranted.

10.4. 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 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.

10.5. 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.

§126-189-12. Severability.

12.1. 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.