

**WEST VIRGINIA  
SECRETARY OF STATE**

NATALIE E. TENNANT

**ADMINISTRATIVE LAW DIVISION**

Form #5

Do Not Mark In This Box  
**FILED**  
2009 SEP 24 PM 3:45  
OFFICE 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 §18-2E-10

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 \_\_\_\_\_

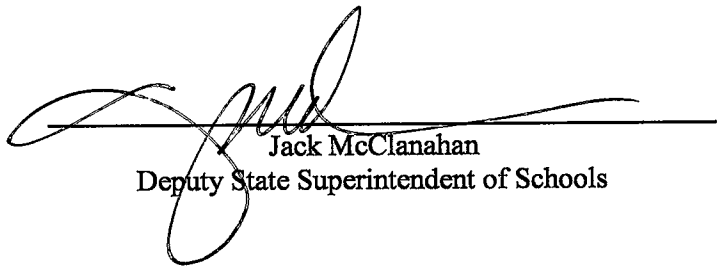
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 30

TITLE OF RULE BEING AMENDED: Instructional Supports for Third and Eighth  
Grade Students to Achieve Critical Skills (2512)

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 October 26, 2009.

  
Jack McClanahan  
Deputy State Superintendent of Schools

**EXECUTIVE SUMMARY**  
**WEST VIRGINIA DEPARTMENT OF EDUCATION**

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**Policy Number and Title:** West Virginia Board of Education Policy 2512: Instructional Supports for Third and Eighth Grade Students to Achieve Critical Skills

**Background:** This policy establishes rules to effectuate the provision of Section 18-2E-10 Critical skills instructional support for third and eighth graders. However, if a county board determines that adequate funds are not available for full implementation of critical skills instructional supports in the county, the county board may implement in phases by first establishing critical skills instructional supports the third grade and then establishing critical skills instructional supports for eighth grade once the county board determines that adequate funds are available.

**Proposals:** The purpose of this policy is to provide rules that encourage and assist County boards in operating critical skills instructional supports for students in grades three and eight who are not mastering language arts and mathematics adequately for success at the next grade level. The instructional supports to achieve critical skills are to occur before, during and after the instructional day and during the summer for students who are recommended by the student assistance team or the classroom teacher.

**Impact:** The WVDE has the primary responsibility for providing leadership in (1) defining and developing the framework for the effective delivery of critical skills instructional supports for students in grades 3 and 8; (2) assisting counties in the delivery of instructional supports through structures to maximize funding resources available; (3) developing online structures/programs to increase efficiency of delivery and accountability; and (4) designing reporting systems that assure the WVDE, Legislature and the Governor of monitored progress of the instructional supports for students in third and eighth grade to achieve critical skills.

**Response to Comments:** One comment was received during the comment period. The comment addressed the use of the word "program" and spoke to confusion that could take place in the field by use of the word to describe the work. WVDE has been promoting that these needs be addressed in all schools grades K-8 through systematic tiered instruction and interventions referenced in Policy 2419 and Policy 2510, Title I services, and Closing the Achievement Gap schools. Another "program" is not needed, however consistent instructional support and intervention for all students to master critical skills is needed.

FILED

**Title 126  
LEGISLATIVE RULE  
BOARD OF EDUCATION  
SERIES 30**

2009 SEP 24 PM 3:45

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**Instructional Supports for Third and Eighth Grade Students  
To Achieve Critical Skills (2512)**

**§126-30-1. General.**

1.1. **Scope.** - This policy establishes rules to effectuate the provision of W. Va. Code §18-2E-10 instructional supports for third and eighth grade students to achieve critical skills. However, if a county board determines that adequate funds are not available for full implementation of critical skills instructional supports in the county, the county board may implement its program in phases by first establishing critical skills instructional support in the third grade and then establishing critical skills instructional support for the eighth grade once the county board determines that adequate funds are available.

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

1.3. **Filing Date.** September 24, 2009

1.4. **Effective Date.** October 26, 2009

1.5. **Repeal of Former Rule.** None, this is a new rule.

**§126-30-2. Purpose.**

2.1. The purpose of this policy is to provide rules that encourage and assist county boards in operating critical skills instructional support for students in grades three and eight who are not mastering language arts and mathematics adequately for success at the next grade level. The instructional support is to occur during and after the instructional day and during the summer for students who are recommended by the student assistance team or their classroom teacher.

**§126-30-3. General Responsibilities.**

3.1. The responsibility for developing and implementing critical skill instructional support for 3<sup>rd</sup> and 8<sup>th</sup> graders is shared as follows:

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

a. encouraging and assisting county boards in establishing and operating critical skills instructional support and interventions during and after the instructional day and during the summer for students in grades three and eight who in the judgment of the student

assistance team or the student's classroom teacher are not mastering the content skills in reading, language arts and mathematics adequately for success at the next grade level and who are recommended by the student assistance team or the student's classroom teacher for additional academic help through the programs;

b. maximizing parental involvement in supporting the critical skills development of their children in reading, language arts and mathematics through critical skills instructional support;

c. ensuring the employment of qualified teachers and service personnel in accordance with the provisions of W. Va. Code §18-5-39 and §18A-4-7c to provide instruction to students enrolled in critical skills instructional support;

d. creating a formula or grant-based programs for the distribution of funds appropriated specifically for the purposes of this section or otherwise available for the support of in-school, after school and summer critical skills instructional support;

e. providing transportation and healthy foods for students required to attend after-school and summer critical skills instructional support and supervision at the school that accommodates the typical work schedules of parents;

f. receiving from county boards any applications and annual reports required by the rule of the state board;

g. providing a report describing the proposed implementation of the critical skills instructional support to be instituted for the summer of 2010 to the Legislative Oversight Commission on Education Accountability on or before May 1, 2010; and

h. providing a comprehensive report regarding the status of critical skills instructional support to the Legislative Oversight Commission on Education Accountability, the Joint Committee on Government and Finance, and the Governor on November 1, 2010 and annually on November 1 each year thereafter. The report will include as a minimum, progress implementation of instructional support, throughout the state, its effect on student achievement and the sources of funding both available to and used by the instructional support system.

3.1.2. Responsibility of the West Virginia Department of Education (hereinafter WVDE): The WVDE has the primary responsibility for providing leadership in: 1) defining and developing the framework for the effective delivery of critical skill instructional support for students in grades 3 and 8; 2) assisting counties in the delivery of these instructional support through structures to maximize funding resources available; 3) developing online structures/systems to increase efficiency of delivery and accountability; and 4) designing reporting systems that assure the WVDE, Legislature and the Governor of monitored progress of critical skills instructional support. It is further the responsibility of the WVDE to:

a. develop a Guidance Document for Design and Delivery of Critical Skill Instructional Support for 3<sup>rd</sup> and 8<sup>th</sup> Graders that includes:

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A. recommendations for processes to identify students that includes use of WESTEST2, benchmark assessments like Acuity, informal mathematics assessments, Algebra readiness assessments, Individualized Education Program (IEP) assessment data, teacher referral and student assistance team review;

B. recommendations for the provision of highly qualified teachers and service personnel such as instructional aides and paraprofessionals who deliver critical skills instructional support before, during, and after school, and in summer programs;

C. recommendations for the provision of research-based instructional interventions before, during, and after school, and in summer programs;

D. recommendations for providing access to online based instructional resources to deliver critical skills instructional support before, during, and after school, and in the summer;

E. recommendations for maximizing integration of technology based intervention and instructional support;

F. recommendations for online and face-to-face parental involvement in supporting students critical skill success;

G. recommendations for provision of transportation, healthy foods;

H. recommendations for electronic student management structures to manage essential student data for program participation;

I. recommendations for completion of required progress reporting structures/requirements; and

J. recommendations for maximizing alternate sources of funding, Title I, Title II, and Individuals with Disabilities Education Improvement Act (IDEA) to support the delivery of critical skill instructional support for 3rd and 8th graders.

b. develop an Online Student Management System to assist counties in the verification of providing academic assistance through an in-school or after school critical skills instructional support prior to the end of the school year and in the providing of academic assistance during the summer and the monitoring of student progress in mastering reading, language arts and mathematics objectives/learning targets;

c. development of distribution structures for formula allocation and/or project based award of legislative appropriation for the Critical Skills Instructional Support; and

d. preparation of Annual Report of Student Progress to be submitted to the WVBE, Legislature and Governor.

3.1.3. Responsibility of the Regional Education Service Agency (hereinafter RESAs): Educational services provided by the RESAs should be fully utilized in the implementation of WVBE policy requirements at the county and school level through the following important responsibilities:

a. providing technical assistance to counties in the design of effective and successful critical skills instructional support for 3rd and 8th graders;

b. providing high quality staff development to support teachers in the delivery of research based instructional support and interventions, integration of technology, and learning skills for critical skill acquisition; and

c. facilitating the coordination and cooperation among the county boards within their respective regions in the design and delivery of summer critical skills instructional support

3.1.4. Responsibility of County Boards of Education: It is the responsibility of county boards of education to plan, deliver and evaluate the implementation of critical skill instruction support before, during, and after school, and in the summer to children in the 3<sup>rd</sup> and 8<sup>th</sup> grade in accordance with WVBE policy and WVDE Guidance Document for Design and Delivery of Critical Skill Instructional Support for 3<sup>rd</sup> and 8<sup>th</sup> Graders. In carrying out this responsibility the county boards must address the following established processes that meet the requirements of critical skill support for 3<sup>rd</sup> and 8<sup>th</sup> grade students:

a. systematic process for identification and monitoring of students receiving critical skill intervention before, during, and after school, and in the summer;

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

c. maximum utilization of online resources to insure access of instructional support before, during, and after school, and in the summer;

d. maximum utilization of funding resources including Title I, Title II, IDEA, 21st Century Community Center Programs, and The American Recovery and Reinvestment Act (ARRA) funds to support instructional intervention in grades pre-k-8 to students not acquiring critical skills in reading and mathematics.

e. employment of highly qualified teachers and service personnel for the delivery of instruction;

f. parent involvement programs supporting critical skills development of their children;

g. provision of adequate facility, equipment and services to support critical skills instructional support;

h. annual electronic report of student progress in critical skill development; and

i. assessment at the conclusion of the intervention program to measure student progress.

3.1.5. Responsibility of the School: It is the responsibility of the school to plan, deliver and evaluate the implementation of critical skill instruction support before, during and after school, and in the summer to children in the 3<sup>rd</sup> and 8<sup>th</sup> grade in accordance with WVBE policy and WVDE Guidance Document for Design and Delivery of Critical Skill Instructional Support for 3<sup>rd</sup> and 8<sup>th</sup> Graders. In carrying out this responsibility the school must address the following established processes that meet the requirements of critical skill support for 3<sup>rd</sup> and 8<sup>th</sup> grade students:

a. adhere to the criteria established in the policy and guidance including identification, intervention and accountability;

b. assist students in understanding their identified learning needs and provide guidance in the development of learning goals that will prepare them for success during the intervention process;

c. monitor the progress of each student participating in before, during and after school and summer intervention programs and report progress to the county using the online student management and reporting system;

d. work collaboratively through the Student Assistance Team to identify students requiring interventions in reading, language and mathematics;

e. develop a process for involving parents as active members in the intervention process; and

f. insure accurate information is documented within the Online Student Management System as it pertains to identification of students, structured interventions and academic progress.

3.1.6. Responsibility of the Parent: It is the responsibility of the parent to assist the school and the student in meeting the goals of the interventions designed for the student. Through collaborative work, the school, the parent, and the student will improve the performance of students in grades 3 and 8 who are not mastering language arts and mathematics adequately for success at the next grade level. The parents will have the following responsibilities:

a. communicate and partner with the school in implementation of the interventions instructional supports and designed to improve the performance of students in

grades 3 and 8 who are not mastering language arts and mathematics adequately for success at the next grade level; and

b. be an active participant in the intervention process by providing guidance and assistance to the student during the intervention processes.

3.1.7. Responsibility of the Student: It is the responsibility of the 3<sup>rd</sup> and 8<sup>th</sup> grade student to work cooperatively with the school staff and the parent to improve their performance in mastering language arts and mathematics adequately for success at the next grade level. The students will have the following responsibilities:

a. be actively engaged in the before, during or after school intervention process and summer interventions, if necessary; and

b. be a responsible partner in the intervention process by establishing goals targeting identified learning needs and monitoring their own learning progress.

**§126-30-4. Definitions.**

4.1. Critical Skills in Reading, Language Arts and Mathematics – The acquisition of necessary skills that will allow students to perform at mastery as it relates to performance descriptors in reading/language arts and/or mathematics on WESTEST2, to perform at mastery on benchmark assessments like Acuity in reading/language arts and/or mathematics or to master reading/language arts and mathematics objectives as measured by classroom assessments.

4.2. Identification of Students Needing Critical Skills Instruction – Students would be identified in need of Critical Skills instruction based on lack of mastery or proficiency on such measures as WESTEST2, Acuity Benchmark, classroom assessments and other identified specific diagnostic measures and who are recommended by their classroom teacher or student assistance team.

4.3. Critical Skill Instruction Before School – The provision of instruction in reading/language arts and/or mathematics to students who have skill deficiencies as identified through summative, benchmark and/or classroom assessment measures. Instruction may be online or face-to-face but is research based in quality and specifically aligned to identified skill deficiencies.

4.4. Critical Skill Instruction During School - The provision of Tier II and Tier III, of the Response to Intervention Process, instruction during the school day to students identified with critical skill deficiencies in reading/language arts and/or mathematics. Instruction may be online and/or face-to-face but is research based in quality and specifically aligned to identified skill deficiencies.

4.5. Critical Skill Instruction After and In the Summer - The provision of instruction in reading/language arts and /or math to students who have skill deficiencies as identified through

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summative, benchmark and/or classroom assessment measures. Instruction may be online or face-to-face but is research based in quality and specifically aligned to identify skill deficiencies.

4.6. Parent Involvement - The provision of structures to insure parent involvement to support their child's critical skill development.

4.7. Online Student Management Reporting System - An online Student Management and Reporting System that assists counties in the verification and monitoring of academic assistance provided before, during or after school through a critical skills instructional support focused on mastery of reading, language arts and mathematics objectives/learning targets.

4.8. Annual Reports/Evaluation - Comprehensive report regarding the status of the critical skills instructional support provided to the Legislative Oversight Commission on Education Accountability, the Joint Committee on Government and Finance, and the Governor on November 1, 2010 and annually on November 1 each year thereafter. The report will include as a minimum the progress of instructional supports throughout the state, its effect on student achievement and the sources of funding both available to and used by the implementation.

### **§126-30-5. Severability.**

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

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Policy 2512: Critical Skills Instruction Support Programs for Third and Eighth Grade

Type of Rule:     Legislative     Interpretive     Procedural

Agency:        West Virginia Department of Education

Address:        Building 6, Room 608  
                   1900 Kanawha Boulevard, East  
                   Charleston, WV 25305-0330

Phone Number: (304) 558-3762      Email: jmcclan@access.k12.wv.us

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Legislative appropriation of \$6.2 million will be distributed directly to county boards of education through formula-based grants.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "-" )	Next Increase/Decrease (use "-" )	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

Rule Title: \_\_\_\_\_

Rule Title: \_\_\_\_\_

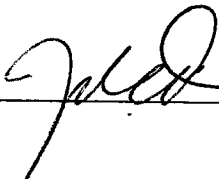
3. **Explanation of above estimates (including long-range effect);**  
Please include any increase or decrease in fees in your estimated total revenues.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Signature of Agency Head or Authorized Representative

Date

  
\_\_\_\_\_

8-5-09  
\_\_\_\_\_

**Policy 2512: Instructional Supports for Third and Eighth Grade Students to Achieve Critical Skills**

**Comment Log**

**August 14, 2009 – September 14, 2009**

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

<b>Date</b>	<b>Individual/Organization</b>	<b>Comments</b>	<b>Action/ Type</b>	<b>Rationale</b>
9/2/09	Lynn Boyer, Director WVDE	Throughout the proposed policy and in its title, references to the critical skills instructional support program, should be changed to instructional supports for third and eighth graders to achieve critical skills. Continued use of the word "programs" conveys another initiative to address the instructional needs of grades 3 and 8 students who are struggling to gain mastery in reading and math. At this time, these needs are addressed in all schools grade K-8 through systematic tiered instruction and interventions referenced in Polices 2419 and 2510, Title I services, and Closing the Achievement Gap schools. Another "program" is not needed. The associated resources/funds available through SB1001 can enhance or extend the current services and supports	A+	This comment is relevant and by changing the wording of this policy, we will reduce confusion in the field while still maintaining the integrity of intervention and instructional support process for all students in grades K-8.

**Cyndi Miller**

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**From:** Carla Williamson [cljwilli@access.k12.wv.us]  
**Sent:** Thursday, September 24, 2009 9:27 AM  
**To:** 'Cyndi Miller'  
**Subject:** FW: Comment Received for Policy 2512 (2009-09-02 11:52:17)

Carla

Carla Williamson, Executive Director  
Office of Instruction  
West Virginia Department of Education  
1900 Kanawha Boulevard East  
Building 6, Room 608  
Charleston, West Virginia 25305-0330

-----Original Message-----

**From:** Nobody [mailto:nobody@wvde.state.wv.us]  
**Sent:** Wednesday, September 02, 2009 11:52 AM  
**To:** fibanez@wvde.state.wv.us; cljwilli@access.k12.wv.us  
**Subject:** Comment Received for Policy 2512 (2009-09-02 11:52:17)

Please save this email in a "Comments Received Online" folder.  
Your folder will be a backup. All comments are saved in our database.  
The Complete Comments Report from the database can be found here:  
<http://129.71.2.32/r.html?id=b1a9af7541c80da6ef86168108da1433>  
This is an encrypted URL. Please Bookmark it.

Comment Received for Policy 2512

#####  
#####

#  
Name: Lynn Boyer  
Organization: WVDE  
Email: [lboyer@access.k12.wv.us](mailto:lboyer@access.k12.wv.us)  
Title: director  
Address1: 1900 Kanawha Blvd  
Address2:  
City/State/Zip: Charleston, WV 25305  
Role: Professional Support  
Posted: 2009-09-02 11:52:17  
Posted from IP: 129.71.215.161

Comments for section 126-30-1 General

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Throughout the proposed policy and in its title, references to the critical

skills instructional support program, should be changed to instructional supports for third and eighth graders to achieve critical skills. Continued use of the word "programs" conveys another initiative to address the instructional needs of grades 3 and 8 students who are struggling to gain mastery in reading and math. At this time, these needs are addressed in all schools grade K-8 through systematic tiered instruction and interventions referenced in Polices 2419 and 2510, Title I services, and Closing the Achievement Gap schools. Another "program" is not needed. The associated resources/funds available through SB1001 can enhance or extend the current services and supports.

Comments for section 126-30-2 Purpose  
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Comments for section 126-30-3 Scope  
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Comments for section 126-30-4 General Responsibilites  
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Comments for section 126-30-5 Definitions  
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