

**WEST VIRGINIA
SECRETARY OF STATE**

BETTY IRELAND

ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In This Box
FILED
2007 SEP 14 PM 12:37
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 §§16-3-4, 16-3-4a, 16-3-5,
16-3C-1 through 16-3C-9, 18-2-5, 18-5-9, 18-5-22, 18-5-34 and 18A-51.

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 _____

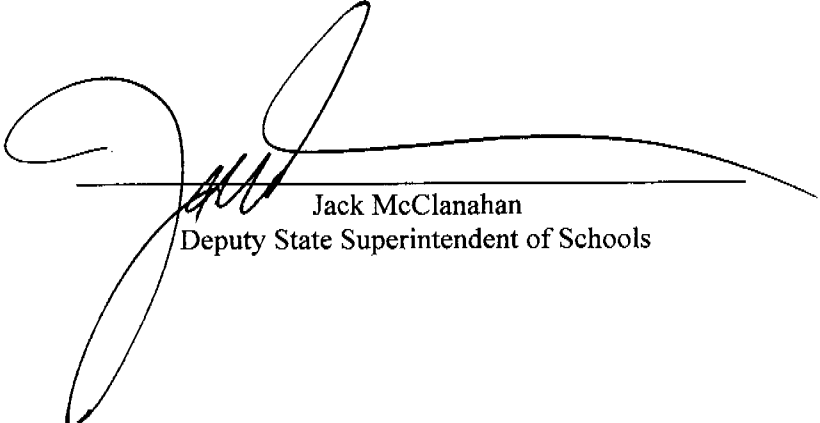
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 51

TITLE OF RULE BEING AMENDED: Communicable Disease Control (2423)

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 15, 2007.



Jack McClanahan
Deputy State Superintendent of Schools

EXECUTIVE SUMMARY
WEST VIRGINIA DEPARTMENT OF EDUCATION

Policy Number and Title:

Policy 2423
Communicable Disease Control

Background:

The objective of Policy 2423 is to allow for procedures to be in place for detection of potential communicable diseases, inclusion and exclusion, standard/universal precautions and enhancement of knowledge to ensure preventative measures occur for students and school personnel. This policy will assist in developing a working relationship with school personnel, parents/guardians, the students' medical home and the local health department while decreasing duplication of health services offered by the school and the medical home and/or the community serving the students.

Purpose:

The purpose of this Board item is to present a revision to Policy 2423, Sections 5.2.2. and 5.2.3. clarifying language regarding adolescent immunizations and request that this revision be approved.

Major Revisions:

- Section 5.2.2. was revised to clarify that adolescent immunizations are strongly recommended for students entering grades six and nine. This revision removed language implying that these immunizations are required. Language was also revised to clarify the need to record adolescent immunization status at grades six and nine to protect students and staff in the event of a communicable disease outbreak.
- Section 5.2.3. was removed. This sub-section was no longer necessary due to the clarifications in 5.2.2.

FILED

**TITLE 126
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF EDUCATION**

2007 SEP 14 PM 12:37

**SERIES 51
COMMUNICABLE DISEASE CONTROL (2423)**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§126-51-1. General.

1.1. Scope. - The legislative rule requires establishment of county policies related to communicable disease control.

1.2. Authority. - West Virginia Constitution, Article XII, §2, W. Va. Code §§16-3-4, 16-3-4a, 16-3-5, 16-3C-1 through 16-3C-9, 18-2-5, 18-5-9, 18-5-22, 18-5-34 and 18A-5-1.

1.3. Filing Date. - September 14, 2007

1.4. Effective Date. - October 15, 2007

1.5. Repeal of Former Rules. - This rule amends W. Va. 126CSR51 "Communicable Disease Control (2423)," filed May 12, 2006 and effective July 1, 2007.

§126-51-2. Purpose.

2.1. Good health and safety are essential to student learning. The education and monitoring of communicable diseases during the school year is necessary to keep students healthy and learning. This policy establishes the standards that must be placed in county policy for addressing issues and educating students and school personnel on communicable diseases. The knowledge of standard/universal precautions, transmission, prevention and treatment of communicable diseases will enhance health education, prevention and equality for all.

2.2. The objective of this policy is to allow for procedures to be in place for detection of potential communicable diseases, inclusion and exclusion, standard/universal precautions and enhancement of knowledge to ensure preventative measures occur for students and school personnel. This policy will assist in developing a working relationship with school personnel, parents/guardians, the students' medical home and the local health department while decreasing duplication of health services offered by the school and the medical home and/or the community serving the students.

§126-51-3. Application.

3.1. County boards of education shall develop or amend communicable disease policies to reflect understanding of disease transmission in the school setting and to reflect understanding of student/staff rights to attend school or remain employed. The goal of the policy is to protect individual students, staff members and the school population in general.

3.2. The potential for unnecessary exclusion from the school setting is cause for concern. This problem makes it necessary for counties to develop a policy that is protective of the educational process and the health and safety rights of students and staff.

3.3. Each county should seek the assistance of school nurses, school personnel, parents and guardians, public health, medical personnel and community leaders in developing the communicable disease policy. Technical assistance will be provided by the West Virginia Department of Education to any county upon request.

3.4. The county school system will work cooperatively with the county health department to enforce and adhere to the W. Va. Code §§18A-5-1, 16-3-4, 16-3D-1, 16-3-5, 16-3C-1 through 16-3C-9, 18-2-5, 18-5-9, 18-5-22, and 18-5-34 for prevention, control and containment of communicable disease in schools.

§126-51-4. Definitions.

4.1. "Airborne Pathogens" are defined as the transmission of infectious agents through either airborne droplet nuclei (small-particle residue [five μm or smaller in size] of evaporated droplets that may remain suspended in the air for long periods of time) or dust particles containing infectious agents. These pathogens include but are not limited to tuberculosis (TB), rubella (measles) and varicella (chickenpox).

4.2. "Airborne Precautions" are not normally utilized in the school setting. It is defined as the isolation of an airborne pathogen to reduce the risk of airborne transmission of infectious agents. Airborne precautions entail wearing a respiratory protection mask (N95 respirator) when entering the room of a student receiving home/hospital instruction with known or suspected disease transmitted via airborne droplet nuclei, student placement in private hospital room with negative air pressure and placing a mask on the student for hospital transporting.

4.3. "American Academy of Pediatrics" also known as the AAP, is defined as a national organization of pediatricians, founded in 1930, committed to the attainment of optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults.

4.4. "Blood Borne Pathogens" means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, human immunodeficiency virus (HIV), acquired immunodeficiency syndrome (AIDS), hepatitis B virus (HBV) and hepatitis C virus (HCV).

4.5. "Casual Contact" means day-to-day interaction between individuals and others in the home, at school or in the work place. It does not include intimate contact, such as sexual or drug use interactions, and it implies closer contact than chance passing in the hallway or sharing a lunch table.

4.6. "Centers for Disease Control and Prevention" also known as CDC, is defined as one of the thirteen major operating components of the United States Department of Health and Human Services (USDHHS), which is the principal agency in the United States government for protecting the health and safety of all Americans and for providing essential human services,

especially for those people who are least able to help themselves. CDC remains at the forefront of public health efforts to prevent and control infectious and chronic diseases, injuries, workplace hazards, disabilities and environmental health threats.

4.7. "Communicable Disease" means a disease that may be transmitted directly or indirectly from one individual to another.

4.8. "Direct Contact" means a disease that is spread through the exposure of blood and/or body fluids to mucus membranes, open skin wounds, semen or intravenous transfusion. HIV/AIDS is spread by direct blood transmission into the blood stream of another and by semen or vaginal fluid contact. Hepatitis A can be spread by direct or indirect contact with feces while Hepatitis B and C can be spread by direct contact with semen and blood. These diseases do not pose a risk in school if body fluids such as blood and feces are handled using standard/universal precautions.

4.9. "Droplet Contact" means contact of the conjunctivae or the mucous membranes of the nose or mouth of a susceptible person with large-particle droplets (larger than five μm in size) containing microorganisms generated from a person who has a clinical disease or who is a carrier of the microorganism. Droplets are generated from the source person primarily during coughing, sneezing, or talking and during the performance of certain procedures such as suctioning. Transmission via large-particle droplets requires close contact between source and recipient persons, because droplets do not remain suspended in the air and generally travel only short distances, usually three feet or less, through the air. These pathogens include, but are not limited to, bacterial infections, such as Pertussis (whooping cough), streptococcal (group A) pharyngitis, pneumonia or scarlet fever, Diphtheria (pharyngeal), Haemophilus influenzae type b and Neisseria meningitis disease, including meningitis, pneumonia and sepsis. Serious viral infections spread by droplet contact include but are not limited to adenovirus, influenza (flu), mumps and rubella (German measles).

4.10. "Droplet Precautions" is defined as droplet pathogen isolation utilized around individuals known or suspected to be infected with microorganisms transmitted by droplets (large-particle droplets [larger than five μm in size] that can be generated by the person during coughing, sneezing, talking, or the performance of procedures). Droplet precautions entail being in the a private environment, like the student's home, wearing a mask while within three feet of the individual infected and utilizing standard/universal precautions. Because droplets do not remain suspended in the air, special air handling and ventilation are not required to prevent droplet transmission. Masks may be worn to protect the health of a student who is immunocompromised.

4.11. "Health or Safety Emergency Situation" is determined on a case-by-case basis, and is defined as a specific situation that presents imminent danger or threat to students or other members of the community, or requires an immediate need for information in order to avert or diffuse serious threats to the safety or health of a student or other individuals. Any release of confidential medical information must be narrowly tailored considering the immediacy and magnitude of the emergency and must be made only to parties who can address the specific emergency in question. This exception is temporally limited to the period of the emergency and generally does not allow a blanket release of personally identifiable information from a student's

education records to comply with general requirements under state law. Certainly an outbreak of diseases such as measles, rubella, mumps, and polio not only pose threat of permanent disability or death for the individual, but have historically presented themselves as epidemic in nature. Thus, disclosure of personally identifiable information from students' education records to state health officials for an outbreak of a communicable disease would generally be permitted under Family Educational Rights and Privacy Act's (FERPA) health or safety emergency provisions.

4.12. "Immunocompromised" is defined as reduced immune response due to immunosuppressive drugs, radiation, disease or malnutrition.

4.13. "Legitimate Educational Reason" is defined as school officials who have been determined to have genuine concern related to the student's educational achievement and performance allowing access and review pertinent educational records including medical and health information. A record of disclosure must be maintained and include: (1) the parties who have requested the information from the education records, and (2) the legitimate interests the parties had in requesting or obtaining the information.

4.14. "Occupational Safety and Health Administration (OSHA)" is defined as a division of the United States Department of Labor that provides standards and guidelines for the health and safety of America's workers by setting and enforcing standards; providing training, outreach, and education; establishing partnerships; and encouraging continual improvement in workplace safety and health.

4.15. "School Nurse" is defined as a registered professional nurse, licensed by the West Virginia Board of Examiners for Registered Professional Nurses (W. Va. Code §30-7-1, et seq.), who has completed a West Virginia Department of Education approved program as defined in 126CSR114 West Virginia Board of Education Policy 5100, Approval of Educational Personnel Preparation Programs and meets the requirements for certification contained in 126CSR136 West Virginia Board of Education Policy 5202, Minimum Requirements for the Licensure of Professional/Paraprofessional Personnel and Advanced Salary Classification. The school nurse must be employed by the county board of education or as specified in W. Va. Code §18-5-22.

4.16. "Standard/Universal Precautions" is a body substance isolation approach to infection control. Standard Precautions apply to 1) blood; 2) all body fluids, secretions, and excretions, except sweat, regardless of whether or not they contain visible blood; 3) non-intact skin; and 4) mucous membranes. According to the concept of standard/universal precautions, all human blood and all other human body fluids are treated as if known to be infectious for HIV, HBV, and other bloodborne pathogens. There are three types of transmission: contact, airborne and droplet.

4.17. "West Virginia Department of Health and Human Resources (WVDHHR)" is the lead public health agency in West Virginia working to help shape the environments within which people and communities can be safe and healthy.

4.18. "West Virginia Education Information System (WVEIS)" is a comprehensive, uniform, integrated, on-line management information system (MIS) for schools and county school systems (districts). The system began implementation in 1991 with all schools and

districts currently participating. The system provides for doing the business of the schools and districts in areas such as student demographics, special programs participation, grades, schedules, attendance, payroll, accounts payable, warehousing, student health records, immunizations, etc. Districts submit to the West Virginia Department of Education data from WVEIS required for state and federal reporting.

§126-51-5. Disease Prevention Measures.

5.1. All county boards of education must incorporate hand washing, as defined and outlined in The Basic and Specialized Health Care Procedures Manual for West Virginia Public Schools that accompanies 126CSR25A, West Virginia Board of Education Policy 2422.7, Standards For Basic and Specialized Health Care Procedures, into the county board of education communicable disease policy. It is best practice to wash the hands with soap and clean running water for twenty seconds. However, if soap and clean water are not available, use an alcohol-based product to clean the hands. Alcohol-based hand rubs significantly reduce the number of germs on skin and are fast acting. Good hand hygiene is the single most effective procedure to prevent the spread of communicable disease in the school setting. An allowance for hand washing should be incorporated into the daily routine of all students in West Virginia public schools, especially before eating, after blowing the nose, coughing, or sneezing, after going to the bathroom and as deemed necessary by the school.

5.2. Students must be in compliance with the required immunization schedule as set forth by the WVDHHR State Health Officer. The WVDHHR State Health Officer, or his/her designee (local health officer) shall make the final determination in cases in which an authorized medical practitioner's written medical exemption is challenged by school personnel as inappropriate or invalid. The immunization record shall be entered and reviewed annually into the West Virginia Education Information System (WVEIS).

5.2.1. All children entering prekindergarten (Pre-k), kindergarten and a West Virginia public school for the first time must have immunizations and show proof upon enrollment as defined by W.Va. Code §16-3-4. All Pre-k students shall also meet requirements in 126CSR28 West Virginia Board of Education Policy 2525, West Virginia's Universal Access to a Quality Early Education System.

5.2.2. It is strongly recommended that students entering grades six and nine receive adolescent immunizations as defined by the United States Department of Health and Human Services (USDHHS), Centers for Disease Control and Prevention (CDC) and WVDHHR State Health Officer. The immunization record for each student in grades six and nine shall be entered into the West Virginia Education Information System (WVEIS) in order to ensure that updated immunization information is readily available to health officials in the event of a communicable disease outbreak that presents an imminent danger to students or other members of the community.

5.3. Instruction on the principle modes by which communicable diseases, including, but not limited to, human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS) are prevented, spread and transmitted shall be taught to students as outlined in 126CSR44E West Virginia Board of Education Policy 2520.5, Health Content Standards and Objectives. An

opportunity shall be afforded to the parent or guardian of a child subject to instruction in the prevention, transmission and spread of HIV/AIDS and other sexually transmitted diseases to examine the course curriculum requirements and materials to be used in such instruction. The parent or guardian may exempt such child from participation in such instruction by giving notice to that effect in writing to the school principal as set forth in W. Va. Code §18-2-9.

5.4. An educational inservice on the prevention, transmission and treatment of current communicable diseases shall include, but not limited to, human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS), shall be provided to all school personnel every two years by the county boards of education, as specified in W. Va. Code §18-2-9 and §18-5-15d.

§126-51-6. Disease Control Measures.

6.1. Distinctions will be made related to diseases that are communicable in the school setting versus those known not to be spread by casual contact e.g. AIDS, Hepatitis B, Hepatitis C and other like diseases.

6.2. Each reported case of disease known not to be spread by casual contact will be validated by a designated individual such as a school nurse (W. Va. §18A-5-1 and W. Va. §18-5-22).

6.3. The administrator or school nurse shall exclude from the school any pupil or pupils known to have or suspected of having any infectious disease known to be spread by casual contact and is considered to be a health threat to the school population. The superintendent has the authority to exclude a staff member from school when reliable evidence or information from a qualified source confirms him/her of having a potential communicable disease that is known to be spread by any form of casual contact and is considered a health threat to the school population. Such a student or staff member shall be excluded in accordance with guidelines of American Academy of Pediatrics and WVDHHR unless his/her physician approves school attendance and the condition is no longer considered contagious. All reportable communicable diseases will be referred to the county health department, without disclosure of personally identifiable information, as set forth in West Virginia Bureau for Public Health Legislative Rule 64CSR7, Reportable Diseases, Events and Conditions. The county health department is able to provide reportable communicable disease guidance or go to <http://www.wvdhhr.org/idep/#Disease%20%20Reporting>.

6.4. Mandatory screening for communicable diseases that are known not to be spread by casual contact is not warranted as a condition for school entry or for employment or continued employment, nor is it legal based on W. Va. Code §16-3C-1. All screenings performed in the public school setting should be age appropriate deemed effective and necessary through evidence-based and scientific researched-based practice utilizing standard procedures and with the Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. §1232h. W. Va. Code §18-5-22 allows county boards to provide proper medical and dental inspections for all students attending school and gives authority to take any other necessary actions to protect students from infectious diseases.

6.5. Irrespective of the disease presence, standard/universal precautions shall be used and adequate sanitation facilities will be available for handling blood or body fluids within the school setting or school buses. Blood and body fluids from any person in the school setting shall be treated with standard/universal precautions; no exception shall be made when handling blood and body fluids. School personnel will be trained in standard/universal precautions as set forth by the Occupational Safety and Health Administration recommendations and guidelines at <http://www.osha.gov/>.

§126-51-7. Confidentiality.

7.1. All persons privileged with any medical information that pertains to students or staff members shall be required to treat all proceedings, discussions and documents as confidential information. Before any medical information is shared with anyone in the school setting a "legitimate educational reason" or "health or safety emergency situation" must exist, all other releases of confidential medical and health information shall be released only with the consent of the parent/guardian, student if over 18, employee or their representative as outlined in 126CSR94, West Virginia Board of Education Policy 4350, Procedures for the Collection, Maintenance and Disclosure of Student Data, Family Educational Rights and Privacy Act of 1988 and Family Educational Rights and Privacy: Final Regulations. Part II, 34 CFR Part 99.

7.2. Information from health records is part of the educational record and should be shared with the child's parents/guardians and pass freely among the school and medical home/health care provider to enhance student health and prevent duplication of services, only after permission is obtained from the student's parent/guardian.

§126-51-8. Severability.

8.1. 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.

FORM HD 201
(10-86)

FISCAL NOTE WORKSHEET
(Submit 4 Copies)

HD NO _____ DRAFT NO _____ BILL NO _____ RESOLUTION NO _____

SUBJECT Policy 2423 - Communicable Disease Control Policy FUND _____

SOURCE OF REVENUE: GENERAL FUND SPECIAL OTHER (SPECIFY) _____

COST OF ESTIMATE BASED ON: AN ORIGINAL ESTIMATE BUDGET BILL OTHER (SPECIFY) _____

INCOME ESTIMATE BASED ON: AN ORIGINAL ESTIMATE BUDGET BILL OTHER (SPECIFY) _____

SHOW OVER-ALL EFFECT IN ITEMS 1 AND 2 & GIVE EXPLANATION OF BREAKDOWN BY FISCAL YEAR INCLUDING LONG-RANGE EFFECT

EFFECT OF PROPOSAL	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
1. ESTIMATED TOTAL COST	\$0	\$0	\$0	\$0	\$0
PERSONAL SERVICES CURRENT EXPENSES REPAIRS/ALTERATIONS EQUIPMENT OTHER	\$0	\$0	\$0	\$0	\$0
2. ESTIMATED TOTAL REVENUES	\$0	\$0	\$0	\$0	\$0

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

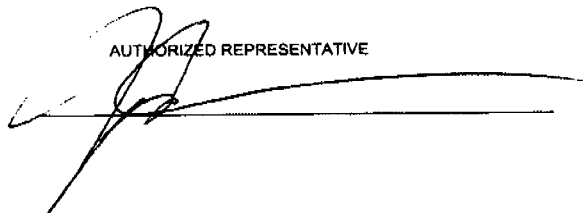
DATE

AGENCY

AUTHORIZED REPRESENTATIVE

7/02/07

West Virginia Department of Education



**Policy 2423 – Communicable Disease Control
Comment Log
July 13, 2007- August 13, 2007**

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

DATE	INDIVIDUAL ORGANIZATION	COMMENTS	ACTION/TYPE	RATIONALE
07-29	John Grindley cmlodge@grinpro.com West Virginian's for Vaccine Exemptions 243 Arborland rd Wheeling WV 26003	<p align="center">§126-51-5 Disease Prevention Measures (Sections 5. 2. 2 and 5.2.3)</p> <p>On April 27, 2007, Lowell E. Johnson, in a letter regarding Policy 2423, states "The efforts to recommend grades 6th and 9th show proof of adolescent immunizations is not compulsory and only a health awareness and promotion initiative." However, Policy 2423 has misleading language that implies mandating more vaccines: 5.2. "Students must be in compliance with the required immunization schedule as set forth by the WVDHHR State Health Officer..." 5.2.1 "All children entering prekindergarten (Pre-k), kindergarten and a West Virginia public school for the first time must have immunizations and show proof upon enrollment..." 5.2.2 "Students entering in grades six and nine must have adolescent immunizations..." In June 2007, the WV BOE, attempted to correct the misleading language by amending 5.2.1 and 5.2.2. 5.2.1 now states recommended instead of</p>	N	Section 5.2 was not on public comment. Changes can only be made in sections that were placed on public comment.

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		<p>required and 5.2.2 was removed. These two amendments are a good start, but do not address all of the misleading language. 5.2 must also be removed.</p> <p>WV code 16-3-4 is the only authority by which vaccines can be made compulsory. Policy 2423, 5.2 gives authority to the WVDHHR State Health Officer in mandating vaccines to a schedule. The WVDHHR State Health Officer, The Centers for Disease Control & Prevention and The American Academy of Pediatrics does not have any legal authority to mandate vaccines in the state of West Virginia, only WV state code 16-3-4 does. Currently 16-3-4 requires six vaccines for school entry, not the thirteen vaccines that Policy 2423, 5.2 would mislead parents into receiving. Furthermore 5.2 gives the WVDHHR the final decision on medical exemptions instead of doctors.</p> <p>Anybody that reads Policy 2423, is lead to believe, "Students must be in compliance with the required immunization schedule as set forth by the WVDHHR State Health Officer..." Policy 2423 is still misleading. All of Section 5.2 needs to be removed.</p>	
07-19	Linda Grindley	<p>On April 27, 2007, Lowell E. Johnson, in a letter regarding Policy 2423, states "The efforts to recommend grades 6th and 9th show proof of adolescent immunizations is not compulsory and only a health awareness and promotion initiative."</p> <p>However, Policy 2423 has misleading language that implies mandating more vaccines:</p> <p>5.2. "Students must be in compliance with the required immunization schedule as set forth by the WVDHHR State Health Officer..."</p> <p>5.2.1 "All children entering prekindergarten (Pre-k), kindergarten and a West Virginia public school for the first time must have immunizations and</p>	<p>Section 5.2 was not on public comment. Changes can only be made in sections that were placed on public comment.</p>

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	<p>show proof upon enrollment...”</p> <p>5.2.2 “Students entering in grades six and nine must have adolescent immunizations...”</p> <p>In June 2007, the WV BOE, attempted to correct the misleading language by amending 5.2.1 and 5.2.2. 5.2.1 now states recommended instead of required and 5.2.2 was removed. These two amendments are a good start, but do not address all of the misleading language. 5.2 must also be removed.</p> <p>WV code 16-3-4 is the only authority by which vaccines can be made compulsory. Policy 2423, 5.2 gives authority to the WVDHHR State Health Officer in mandating vaccines to a schedule. The WVDHHR State Health Officer, The Centers for Disease Control & Prevention and The American Academy of Pediatrics does not have any legal authority to mandate vaccines in the state of West Virginia, only WV state code 16-3-4 does. Currently 16-3-4 requires six vaccines for school entry, not the thirteen vaccines that Policy 2423, 5.2 would mislead parents into receiving. Furthermore 5.2 gives the WVDHHR the final decision on medical exemptions instead of doctors.</p> <p>Anybody that reads Policy 2423, is lead to believe, “Students must be in compliance with the required immunization schedule as set forth by the WVDHHR State Health Officer...” Policy 2423 is still misleading. All of Section 5.2 needs to be removed.</p> <p>The WVDHHR is trying to get what they want through the BOE what they have not been able to get through the Legislature. Right now the Law in WV concerning vaccines is 16-3-4.</p> <p>http://www.legis.state.wv.us/WVCODE/16/WVCODE/16/WVCODE%2016%20%20-%20%20%203%20-%20-%20%20%20%20%20%20%20%20%20.htm</p>	
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126CSR51

Presently, the Mandatory vaccines for school entry are diphtheria, polio, rubeola(measles), rubella, tetanus and whooping cough.

The WVDHHR has been trying to add more vaccines for a couple of years now, but they can't get them added by the legislative route, because they refuse to add an exemption, like the other 48 states have.

The WVDHHR wants to make Mandatory 7 more vaccines to the 0-6 year olds ; HepB, Rota, Hib, PCV, Varicella, HepA, and Influenza (yearly).

and to the 7-18 year olds

Tdap, HPV, MCV, PPV, Influenza (yearly),and HepA.

<http://www.wvdhhr.org/immunizations/immunization%20schedule.asp>

This BOE policy change 2423 would make their schedule, not the WV law code 16-3-4, the new Mandatory list.

5.2. Students must be in compliance with the required immunization schedule as set forth by the WVDHHR State Health Officer. The WVDHHR State Health Officer, or his/her designee (local health officer) shall make the final determination in cases in which an authorized medical practitioner's written medical exemption is challenged by school personnel as inappropriate or invalid. The immunization record shall be entered and reviewed annually into the West Virginia Education Information System (WVEIS).

The second half of this paragraph also changes the present law.

Presently the law reads;

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"or a certificate from a reputable physician showing that immunization for any or all is impossible or improper, or sufficient reason why any or all immunizations should not be done."

<http://www.legis.state.wv.us/WVCODE/16/WVC%2016%20-%20-%20%203%20-%20-%20%20%204%20%20.htm>

If this BOE policy goes through as is, the WVDHHR will get everything they want without giving parents the right to opt out of vaccines they may find objectionable.

The Varicella (chickenpox) virus, is grown on Aborted fetal cells MRC 5 and WI-38. The vaccine contains residual components, DNA and protein, of these aborted fetuses. The diploid cells contain all 23 chromosomes of the aborted fetus.

Hep b (hepatitis B) and HPV are sexually transmitted, blood borne viruses, not transmitted in the school setting.

The other 48 states have exemptions already in place. WV does not. If the WVDHHR gets it's way through the BOE, parents will be forced to either vaccinate their children for all of these diseases, or remove their children from school. "

Please do not let this happen.

We need your help.

Thank you,

Policy 2423: Communicable Disease Control

AMENDED COMMENT LOG

July 13, 2007 – August 13, 2007

DATE	INDIVIDUAL ORGANIZATION	COMMENTS	ACTION/TYPE	RATIONALE
07-29	John Grindley cmlodge@grinpro.com West Virginian's for Vaccine Exemptions 243 Arborland rd Wheeling WV 26003	<p>§126-51-5 Disease Prevention Measures (Sections 5. 2. 2 and 5.2.3)</p> <p>On April 27, 2007, Lowell E. Johnson, in a letter regarding Policy 2423, states "The efforts to recommend grades 6th and 9th show proof of adolescent immunizations is not compulsory and only a health awareness and promotion initiative."</p> <p>However, Policy 2423 has misleading language that implies mandating more vaccines:</p> <p>5.2. "Students must be in compliance with the required immunization schedule as set forth by the WVDHHR State Health Officer..."</p> <p>5.2.1 "All children entering prekindergarten (Pre-k), kindergarten and a West Virginia public school for the first time must have immunizations and show proof upon enrollment..."</p> <p>5.2.2 "Students entering in grades six and nine must have adolescent immunizations..."</p> <p>In June 2007, the WV BOE, attempted to correct the misleading language by amending 5.2.1 and 5.2.2. 5.2.1 now states recommended instead of</p>	N	Section 5.2 was not on public comment. Changes can only be made in sections that were placed on public comment.

126CSR51

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WV code 16-3-4 is the only authority by which vaccines can be made compulsory. Policy 2423, 5.2 gives authority to the WVDHHR State Health Officer in mandating vaccines to a schedule. The WVDHHR State Health Officer, The Centers for Disease Control & Prevention and The American Academy of Pediatrics does not have any legal authority to mandate vaccines in the state of West Virginia, only WV state code 16-3-4 does. Currently 16-3-4 requires six vaccines for school entry, not the thirteen vaccines that Policy 2423, 5.2 would mislead parents into receiving. Furthermore 5.2 gives the WVDHHR the final decision on medical exemptions instead of doctors.

Anybody that reads Policy 2423, is lead to believe, "Students must be in compliance with the required immunization schedule as set forth by the WVDHHR State Health Officer..." Policy 2423 is still misleading. All of Section 5.2 needs to be removed.

07-19 Linda Grindley

On April 27, 2007, Lowell E. Johnson, in a letter regarding Policy 2423, states "The efforts to recommend grades 6th and 9th show proof of adolescent immunizations is not compulsory and only a health awareness and promotion initiative."

However, Policy 2423 has misleading language that implies mandating more vaccines:

5.2. "Students must be in compliance with the required immunization schedule as set forth by the WVDHHR State Health Officer..."

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Section 5.2 was not on public comment. Changes can only be made in sections that were placed on public comment.

N

126CSR51

Presently, the Mandatory vaccines for school entry are diphtheria, polio, rubeola(measles), rubella, tetanus and whooping cough.

The WVDHHR has been trying to add more vaccines for a couple of years now, but they can't get them added by the legislative route, because they refuse to add an exemption, like the other 48 states have.

The WVDHHR wants to make Mandatory 7 more vaccines to the 0-6 year olds ; HepB, Rota, Hib, PCV, Varicella, HepA, and Influenza (yearly).

and to the 7-18 year olds

Tdap, HPV, MCV, PPV, Influenza (yearly),and HepA.

<http://www.wvdhhr.org/immunizations/immunization%20schedule.asp>

This BOE policy change 2423 would make their schedule, not the WV law code 16-3-4, the new Mandatory list.

5.2. Students must be in compliance with the required immunization schedule as set forth by the WVDHHR State Health Officer. The WVDHHR State Health Officer, or his/her designee (local health officer) shall make the final determination in cases in which an authorized medical practitioner's written medical exemption is challenged by school personnel as inappropriate or invalid. The immunization record shall be entered and reviewed annually into the West Virginia Education Information System (WVEIS).

The second half of this paragraph also changes the present law.

Presently the law reads;

"or a certificate from a reputable physician showing that immunization for any or all is impossible or improper, or sufficient reason why any or all immunizations should not be done."
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If this BOE policy goes through as is, the WVDHHR will get everything they want without giving parents the right to opt out of vaccines they may find objectionable.

The Varicella (chickenpox) virus, is grown on Aborted fetal cells MRC 5 and WI-38. The vaccine contains residual components, DNA and protein, of these aborted fetuses. The diploid cells contain all 23 chromosomes of the aborted fetus.

Hep b (hepatitis B) and HPV are sexually transmitted, blood borne viruses, not transmitted in the school setting.

The other 48 states have exemptions already in place. WV does not. If the WVDHHR gets it's way through the BOE, parents will be forced to either vaccinate their children for all of these diseases, or remove their children from school. "

Please do not let this happen.
We need your help.
Thank you,

8/07 Andrew Schneider
Executive Director
ACLU of West Virginia
PO Box 3952
Charleston, WV 25339

I am writing on behalf of the American Civil Liberties Union of West Virginia to express our interest in policy 2323, section 5.2 regarding the authority given to the WVDHHR state health officer over school vaccinations. The ACLU of West Virginia strongly urges that any requirement for mandatory immunizations include a carefully crafted provision for a conscientious exemption. Our position is based upon our

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conviction that such exemptions are required by the free exercise of religion clause of the First Amendment to the United States Constitution and Article III, Section 15 of the West Virginia Constitution.

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West Virginia and Mississippi are the only two states that do not permit exemptions from mandatory immunization on conscientious grounds. The record of the 48 states that have conscientious exemptions demonstrates that such exemptions do not threaten public health. The National Vaccine Advisory Committee found that state that offer exemptions do not have higher disease rates or lower vaccination rates than those without exemptions. . Nationally less than one percent of the population do not get vaccinated based on religious or philosophical reasons.

In sum, the ACLU of West Virginia believes the state can protect both the public health of school children and their constitutionally protected religious freedom without having to compromise either.

EXECUTIVE SUMMARY
WEST VIRGINIA DEPARTMENT OF EDUCATION

Policy Number and Title:

Policy 2423
Communicable Disease Control

Background:

The objective of Policy 2423 is to allow for procedures to be in place for detection of potential communicable diseases, inclusion and exclusion, standard/universal precautions and enhancement of knowledge to ensure preventative measures occur for students and school personnel. This policy will assist in developing a working relationship with school personnel, parents/guardians, the students' medical home and the local health department while decreasing duplication of health services offered by the school and the medical home and/or the community serving the students.

Purpose:

The purpose of this Board item is to present a revision to Policy 2423, Sections 5.2.2. and 5.2.3. clarifying language regarding adolescent immunizations and request that this revision be placed on public comment for thirty days.

Major Revisions:

- Section 5.2.2. was been revised to clarify that adolescent immunizations are strongly recommended for students entering grades six and nine. This revision removed language implying that these immunizations are required. Language was also revised to clarify the need to record adolescent immunization status at grades six and nine to protect students and staff in the event of a communicable disease outbreak.
- Section 5.2.3. was removed. This sub-section was no longer necessary due to the clarifications in 5.2.2.

Beverly Mccloud

From: Melanie Purkey [mpurkey@access.k12.wv.us]
Sent: Monday, July 30, 2007 10:00 AM
To: 'Bev McCloud'; 'gus nelson'
Subject: FW: Comment Received for Policy 2423 (2007-07-29 23:19:44)

First comment for policy 2423. It is my understanding that Fernando records them officially, but we will all keep a set just in case. Thanks

Melanie

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

From: Nobody [mailto:nobody@wvde.state.wv.us]
Sent: Sunday, July 29, 2007 11:20 PM
To: fibanez@wvde.state.wv.us; mpurkey@access.k12.wv.us
Subject: Comment Received for Policy 2423 (2007-07-29 23:19:44)

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=ab96cb942512ebadb08bd90d36eb223> This is an encrypted URL. Please Bookmark it.

Comment Received for Policy 2423

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#

Name: John Grindley
Organization: West Virgian\'s for Vaccine Exemptions
Email: cmlodge@grinpro.com
Title:
Address1: 243 Arborland rd
Address2:
City/State/Zip: Wheeling, WV 26003
Role: Parent-Family
Posted: 2007-07-29 23:19:44
Posted from IP: 67.163.242.12

Comments for section 126-51-5 Disease Prevention Measures (5 2 2)

On April 27, 2007, Lowell E. Johnson, in a letter regarding Policy 2423, states "The efforts to recommend grades 6th and 9th show proof of adolescent immunizations is not compulsory and only a health awareness and promotion initiative."

However, Policy 2423 has misleading language that implies mandating more vaccines:

5.2. "Students must be in compliance with the required immunization schedule as set forth by the WVDHHR State Health Officer."

5.2.1 "All children entering prekindergarten (Pre-k), kindergarten and a West Virginia public school for the first time must have immunizations and show proof upon enrollment."

5.2.2 "Students entering in grades six and nine must have adolescent immunizations."

In June 2007, the WV BOE, attempted to correct the misleading language by amending 5.2.1 and 5.2.2. 5.2.1 now states recommended instead of required and 5.2.2 was removed. These two amendments are a good start, but do not address all of the misleading language. 5.2 must also be removed.

WV code 16-3-4 is the only authority by which vaccines can be made compulsory. Policy 2423, 5.2 gives authority to the WVDHHR State Health Officer in mandating vaccines to a schedule. The WVDHHR State Health Officer, The Centers for Disease Control & Prevention and The American Academy of Pediatrics does not have any legal authority to mandate vaccines in the state of West Virginia, only WV state code 16-3-4 does. Currently 16-3-4 requires six vaccines for school entry, not the thirteen vaccines that Policy 2423, 5.2 would mislead parents into receiving. Furthermore 5.2 gives the WVDHHR the final decision on medical exemptions instead of doctors.

Anybody that reads Policy 2423, is lead to believe, "Students must be in compliance with the required immunization schedule as set forth by the WVDHHR State Health Officer." Policy 2423 is still misleading. All of Section 5.2 needs to be removed.

Sincerely,

John Grindley

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Sincerely,

John Grindley

John Grindley

From: Cranberry Mountain Lodge [mailto:cm1odge@gr1npro.com]
Sent: Thursday, July 19, 2007 9:53 PM
To: barbara@bfish.org
Subject: BOE policy

Barbara,
The WVDHHR is trying to get what they want through the BOE what they have not been able to get through the Legislature. Right now the Law in WV concerning vaccines is 16-3-4.

[http://www.legis.state.wv.us/WVCODE/16/WVC%2016%20%20-%20%20%203%20%20-%20%20%20%20%20%20%20.htm](http://www.legis.state.wv.us/WVCODE/16/WVC%2016%20%20-%20%203%20%20-%20%20%20%20%20%20%20.htm)

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Thank you,

<><

Linda Grindley

P.S.



AMERICAN CIVIL LIBERTIES UNION
of WEST VIRGINIA

PO Box 3952
Charleston, WV 25339-3952

Andrew Schneider
Executive Director

(304) 345-9246
Fax (304) 345-9262
www.aclu-wv.org

August 8, 2007

Ms. Virginia Harris, Secretary
West Virginia Board of Education
1900 Kanawha Boulevard East
Charleston, WV 25305

RE: Mandatory Immunizations of School Children

Dear Ms. Harris:

I am writing on behalf of the American Civil Liberties Union of West Virginia to express our interest in policy 2423, section 5.2 regarding the authority given to the WVDHHR state health officer over school vaccinations. The ACLU of West Virginia strongly urges that any requirement for mandatory immunizations include a carefully crafted provision for a conscientious exemption. Our position is based upon our conviction that such exemptions are required by the free exercise of religion clause of the First Amendment to the United States Constitution and Article III, Section 15 of the West Virginia Constitution.

West Virginia and Mississippi are the only two states that do not permit exemptions from mandatory immunization on conscientious grounds. The record of the 48 states that have conscientious exemptions demonstrates that such exemptions do not threaten public health. The National Vaccine Advisory Committee found that states that offer exemptions do not have higher disease rates or lower vaccination rates than those without exemptions. Nationally less than one percent of the population do not get vaccinated based on religious or philosophical reasons.

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Sincerely,

Andrew Schneider
Executive Director



WEST VIRGINIA BOARD OF EDUCATION

Capitol Building 6, Room 351
1900 Kanawha Boulevard East
Charleston, West Virginia 25305-0330

Telephone: 304-558-3660

Fax: 304-558-0198

August 10, 2007

Mr. Andrew Schneider
Executive Director
ACLU
P. O. Box 3952
Charleston, West Virginia 25339

Dear Mr. Schneider:

I am in receipt of your correspondence regarding Policy 2423, Communicable Disease Control. As Policy 2423 is currently on comment, I have provided your comments to Ms. Melanie Purkey, Executive Director, Office of Healthy Schools. Ms. Purkey is responsible for collecting all comments submitted regarding Policy 2423 and will provide the same (including a response) in a comment log that is provided to the Board when the policy is submitted for the Board's consideration.

Please contact me again if I may be of service.

Sincerely,

A handwritten signature in cursive script, appearing to read "Virginia M. Harris".

Virginia M. Harris
Executive Secretary

cc: Melanie Purkey