

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Education TITLE NUMBER: 126
RULE TYPE: Legislative; CITE AUTHORITY: 18A-5-1, 16-3-4, 16-3-4a
16-3-5, 16-3C-1 thru 16-3C-9
18-2-5, 18-5-9, 18-5-22 and 18-5-34
AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 51 (Policy 2423)

TITLE OF RULE BEING PROPOSED: Communicable Disease Control Policy

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 3, 1991 AT 9:00 a.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Bureau of General, Special and
Professional Education
Room B-318, Bldg. #6
Capitol Complex
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Bernard L. Estep
April 11, 1991

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

TITLE 126
WEST VIRGINIA BOARD OF EDUCATION
CHAPTER 18.2
SERIES 51 (2423)

TITLE: COMMUNICABLE DISEASE CONTROL POLICY

Section 1

General

- 1.1 Scope - The legislative rule requires establishment of county policies related to communicable disease control.
- 1.2 Authority - WV Code §18A-5-1, 16-3-4, 16-3-4a, 16-3-5, 16-3C-1 thru 16-3C-9, 18-2-5, 18-5-9, 18-5-22, and 18-5-34.
- 1.3 Filing Date -
- 1.4 Effective Date -
- 1.5 Repeal of Former Rule - none - This is a new policy.

Section 2

Applicability

Effective January 1, 1989 each of the fifty-five county boards of education will adopt or amend communicable disease policies to reflect understanding of disease transmission in the school setting and to reflect understanding of students/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. The policy should provide consistent means for handling reports of infections/diseases such as AIDS, Hepatitis B or other like diseases and for decision making related to remaining in the school.

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 rights, health and safety of students and staff.

Section 3

Components

The following components shall be addressed in each county board policy:

- 3.1 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 and other like diseases.

A communicable disease is defined as a disease which may be transmitted directly or indirectly from one individual to another. Diseases such as streptococcal sore throat and influenza can be spread by discharge from nose or throat, either by droplet through the air, or by contact with objects contaminated by these discharges. Thus, they can be spread by casual contact such as that that occurs in a school setting. 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 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 correctly handled.

3.2 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.

3.3 Procedures for case decision making will be outlined and will be consistent with current laws and regulations, both state and federal.

State Laws 18A-5-1, 16-3-4, 16-3-4a, 16-3-5, 16-3C-1 thru 16-3C-9 and 18-5-22, 18-20-5

Federal regulations: PL 94-142.- Education of the Handicapped Act; Federal 504 Regulations - Vocational Rehabilitation Act of 1973

3.4 Confidentiality procedures will be outlined and strictly followed.

For reference see: Family Educational Rights and Privacy; Final Regulations. Part II, 34 CFR Part 99. Federal Register, April 11, 1988. -

3.5 Prevention methods such as instructional programs and environmental sanitation (cleaning up of body fluid spills).

Section 4

Policy Implementation

4.1 Each county should seek the assistance of school personnel, public health and 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.

4.2 Policies are to be submitted to the State Superintendent of Schools for approval on or before August 1, 1989.

Model Communicable Disease Policy

COMMUNICABLE DISEASE CONTROL POLICY

The _____ County School System will work cooperatively with the _____ County Health Department to enforce and adhere to the West Virginia Codes: 18A-5-1, 16-3-4, 16-3-4a, 16-3-5, 16-3C-1 thru 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. Decisions related to student or employee attendance will be based on P.L. 94-142 and Federal 504 Regulations.

1. Students are expected to be in compliance with the required immunization schedule. The building principal is required under State Statute 16-3-4 to exclude children from school attendance who are out of compliance with the immunizations required by this act. School personnel will cooperate with county/state health personnel in completing and coordinating all immunization data, waivers and exclusions.
2. The teacher shall exclude from the school any pupil or pupils known to have or suspected of having any infectious disease or infestation known to be spread by casual contact. 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 communicable disease or infestation 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 unless their physician approves school attendance and the condition is no longer considered contagious. All reportable communicable diseases will be referred to the _____ County Health Department.
3. When reliable evidence or information from a qualified source confirms that a student/staff member is known to have a communicable disease or infection that is known not to be spread by casual contact* i.e., HIV Infections, Hepatitis B and other like diseases, the decision as to whether the affected person will remain in the school setting will be addressed on a case by case basis by a review panel to ensure due process. (Protocol and review panel membership outlined in Appendix A.)
4. If a decision is made to exclude a child from school who is HIV positive or has AIDS, final approval of this decision must be made by the WV Department of Health (16-3C-6).
5. 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 16-3C-1.

*CASUAL CONTACT - Refers to day-to-day interaction between HIV-infected 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 on a street or sharing a subway car.

This definition is from the book, AIDS: A GUIDE FOR SURVIVAL, published by The Harris County Medical Society and the Houston Academy of Medicine, 1987, and provided by the West Virginia State Medical Association.

6. Irrespective of the disease presence, routine procedures shall be used and adequate sanitation facilities will be available for handling blood or body fluids within the school setting or school busses. School personnel will be trained in the proper procedures for handling blood and body fluids and these procedures will be strictly adhered to by all school personnel. (See Appendix B, Routine Procedures for Sanitation and Hygiene-Handling Body Fluids.)
7. All person's priviledged 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 "Need to Know" review shall be made which includes the parent/guardian, student if over 18, employee or their representative as outlined in the West Virginia Procedures for the Collection, Maintenance and Disclosure of Student Data and Family Educational Rights and Privacy Act 1988.
8. Instruction on the principle modes by which communicable diseases, including, but not limited to, Acquired Immunodeficiency Syndrome (AIDS) are spread and the best methods for the restriction and prevention of these diseases shall be taught to students and inservice education provided to all staff members as specified in 18-2-9 and 15-5-15d.

PROTOCOL FOR COMMUNICABLE DISEASES
KNOWN NOT TO BE SPREAD BY CASUAL CONTACT

1. The Review Panel

- 1.1. Communicable diseases that are known not to be spread by casual contact, e.g., AIDS, Hepatitis B, and other like diseases will be addressed on a case by case basis by a review panel.
- 1.2. Panel Membership
 - 1.2.1. The physician treating the individual.
 - 1.2.2. A health official from the State or County Health Department who is familiar with the disease.
 - 1.2.3. A child/employee advocate (e.g., school nurse, counselor, child advocate, social worker, employee representative, etc., from in or outside the school setting).
 - 1.2.4. A school representative familiar with the child's behavior in the school setting or the employee's work situation (in most cases, the building principal or in the case of a special education student, a special education representative may be more appropriate).
 - 1.2.5. Either the parent/guardian of child, student if over 18, employee, or their representative.
 - 1.2.6. The county superintendent or designee.
- 1.3. The superintendent or designee will assign a panel member to record the proceedings.
- 1.4. The superintendent or designee will designate the chair of the panel. The Chair is responsible for assuring a due process hearing that is fair and just. The chair shall serve as a neutral hearing officer to ensure an impartial hearing for all interests concerned.
- 1.5. The chair of the review panel will designate the panel member who will write the "Proposal for Decision".

2. Case Review Process

- 2.1. Upon learning of a student/staff member within the _____ County School System who has been identified by a qualified source as having a communicable disease that is known not to be spread by casual contact, the superintendent shall.

Immediately consult with the physician of the student/staff member and/or health official from the State or County Health Department to obtain information as to whether the student/staff member is generally well enough to remain in school during the review panel process. The superintendent will confirm whether the student/staff member has evidence of an existing condition that could be transmitted by casual contact in the school setting.

If the student/staff member's physician or the health department physician indicates the student/staff member is well enough to remain in the school setting and poses no immediate health threat through casual contact to the school population because of their illness, the student/staff member shall be allowed to remain in the school setting while the review panel meets.

If the student/staff member's physician or the health department official indicates the student/staff member is currently not well enough to remain in the school setting and/or that the affected individual currently has evidence of an illness or infection that poses a potential health threat through casual contact to the school population, the student/staff member shall be excluded from the school setting while the review panel meets. If the health department official recommends exclusion because a public health threat exists, the review panel will discuss the conditions under which the individual may return to school.

- 2.2. Immediately contact the review panel members to convene a meeting to explore aspects of the individual's case.
- 2.3. Submit to the parent/guardian or infected person, in writing, a notice of their rights as a review panel member and the method of appeal.

3. The Review Panel Process

- 3.1. The Review Panel shall meet within 24-48 hours* (excluding weekends or holidays) to review the case. The following aspects should be considered in that review:
 - 3.1.1. The circumstances in which the disease is contagious to others.
 - 3.1.2. Any infections or illnesses the student/staff member could have as a result of the disease that would be contagious through casual contact in the school situation.
 - 3.1.3. The age, behavior and neurologic development of the student.
 - 3.1.4. The expected type of interaction with others in the school setting and the implications to the health and safety of those involved.
 - 3.1.5. The psychological aspects for both the infected individual and others concerning the infected person remaining in the school setting .
 - 3.1.6. Consideration of the existence of contagious diseases occurring within the school population while the infected person is in attendance.
 - 3.1.7. Consideration of a potential request by the person with the disease to be excused from attendance in school or on the job.
 - 3.1.8. The method of protecting the student/staff member's right to privacy, including maintaining confidential records.
 - 3.1.9. Recommendations as to whether the student/staff member should continue in the school setting, or if currently not attending, under what circumstances he/she may return.

*See 3.4 of Appendix A

- 3.1.10. Recommendations as to whether a restrictive setting or alternative delivery of school programs is advisable.
 - 3.1.11. Determination of whether an employee would be at risk of infection through casual contact when delivering an alternative educational program.
 - 3.1.12. Determination of when the case should be reviewed again by the panel.
 - 3.1.13. Any other relevant information.
- 3.2. Proposal for Decision
- 3.2.1. Within three(3) school days after convening the panel, the superintendent shall be provided with a written record of the proceedings and the "Proposal for Decision". The Proposal serves as a recommendation to the superintendent. It is based on the information brought out in the review panel process and will include the rationale for the recommendation concerning school attendance for the student or continuation of employment for the staff member. If there is a minority viewpoint by panel members following the review process, that should also be included in the report.
 - 3.2.2. If the Proposal for Decision is to exclude the affected person from the school setting because of an existing condition that is known to be spread by casual contact and is considered a health threat to the school community, the Proposal for Decision shall include the conditions under which the exclusion will be reconsidered.
 - 3.2.3. The parent/guardian, or affected person will be given a copy of the Proposal. The review panel members will be given the opportunity to review the content of the Proposal for Decision.
- 3.3. The Superintendent's Decision
- 3.3.1. The superintendent shall either affirm, modify, or take exception to the Proposal for Decision within three (3) school days after receipt of the Proposal for Decision unless a rehearing request on that Proposal has been made. (see Appeal Process, Rehearing Request.)
 - 3.3.2. In the event the superintendent takes exception to the Proposal of Decision, he/she shall prepare a written statement that sets forth the reasons for the exceptions and the basis for that decision.
 - 3.3.3. The parent/guardian or affected person and the Health Department official will be given a copy of the Superintendent's Decision. The other review panel members will be given the opportunity to review the content of the Superintendent's Decision.
- 3.4. If the affected person is a special education student, the superintendent shall convene an Individualized Education Planning Committee meeting to determine the appropriate program and services for the student based on the panel's recommendations and the superintendent's decision. Placement of the student in the interim shall be based upon the recommendation of the superintendent and the attending physician.

4. Appeal Process

4.1. Rehearing Request

- 4.1.1. The parent, guardian, or affected person who considers the Proposal for Decision unjust may request a rehearing, in writing, directed to the chair of the review panel within three (3) school days of the date of the Proposal for Decision. Grounds for requesting a rehearing are limited to: (1) new evidence or information that is important to the decision; or (2) substantial error of fact.
- 4.1.2. The chair, within three (3) school days from the date of receipt of the request for rehearing shall either grant or deny the request for rehearing. If the request for rehearing is denied, the chair shall immediately submit the Proposal for Decision to the superintendent. If the request for rehearing is granted, the chair shall reconvene the same panel that originally heard the matter within five (5) school days of the date the hearing is granted.
- 4.1.3. Within three (3) school days after the rehearing the chair shall submit the Proposal for Decision to the superintendent. The parent/guardian or affected person will be given a copy of the Proposal. The review panel members will be given the opportunity to review the content of the Proposal for Decision.

4.2. Request for Reconsideration of Superintendent's Decision

- 4.2.1. The parent, guardian or affected person may request a reconsideration of the Superintendent's Decision within three (3) school days of the date the Superintendent's Decision was issued. The request shall be in writing and shall allege that the Decision contains a substantial error of fact or that the Decision is against the great weight of the evidence as set forth in the Proposal for Decision.
- 4.2.2. An oral presentation by the parent/guardian, affected person or their representative may be granted by the superintendent.
- 4.2.3. The superintendent shall grant or deny the request for reconsideration within three (3) school days after receipt of the request or within three (3) school days following the oral presentation, whichever is applicable.

4.3. Request for a Board Decision

The parent/guardian, affected person or their representative may make a final written appeal to the president of the Board of Education with five (5) school days after the Superintendent's Decision. The Board shall meet within three (3) school days and hear the student/staff member's appeal along with the Proposal for Decision and Superintendent's Decision. Within two (2) school days of the hearing, the Board shall render its decision in writing with copies sent to the superintendent, health department official, and parent/guardian or affected person.

4.4. Review Panel Request for Appeal

If the Proposal for Decision or the Superintendent's Decision is contrary to the majority opinion of the review panel, a majority of the panel has the right to appeal either decision in the same manner stated in the "Appeal Process."

4.5. Extenuating Circumstances

Circumstances may warrant extended timelines if complete medical information is not available.

5. General

5.1. If the student with the disease is not attending school, the district will provide an alternative delivery of school programs.

5.1.1. If the panel determines there is no risk of infection to the employee, the employee will be expected to participate in the delivery of the alternative program.

5.1.2. If the review panel determines there is a risk of infection through casual contact to the employee while delivering this program, the employee may be allowed the option not to serve in the situation. Alternative methods for delivery of school programs should be explored by the IEP team.

5.2. The review panel member who is serving as the advocate for the infected individual (or another person designated by the panel) will serve as the liaison between the student/staff member, family and attending physician as it relates to the school setting.

5.3. Employees of the district shall be expected to teach and provide other normal personal contract services in school to a student or to work with a school employee determined to have a disease known not to be communicable by casual contact unless a determination to the contrary has been made by the review panel.

6. Confidentiality

All persons involved in these procedures shall be required to treat all proceedings, deliberations, and documents as confidential information. Records of the proceedings and the decisions will be kept by the superintendent in a sealed envelope with access limited to only those persons receiving the consent of the parent/guardian or infected person as provided by the Employee Right to Know Act, and the Family Education Rights and Privacy Act.

Appendix B

Routine Procedures for Sanitation and Hygiene - Handling Body Fluids

Purpose

To insure that body fluids involving blood, vomitus, urine, feces, semen, saliva, and nasal discharges are handled properly.

Those Affected

All school staff should be alerted to dangers of infections (see Table 1) from body fluids. School nurses, custodians, bus drivers, school aids, and teachers should be particularly alert to the proper techniques in handling and disposal of materials.

Equipment Needed

Soap	Disposal Bags
Water	Dust Pans
Paper Towels	Buckets (two)
Disposable Gloves	Mops

Disinfectants—should be one of the following classes:

- a. Phenolic germicidal detergent in a 1% aqueous solution (e.g., Lysol*)
- b. Isopropol alcohol 70% full strength
- c. Sodium hypochlorite solution (household bleach), 1 part bleach to 9 parts water. (Example: 1-1/2 cups bleach to one (1) gallon of water. Needs to be prepared fresh daily.
- d. Iodophor germicidal detergent with 500ppm available iodine (e.g. Wescodyne*).
- e. Sanitary absorbing agent (Chlora Sorb*, X-O Oder Away*)

*Brand names are used as examples and are not endorsement of products.

Procedures

1. General

- a. Wear disposable gloves before making contact with body fluids during care, treatment, and all cleaning procedures.
- b. Discard gloves after each use, or if they are torn.
- c. Wash hands after handling fluids and contaminated articles, whether or not gloves are worn.
- d. Discard disposal items including diapers, tampons, used bandages and dressings in plastic-lined trash container with lid. Close bags, place inside a second clean plastic bag, label "contaminated material" and discard to be incinerated.
- e. Do not reuse plastic bags.
- f. Use disposable items to handle body fluids whenever possible.
- g. Use paper towels to pick up and discard any solid waste materials such as vomitus or feces.
- h. Daily use items that routinely come in contact with body fluids should be disposable, including diapers and disposable bibs for pre-school or developmentally delayed students who drool excessively.

2. Handwashing

- a. Use soap and warm running water. Soap suspends easily removable soil and micro-organisms allowing them to be washed off.
- b. Rub hands together for approximately 10 seconds to work up a lather.
- c. Scrub between fingers, knuckles, backs of hands, and nails.
- d. Rinse hands under warm running water. Running water is necessary to carry away debris and dirt.
- e. Use paper towels to thoroughly dry hands.
- f. Now turn off water with towel.
- g. Discard paper towels without touching waste container.

3. For Washable Surfaces

- a. For tables, desks, etc:
 - (1) Use Lysol, or household bleach solution of 1 part bleach to 9 parts water, mixed fresh.
 - (2) Rinse with water if so directed or disinfectant.
 - (3) Allow to air dry.
 - (4) When bleach solution is used, handle carefully.
 - (a) Gloves should be worn since the solution is irritating to skin.
 - (b) Avoid applying on metal since it will corrode most metals.
- b. For floors:
 - (1) One of the most readily available and effective disinfectants is the bleach solution (1-1/2 cups bleach to one (1) gallon water).
 - (2) Use the two bucket system—one bucket to wash the soiled surface and one bucket to rinse as follows:
 - (a) In bucket #1, dip, wring, mop up vomitus, blood.
 - (b) Dip, wring and mop once more.
 - (c) Dip, wring out mop in bucket #1.
 - (d) Put mop into bucket #2, (rinse bucket) that has clean disinfectant (such as Lysol, bleach solution).
 - (e) Mop or rinse area.
 - (f) Return mop to bucket #1, to wring out. This will keep rinse bucket clean for second spill in the area.
 - (g) After all spills are cleaned up, proceed with #3.

- (3) Soak mop in the disinfectant after use.
 - (4) Disposable cleaning equipment and water should be placed in a toilet or plastic bag as appropriate.
 - (5) Rinse non-disposable cleaning equipment (dust pans, buckets) in disinfectant.
 - (6) Dispose disinfectant solution down a drain pipe. Flush with water.
 - (7) Remove gloves, if worn, and discard in appropriate receptacle.
 - (8) Wash hands as described in #2.
4. For Non-Washable Surfaces (rugs, upholstery)
- a. Apply sanitary absorbing agent, let dry, vacuum.
 - b. If necessary, use broom and dust pan to remove solid materials.
 - c. Apply rug or upholstery shampoo as directed. Revacuum according to directions on shampoo.
 - d. If a sanitizing carpet cleaner only available by water extraction method is used, follow the directions on the label.
 - e. Clean dustpan and broom, if used. Rinse in disinfectant solution.
 - f. Air dry.
 - g. Wash hands as described in #2.
5. For soiled washable materials (clothing, towels, diapers, etc.)
- a. Rinse item under running water using gloved hands, if appropriate.
 - b. Place item in plastic bag and seal until item is washed. Plastic bags containing soiled, washable material must be clearly identified if outside laundry service is used.
 - c. Wash hands as described in #2.
 - d. Wipe sink with paper towels, discard towels.
 - e. Wash soiled items separately, washing and drying as usual.
 - f. If material is bleachable, add 1/2 cup bleach to the wash cycle. Otherwise, add 1/2 cup non-chlorine bleach (Clorox II, Borateem) to the wash cycle.
 - g. Discard plastic bag.
 - h. Wash hands as described in #2, after handling soiled items.
6. Daily use items - disposable diapers, bibs.
- a. Wear disposable gloves.
 - b. Place soiled diaper/bib in plastic bag.
 - c. Continue wearing gloves while cleaning the child, then discard into the plastic bag. Close bag.
 - d. At end of day, place plastic bag containing soiled diapers/bibs, etc., inside a clean plastic bag. Label and dispose of as in item 1.d.

TABLE 1

TRANSMISSION CONCERNS IN THE SCHOOL SETTING
 BODY FLUID SOURCES OF INFECTIOUS AGENTS

<u>BODY FLUID SOURCE</u>	<u>ORGANISM OF CONCERN</u>	<u>TRANSMISSION CONCERN</u>
Blood cuts/abrasions nosebleeds menses contaminated needle	Hepatitis B. Virus AIDS Virus Cytomegalovirus Syphilis	Bloodstream inoculation through cuts/abrasions on hands, rectum, vagina Direct blood stream inoculation
*Feces incontinence	Salmonella Bacteria Shigella Bacteria Rotavirus Hepatitis A Virus Hepatitis B Virus	Oral inoculation from contaminated hands
*Urine incontinence	Cytomegalovirus	Bloodstream, oral and mucus membrane inoculation from hands
*Respiratory Secretions	Mononucleosis Virus Common Cold Virus Influenza Virus	Oral inoculation from contaminated hands
*Saliva	Hepatitis B Virus	Bloodstream Inoculation through bites
*Vomit	Gastrointestinal virus, e.g., (Norwalk agent Rotavirus)	Oral inoculation from contaminated hands
Semen	Hepatitis B Virus AIDS Virus Gonorrhea Syphilis	Sexual Contact

*Possible transmission of AIDS is currently thought to be of little concern from these sources.