

**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE 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: W. Va. Constitution, Article XII, §2, W.Va. Code §§16-3-14, 17B-2-3, 17B-2-5, 18-2-5, 18-5-15, 18-8-1, 18-8-2, 18-8-3, 18-8-4, 18-8-5, 18-8-11 and Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.)

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 81

TITLE OF RULE BEING AMENDED: Attendance (4110)

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

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 December 11, 2009 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Dr. Fran Warsing

Office of Institutional Education Programs

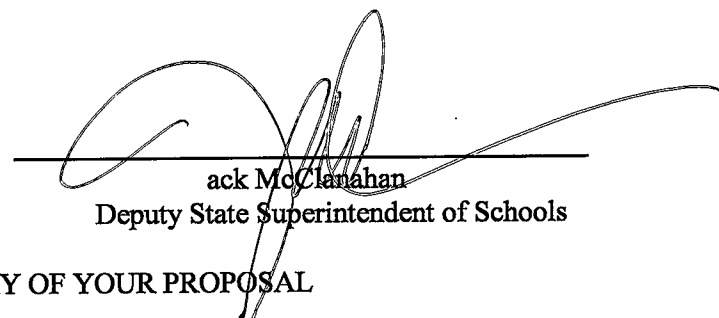
West Virginia Department of Education

Capitol Building 6, Room 728

1900 Kanawha Boulevard, East

Charleston, West Virginia 25305-0330

THE ISSUES TO BE HEARD WILL BE LIMITED TO Section 5.3.3.d OF THIS PROPOSED RULE.


Mack McClanahan
Deputy State Superintendent of Schools

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**EXECUTIVE SUMMARY
WEST VIRGINIA OF EDUCATION**

Policy Number and Title: Policy 4110, Attendance

Background:

At any given time there are approximately 2,500 to 3,000 children in out-of-home care, generally referred to as foster care, in West Virginia. In response to concerns raised regarding the educational status of these children, the West Virginia Department of Education revised Policy 4110, Attendance in August, 2009.

Purpose:

The purpose of this Board item is to receive approval of Section 5.3.3.d. which states ; "A student whose educational services are guided by an existing SAT plan, IEP or 504 Plan may warrant special consideration when a pattern of multiple single or chronic absences exist. The child's current status should be reviewed by the SAT, IEP, or 504 Team as deemed appropriate and in accordance with state and federal laws."

Impact:

No impact.

Action:

It is requested that Policy 4110, at Section 5.3.3.d., be placed on public comment for 30 days.

Stakeholders Listing:

Fran Warsing, Superintendent of Institutional Education Programs, WVDE
Patricia Lucas, Coordinator of Education of Homeless and Attendance, WVDE
Jan Barth, Special Assignment, Curriculum and Instruction, WVDE
Lynn Boyer, Executive Director of Special Programs, Extended and Early Learning, WVDE
Melanie Purkey, Executive Director, Student Services and Health Promotion, WVDE
Rebecca King, Office of Healthy Schools, WVDE

Kathy Green, Parent of Boone County Child

India Hosch, Raleigh County School Nurse
Jim Kirby, Harrison County Attendance Director
Sherry Woods, Cabell County Attendance Director
Eddie Ivy, Kanawha County Attendance Director
Sandra Boggs, Kanawha County Special Education Director
Ruth Isaacs, Kanawha County School Nurse
Glenn Sweet, Barbour County Attendance Director

Mary Poling, Chairperson for House Education
Carrie Webster, Chairperson for House Judiciary
Mark Hunt, Kanawha County Delegate
David Mohn, House Education

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TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION
SERIES 81
ATTENDANCE (4110)

OFFICE OF THE CLERK
WEST VIRGINIA
SECRETARY OF STATE

§126-81-1. General.

1.1. Scope. - This rule provides guidelines for the development of local county attendance policies.

1.2. Authority. - West Virginia Constitution, Article XII, §2, W. Va. Code §§16-3-14, 17B-2-3, 17B-2-5, 18-2-5, 18-5-15, 18-8-1, 18-8-2, 18-8-3, 18-8-4, 18-8-5, 18-8-11 and Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) (hereinafter McKinney-Vento Act).

1.3. Filing Date. - ~~August 14, 2009~~

1.4. Effective Date. - ~~September 14, 2009~~

1.5. Repeal of Former Rule. - This legislative rule amends W. Va. 126CSR81 West Virginia Board of Education (hereinafter WVBE) Policy 4110, Attendance, filed April 11, 2008 August 14, 2009 and effective May 12, 2008 September 14, 2009.

§126-81-2. Rationale.

2.1. The WVBE recognizes that a direct relationship exists between students' daily school attendance and academic performance, graduation, and good work habits. This attendance policy promotes students' daily school attendance. Each county shall be required to develop and implement a county attendance policy in accordance with this policy. Daily attendance is necessary for students to meet their schools' academic program standards as each day's learning builds on the work previously completed. While students and parents/guardians have the ultimate responsibility for daily school attendance, the laws of West Virginia require school administrators to enforce compulsory school attendance, and to provide an environment conducive to, and encouraging of, attendance.

§126-81-3. Policy Development.

3.1. Each county must provide for input from teachers, principals, attendance directors, parents/guardians, and community leaders when developing or revising the

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attendance policy. Counties are to conduct an annual attendance evaluation to determine the effectiveness of the policy. County policies will be reviewed by on-site review teams to ensure compliance with this policy.

§126-81-4. Definitions.

4.1. Absence - Not being physically present in the school facility for any reason.

4.2. Allowable Deductions for Schools - Absences that result from school-approved curricular/co-curricular activities; failure of the bus to run/hazardous conditions; excused student absences; students not in attendance due to disciplinary measures; and absent students for whom the attendance director has pursued judicial remedies to compel attendance (filed a criminal complaint or juvenile petition) due to provisions in W. Va. Code §18-8-4.

4.3. Attendance - For statistical purposes, attendance will be reported and aggregated to the nearest half day according to the definitions in sections 4.3.1. and 4.3.2.

4.3.1. Full-day attendance means being present at least .74 of the school day.

4.3.2. Half-day attendance means being present at least .50 of the school day.

4.4. Attendance Rate - The number of days present divided by the number of days of membership, multiplied by one hundred, equals attendance rate for students on the attendance registers in grades K-12.

4.5. Awaiting Foster Care Placement - Any child or youth who: 1) is in the custody of the West Virginia Department of Health and Human Resources, 2) has been placed in out-of-home care, and 3) is not in a permanent placement. This includes, but is not limited to, children and youth in family foster care, kinship care, emergency shelter care or in a residential group home.

4.6. Dropout - A dropout is an individual who:

4.6.1. was enrolled in school at some time during the previous school year and was not enrolled on October 1 of the current school year; or

4.6.2. was not enrolled on October 1 of the previous school year although expected to be in membership (i.e., was not reported as a dropout the year before); and

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4.6.3. has not graduated from high school, obtained a General Educational Development Certificate (hereinafter GED) diploma, or completed a state- or district-approved education program; and

4.6.4. does not meet any of the following exclusionary conditions:

a. transfer to another public school district, private school, registered home school, or state- or district-approved education program;

b. temporary school-recognized absence due to suspension or illness; or

c. death.

4.7. Dropout Date - For students of compulsory school attendance age or older, the dropout date is defined as the school day after the student's last day of attendance.

4.8. Enrollment - A student is officially enrolled when one of the following conditions occur:

4.8.1. student was enrolled the previous year;

4.8.2. student appears at school to enroll with or without a parent/guardian; or

4.8.3. student and/or parent/guardian appears at school to enroll with or without records.

4.9. Enrollment Count - A status count that reports the number of students on the attendance register as required by the West Virginia Department of Education (hereinafter WVDE).

4.10. Excused Student Absences - Absences that result from school-approved curricular/co-curricular activities; failure of the bus to run/hazardous conditions, SAT Plan, IEP or 504 Plan and other county board approved excused absences.

4.10.1. "Documented chronic medical condition" means any physical or mental condition that may require multiple or regular absences. This condition must be documented annually with a valid physician's note that explains the condition and anticipated impact on attendance. The necessity for the absences must be approved and reviewed quarterly by the SAT, IEP or 504 team (See §5.3.3.d). Such absence(s) shall be considered an allowable deduction for purposes of §126-81-5.2 of this policy.

4.10.2. "Documented disability" means any mental or physical impairment

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that substantially limits one or more major life activities and is documented annually with a valid physician's note that explains the disability and anticipated impact on attendance. The necessity for the absences must be approved and reviewed quarterly by the SAT, IEP, or 504 team (See §5.3.3.d). Such absence(s) shall be considered an allowable deduction for purposes of §126-81-5.2 of this policy.

4.11. Homeless Children and Youths - as defined in the McKinney-Vento Act means individuals who lack a fixed, regular, and adequate nighttime residence and includes:

4.11.1. children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

4.11.2. children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

4.11.3. children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

4.11.4. migratory children who qualify as homeless because the children or youth are living in circumstances as described in the above descriptions.

4.12. Membership Days - The days present plus the days absent.

4.13. School of Origin - As defined in the McKinney-Vento Act is the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled.

4.14. Transfer - A process by which a student ends enrollment or attendance in one location and begins enrollment or attendance in a second location (e.g., within a county, between counties, or out-of-state). This can be evidenced through a transcript request or other documentation that the student is continuing elementary or secondary education.

§126-81-5. Responsibility.

5.1. The WVBE has the responsibility to encourage daily attendance and mandate that county school systems adequately address student absences including tardiness.

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5.2. The WVBE has responsibility for defining allowable deductions for purposes of state attendance reports and statistics. Schools shall not be held accountable for absences resulting from allowable deductions. These absences shall not be calculated in the school's/county's attendance rate.

5.3. Each county board of education shall:

5.3.1. employ a certified county director of school attendance as required by W. Va. Code §18-8-3.

5.3.2. support and require the county attendance director to implement and execute the duties as defined in W. Va. Code §18-8-4:

a. The county attendance director and his/her assistants shall diligently promote regular school attendance. They shall ascertain reasons for absences from school of students of compulsory school age and students who remain enrolled beyond the compulsory school age birthday.

b. In the case of five consecutive or ten total unexcused absences of a child during a school year, the attendance director or his/her assistant shall serve written notice to the parent, guardian, or custodian of such child that the attendance of such child at school is required and that within the time frame as specified in W. Va. Code §18-8-4(b) of receipt of the notice the parent, guardian, or custodian, accompanied by the child, shall report in person to the school the child attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the unexcused absences of the child.

c. If the parent, guardian, or custodian does not comply, then the Attendance director or assistant shall make complaint against the parent, guardian, or custodian before a magistrate of the county.

d. The attendance director shall serve as the liaison for homeless children and youth as defined in W. Va. Code §18-8-4. As defined in McKinney-Vento Act, as the liaison for homeless children and youth, the attendance director is required to:

A. ensure that public notice of the educational rights of students in homeless situations is disseminated where children and youths receive services.

B. ensure that parents or guardians are informed of educational and related opportunities available to their children, and are provided with meaningful opportunities to participate in the education of their children.

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C. ensure that parents or guardians are informed of, and assisted in accessing, all transportation services for their children, including to the school of origin.

D. help unaccompanied youth choose and enroll in a school, after considering the youth's wishes, and provide the youth with notice of his or her right to appeal the school district's decision.

E. immediately assist in obtaining immunizations or record of immunizations or other medical records for those students who do not have them, and assure that students are enrolled in school while the records are being obtained.

F. ensure that homeless children and youths are identified by school personnel and through coordination activities with other entities and agencies.

G. ensure that homeless children and youths enroll in, and have a full and equal opportunity to succeed in, schools of that local educational agency.

H. ensure that homeless families, children, and youths receive educational services for which such families, children, and youths are eligible, including Head Start and Even Start programs and preschool programs administered by the local educational agency, and referrals to health care services, dental services, mental health services, and other appropriate services.

I. ensure that enrollment disputes are mediated as outlined in Paragraph (3)(E) of the McKinney-Vento Act.

e. The attendance director shall file with the county superintendent and county board of education, at the close of each month, a report showing activities of the school attendance office and the status of attendance in the county at the time due to provisions in W. Va. Code §18-8-4.

5.3.3. support and require the school principal to implement and execute the duties as defined in W. Va. Code §18-8-5:

a. The principal shall compare school numbers with school enrollment monthly.

b. The principal shall contact any parent, guardian, or custodian of the student and hold a meeting with such person and the student when the enrolled student has accumulated five unexcused absences from attendance.

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c. It shall be the duty of the principal, administrative head, or other chief administrator of each school, whether public or private, to make prompt reports to the county attendance director, or proper assistant, of all cases of unexcused absences arising within the school which require the services of an attendance worker.

d. A student whose educational services are guided by an existing SAT plan, IEP or 504 Plan may warrant special consideration when a pattern of multiple single or chronic absences exist. The child's current status should be reviewed by the SAT, IEP, or 504 Team as deemed appropriate and in accordance with state and federal laws.

5.4. Each parent, guardian, or custodian be responsible for fully cooperating in and completing the enrollment process by providing: immunization documentation (W. Va. Code §16-3-4), copy of a certified birth certificate or affidavit (W. Va. Code §18-2-5c), signed suspension and expulsion document (W. Va. Code §18-5-15), and any other documents required by federal, state, and/or local policies or code.

§126-81-6. County Attendance Policy Components.

6.1. Each county's attendance policy shall address the following components:

6.1.1. Philosophy: A philosophy declaring the board's intent to increase attendance by:

a. creating a positive safe environment conducive to learning and committed to helping students develop responsibility, self-discipline, and other good work habits.

b. developing a system enlisting parental/guardian support for daily school attendance by students.

6.1.2. Principles of Operation: County school districts are responsible for:

a. appointing a designated school attendance coordinator (principal, or designee) who collects classroom attendance data and makes appropriate referrals to the county attendance director.

b. reporting student attendance information which reflects the allowable deductions as defined by the WVBE.

c. defining excused and unexcused absences in compliance with W. Va. Code §18-8-1 and §18-8-2 and attendance in W. Va. 126CSR42, WVBE Policy

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2510, Assuring the Quality of Education: Regulations for Education Programs (hereinafter Policy 2510); provided, however, that no county may require more than a parental excuse for absences resulting from a documented chronic medical condition or a documented disability as defined in §126-81-4.10.1 and §126-81-4.10.2 of this policy.

d. defining extenuating circumstances for absences which may require home/hospital instruction.

e. setting reasonable preventive measures and consequences for student tardiness.

f. submitting each revision of the county attendance policy to the WVDE for approval.

g. assuring that a student may not be suspended solely for failure to attend class. Other methods of discipline may include, but are not limited to, detention, extra class time, or alternative class settings.

h. reporting all school dropouts to the WVDE.

6.1.3. Development of Processes and Procedures: County school districts are responsible for:

a. developing a process to notify students and their parents/guardians of the county attendance policy and their responsibility and accountability for regular school attendance.

b. developing procedures and reasonable timelines requiring students with excused and unexcused absences to make up school work.

c. requiring a student maintain satisfactory attendance (satisfactory being defined as no unexcused absences) during one complete semester following the revocation of his/her driver's license. (Refer to §126-81-7.)

d. developing an attendance appeal process for students and parents/guardians.

6.1.4. Maintenance of Records: Accurate attendance records and related documentation shall be maintained for every student enrolled in public school.

a. An up-to-date daily register/record of attendance for every student must be maintained.

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b. There must be written procedures for 1) notifying parents/guardians about absences, 2) monitoring absences, and 3) notifying the county attendance director.

c. Students who are physically absent from school must be documented as absent. This record may become a legal document.

6.1.5. Preventive and Corrective Measures: Designed to meet the developmental needs of students, preventive and corrective measures should include:

a. developing preventive and educational procedures including incentives, to maintain and improve attendance and reduce tardiness.

b. procedures for notification of parents/guardians of absences and procedures for securing parent/guardian involvement to improve student attendance.

c. procedures for providing adequate counseling for problems related to attendance.

d. procedures for interagency involvement.

e. alternative plans and programs that are positive in nature and encourage improved school attendance.

f. assurances that students with a pattern of excessive absenteeism are referred to appropriate student assistance teams/programs (Policy 2510 and W. Va. 126CSR13, WVBE Policy 2320, Process for Improving Education: Performance Based Accreditation System) for appropriate intervention(s), and that these interventions have been reviewed to determine effectiveness.

§126-81-7. School attendance as condition of licensing for privilege of operation of motor vehicle.

7.1. Any student at least fifteen, but less than eighteen years of age, who is properly enrolled in a West Virginia public school, or who is a West Virginia resident enrolled in an out-of-state school, or who is properly enrolled in an Exemption A, B, or K non-public school may request from the attendance director or chief administrator of the appropriate school system documentation of enrollment/attendance status. This documentation must be provided on a form approved by the WVDE for presentation to the West Virginia Division of Motor Vehicles (hereinafter WVDMV) when making application for, or reinstatement of, an instruction permit or license to operate a motor vehicle.

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7.2. In accordance with the provisions of W. Va. Code §17B-2-3 and §17B-2-5, the WVDVM shall deny a license or instruction permit for the operation of a motor vehicle to any person under the age of eighteen who does not at the time of application present a diploma or other certificate of graduation issued to the person from a secondary high school of this state or any other state, or documentation that the person: (1) is enrolled and making satisfactory progress in a course leading to a GED from a state approved institution or organization, or has obtained such certificate; (2) is enrolled in a secondary school of this state; (3) is a West Virginia resident enrolled in an out-of-state school; (4) is excused from such requirement due to circumstances beyond his or her control; or (5) is enrolled in an institution of higher education as a full-time student in this state or any other state.

7.3. No later than five days after following appropriate due process from the date of withdrawal, the attendance director or chief administrator of the school system shall notify the WVDMV of the withdrawal from school of any student fifteen years of age, but less than eighteen years of age, except as provided in W. Va. Code §18-8-11(d).

7.4. For the purposes of this section and pursuant to W. Va. Code §18-8-11, withdrawal is defined as more than ten consecutive, or fifteen days total, unexcused absences during a school year. Suspension or expulsion from school or imprisonment in a jail or a West Virginia correctional facility is not a circumstance beyond the control of the person. If suspended, the WVDMV may not reinstate a license before the end of the semester following that in which the withdrawal occurred.

7.5. If a student's withdrawal from school is beyond the control of the student and such student is applying for a license, the attendance director or chief administrator of the school system shall provide the student with documentation to present to the WVDMV to excuse the student from the provisions of W. Va. Code §18-8-11(d). The school district superintendent (or the appropriate school official of any private secondary school), with the assistance of the county attendance director or any other staff or school personnel, shall be the sole judge of whether such withdrawal is due to circumstances beyond the control of such person.

§126-81-8. 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.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Attendance – Policy 4110

Type of Rule: Legislative Interpretive Procedural

Agency: WV Department of Education/Office of Institutional Education Programs

Address: 1900 Kanawha Boulevard, Building 6 Room 728

Charleston, WV 25305

Phone Number: 304-558-8833 Email: fwarsing@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.

No state costs or revenues will be impacted by the proposed amendment of W. Va. 126CSR81, Policy 4110: Attendance.

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.

Effect of Proposal	FISCAL YEAR		
	Current Increase/Decrease (use "-" for decrease)	Next Increase/Decrease (use "-" for decrease)	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: W. Va. 126CSR81, Policy 4110: Attendance

Rule Title: W. Va. 126CSR81, Policy 4110: Attendance

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

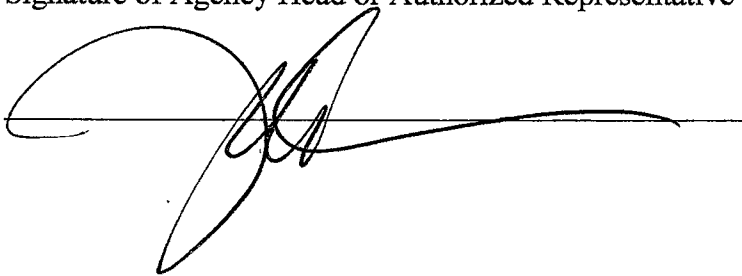
No state costs or revenue will be impacted by the proposed amendment of W. Va. 126CSR81, Policy 4110: Attendance.

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.

The purpose of this amendment is to receive approval for Section 5.3.3.d.

Signature of Agency Head or Authorized Representative



Date

10-9-09

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POLICY 4110: Attendance

COMMENT PERIOD ENDS: December 11, 2009

COMMENT RESPONSE FORM

The following form is provided to assist those who choose to comment on Policy 4110: Attendance. Additional sheets may be attached, if necessary.

Name : _____ Organization: _____

Title: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Please check the box below that best describes your role.

- | | | |
|---|--|--|
| <input type="checkbox"/> School System Superintendent | <input type="checkbox"/> School System Staff | <input type="checkbox"/> Parent/Family |
| <input type="checkbox"/> Principal | <input type="checkbox"/> Teacher | <input type="checkbox"/> Business/Industry |
| <input type="checkbox"/> Professional Support Staff | <input type="checkbox"/> Service Personnel | <input type="checkbox"/> Community Member |

COMMENTS/SUGGESTIONS

§126-81-5 - Responsibility – 5.3.3.d.

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Please direct all comments to:

Frances F. Warsing, Superintendent
Office of Institutional Education Programs
West Virginia Department of Education
Capitol Building 6, Room 728
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
E-Mail Address: rmahan@access.k12.wv.us
Fax No.: (304) 558-5042