

WEST VIRGINIA
SECRETARY OF STATE

BETTY IRELAND

ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark in this Box

2008 FEB 14 AM 10: 07

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 March 17, 2008 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Matthew Kittle, Superintendent

Office of Institutional Education Programs

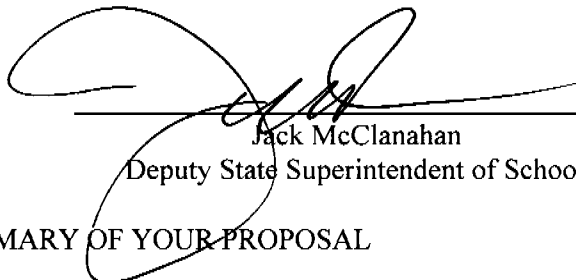
West Virginia Department of Education

Capitol Building 6, Room 728

1900 Kanawha Boulevard, East

Charleston, West Virginia 25305-0330

THE ISSUES TO BE HEARD WILL BE LIMITED TO **Section 4.5** OF THIS PROPOSED RULE.



Jack McClanahan
Deputy State Superintendent of Schools

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$5.20

**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 formed a West Virginia Out-of-Home Care Education Task Force in 2004. The Task Force found that a large number of West Virginia children in out-of-home care are seriously behind in educational achievement and a number of barriers persist in limiting their receipt of full access to public education. Findings and recommendations of the Task Force were documented in a report submitted to the West Virginia Board of Education in September 2005 entitled *Reaching Every Child: Addressing Educational Attainment of Out-of-Home Care Children in West Virginia*. The work of the Task Force has been continued via the recent formation of an implementation group called the Out-of-Home Care Education Advisory Committee. The proposed revision of Policy 4110 is a recommendation of the Advisory Committee to define the phrase "awaiting foster care placement" to ensure that eligible West Virginia children in out-of-home care are covered under Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11431 et seq.) (hereinafter McKinney-Vento Act).

The McKinney-Vento Act guarantees access to school and a meaningful opportunity for educational success to children and youth covered under the Act. The Act covers children and youth "who lack a fixed, regular, and adequate nighttime residence", specifically including children and youth "awaiting foster care placement." The McKinney-Vento Act does not define the phrase "awaiting foster care placement." In its Non-Regulatory Guidance, the U.S. Department of Education does not define the term either, addressing the issue only briefly to suggest that local education liaisons should confer and coordinate with local public social service agency providers in determining how best to assist children and youth who are awaiting foster care placement. It has therefore been left up to states to define this terminology.

Purpose:

The purpose of this Board item is to present a revision of Policy 4110 to include a definition of "awaiting foster care placement" under Section 4.5 and request that this revision be placed on public comment for thirty days. The definition will ensure that children in interim social service placements have protections under the McKinney-Vento Act as administered through Policy 4110. Children in interim social service placements

have been found to encounter the kinds of barriers to educational access and success that the McKinney-Vento Act was designed to eliminate.

Major Revisions:

- Section 4.5 was added to define “awaiting foster care placement.” This addition will serve to clarify who is covered under this terminology in West Virginia under the McKinney-Vento Act and Policy 4110.
- The definition of “awaiting foster care placement” includes 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 in family foster care, kinship care, emergency shelter care or in a facility used to provide treatment services.

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

2006 FEB 14 AM 10:37

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. - ~~April 14, 2006.~~

1.4. Effective Date. - ~~July 1, 2006.~~

1.5. Repeal of Former Rule. - This legislative rule amends W. Va. 126CSR81 West Virginia Board of Education (hereinafter WVBE) Policy 4110, Attendance, filed ~~November 14, 2003~~ April 14, 2006 and effective ~~December 14, 2003~~ July 1, 2006.

§126-81-2. Rationale.

2.1. The ~~West Virginia Board of Education~~ (hereinafter 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 facility used to provide treatment services.

4.56. Dropout - A dropout is an individual who:

4.56.1. 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

4.56.2. 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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4.56.3. 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

4.56.4. 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.

4.67. 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.

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

4.78.1. student was enrolled the previous year;

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

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

4.89. 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).

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

4.1011. Homeless Children and Youths - as defined in ~~Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.)~~ means individuals who lack a fixed, regular, and adequate nighttime residence and includes:

4.1011.1. 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

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accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

4.1011.2. 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;

4.1011.3. children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

4.1011.4. migratory children who qualify as homeless because the children or youth are living in circumstances as described in the above descriptions.

4.1112. Membership Days - The days present plus the days absent.

4.1213. School of Origin - As defined in ~~Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.)~~ is the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled.

4.1314. 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.

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:

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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 ~~Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.)~~, 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.

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.

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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 ~~Subtitle B of Title VII~~ of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.).

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.

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.

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.

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§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 WVDE.

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 2510, Assuring the Quality of Education: Regulations for Education Programs (hereinafter Policy 2510).

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.

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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 Section 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.

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.

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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 WVDVMV) when making application for, or reinstatement of, an instruction permit or license to operate a motor vehicle.

7.2. In accordance with the provisions of W. Va. Code §17B-2-3 and §17B-2-5, the WVDVMV 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 WVDVMV 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

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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: **W. Va. 126CSR81 Policy 4110: Attendance**
Type of Rule: X Legislative Interpretive Procedural
Agency: West Virginia Board of Education
Address: Capitol Building 6, Room 351
 1900 Kanawha Boulevard, East
 Charleston, West Virginia 25305
Phone Number: 304.558.8830 Email: rmkittle@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.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	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 revenues will be impacted by the proposed amendment of W. Va. 126CSR81, Policy 4110: Attendance.

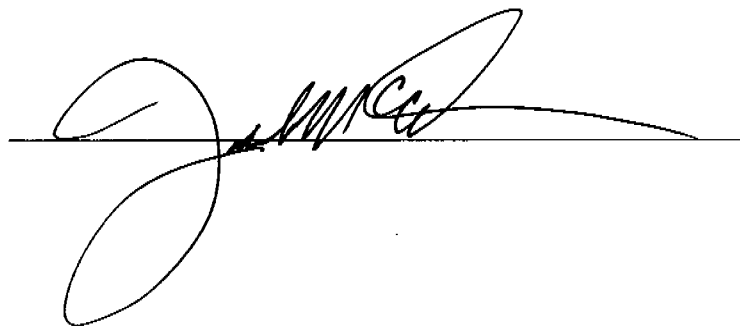
MEMORANDUM

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.

No state costs or revenues will be impacted by the proposed amendment of W. Va. 126CSR81, Policy 4110: Attendance. The proposed policy amendment will ensure that 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 will have protections under the McKinney-Vento Act as administered through Policy 4110. Children in interim social service placements have been found to encounter the kinds of barriers to educational access and success that the McKinney-Vento Act was designed to eliminate. The McKinney-Vento Act guarantees access to school and a meaningful opportunity for educational success to children and youth covered under the Act. The Act covers youth "who lack a fixed, regular, and adequate nighttime residence," specifically including children and youth "awaiting foster care placement."

Signature of Agency Head or Authorized Representative

Date

A handwritten signature in black ink, appearing to be "MRC", written over a horizontal line.

1-28-08

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POLICY4110: Attendance

COMMENT PERIOD ENDS: March 17, 2008

COMMENT RESPONSE FORM

The following form is provided to assist those who choose to comment on section 4.5 of 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

§126-81-4.5. Awaiting Foster Care Placement.

Please direct all comments to:

Mr. Matthew Kittle, 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