

WEST VIRGINIA
SECRETARY OF STATE

JOE MANCHIN III

ADMINISTRATIVE LAW DIVISION

Form #2

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2003 SEP 19 A 11:17

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, 18-8-4, 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 October 23, 2003 AT 4:45 p.m.. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Lisa Burton, Coordinator

Office of Student Services & Health Promotion

West Virginia Department of Education

Capitol Building 6, Room 309

1900 Kanawha Boulevard, East

Charleston, West Virginia 25305-0330

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



Steven L. Paine
Deputy State Superintendent of Schools

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**EXECUTIVE SUMMARY
WEST VIRGINIA DEPARTMENT OF EDUCATION**

**POLICY 4110
ATTENDANCE**

BACKGROUND:

The Legislature amended West Virginia Code §18-8-4, by Senate Bill 522, to set forth student absences that shall be excluded for accountability purposes. "The absences shall include 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 to the extent of his or her authority". This policy should remain aligned with Policy 2510 which defines which absences will count in the calculation with attendance and with Policy 2320 which states accountability measures for attendance.

PROPOSALS:

Revisions to Policy 4110 are being recommended due to federal and state legislation changes. West Virginia Code §18-8-4, required changes be made to the allowable deductions for accountability purposes. Specifically, sections 4.1., 4.2., 4.10 were deleted, and section 5.3.2.e was revised. West Virginia Code §18-8-11 required changes be made to the driver's license law, see specifically section 7.4. Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.), required the addition of the definition of homeless children and youth and school of origin, see specifically sections 4.10 and 4.12. The attendance director's duties as the liaison for homeless children and youth were revised due to the federal legislation changes, see specifically sections 5.3.2.d. A new definition was added, section 4.9., to define excused student absences. Grammatical revisions were made throughout the policy.

IMPACT:

The impact regarding the revisions to Policy 4110 due to changes in state legislation requirements regarding allowable deductions for accountability purposes should allow all schools to meet adequate yearly progress for attendance. The proposed revisions due to federal legislation regarding homeless students will greatly impact the understanding and services provided for these students.

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

2003 SEP 19 A 11: 17

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§126-81-1. General.

1.1. Scope. - These rules provide 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.).

1.3. Filing Date. - ~~June 7, 2002.~~

1.4. Effective Date. - ~~July 7, 2002.~~

1.5. Repeal of Former Rule. - This legislative rule ~~repeals and replaces~~ revises W.Va. 126CSR81 "County Attendance Policy" filed ~~August 13, 1998~~ June 7, 2002 and effective ~~September 12, 1998~~ July 7, 2002.

§126-81-2. Rationale.

2.1. The West Virginia Board of Education 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, and community leaders when developing or revising the attendance policy. Counties are to conduct an annual attendance evaluation to determine the effectiveness of the policy. County

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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. ~~Absences resulting from the suspension of a student due to provisions in W. Va. Code §18A-5-1a(c) for which W. Va. Code provides that the pupil may be suspended shall be calculated in the school's/county's attendance rate. Under this section of W. Va. Code, a principal may suspend a student who has (1) threatened to injure, or in any manner injured, a pupil, teacher, a dministrator or other school personnel; (2) willfully disobeyed a teacher; (3) possessed alcohol in an educational facility, on school grounds, a school bus or any school-sponsored function; (4) used profane language directed at a school employee or a pupil; (5) intentionally defaced any school property; (6) participated in any physical altercation with another person while under the authority of school personnel; (7) habitually violated school rules or policies.~~

4.2. Allowable ~~d~~Deductions for Schools- Absences that result from school-approved curricular/co-curricular activities; failure of the bus to run/hazardous conditions; ~~and absences resulting from the suspension of a student due to a "Safe Schools violation.";~~ 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 4.3.1. and 4.3.2.

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

4.3.2. Half-day attendance is being present at least .26 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 classes K-12.

4.5. Dropout - A dropout is an individual who:

4.5.1. 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

4.5.2. 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

4.5.3. has not graduated from high school, obtained a GED diploma, or completed

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a state- or district-approved education program; and

4.5.4. 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.

4.6. Dropout Date - For students of ages 16 or older, the dropout date is defined as the school day after the student's last day of attendance.

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

- 4.7.1. student was enrolled the previous year;
- 4.7.2. student appears at school to enroll with or without a parent/guardian; or
- 4.7.3. student and/or parent/guardian appears at school to enroll with or without records.

4.8. Enrollment Count - A status count that reports the number of students on the attendance register as required by the West Virginia Department of Education.

4.9. 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.

4.10. Homeless Children and Youth - as defined in Subtitle B of the title VII of 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:

4.10.1. 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;

4.10.2. 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;

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

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

4.9. 4.11. Membership Days - The days present plus the days absent.

~~4.10. "Safe Schools violation" - A violation by a student of any of the provisions in §18A-5-1a for which W.Va. Code requires that a pupil shall be suspended (i.e., possession of deadly weapons or controlled substances on the premises of an educational facility, or assault and battery committed by a student upon a teacher or other school personnel).~~

4.12. 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.

~~4.11.~~ 4.13. 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 West Virginia Board of Education has the responsibility to encourage daily attendance and mandate that county school systems adequately address student absences including tardies.

5.2. The West Virginia ~~Department~~ Board of Education has the responsibility of defining allowable deductions for purposes of state attendance reports and statistics. Absences resulting from allowable deductions shall not be calculated in the school's/county's attendance rate for accountability.

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

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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 sixteenth 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 ten days 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 ~~H. R. 1 (No Child Left Behind)~~ 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:

(1) ensure that public notice of the educational rights of students in homeless situations is disseminated where children and youth receive services.

(2) 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.

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

(4) 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.

(5) 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.

(6) ensure that homeless children and youth are identified by school personnel and through coordination activities with other entities and agencies.

(7) ensure that homeless children and youths enroll in, and have a full

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and equal opportunity to succeed in, schools of that local educational agency.

(8) 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.

(9) 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 shall have the responsibility of 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

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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 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 West Virginia Department of Education.

c. defining excused and unexcused absences in compliance with W.Va. Code §18-8-1 and §18-8-2 and attendance in W.Va. 126CSR 42, West Virginia Board of Education Policy 2510, Assuring the Quality of Education: Regulations for Education Programs.

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

e. setting reasonable preventions and consequences for student tardies.

f. submitting each revision of the county attendance policy to the West Virginia Department of Education 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 West Virginia Department of Education.

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.

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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 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.

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 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 educative procedures including incentives to maintain and improve attendance and reduce tardies.

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 (West Virginia Board of Education Policy 2510 and W.Va. 126CSR13, West Virginia Board of Education Policy 2320, Process for Improving Education: Performance Based Accreditation System) for appropriate intervention(s), and that these interventions have been reviewed to determine effectiveness.

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

7.1. Any student at least fifteen years of age, 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 West Virginia Department of Education for presentation to the West Virginia Division of Motor Vehicles 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 West Virginia Division of Motor Vehicles 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 general educational development certificate (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 West Virginia Division of Motor Vehicles 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 shall be is defined as more than ten consecutive, or fifteen days total, unexcused absences during a school year. ~~For the purposes of this section and pursuant to W.Va. Code §18-8-11, suspension or expulsion from school, or imprisonment in a jail or penitentiary, is not a circumstance beyond the control of such person.~~ 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 West Virginia Division of Motor Vehicles 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 West Virginia Division of Motor

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Vehicles 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 WORKSHEET

(Submit 4 Copies)

) _____ DRAFT NO _____ BILL NO _____ RESOLUTION NO _____
 SUBJECT Policy 4110 - Attendance FUND General

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) _____

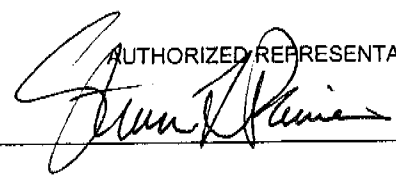
SHOW OVER-ALL EFFECT IN ITEMS 1 AND 2 & GIVE EXPLANATION OF BREAKDOWN BY FISCAL YEAR INCLUDING LONG-RANGE EFFECT

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					
2. ESTIMATED TOTAL REVENUES	0	0	0	0	0

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

DATE
8/18/03

AGENCY
West Virginia Department of Education

AUTHORIZED REPRESENTATIVE


**POLICY 4110
SERIES 81
ATTENDANCE
COMMENT RESPONSE FORM**

Comment Period Ends: October 23, 2003

Please use this form when commenting on proposed Policy 4110. You may attach additional sheets if necessary.

Individual/Organization: _____

Title: _____

Street Address: _____

City/State/Zip Code: _____

§126-81-1. General

§126-81-2. Rationale.

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Comment Response Form
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§126-81-3. Policy Development.

§126-81-4. Definitions.

§126-81-5. Responsibility.

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

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

§126-81-8. Severability.

Please return comments to:

**Lisa Burton, Coordinator
Office of Student Services and Health Promotion
West Virginia Department of Education
Building 6, Room 309, Capitol Complex
1900 Kanawha Boulevard East
Charleston, West Virginia 25305-0330**