

WEST VIRGINIA  
SECRETARY OF STATE

JOE MANCHIN III

ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark in this Box

FILED

2002 APR 19 P 3:46

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. Const., Article XII, § 2, W.Va. Code

§§ 18-2-5, 18-5-15, 18-8-1, 18-8-3, 18-8-4, and 18A-5-1

AMENDMENT TO AN EXISTING RULE: YES  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 May 21, 2002 AT 4:45 p.m.. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Shirley McGraw, Secretary

Office of Student Services and Assessment

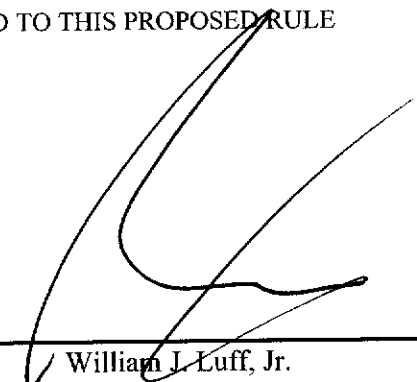
West Virginia Department of Education

Capitol Building 6, Room 722

1900 Kanawha Boulevard, East

Charleston, West Virginia 25305

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



William J. Luff, Jr.  
Deputy State Superintendent of Schools

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED

**EXECUTIVE SUMMARY  
WEST VIRGINIA BOARD OF EDUCATION**

**POLICY 4110  
ATTENDANCE POLICY**

**PUBLIC COMMENT PERIOD ENDS: February 11, 2002 ADOPTED:**

**Background:**

Policy 4110 is the policy that defines and outlines regulations for county school systems to follow when developing and implementing their county attendance policy.

The regulations set forth in Policy 4110 were last revised in August, 1998. West Virginia Constitution, Article XII, §2; W.Va. Code §§18-2-5, 18-5-15, 18-8-1, 18-8-3, 18-8-4 and 18A-5-1 and the West Virginia Board of Education establish the authority for these regulations.

**Major Changes to Policy 4110:**

**1. §126-81-1. General.**

The Authority section includes the addition of the following code cites §18-5-15, §18-8-3, §18-8-4, and §18A-5-1.

**2. §126-81-2. Rationale.**

The Rationale section requires that each county develop and implement a county attendance policy in accordance with this policy.

**3. §126-81-3. Policy Development.**

Policy Development is a new section that states that counties must provide for input from teachers, principals, attendance directors, parent/guardians/custodians, and community leaders when developing or revising the attendance policy.

**4. §126-81-4. Definitions.**

A new section for appropriate attendance definitions has been added to create a common language for use statewide.

- A. Absence (Sec. 4.1.)
- B. Attendance (Sec. 4.2.)
- C. Attendance rate (Sec. 4.3.)
- D. Dropout (Sec. 4.4.)
- E. Dropout date (Sec. 4.5.)
- F. Enrollment (Sec. 4.6.)
- G. Enrollment count (Sec. 4.7.)
- H. Membership days (Sec. 4.8.)
- I. Transfer (Sec. 4.9.)

## **5. §126-81-5. Responsibility.**

The Responsibility section adds and redefines areas of responsibility at the state and county levels.

- A. County school systems will set reasonable limits for student absences including tardies. (Sec. 5.1.)
- B. The West Virginia Department of Education has the responsibility of defining allowable deductions for purposes of state attendance reports and statistics. (Sec. 5.2.)
- C. County board of educations shall support and require the county attendance director to implement and execute the duties as defined in W.Va. Code §18-8-4. (Sec. 5.3.2.)
- D. County board of educations shall support and require school principals to implement and execute the duties as defined in W.Va. Code §18-8-5. (Sec. 5.3.3.)
- E. Each parent/guardian/custodian shall have the responsibility of fully cooperating in and completing the enrollment process. (Sec. 5.4.)

## **6. §126-81-6. Guidelines section has been renamed County Attendance Policy Components.**

The County Attendance Policy Components section replaces the old Guidelines section. This section outlines specifically what county attendance policies need to address. County school districts are responsible for:

- A. Reporting student attendance information which reflects the allowable deductions as defined by the West Virginia Department of Education. (Sec. 6.1.2.b.)
- B. Setting reasonable limits for student tardies. (Sec. 6.1.2.e.)
- C. Assuring that a student may not be suspended solely for failure to attend class in compliance with W.Va. State Code §18A-5-1. (Sec. 6.1.2.g.)
- D. Developing procedures for determining satisfactory attendance for granting the Verification of Attendance/Enrollment Form. (Sec. 6.1.3.d.)
- E. Documenting when students are physically absent from school. Attendance records may become legal documents. (Sec. 6.1.4.c.)
- F. Assurances that students with a pattern of excessive absenteeism are referred to student assistance teams/programs for appropriate intervention(s), and that these interventions have been reviewed to determine effectiveness. (Sec. 6.1.5.f.)

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

The school attendance as condition of licensing for privilege of operation of motor vehicle is a new section that addresses legislation W.Va. State Code §18-8-11. (Sec. 7.1 - 7.5.)

### **Comment Summary**

The comments that were received have been addressed by making minor changes in the wording of the policy for purposes of clarification.

126CSR81

FILED

2002 APR 19 P 3:46

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

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 §§18-2-5, 18-5-15, 18-8-1, 18-8-3, 18-8-4, and 18A-5-1.

1.3. Filing Date. -

1.4. Effective Date. -

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

**§126-81-2. Rationale.**

2.1. 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.

**§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 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 §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, administrator or other school personnel; (2) wilfully 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 deductions - 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."

4.3. Attendance - For statistical purposes, attendance will be reported and aggregated to the nearest half day according to the definitions in 4.2.1. and 4.2.2.

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 a state- or district-approved education program; and

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

## 126CSR81

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

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

4.5.4.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. 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.)

4.11. 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.

## 126CSR81

5.2. The West Virginia Department 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.

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:

5.3.2.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 sixteenth birthday.

5.3.2.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.

5.3.2.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.

5.3.2.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), as the liaison for homeless children and youth, the attendance director is required to:

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

5.3.2.d.(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.

5.3.2.d.(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.

## 126CSR81

5.3.2.d.(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.

5.3.2.d.(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.

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

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

5.3.3.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.

5.3.3.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 by:

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

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

## 126CSR81

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

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

6.1.2.b. reporting student attendance information which reflects the allowable deductions as defined by the West Virginia Department of Education.

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

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

6.1.2.e. setting reasonable limits, preventions and consequences for student tardies.

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

6.1.2.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.

6.1.2.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:

6.1.3.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.

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

6.1.3.c. requiring a student maintain satisfactory attendance during one complete semester following the revocation of his/her driver's license. (Refer to Section 7.)

## 126CSR81

6.1.3.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.

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

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

6.1.4.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:

6.1.5.a. developing preventive and educative procedures including incentives to maintain and improve attendance and reduce tardies.

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

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

6.1.5.d. procedures for interagency involvement.

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

6.1.5.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 Policy 2320, 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 fifteen years of age, but less than eighteen years of age, who is properly

## 126CSR81

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 Department 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 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.

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 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.

**FISCAL NOTE WORKSHEET**  
(Submit 4 Copies)

NO \_\_\_\_\_ DRAFT NO \_\_\_\_\_ BILL NO \_\_\_\_\_ RESOLUTION NO \_\_\_\_\_

SUBJECT Attendance Policy FUND \_\_\_\_\_

SOURCE OF REVENUE:  GENERAL FUND  SPECIAL  OTHER (SPECIFY) \_\_\_\_\_

TYPE OF ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) \_\_\_\_\_

SOME 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-

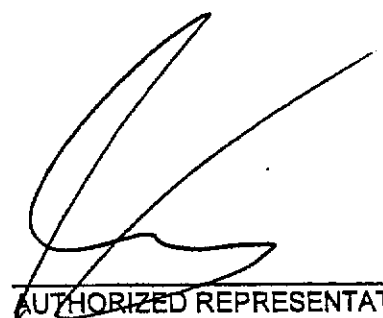
3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

January 10, 2002

DATE

WV Dept. of Education

AGENCY



AUTHORIZED REPRESENTATIVE

**POLICY 4110: ATTENDANCE POLICY  
COMMENT/SUGGESTIONS**

---

---

*Directions: Please use this form in commenting on proposed Policy 4110.*

**Individual/Organization:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_ **City/State Zip:** \_\_\_\_\_

Comments/Suggestions
<b>126-81-1. General</b>
<b>126-81-2. Rationale</b>
<b>126-81-3. Policy Development</b>
<b>126-81-4. Definitions</b>
<b>126-81-5. Responsibility</b>

**Page Two - POLICY 4110: ATTENDANCE POLICY**

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

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

**RETURN COMMENTS BY May 21, 2002 TO:**

Shirley McGraw  
Secretary  
West Virginia Department of Education  
Office of Student Services and Assessment  
Building 6, Room B-722  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0330