

WEST VIRGINIA
SECRETARY OF STATE

BETTY IRELAND

ADMINISTRATIVE LAW DIVISION

Form #2

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2008 JUN -6 PM 1:10

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 §§17B-2-3a, 17B-3-6, 18-2-5, and 18-8-11

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 84

TITLE OF RULE BEING PROPOSED: Student Driver Eligibility Certificate (4150)

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 July 7, 2008 AT 4:00 p.m.. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Patricia Lucas, Coordinator

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 THIS PROPOSED RULE.



Jack McClanahan
Deputy State Superintendent of Schools

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

EXECUTIVE SUMMARY
WEST VIRGINIA DEPARTMENT OF EDUCATION

Policy 4150 - Student Driver Eligibility Certificate

Background: The Legislature amended W. Va. Code §18-8-11 by House Bill 4023, to increase the requirements for driver eligibility. This added satisfactory academic progress and appropriate behavior to the existing attendance requirements. In addition, the bill required the State Board to promulgate rules that would assure uniform implementation across all counties.

Proposals: This is a new policy. Reference to this policy should be included in future revisions to Policy 2510: Assuring the Quality of Education, Regulations for Education Programs; Policy 4110: Attendance; and Policy 4373: Student Code of Conduct.

Impact: The intended impact of this policy is to utilize the privilege of operating a motor vehicle as an incentive for students to demonstrate good attendance, good behavior and satisfactory academic progress leading toward successful completion of high school.

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**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION
SERIES 84
STUDENT DRIVER ELIGIBILITY CERTIFICATE(4150)**

§126-84-1. General.

1.1. Scope. – This rule provides guidelines for the uniform implementation of driver eligibility criteria for students at least fifteen but less than eighteen years of age.

1.2. Authority. – West Virginia Constitution, Article XII, §2, W. Va. Code §§17B-2-3a, 17B-3-6, 18-2-5, and 18-8-11.

1.3. Filing Date. - .

1.4. Effective Date. - .

1.5. Repeal of former Rule. – None. This is a new rule.

§126-84-2. Rationale.

2.1. The West Virginia Board of Education (hereinafter WVBE) recognizes that driving a vehicle is a privilege and that West Virginia Code requires young people at least fifteen but less than eighteen years of age to maintain specified driver eligibility requirements related to school attendance, personal behavior and academic progress in order to obtain and maintain a West Virginia license or instruction permit for the operation of a motor vehicle. While the West Virginia Department of Motor Vehicles (hereinafter WVDMV) has the authority to deny and suspend a license or instruction permit for the operation of a motor vehicle, the West Virginia Code places certain responsibilities on school administrators to identify students who do not meet any or all of the driver eligibility requirements and communicate this information to the WVDMV. The identification of students not meeting the driver eligibility requirements must be done using uniform measures across all of the fifty-five county school districts; the definitions provided in this policy have been designed to assure consistent application of driver eligibility throughout West Virginia.

§126-84-3. Policy Development.

3.1. Each county board of education must incorporate the content of this policy where appropriate within its existing county policies related to attendance, student code of conduct and academic requirements.

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§126-84-4. Definitions.

4.1. Circumstances Outside the Control of the Student – shall include, but not be limited to, medical reasons, familial responsibilities and the necessity of supporting oneself or another. 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 student, and for purposes of this policy, shall be considered an unexcused absence.

4.2. Driver's Eligibility Certificate – documentation provided by the county to the student verifying that the student has met the attendance, behavioral and academic expectations set forth by W. Va. Code §18-8-11 that are required to obtain a license or instruction permit to drive a motor vehicle.

4.3. Satisfactory Academic Progress – attaining and maintaining grades sufficient to allow for graduation and course-work in an amount sufficient to allow graduation in five years or by age nineteen, whichever is earlier (beginning with the completed 2008-09 school year).

4.3.1. This would calculate in the minimum annual earning of five credits to allow graduation in five years based on the graduation requirements set forth in §126CSR42 WVBE Policy 2510: Assuring the Quality of Education, Regulation for Education Programs.

4.3.2. Three of the five credits earned annually must be from the core requirements identified in W. Va. §126CSR42 WVBE Policy 2510: Assuring the Quality of Education, Regulation for Education Programs.

4.4. Withdrawal – for the purpose of driver's license eligibility, withdrawal is defined as the following reasons for which the county shall deny or revoke a Driver's Eligibility Certificate from any student at least fifteen but less than eighteen years of age:

4.4.1. More than ten consecutive or fifteen total days unexcused absences during a school year.

4.4.2. Suspension pursuant to W. Va. Code §18A-5-1a and §18A-5-1b which include the following behaviors when committed on the premises of an educational facility, at a school-sponsored function, or on a school bus:

- a. assault and/or battery on school employees,
- b. possessing deadly weapons,
- c. sale of a narcotic drug,
- d. committing an act or engaging in conduct that would constitute a felony under West Virginia Code if committed by an adult, and/or

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e. unlawfully possessing a control substance governed by the uniform controlled substances act as described in W. Va. Code §60A-1.1 et seq.

§126-84-5. Responsibility.

5.1. The WVBE has the responsibility to encourage daily attendance and appropriate student conduct, to set academic graduation requirements for public schools and to mandate that county school systems collect and report student performance data regarding these student behaviors.

5.2. The WVBE has the responsibility for defining Driver's Eligibility Certificate criteria in uniform quantifiable measures to assure that the process is applied equally to all students ages fifteen to eighteen who are enrolled in West Virginia public schools.

5.3. Each county board of education shall:

5.3.1 support and require the county attendance director and all school administrators to implement and execute the duties defined in W. Va. §126CSR81 WVBE Policy 4110: Attendance.

5.3.2. incorporate the appropriate components of this rule into existing county attendance, student code of conduct and academic requirement policies respectively.

5.3.3. support and require the county attendance director and all school administrators to implement and execute the following duties defined in W. Va. Code §18-8-11. Regarding driver's eligibility for a license or instruction permit to operate a motor vehicle:

a. provide, upon request, a Driver's Eligibility Certificate on a form (hard-copy or electronic) approved by West Virginia Department of Education (hereinafter WVDE) to any student at least fifteen but less than eighteen years of age who is properly enrolled and is making satisfactory academic progress in a school under the jurisdiction of the official for presentation to the WVDMV on application for or reinstatement of an instruction permit or license to operate a motor vehicle.

b. provide notification to the WVDMV whenever a student at least fifteen but less than eighteen years of age withdraws from school, except when the withdrawal is due to circumstances outside the control of the student. Notification must be provided to the WVDMV no later than five days from the date of the withdrawal.

c. provide the opportunity, upon request, for a student who has been denied a Driver's Eligibility Certificate or has received a revocation notice, to have a hearing before the county superintendent of schools or his/her designee concerning whether the student's withdrawal from school or failure to make satisfactory academic progress was due to a

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circumstance or circumstances beyond the control of the student. The county superintendent, with the assistance of appropriate staff, shall be the sole judge of whether any of the grounds for denial or suspension of a license or instruction permit are due to a circumstance or circumstances beyond the control of the student.

5.3.4. provide a review process that allows students to have their Driver's Eligibility Certificate reinstated upon demonstration of satisfactory progress as follows:

a. reinstatement requests related to withdrawal for unexcused absences shall be reviewed at the end of the semester following that in which the withdrawal occurred.

b. reinstatement requests related to withdrawal for failure to make satisfactory academic progress shall be reviewed at the end of each school year for the purpose of reinstating the Driver's Eligibility Certificate.

c. reinstatement requests related to withdrawal for suspension pursuant to W. Va. Code §18A-5-1a and §18A-5-1b shall be reviewed after all disciplinary sentences have been served for the purpose of reinstating the Driver's Eligibility Certificate.

§126-84-6. Severability.

6.1. 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: Policy 4150 – Student Driver Eligibility Certificate

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Education

Address: 1900 Kanawha Blvd. East, Bldg. 6., Room 728

Charleston, WV 25305

Phone Number: 558-8833

Email: ptlucas@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.

This measure will have no impact on costs or revenues of state government.

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: Policy 4150 – Student Driver Eligibility Certificate

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

This measure will have no impact on costs or revenues of state government.

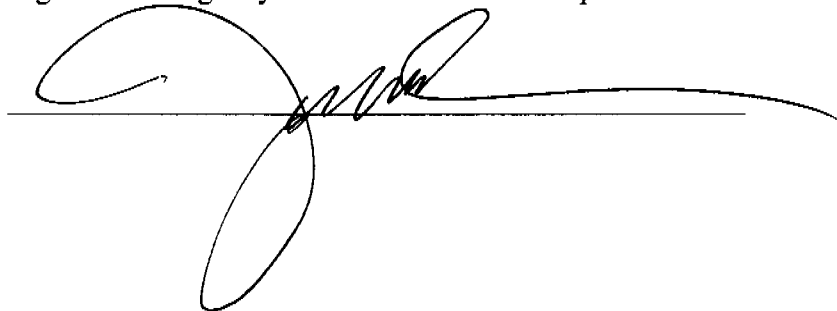
MEMORANDUM

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 rule requires school based data sets that already exists to be shared with the WV Department of Motor Vehicles (WVDMV). The transfer of data is managed by the individual students for whom the data exists and parent consents are included; therefore, no privacy issues are violated. The data is related to driver eligibility which is a WVDMV process that already exists so no new processing costs will be incurred nor revenues generated.

Signature of Agency Head or Authorized Representative

Date



5-23-08

POLICY 4150: Student Driver Eligibility Certificate

COMMENT PERIOD ENDS: July 7, 2008

COMMENT RESPONSE FORM

The following form is provided to assist those who choose to comment on Policy 4150: Student Driver Eligibility Certificate. 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
§126-84-1. General.
§126-84-2. Rationale
§126-84-3. Policy Development.

§126-84-4. Definitions.

§126-84-5. Responsibility.

§126-84-6. Severability.

Please direct all comments to:

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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: ptlucas@access.k12.wv.us
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