

WEST VIRGINIA
SECRETARY OF STATE

BETTY IRELAND

ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In This Box
FILED

2008 AUG 15 PM 12: 59

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

CITE AUTHORITY: W. Va. Constitution, Article XII, §2, W. Va. Code §§17-B-2-3a, 17B-3-6, 18-2-5
and 18-8-11

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education
v. Hechler, 180 W.Va. 451; 376 S.E.2d 839 (1988).

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

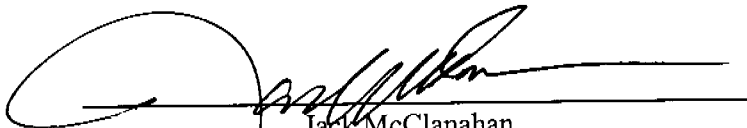
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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)

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS September 15, 2008.


Jack McClanahan
Deputy State Superintendent of Schools

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.

Response to Comments: Comments were received from eleven individuals representing attendance directors (6), principal (1), teachers (2) and others with no listed link to an organization (2). Ten of the individuals who commented on the policy were in support of the policy and gave suggestions to improve clarity of the policy. One of the individuals who commented on the policy was not in support of the policy. In order to provide the clarity suggested by the comments, the policy has been revised in Sections 5.3.3 and 5.3.4. Changes that were suggested by the comments that were not in support of the policy could not be incorporated because W. Va. Code §18-8-11 requires the State Board to promulgate this rule in a specified manner.

126CSR84

FILED

2008 AUG 15 PM 12: 58

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**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. - August 15, 2008.

1.4. Effective Date. - September 15, 2008.

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, Regulations 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, Regulations 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 in satisfactory standing with regard to attendance, behavior and 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, is suspended pursuant to W. Va. Code §18A-5-1a and §18A-5-1b and/or fails to maintain satisfactory academic progress, except when the withdrawal or failure to make satisfactory academic progress 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 and/or suspension. Notification must be provided to the WVDMV no later than five days from the end of the school year for failure to maintain satisfactory academic progress.

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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 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, as outlined in W.Va. §126CSR81, WVBE Policy 4110: Attendance, at the end of the semester following that in which the withdrawal occurred.

b. reinstatement requests related to 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.

Rule Title: Policy 4150 – Student Driver Eligibility Certificate

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.

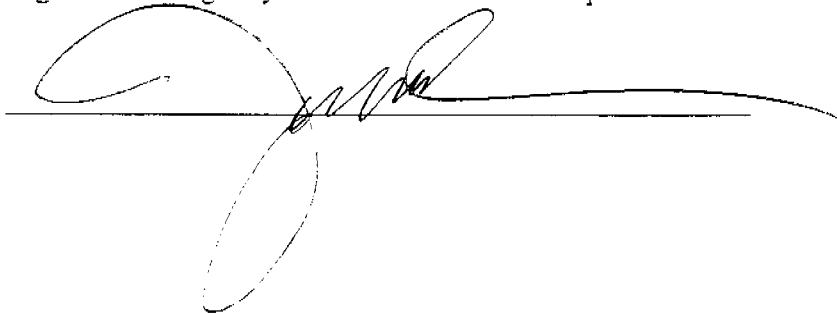
MEMORANDUM

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 Log

June 6 – July 7, 2008

Action Type
 N: No Response - Negative
 NA: Not Accepted + Positive
 A: Accepted 0 Neutral

Date	Individual/Organization	Comments	Action/ Type	Rationale
6/23/08	Grace Tallhamer, Principal, Robert L. Bland Middle School	I think students should maintain a 2.0 and have met the attendance requirement to get their driver's license. Most students at the middle school level seeking their driver's license are those who have an unacceptable GPA due to a lack of effort or desire.	NA/+	State code specifically prohibits GPA
7/2/08	Angela Simmons	I wonder how this policy will affect homeschooled families; specifically how we will be able to provide evidence of acceptable behavior and progress. With more and more homeschoolers in the state each year, I believe it needs to be addressed.	N/0	The State code does not address homeschooling.
6/10/08	Sharon Pitts, teacher, Cathoun Middle/High School	\$126-84-2. Rationale I totally agree with the rationale behind this policy. We have, too long, seen students stay in school to keep their driver's license with no regard to actually being committed to learning.	N/+	Comment in support

		Students need to not only attend but pursue an education.		
7/7/08	Scott Dicken	<p>“The West Virginia Board of Education recognizes that driving a vehicle is a privilege...”</p> <p>The process of OBTAINING a driver’s license is a privilege. After a driver’s license has been obtained the person has the right to drive. That right shall not be suspended or revoked without due process (14th Amendment).</p>	N/A/-	The policy, as written, is in compliance with State code.
		§126-84-4. Definitions		
6/10/08	Sharon Pitts, teacher, Cahoun Middle/High School	I like the definition of academic progress in that it allows for students to be making progress, but doesn't dictate that they have to be star students. Effort and progress towards graduation is what we should be all about.	N/+	Comment in support.
6/13/08	Brandy Fisher – Attendance Worker/Counselor, Mineral County Schools	4.1 – Circumstances outside the control of the student – anyone could simply claim familial responsibilities. How would this be verified? I could also see students who work abusing this.	N/A/-	State code leaves the determination to the county superintendent.
6/13/08	Linda McGraw – Director of Student Services, Morgan County Schools	5.3.4.b If the attendance segment is being checked on a semester basis, then the grade component should also be checked on a semester basis.	N/A/-	Students should have the full school year to earn the five credits.
6/20/08	Angela Merrifield, North Marion High School	What defines adequate attendance?	N/0	Defined in State code and policy.

6/20/08	Linda Marsh, Attendance Director, Mineral County Schools	<p>Does the satisfactory academic progress only come into play when you are checking the eligibility? I do not see it under the definition of withdrawal. In other words, if a student does not meet the 5 credits annually but attendance and discipline are OK, are they to be reported to the DMV? I see this as a nightmare to keep track of.</p> <p>The definition of circumstances outside the control of the student has become too open-ended. Anyone could say they had to miss for family responsibilities or supporting self or others. I don't think this has to actually in the definition. I am sure that if this comes up in a hearing with the superintendent then it would be taken into consideration.</p> <p>Policy 4110 says that the student can have NO unexcused absences during the semester after the license has been suspended. The proposed policy says attendance shall be reviewed. Does this mean we still look to see if they have No unexc. Absences. What is the criteria for review for this? Needs clarification.</p> <p>"4.1 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."</p>	A/+	See revision in 5.3.3.b
7/7/08	Scott Dicken	<p>Policy 4110 says that the student can have NO unexcused absences during the semester after the license has been suspended. The proposed policy says attendance shall be reviewed. Does this mean we still look to see if they have No unexc. Absences. What is the criteria for review for this? Needs clarification.</p> <p>"4.1 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."</p>	N/A/-	<p>Definition in policy matches definition in State code.</p> <p>See revision in section 5.3.4.a</p> <p>The policy, as written, is in compliance with State code.</p>

	<p>The idea that a suspension or expulsion from school could result in a license suspension is ridiculous. This gives a school principal and/or school superintendent an unchecked balance of power. In essence, the power to suspend driver's licenses SHOULD NOT be put in the hands of anyone employed by the Department of Education. As for imprisonment, a student that is arrested and held while awaiting trial SHOULD NOT be punished by the Department of Education while awaiting due process of the courts to take place. In the United States of America a criminal defendant is "innocent until proven guilty." With this present provision, a student defendant that is exonerated for a crime will still face the punishment of losing driving privileges based on not attending school for circumstances that were "beyond the control of the student." Law enforcement officials are human, and therefore capable of making mistakes. It is unlikely that this will happen, but it is NOT impossible. Therefore, this provision should be removed.</p>	
	<p>4.4.2 "Suspension pursuant to W. Va. Code §18-A-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:</p> <ul style="list-style-type: none">a. assault and/or battery on school employees,b. possessing deadly weapons,	

		<p>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 e. unlawfully possessing a control substance governed by the uniform controlled substances act as described in W. Va. Code §60A-1.1. et seq.”</p> <p>If the Department of Education is worried about preventing these incidents, stricter punishments should be created for those actions. The present wording is not clear if a license suspension occurs if actions A-E are the result of a criminal conviction, or a suspension from school. The difference between the two is huge. An example would be a teacher that says a student struck him/her. Think about if the teacher has a grudge against the student. With this provision a teacher is given the unchecked power of suspending a driver's license by lying. An unbiased judge could eventually fine the defendant not guilty because of no eyewitnesses, bruising, ECT. A principle would be biased to protect his/her coworker, and therefore will likely suspend the student based on the word of a teacher. A driver's license suspension SHOULD NOT be based on the word of a teacher.</p>		
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6/30/08	Paul Rice, Director of Attendance, Monongalia County Schools	4.3. "... by age nineteen,..." should read "by age eighteen/" Effective date is not clearly stated. 4.4. Withdrawal section does not include "Satisfactory Academic Progress" definition	NA/ NA/-	The policy, as written, is in compliance with State Code. Satisfactory Academic Progress is defined in 4.3.
6/13/08	Brandy Fisher – Attendance Worker/Counselor, Mineral County Schools	5.3.4 c – This is something that would have to be done on a daily basis at larger schools. Plus it takes DMV time to process. The student could be back and need reinstated before DMV has done anything with it in the first place.	NA/0	The discipline violations referred to in 5.3.4.c. are very severe and will require individualized attention from building and county administrator.
6/20/08	Linda Marsh, Attendance Director, Mineral County Schools	Who is to provide the review process? Is it the school or attendance director? Having 3 different times to review attendance, academic progress and suspension will be tough to keep track of. The suspension issue could be time consuming. I think there should be one time that all are reviewed for reinstatement.	N/0	Policy answers the commenter's questions.
6/30/08	Paul Rice, Director of Attendance, Monongalia County Schools	5.3.3.a Add attendance and behavior requirements to this subsection.	A/+	See revision in section 5.3.3.a.
7/1/08	Jodie Akers, Director of Student Services and Attendance, Upshur County Schools	5.3.3.b. Provide notification to the WVDMV whenever a student at least fifteen but less than eighteen years of age withdraws from school or fails to maintain satisfactory academic progress, except when the situation is due to circumstances	A/+	See revision in Section 5.3.3.b.

		<p>outside the control of the student. Notification must be provided to the WVDMV no later than five days from the date of the withdrawal or determination of failure to maintain satisfactory academic progress.</p>		
7/7/08	Scott Dicken	<p>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."</p> <p>5.3.3. "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."</p> <p>Define "due to circumstances outside the control of the student."</p> <p>5.5.5. "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 circumstance or circumstances beyond the control of the student.</p>	NA/-	The policy, as written, is in compliance with State code.

	<p>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.”</p> <p>My question is when did the Department of Education acquire the power to suspend driver’s licenses? I thought that was the job of the DMV.</p> <p>“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.” The county superintendent will have the power to suspend a student’s driver’s license. Why: Where did the DMV go? The hearing should not be with any representative of the Department of Education, but with the DMV instead. Let us look at this broadly.</p> <p>Under this proposal a student with bad behavior/poor grades will have their license suspended by the Department of Education. But let us flip everything around for the sake of argument. If the DOE can suspend driver’s licenses, then the DMV should be allowed to suspend a student from school. Which the thought of is appalling. Hypothetically, if a student is involved in a car accident, issued a</p>	
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		<p>citation for failure to yield, failure to obey a traffic device, ECT. Should the DMV have the power to suspend the student form school based on their lack of concentration on the road? Absolutely not. The Department of Education and the Division of Motor Vehicles are two separate government entities, and should operate as such, without a crossover of power. The hearing should come before the DMV as that is who issued the driver'</p>		
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6/4/08	David Wilbur	<p>Reading over the draft of the Legislative Rule <u>126CSR84</u> regarding the new DMV law, I have questions regarding 5.3.4.a of the Responsibility section (126-84-5)</p> <p>That clause reads: "reinstatement requests related to withdrawal for unexcused absences shall be reviewed at the end of the semester following that in which the withdrawal occurred"</p> <p>My understanding of the statute passed by legislature is that a license that is suspended under that statute for unexcused absences can be reinstated six (6) months after the license is suspended. If this is so, the clause above does not coincide with the statute. Also, if students reach the withdrawal stage of 15 unexcused absences and apply for the verification of enrollment form, we routinely deny them the form at that time. Would we count six months from the date of their 15th unexcused day of absence or would we count the six months from the day they apply for the form? Some schools require students applying for the form to fill out an information slip and some do not. Hence, in some cases we have documentation of the request and, in others, we do not.</p> <p>A third issue regarding this clause that I would like to see addressed is what happens with the student who transitions to a GED class or to home schooling AFTER his/her license has been suspended or an enrollment form request has been denied. What is the waiting period for this</p>	NA/0+	<p>The policy, as written, is in compliance with State code.</p>
			N/0	<p>Not applicable to this policy.</p>

		<p>student before he/she can be reinstated or granted an enrollment form? I appreciate anything you can do to raise these issues and get them addressed in a legislative rule. This will o a long ways to meeting the rationale of "using uniform measures across all the fifty-five county school districts."</p>		
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DATE	INDIVIDUAL ORGANIZATION	COMMENTS	ACTION/TYPE	RATIONALE
§126-136-23 Reimbursement, Recruitment and Retention				
07-11	Fernando	test		
07-11	Fernando	test		
§126-139-11 Permits Issued to Educators				
07-11	Fernando	test		
07-11	Fernando	test		
§126-139-19 Special Education				
07-11	Fernando	test		
07-11	Fernando	test		
§126-84-1 General				
06-23	Grace Tallhamer Principal gtallham@access.k12.wv.us Robert L. Bland Middle School 358 Court Ave Weston WV 26452	I think students should maintain a 2.0 and have met the attendance requirement to get their driver's license. Most students at the middle school level seeking their driver's license are those who have an unacceptable GPA due to a lack of effort or desire.		
07-02	Angela Simmons mrsangelasimmons@yahoo.com 3612 Route 75 Huntington WV 25704	I wonder how this policy will affect homeschooled families; specifically how we will be able to provide evidence of acceptable behavior and progress. With more and more homeschoolers in the state each year, I believe it needs to be addressed.		
§126-84-2 Rationale				
06-10	Sharon Pitts teacher sapitts@access.k12.wv.us Calhoun Middle/High School 2474 W. Little Kanawha Hwy Grantsville WV 26147	I totally agree with the rationale behind this policy. We have, too long, seen students stay in school to keep their driver's license with no regard to actually being committed to learning. Students need to not only attend but pursue an education.		
		"The West Virginia Board of Education recognizes that driving a vehicle is a privilege..."		

07-07	Scott Dicken sdicken1@fairmontstate.edu 173 Williams Lane Morgantown WV 26508	The process of OBTAINING a driver's license is a privilege. After a driver's license has been obtained the person has the right to drive. That right shall not be suspended or revoked without due process (14th Amendment).		
§126-84-4 Definitions				
06-10	Sharon Pitts teacher sapitts@access.k12.wv.us Calhoun Middle/High School 2474 W. Little Kanawha Hwy Grantsville WV 26147	I like the definition of academic progress in that it allows for students to be making progress, but doesn't dictate that they have to be star students. Effort and progress towards graduation is what we should be all about.		
06-13	Brandy Fisher Attendance Worker/Counselor brnfisher@access.k12.wv.us Mineral County Schools 700 Harley Staggers Dr. One Tornado Way Keyser WV 26726	4.1 - Circumstances outside the control of the student - anyone could simply claim familial responsibilities. How would this be verified? I could also see students who work abusing this.		
06-13	Linda McGraw Director of Student Services lmcgraw@access.k12.wv.us Morgan County Schools 247 Harrison Avenue Berkeley Springs WV 25411	5.3.4.b If the attendance segment is being checked on a semester basis, then the grade component should also be checked on a semester basis.		
06-20	Angela Merrifield North Marion High School #1 North Marion Drive Farmington WV 26571	What defines adequate attendance?		
	Linda Marsh Attendance Director	Does the satisfactory academic progress only come into play when you are checking the eligibility? I do not see it under the definition of withdrawal. In other words, if a student does not meet the 5 credits annually but attendance and discipline are OK, are they to be reported to the DMV? I see this as a nightmare to keep track of.		

<p>06-20</p>	<p>lmarsh@access.k12.wv.us Mineral County Schools Mineral County Schools One Baker Place Keyser wv 26726</p>	<p>The definition of circumstances outside the control of the student has become too open-ended. Anyone could say they had to miss fro family responsibilities or supporting self or others. I don't think this has to actually in the defintion. I am sure that if this comes up in a hearing with the superintendent then it would be taken into consideration.</p>		
<p>06-20</p>	<p>Linda Marsh Attendance Director lmarsh@access.k12.wv.us Mineral County Schools Mineral County Schools One Baker Place Keyser wv</p>	<p>Policy 4110 says that the student can have NO unexcused absences during the semester after the license has been suspended. The proposed policy says attendance shall be reviewed. Does this mean we still look to see if they have No unex. absences. What is the criteria for review for this? Needs clarification.</p>		
		<p>"4.1 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." -- The idea that a suspension or expulsion from school could result in a license suspension is ridiculous. This gives a school principle and/or school superintendent an unchecked balance of power. In essence, the power to suspend driver's licenses SHOULD NOT be put in the hands of anyone employed by the Department of Education. As for imprisonment, a</p>		

07-07

Scott Dicken
sdicken1@fairmontstate.edu
173 Williams Lane
Morgantown WV 26508

student that is arrested and held while awaiting trial SHOULD NOT be punished by the Department of Education while awaiting due process of the courts to take place. In the United States of America a criminal defendant is "innocent until proven guilty." With this present provision, a student defendant that is exonerated for a crime will still face the punishment of losing driving privileges based on not attending school for circumstances that were "beyond the control of the student." Law enforcement officials are human, and therefore capable of making mistakes. It is unlikely that this will happen, but it is NOT impossible. Therefore, this provision should be removed.

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
- e. unlawfully possessing a control substance governed by the uniform controlled substances act as described in

		<p>W. Va. Code §60A-1.1 et seq."</p> <p>--If the Department of Education is worried about preventing these incidents, stricter punishments should be created for those actions. The present wording is not clear if a license suspension occurs if actions A-E are the result of a criminal conviction, or a suspension from school. The difference between the two is huge. An example would be a teacher that says a student struck him/her. Think about if the teacher has a grudge against the student. With this provision a teacher is given the unchecked power of suspending a driver's license by lying. An unbiased judge could eventually find the defendant not guilty because of no eyewitnesses, bruising, ECT. A principle would be biased to protect his/her coworker, and therefore will likely suspend the student based on the word of a teacher.</p> <p>A driver's license suspension SHOULD NOT be based on the word of a teacher.</p>		
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§126-84-5 Responsibility

<p>06-13</p>	<p>Brandy Fisher Attendance Worker/Counselor brnfisher@access.k12.wv.us Mineral County Schools 700 Harley Staggers Dr. One Tornado Way Keyser WV 26726</p>	<p>5.3.4 c - This is something that would have to be done on a daily basis at larger schools. Plus it takes DMV time to process. The student could be back and need reinstated before DMV has done anything with it in the first place.</p>		
	<p>Linda Marsh</p>	<p>Who is to provide the review process? Is it the school or attendance director? Having 3</p>		

<p>06-20</p>	<p>Attendance Director lmarsh@access.k12.wv.us Mineral County Schools Mineral County Schools One Baker Place Keyser wv 26726</p>	<p>different times to review attendance, academic progress and suspension will be tough to keep track of. The suspension issue could be time consuming. I think there should be one time that all are reviewed for reinstatement</p>		
<p>07-01</p>	<p>Jodie Akers Director of Student Services and Attendance Jodie_akers@hotmail.com Upshur County Board of Education 102 Smithfield Street Buckhannon WV 26201</p>	<p>5.3.3 b. provide notification to the WVDMV whenever a student at least fifteen but less than eighteen years of age withdraws from school or fails to maintain satisfactory academic progress, except when the situation 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 or determination of failure to maintain satisfactory academic progress.</p>		
		<p>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." -- No one is going to disagree with that statement. But the WVBE should not encourage these concepts by hijacking the power of the DMV. 5.3.3. "b. provide notification to the WVDMV whenever a student at least fifteen but less than eighteen years of age</p>		

withdraws from school, except when the withdrawal is due to circumstances outside the control of the student."

--Define "due to circumstances outside the control of the student."

5.3.3.

"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 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."

My question is when did the Department of Education acquire the power to suspend driver's licenses? I thought that was the job of the DMV. "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

07-07 Scott Dicken
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circumstance or circumstances beyond the control of the student.” The county superintendent will have the power to suspend a student’s driver’s license. Why? Where did the DMV go? The hearing should not be with any representative of the Department of Education, but with the DMV instead.

Let us look at this broadly.

Under this proposal a student with bad behavior/poor grades will have their license suspended by the Department of Education.

But let us flip everything around for the sake of argument. If the DOE can suspend driver’s licenses, then the DMV should be allowed to suspend a student from school. Which the thought of is appalling. Hypothetically, if a student is involved in a car accident, issued a citation for failure to yield, failure to obey a traffic device, ECT. should the DMV have the power to suspend the student from school based on their lack of concentration on the road? Absolutely not. The Department of Education and the Division of Motor Vehicles are two separate government entities, and should operate as such, without a crossover of power.

The hearing should come before the DMV as that is who issued the driver’s license, and therefore should

MONONGALIA COUNTY SCHOOLS

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F A X

TO: Patricia Lucas, Coordinator, Office of Institutional
Education Programs, WVDE

FAX: 558-5042 PHONE: _____

DATE: 30 JUN 08

Pages (including cover page) 3

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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: Paul E. Rice Organization: Monongalia County Schools

Title: Director of Attendance

Street Address: 13 S. High St.

City: Morgantown, State: WV Zip: 26501

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.
4.3. "... by age nineteen, ..." should read "by age eighteen".
Effective date is not clearly stated.
4.4. Withdrawal section does not include "Satisfactory Academic Progress" definition

'126-84-5. Responsibility.
5.3.3.a. Add attendance and behavior requirements to this subsection.

'126-84-6. Severability.

Please direct all comments to:

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
E-Mail Address: ptlucas@access.k12.wv.us
Fax No.: (304) 558-5042

Patricia Lucas

From: Maury W Johnson [mwjohnso@access.k12.wv.us]
Sent: Tuesday, July 08, 2008 9:29 AM
To: Patrica lucas
Subject: Fw: DMV rules

----- Original Message -----

From: Dave Wilbur
To: Patricia Lucas
Cc: Jodie Akers ; Eddie Weikle BOONE ; Judy Lively FAYETTE ; Sheri Hoff JEFFERSON ; Ollie Hunting LINCOLN ; Marilyn Dague MARSHALL ; Maury Johnson MONROE ; Jeff Laird OHIO ; David Weekley RITCHIE ; Jodie Akers UPSHUR ; Sharon Norman WYOMING
Sent: Wednesday, June 04, 2008 11:06 AM
Subject: DMV rules

Hi, Trish -

Reading over the draft of the Legislative Rule 126CSR84 regarding the new DMV law, I have questions regarding **5.3.4.a.** of the Responsibility section (**126-84-5**).

That clause reads: "reinstatement requests related to withdrawal for unexcused absences shall be reviewed at the end of the semester following that in which the withdrawal occurred"

My understanding of the statute passed by legislature is that a license that is suspended under that statute for unexcused absences can be reinstated six (6) months after the license is suspended. If this is so, the clause above does not coincide with the statute.

Also, if students reach the withdrawal stage of 15 unexcused absences and apply for the verification of enrollment form, we routinely deny them the form at that time. Would we count six months from the date of their 15th unexcused day of absence or would we count the six months from the day they apply for the form? Some schools require students applying for the form to fill out an information slip and some do not. Hence, in some cases we have documentation of the request and, in others, we do not.

A third issue regarding this clause that I would like to see addressed is what happens with the student who transitions to a GED class or to home schooling *AFTER* his/her license has been suspended or an enrollment form request has been denied. What is the waiting period for this student before he/she can be reinstated or granted an enrollment form?

I appreciate anything you can do to raise these issues and get them addressed in the legislative rule. This will go a long ways to meeting the rationale of of "using uniform measures across all the fifty-five county school districts".

Regards,
Dave