

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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SEP 20 11 10 AM '94

OFFICE OF 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 18-2-5; 18-5-13

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 92 (Policy 4336)

TITLE OF RULE BEING AMENDED: West Virginia School Transportation
Regulations

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 21, 1994 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Cecil C. Dolin, Director

School Transportation and Facilities

WV Department of Education
Building 6, Room 252
1900 Kanawha Boulevard, East

Charleston, WV 25305-0330

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

Vicki A. Barone
Director, Legal Services

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

4/20

FISCAL NOTE WORKSHEET

HD NO _____ DRAFT NO _____ BILL NO _____ SOLUTION NO _____

SUBJECT West Virginia School Transportation Reqs. FUND General

SOURCE OF REVENUE: GENERAL SPECIAL OTHER (SPECIFY) _____

COST 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 AND ITEM 3 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	\$315,000.00	\$	\$	\$	\$
PERSONAL SERVICES	\$	\$			
CURRENT EXPENSES					
REPAIRS AND ALTERATIONS					
EQUIPMENT					
OTHER					
2. ESTIMATED TOTAL REVENUES	\$315,000.00	\$	\$	\$	\$

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

Approximately 65% of West Virginia's 55 county school districts will be required to implement the drug and alcohol testing program January 1, 1995. Effective January 1, 1996, the other 35% of West Virginia's 55 county school districts will be required. Fifty percent of all drivers are required to be tested randomly each year. Post-accident, pre-employment, and reasonable suspicion testing will require additional persons to be tested. An estimated 3,500 tests will be performed in 1995 at an estimated \$75.00 per test. -Therefore the total fiscal impact for 1995 is estimated to be \$260,000.00. Effective January 1, 1996, an estimated 4,200 tests will be performed annually at an estimated cost of \$315,000.00.

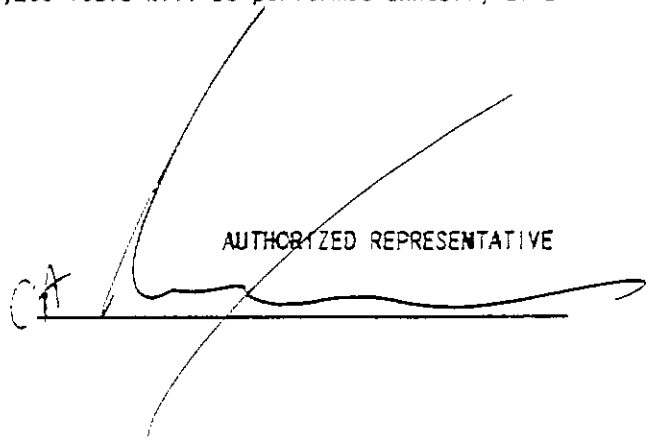
DATE

AGENCY

AUTHORIZED REPRESENTATIVE

08/22/94
5228i/168i

Department of Education

CA 

EXECUTIVE SUMMARY

WEST VIRGINIA BOARD OF EDUCATION

POLICY NUMBER AND TITLE: Policy 4336
West Virginia School Transportation Regulations

PUBLIC COMMENT PERIOD ENDS: October 21, 1994 ADOPTED _____

BACKGROUND:

Policy 4336 sets forth recommended practices for the administration of school transportation in West Virginia. This policy, first adopted July 1, 1946, has been renewed and revised periodically during the past several years. Recommendations for this revision are made by the Office of School Transportation and Facilities.

PURPOSE:

The proposed policy recommendations are designed to ensure safe and efficient school transportation for the approximately 245,000 students who ride a school bus to and from school each day in West Virginia. Since the last revision, in 1993, the United States Department of Transportation has mandated the testing of school bus operators for the use of illegal drugs or the misuse of alcohol. These tests are to begin January 1, 1995.

CONTENTS:

Policy 4336, Section IX, Qualifications for Employment of School Bus Operators, would be amended to include the testing of school bus operators for the use of certain controlled substances and alcohol as required by federal law.

IMPACT:

The primary impact of these revisions to the transportation regulations will be to comply with the federal regulations regarding drug and alcohol testing of school bus operators. There will be a cost associated with the testing program which will be the responsibility of the individual county school district. It has been estimated that the cost will be \$75.00 per person for the test. However, not all persons must be tested annually. Fifty percent of all current employees must be randomly tested for drugs and twenty-five percent must be randomly tested for the misuse of alcohol, thus lessening the fiscal impact to some degree.

West Virginia School Transportation Regulations

Policy 4336

The State Board of Education affirms its commitment to safe school transportation in West Virginia.

The primary goal of these regulations is to ensure the health, safety and welfare of all students who ride school buses in West Virginia.

School transportation is an integral part of a comprehensive educational program and is a very significant part of a thorough and efficient system of education for students.

FILED

SEP 20 11 10 AM '94

TITLE 126
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF EDUCATION
CHAPTER 18-5-13

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

POLICY 4336
Series 92

TITLE: West Virginia School Transportation Regulations

- SECTION 1.0 General
- 1.1 Scope - This legislative rule provides regulations for school transportation.
- 1.2 Authority and Related Code Citation - West Virginia Constitution Article XII, §2, West Virginia Code §18-2-5, and §18-5-13.
- 1.3 Filing Date -
- 1.4 Effective Date -
- 1.5 Repeal of Former Rules - None - Revision of rule formerly filed in 1993.
- SECTION 2.0 Incorporation by Reference
- 2.1 A copy of the section of the West Virginia School Transportation Regulations proposed for amendment is attached. Copies may be obtained in the Office of the Secretary of State and in the West Virginia Department of Education, Division of Administrative Services.
- 2.2 Summary of Rules and Regulations - below.

SUMMARY OF RULES AND REGULATIONS

The state Department of Education has responsibility to establish West Virginia School Transportation Regulations in compliance with Chapter 18, Article 5, Section 13, Subsection 6 of the West Virginia Code. The Department of Education endeavors to carefully consider the selection of bus operators of high moral standards and operating practices that will contribute to the safety, welfare and comfort of those being transported.

School transportation is an integral part of a comprehensive educational program. It is a very significant part of a thorough and efficient system of education.

This revision of the West Virginia School Transportation Regulations is necessary to comply with the requirements of the United States Department of Transportation, Federal Highways Administration's implementation of the Omnibus Transportation Employee Testing Act (OTETA).

IX. QUALIFICATIONS FOR EMPLOYMENT OF SCHOOL BUS OPERATORS

No person shall be employed by any county board of education to operate any motor vehicle transporting school pupils, who has not been certified by the Division of Public Safety and the State Department of Education.

NOTE: In situations where the county board of education is authorized to lease buses or contract transportation services, the buses used shall be operated by certified school bus operators, employed by the county board of education, pursuant to West Virginia Code 18-5-13 (6a) & (7).

School bus operator certification is obtained by meeting the following criteria:

A. Age, experience, license, residency and training

1. Candidate must have had at least three (3) years of driving experience as a licensed operator of a motor vehicle.
2. The required training, written and driving tests may be taken while in possession of a valid commercial driver's instruction permit. However, a valid West Virginia commercial driver's license is required for any person to operate any school bus to and from school or school related events.

The written and driving tests shall be administered by members of the Department of Education to all new public school bus operators prior to certification. A written test will be required every other year thereafter. Any additional driving tests shall conform to applicable federal regulations.

3. Professional personnel who drive board owned vehicles of less than 10 passenger capacity, West Virginia Code 18-5-13, (6)(a), must meet the certification requirements by satisfactory completion of the West Virginia School Bus Operator Training Program, provided, however, that training to physically operate Type B, C, and D school buses will not be required for this certification. (See page 24, c.)
4. Each candidate for employment as a school bus operator must receive adequate training to fully understand and carry out all the duties and responsibilities of a school bus operator. Training shall include the "West Virginia School Bus Operator Instructional Program" and county policies, procedures, et cetera. Such instruction must be given by an instructor certified through the instructor training classes conducted by the State Division of School Transportation. Minimum bus operator training shall include:
 - a. thirty (30) hours of instruction from the "West Virginia School Bus Operator Instructional Program Manual".

- b. sufficient "behind the wheel" instruction to assure the applicant's ability to handle the bus safely and efficiently, prior to appearing before a member of the Department of Education for the written and driving tests.
- c. first aid training: Each person operating a school bus transporting pupils shall hold at least a valid standard Red Cross first aid certificate or an EMT certificate, First Responder Course, or other first aid program approved by the State Director of School Transportation.
- d. special training for bus operators and/or aides transporting the handicapped. (See VIII, B., 4., page 14.)
- e. a record of training for each bus operator shall be maintained by the county transportation director.

B. Physical qualifications

- 1. Each school bus operator shall be free from communicable disease and strong enough physically to operate the bus with ease. This includes the capability of installing tire chains. In case of any physical disability resulting in the disqualification of a candidate that may be questioned by the candidate, or school bus operator, a final determination of eligibility shall be made by the Driver Licensing Medical Advisory Board of the Division of Motor Vehicles.
- 2. Physical examination required
 - a. To be given during the school year (7/1 - 6/30) for which certification is applicable. A county board of education can, on the nomination and recommendation of the county superintendent of schools, employ a physician or retain the services of a physician as an independent contractor, or it can establish a clinic for the purpose of having its personnel and prospective personnel medically/physically examined. If an employee has some objection, however, to being examined by the physician chosen by the board, then the employee can be examined by a physician of her/his choice.
 - b. Before initial certification, and annually between July 1 and August 30, each school bus operator must pass a physical examination.
 - c. The original physical examination shall determine eligibility except:
 - (1) in cases where vision or hearing is corrected by appropriate lenses and/or hearing aids.

- (2) in the event school authorities in charge feel that the examination is inaccurate or questionable. In such case the applicant or bus operator may be required to take another physical examination by a physician or specialist designated by the county superintendent of schools.
- d. The results of all physical examinations shall be recorded on the prescribed form, the original of which shall be forwarded to the State Director of School Transportation. A copy of the report of the physical examination will become a part of the bus operator's permanent record in the county office.
- 3. The physical examination report will determine the eligibility of any person as a school bus operator in relation to physical/medical history and/or condition.
 - a. The prescribed form shall be completed and signed by a licensed physician.
 - b. The physical examination report will include examinations for the following:
 - (1) Convulsive seizures - there shall be no established medical history or clinical diagnosis of convulsive seizures.
 - (2) Diabetes - there shall be no medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control. Applicants having mild diabetes, not requiring insulin, may be recommended at the discretion of the examining physician.
 - (3) Extremities - no person suffering the loss or use of more than three (3) joints of either hand shall be qualified as a school bus operator.

There shall be no amputation of any part of the thumb of either hand, unless such amputation is confined to the tip of the thumb and does not interfere with the movement of the first joint.

Each bus operator shall have normal use of all extremities.

- (4) Hearing - hearing loss in the better ear shall not be greater than 40 decibels at 500 Hz, 1,000 Hz and 2,000 Hz. If a hearing aid is required to meet this regulation, it must be worn and properly functioning at all times while operating the school bus. The bus operator must also be carrying a spare power source for use in the hearing aid.
- (5) Heart - there is no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

Pacemakers are acceptable if approved by a panel of three cardiologists.

No person shall be employed with a reading of systolic blood pressure greater than 145 and/or a diastolic blood pressure greater than 90. Any person displaying such a reading on first examination shall, before certification will be issued, provide medical evidence of three separate blood pressure recordings within a seven day period below 145 systolic, 90 diastolic.

- (6) Hernia - An applicant with a hernia may be approved providing a well-fitting truss, as approved by the examining physician, is worn at all times while performing the duties of a school bus operator. Large hernias shall be surgically repaired prior to employment.
- (7) Mental and nervous condition - There is no mental, nervous, organic or functional disease or psychiatric disorder likely to interfere with the ability to operate a school bus safely.
- (8) Rheumatic, arthritic or other conditions - There is no established medical history or clinical diagnosis of rheumatic, arthritic, muscular, neuromuscular or vascular disease which interferes with the ability to safely control and operate a school bus.
- (9) Tuberculosis - All school personnel shall have a satisfactory tuberculin skin test, chest X-ray or physician's certification, at time of employment and once each two years of employment, or more frequently if medically indicated.
- (10) Urinalysis - Shall be performed by the examining physician, or his laboratory technician, and the results recorded on the examination form.
- (11) Vision - Both eyes must be functional.
 - (a) A distant visual acuity of at least 20/40 (Snellen) in each eye with or without corrective lenses.
(Monocular vision disqualifies a person as a school bus operator.)
 - (b) Field of vision shall be at least 75 degrees in the horizontal meridian of each eye.
 - (c) Applicant/operator must be able to identify the colors of traffic signals and devices showing standard red, green, amber and blue.

(d) Any person who must wear corrective lenses to meet the requirements of this section shall wear such lenses at all times while operating a school bus.

(12) There shall be no other physical condition that would interfere with ability to safely and efficiently perform the duties of a school bus operator.

4. Additional testing requirements

Before initial certification each school bus operator must pass tests which include but are not limited to, visual acuity, field of vision, traffic color recognition, depth perception, reaction time, night vision and glare recovery. Such tests shall be equivalent of testing with "Instructor-Clinic" equipment by Safety Industries Incorporated, Post Office Box 1137, First and Avenue K, McGill, Nevada 89318.

Applicants who test below the minimum standards (in any area(s)) set for the test procedures, and/or who fail in any of these areas to meet requirements otherwise established in these Regulations, shall be denied certification as a school bus operator until examined and/or treated by an appropriately licensed medical authority and found to meet requirements as set forth in these Regulations. The results of this test shall be recorded and made part of the school bus operator's file, with a copy to the state transportation director.

5. Upon written notice from the State Director of School Transportation that any employee, or applicant, has failed to qualify for certification, that person's assignment and performance of the duties of a school bus operator shall cease immediately.

6. All school bus operators will be subject to pre-employment, random, post accident, and reasonable suspicion testing for the use of certain controlled substances and alcohol under the regulations established by the United States Department of Transportation, Federal Highway Administration's implementation of the Omnibus Transportation Employee Testing Act of 1991 (OTETA), as published in the Federal Register February 15, 1994, including subsequent revisions or additions.

All county school districts with fifty (50) or more drivers covered by the OTETA will begin the testing program on January 1, 1995.

All county school districts with fewer than fifty (50) drivers covered by the OTETA will begin the testing program on January 1, 1996.

**RESPONSE FORM
REVISION OF WEST VIRGINIA SCHOOL TRANSPORTATION
REGULATIONS**

Directions: Please use this form to comment on the proposed revisions of the
West Virginia School Transportation Regulations

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Individual/Organization: _____

Address: _____

General Comments: .

**Comments For Qualifications for Employment of School Bus Operators Including
Health and Physical Fitness:**

Return by October 21, 1994 to:
Cecil C. Dolin, State Director of
School Transportation and Facilities
WV Department of Education
Capitol Complex, Bldg. 6, Room B-252
1900 Kanawha Boulevard, East
Charleston, WV 25305-0330