

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

FILED
Do Not Mark In This Box

APR 13 1 43 PM '98

OFFICE OF 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. Const., Article XII, §2; W.Va. Code §§18-2-5, 18-5-13(19), 18-9A-14, and 18A-4-8i.

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

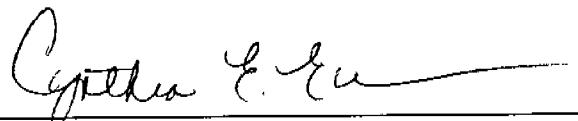
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 185

TITLE OF RULE BEING PROPOSED: Intercounty Transfer Arrangements (7200)

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS May 13, 1998.



Cynthia E. Evans
Director, Legal Services

\$2.80

EXECUTIVE SUMMARY WEST VIRGINIA BOARD OF EDUCATION

POLICY NUMBER AND TITLE: Policy 7200, Series 185
Intercounty Transfer Arrangements

PUBLIC COMMENT PERIOD ENDED: 3/20/98 **ADOPTED:** 4/9/98

H.B. 2204 passed during the 1997 session of the West Virginia Legislature created a process for posting and filling positions in situations where one or more counties have joined in an intercounty transfer agreement to send students to school in a county other than their county of residence.

The process requires the State Board to create a "certified list of employees" whose positions (in a county sending students to another county) will be eliminated, and further requires that the State Board create a "certified list of positions" that will be available in the receiving county. The receiving county may fill the certified positions only from the certified list for the balance of the school year of six months, whichever is the greater length of time. Policy 7200 specifies the manner in which the two certified list must be compiled.

Under Policy 7200, any intercounty transfer arrangement must be approved by the State Board before it is implemented, and it must contain any financial provisions applicable to the arrangement.

COMMENT SUMMARY

Only two comments were received, neither of which requires revision of the policy as previously submitted to the Board.

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FILED

TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

APR 13 1 43 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 185
INTERCOUNTY TRANSFER ARRANGEMENTS (7200)

§126-185-1. General.

1.1. Scope. -- These rules govern the operation of intercounty transfer arrangements under which students from one or more counties attend school in a county other than their county of residence.

1.2. Authority. -- W.Va. Constitution, Article XII, §2; W.Va. Code §§18-2-5, 18-5-13(19), 18-9A-14, and 18A-4-8i.

1.3. Filing Date. -- April 13, 1998

1.4. Effective Date. -- May 13, 1998

§126-185-2. Purpose.

2.1. These rules establish the framework for implementing intercounty transfer arrangements.

§126-185-3. Definitions.

3.1. "Intercounty Transfer Arrangement" means those cases in which students are required to attend school in a county other than the county of their residence.

3.2. "Receiving county" means the county, other than the county of residence, where students are required to attend school.

3.3. "Sending county" means the county of residence of the students involved in intercounty transfer arrangements.

§126-185-4. Authorization for Intercounty Transfer Arrangements.

4.1. County boards of education are encouraged to fully utilize their existing school facilities and to cooperate in planning for new school facilities in order to reduce the need for school facilities and to reduce transportation times for students by entering into intercounty transfer arrangements.

4.2. County boards of education are authorized to enter into agreements with one another, subject to State Board approval, for the transfer and receipt of any and all funds determined to be fair when students are permitted or required to attend school in a county other than the county of their residence. W.Va. Code §18-5-13(19).

4.3. A proposed Intercounty Transfer Arrangement must be approved by the county boards of education of both the sending and receiving counties prior to the time it is sent to the State Board for approval.

4.4. Intercounty transfer arrangements may be entered into for the purpose of submitting an application for funding to the School Building Authority.

§126-185-5. Transfer of Funds and Allowance for Funds in Intercounty Transfer Arrangements.

5.1. Intercounty transfer arrangements must contain (a) provision(s) detailing any financial considerations pertaining to the arrangement, including the amount of any funds to be transferred by the sending county to the receiving county. Any amount to be transferred on a per-pupil basis shall not exceed the per pupil allocation in the state aid formula received by the sending county in the fiscal year in which the intercounty transfer takes place.

5.2. Subject to appropriations by the Legislature, funds equal to the amount agreed upon in the Intercounty Transfer Arrangement under 5.1 above will be provided to the sending county in the year in which the transfer of students occurs. W.Va. Code §18-9A-14.

5.3. Subject to appropriations by the Legislature, funds equal to one-half of the amount agreed upon in the Intercounty Transfer arrangement under 5.1 above will be provided to the sending county in the first year after the transfer occurs. W.Va. Code §18-9A-14.

5.4. Subject to appropriations by the Legislature, funds equal to one-fourth of the amount agreed upon in the Intercounty Transfer Arrangement under 5.1 above will be provided to the sending county in the second year after the transfer occurs. W.Va. Code §18-9A-14.

5.5. Any amount otherwise payable to the sending county under sections 5.2, 5.3 and 5.4 above shall be reduced by the State Board by an appropriate amount should professional or service personnel obtain full-time employment pursuant to the terms of W.Va. §18A-4-8i. W.Va. Code §18-9A-14.

§126-185-6. Determination of Number of Positions to be Created in Facilities Affected by an Intercounty Transfer Arrangement.

6.1. Should two or more counties enter into an Intercounty Transfer Arrangement, the State Board shall determine the number of professional educator and school service personnel positions to be created in any facility receiving students or in any facility affected by the Intercounty Transfer Arrangement.

6.2. Once the State Board has determined the number of professional educator and school service personnel positions to be created, the State Board shall embody those positions in a "certified list of positions" needed to implement the Intercounty Transfer Arrangement. This certified list of positions shall be forwarded to each sending and receiving county involved in the intercounty transfer arrangement.

§126-185-7. Preparation of Certified List of Employees Whose Employment Has Been Terminated as a Result of an Intercounty Transfer Arrangement.

7.1. Should two or more counties enter into an Intercounty Transfer Arrangement, the State Board shall prepare a "certified list of employees" containing the names and seniority of the professional educators and service personnel whose employment in a sending county was terminated as a result of the Intercounty Transfer Arrangement.

7.2. Inclusion in the "certified list of employees" is limited to:

7.2.1. those persons whose positions were eliminated as a direct result of the Intercounty Transfer Arrangement and

a. who choose not to exercise their right to displace another employee with lesser seniority, or

b. whose seniority is insufficient to allow them to displace other employees; and

7.2.2. those persons, as determined by the State Board, who would have retained a position with a sending county if the Intercounty Transfer Arrangement had not occurred.

§126-185-8. Filling Positions Created by an Intercounty Transfer Arrangement

8.1. A receiving county may not act to fill any position created by the Intercounty Transfer Arrangement until it has received from the State Board both the certified list of

positions and the certified list of employees.

8.2. Once a receiving county has received both the certified list of positions and the certified list of employees, it may begin filling positions created by the Intercounty Transfer Arrangement by selecting employees from the certified list.

8.2.1. In filling positions, the receiving county shall comply with all provisions of law relevant to the filling of professional educator or service personnel vacancies.

8.2.2. For the remainder of the school year immediately following the effective date of the intercounty transfer arrangement, but in no case for a period of less than six months, the receiving county may fill positions on the certified list of positions only by selecting employees from the certified list of employees.

§126-185-9. Seniority Rights for Professional Educators and School Service Personnel in Cases of Intercounty Transfer Arrangements.

9.1. Professional educators and service personnel whose names appear on the certified list of employees and who are hired by a receiving county shall accrue seniority in both the sending and the receiving county during the time in which they continue to be employed by the receiving county.

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FISCAL NOTE WORKSHEET
(Submit 4 Copies)

HD NO _____ DRAFT NO _____ BILL NO _____ RESOLUTION NO _____

SUBJECT Policy 7200 Intercountry Transfer Arrangements FUND _____

SOURCE OF REVENUE: GENERAL FUND SPECIAL OTHER (SPECIFY) _____

COST OF ESTIMATE BASED ON: AN ORIGINAL ESTIMATE BUDGET BILL OTHER (SPECIFY) _____

INCOME ESTIMATE BASED ON: AN ORIGINAL ESTIMATE BUDGET BILL OTHER (SPECIFY) _____

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

EFFECT OF PROPOSAL	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT 97-98	THEREAFTER
1. ESTIMATED TOTAL COST	\$ - 0 -	\$ - 0 -	\$ - 0 -	\$ - 0 -	\$ - 0 -
PERSONAL SERVICES CURRENT EXPENSES REPAIRS/ALTERATIONS EQUIPMENT OTHER	\$	\$	\$	\$	\$
2. ESTIMATED TOTAL REVENUES	\$ - 0 -	\$ - 0 -	\$ - 0 -	\$ - 0 -	\$ - 0 -

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

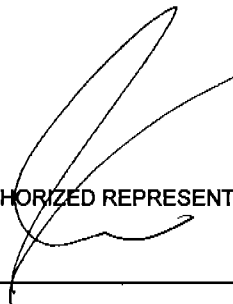
DATE

AGENCY

AUTHORIZED REPRESENTATIVE

February 13, 1998

West Virginia Department of Education



**POLICY 7200: INTERCOUNTY TRANSFER ARRANGEMENTS
COMMENT LOG
February 13, 1998 - March 20, 1998**

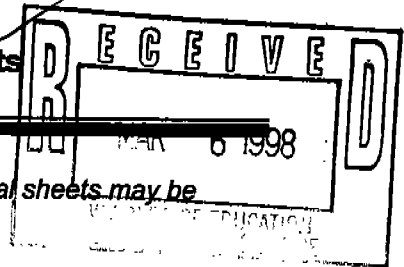
ACTION TYPE
 N: No Response - Negative
 NA: Not Accepted + Positive
 A: Accepted o Neutral

Date	Individual/Organization	Comments	Action/ Type	Rationale
3/6/98	Mary Alice Klein, Supt. Tucker County Schools 501 Chestnut Street Parsons, WV 26287	§126-185-1. General Are provisions/requirements of this policy retroactive to informal agreements existing between counties in which each request for transfer is considered by both the sending and receiving counties -- i.e., Tucker - Preston?		It does not appear that the legislation on which this policy is based was intended to apply retroactively.
		§126-185-2. Purpose		
		§126-185-3. Definitions		
		§126-185-4. Authorization for Intercounty Transfer Arrangements		
3/6/98	Mary Alice Klein, Supt. Tucker County Schools 501 Chestnut Street Parsons, WV 26287	4.2 - Word "permitted" is added, whereas, in other sections "required" is used. Is this intentional?		The wording in 4.2 is taken directly from W.Va. Code §18-5-13(19).
		§126-185-5. Transfer of Funds and Allowance for Funds in Intercounty Transfer Arrangements		

Date	Individual/Organization	Comments	Action/ Type	Rationale
		§126-185-6. Determination of Number of Positions to be Created in Facilities Affected by an Intercounty Transfer Arrangement.		
		§126-185-7. Preparation of Certified List Employees Whose Employment Has Been Terminated as a Result of an Intercounty Transfer Arrangement.		
		§126-185-8. Filling Positions Created by an Intercounty Transfer Arrangement		
		§126-185-9. Seniority Rights for Professional Educators and School Service Personnel in Cases of Intercounty Transfer Arrangements.		

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**POLICY 7200: Intercounty Transfer Arrangements
Comments/Suggestions**



Directions: Please use this form in commenting on proposed Policy 7200. Additional sheets may be attached if needed.

Individual/Organization: Mary Alice Klein

Position: Superintendent

Name of County, School, Business, etc: Tucker

Street Address: 501 Chestnut St.

City/State/Zip: Parsons, WV 26287

Comments/Suggestions
<p>126-185-1. General</p> <p>Are provisions/requirements of this policy retroactive to informal agreements existing between counties in which each request for transfer is considered by both the sending and receiving counties — i.e., Tucker — Preston?</p>
<p>126-185-2. Purpose</p>

126-185-3. Definitions

126-185-4. Authorization for Intercounty Transfer Arrangements

7.2. word "permitted" is added, whereas, in other sections "required" is used. Is this intentional?

126-185-5. Transfer of funds and Allowance for Funds in Intercounty Transfer Arrangements

126-185-6. Determination of Number of Positions to be Created in Facilities Affected by an Intercounty Transfer Arrangement

126-185-7. Preparation of Certified List of Employees Whose Employment Has Been Terminated as a Result of an Intercounty Transfer Arrangement

126-185-8. Filling Positions Created by an Intercounty Transfer Arrangement

126-185-9. Seniority Rights for Professional Educators and School Service Personnel in Cases of Intercounty Transfer Arrangements

RETURN COMMENTS BY MARCH 20, 1998 TO:

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