

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In This Box

FILED

JAN 11 4 03 PM '00

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. Constitution, Article XII, Section 2; W. Va. Code §18-2-5, 18-3-3,
18-3-10 and 18-5-13

RULE TYPE: PROCEDURAL _____ INTERPRETIVE XX

EXEMPT LEGISLATIVE RULE _____
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 XX NO _____

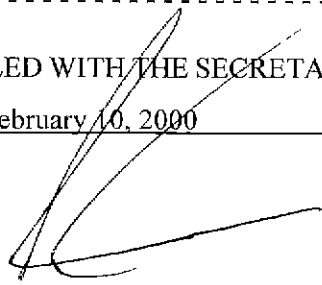
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 189

TITLE OF RULE BEING AMENDED: Intercounty Student Transfer Appeal (7212)

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS February 10, 2000


William J. Luff, Jr.
Associate State Superintendent

EXECUTIVE SUMMARY
WEST VIRGINIA DEPARTMENT OF EDUCATION

POLICY NUMBER AND TITLE: Policy 7212
Intercounty Student Transfer Appeal

PUBLIC COMMENT PERIOD ENDS: October 22, 1999 **ADOPTED:** February 10, 2000.

Policy 7212 provides a process for the appeal of a denial by a county board of education of a transfer of a student who resides in one county and proposes to attend school in a different county.

Section 3.8 of the policy has provided in the past that parents requesting such a transfer shall bear all transportation costs associated with the transfer.

The proposed change to the policy deals only with Section 3.8, and provides that transportation costs for such a transfer remain with the parents requesting the transfer unless the county boards of education involved have initiated and approved the plan for transferring (the) student(s). In that case, the revised policy requires that the county boards must determine the method of transportation and provide coverage for the costs of student transportation.

0012psb/1a

FILED

126CSR189

JAN 11 4 03 PM '00

TITLE 126
INTERPRETIVE RULE
BOARD OF EDUCATION

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 189
INTERCOUNTY STUDENT TRANSFER APPEAL
(Policy 7212)

§126-189-1. General.

1.1. Scope. --

1.2. Authority. -- W.Va. Constitution, Article XII, Section 2; W.Va. Code §§18-2-5, 18-3-3, 18-3-4, 18-3-10 and 18-5-13.

1.3. Filing Date. -- January 11, 2000

1.4. Effective Date. -- February 10, 2000

§126-189-2. Application.

2.1. This legislative rule applies to every county board of education and to every student attending public school within West Virginia.

§126-189-3. Rules.

3.1. Any student whose application for transfer from one county to another has been denied by either the sending or receiving county may file an appeal with the State Superintendent of Schools, who shall have the authority to require the county board to approve the transfer.

3.2. The State Superintendent must receive the appeal within thirty (30) days of the county board of education denial of the transfer request.

3.3. Hearings on requests for waivers will be generally conducted in conformity with the procedures set forth in State Board of Education Policy 1340.

3.4. The parents of the student must demonstrate to the satisfaction of the State Superintendent that the proposed transfer is based upon sound educational grounds and is in the best interests of the student.

126CSR189

3.5. The State Superintendent shall issue a decision regarding a transfer request within thirty (30) days following the hearing, except that for good cause shown the Superintendent may extend the deadline.

3.6. A decision issued by the State Superintendent shall be final.

3.7. Any transfer approved by the State Superintendent shall remain in effect until and unless the parents make proper application to both the sending and receiving county boards of education to revoke the transfer prior to January 1 for the following school year.

3.8. A county board of education is not responsible for transportation costs for students who attend school in a county other than that of their residence, even though the county board has approved the attendance in another county, unless the county board itself has initiated a plan to have the students attend school in a county other than their residence. In an instance where the plan has been initiated by one or more county boards of education, the sending and receiving counties, where both have agreed to the transfer, must determine the method of, and provide coverage for the costs of, transportation to the other county.

3.9. County school buses may provide transportation to students across county boundaries and may pick up students in one county for attendance in the schools of another county.

FISCAL NOTE WORKSHEET
(Submit 4 Copies)

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

SUBJECT Policy 7212 Intercounty Student Transfer Appeal 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	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).

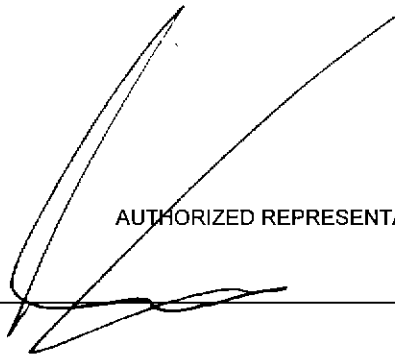
DATE

AGENCY

AUTHORIZED REPRESENTATIVE

August 9, 1999

West Virginia Department of Education



POLICY 7212: INTERCOUNTY STUDENT TRANSFER APPEAL
COMMENT LOG
September 9, 1999 to October 22, 1999

ACTION
N No Response
NA Not Accepted
A Accepted

TYPE
- Negative
+ Positive
o Neutral

Date	Individual/Organization	Comments	Action/Type	Rationale
9/23/99	Robert P. Mason Assistant Superintendent Mineral County Schools One Baker Place Keyser, WV 26726	\$126-189-3. Rules Yes!!!		
9/27/99	Carol M. Hall, Editor Mountain Messenger Newspaper P. O. Box 429 Lewisburg, WV 24901	I think this is a good, and necessary, change.		
10/20/99	Bob Phares Pendleton Citizens for Community Schools P. O. Box 205 Circleville, WV 26804	It does not seem to us that the proposed revision to Section 3 8 does much to clarify the situation like now exists with the Pendleton/Grant County controversy. After all, it was this controversy that initiated the recognized need that there had to be some clarification of the means for covering transportation costs for inter-county transfers. The state must bear some responsibility, one way or another, for the costs of inter-county transfers as the parents of these children are taxpayers and either the receiving or the sending county is being given funding credit based on enrollment and which includes transportation monies. We strongly believe that some sort of subsidy should be given to the North Fork School Transportation Corp. for their effort in transporting more than 50 children to the Grant County line. Isn't it true that mileage is often given to parents who have to drive their children to the nearest school or bus connection. A strong presumption of Section 1, Art. 12, of the Constitution, is		

Date	Individual/Organization	Comments	Action/ Type	Rationale
		<p>in favor of making everything deemed necessary to public education cost-free. The idea that there must be a plan before there is any consideration given to state coverage of transportation costs is weak in that it can easily be blocked by a county board refusing to develop or to be a party to such a plan. At the very least, there should be some language providing an opportunity for a state directive to the counties to develop such a plan and for appeal by the parents. We cannot but wonder whatever happened to a 1992 amendment to Policy 7212 processed by policymaking and drafted by Mr. Barone, Legal Services, and which read as follows: "The county in which student has transferred from -- that county cannot rescind the request and approval of that transfer at anytime. Only the county which has accepted the student can refuse should the enrollment/ratio exceed the limits" This issue was at the forefront of a major controversy this past summer with the Pendleton County Board of Education who delayed approval of a large number of students to go back to Grant County even though the inter-county transfer of these students had already been approved in previous years. This resulted in a lot of unnecessary anxiety and placed the students at a disadvantage in signing up for fall term courses. The Pendleton County Board of Education claimed it was their policy to require re-application of inter-county transfer requests. If so, it would seem to us that their policy conflicts with the state policy as cited above as well as existing Section 3.7 of Policy 7212.</p> <p>Thank you for the opportunity to comment on this revision. We hope these comments will be useful, and will be looking forward to receiving a copy of the final draft.</p>		

Date	Individual/Organization	Comments	Action/Type	Rationale
10/20/99	R. Paul Clayton Superintendent Pendleton County Schools P.O. Box 888 Franklin, WV 26807	Based upon the significant budget implications associated with the potential costs that attend the transportation of students to adjoining counties, it is imperative that decisions by other county school districts or by the State Superintendent (upon appeals of transfer decisions) d not obligate districts to participate in transportation cost sharing arrangements without their consent. As written, a single district could establish a plan for the transfer of students to or from an adjoining county. Disagreement with the plan by an effected school district could be overcome through the appeal procedure and the effected school district would arguably be obligated to enter into a transportation cost sharing agreement. The following substitute language is recommended "3.8 Parents who request the transfer of a student from the county of residence to another county must bear all transportation costs associated with the transfer. If, however, county boards of education enter into agreements that provide for the transfer of students to schools located in a county other than the county of residence (apart from the approval of a student transfer requests), such agreements shall include provisions that meet the transportation needs of the effected students."		
10/21/99	Linda J. Judy, Parent HC 73, Box 38 Riverton, WV 26814	I do not feel the proposed Policy 7212 benefits the children, maybe the county board of education. My oldest son attends Petersburg High School, the youngest attends Petersburg Elementary School. At the high school they offer JROTC in which this is my sons 2 nd year. This class is not offered at Pendleton County High. We know that there is money allocated for students riding on school buses.		
		Our students are transported to the Grant County line by a privately owned bus. At the county line, Grant County picks up the students, 60 or so, and takes them to school. Please tell me who gets the money for our students riding on the bus during the time they are in Pendleton County! Trust me it isn't the privately owned bus company.		

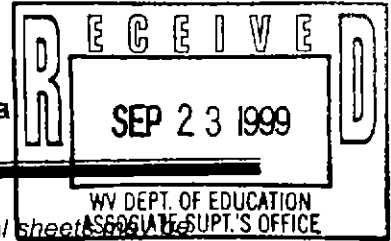
Date	Individual/Organization	Comments	Action/Type	Rationale
		<p>We the parents have asked Pendleton and Grant County Board of Educations to provide transportation for our students. The answer is Pendleton County will not let Grant County come to Seneca Rocks to pick up our students and Pendleton County will not provide transportation for our students. In turn Grant County won't come into Pendleton County because of hard feelings. Section 3.9 - if this is going to be in the policy then the State Board of Education need to take control of the county boards and enforce this. Without your (the State Board) help our students will continue to be transported to the Grant County line on a private bus.</p>		
		<p>Should our students be involved in an accident will the State Board of Education be responsible. Remember someone, some board of education is getting money for transportation costs. Remember our students do not see any of this money.</p>		
		<p>I feel the State Board has made a very bad judgement on this policy. We have approximately 60 students attending Grant County schools.</p>		
		<p>Please take charge of the Pendleton County and Grant County Board of Education and provide our students with transportation not halfway to Petersburg but all the way. All students deserve to have transportation the same as other students in the state.</p>		
10/21/99	<p>Dorothy N. Bennett, Pres. The North Fork School Transportation Corp. P.O. Box 178 Circleville, WV 26804</p>	<p>If I understand Policy 7212 - it would appear (we) are expecting the Pendleton County Board of Education to be responsible for the cost of transportation of our transfer students from the North Fork to Petersburg (Grant County). This is not the case. We do not expect the county board of education to pay for our students. However, we do feel we are entitled to the monies the state allocates per student, each day for transportation costs. The amount allocated for these 50 some transfer students was paid to someone??? I assure you it did not come to our bus company.</p>		

Date	Individual/Organization	Comments	Action/Type	Rationale
		<p>This is a matter we hope could soon be rectified. Now, for the matter of transfers: The Pendleton County Board of Education held up the decision and approval of students wanting to transfer to Grant County until July 21st, past. Pendleton County Board member John Mallow made the suggestion at the July 6th meeting to table the matter of transfers until the August 2nd meeting. At which time Board members Sonny O'Neal made the statement - the delay of another month would not be fair to the parents and their children, they deserve a decision before August 1st. There, a special meeting was set for July 21st, at which time transfers were approved.</p>		
		<p>My question - can or will the State Board of Education mandate for counties to implement a more timely fashion for such transfers to be handled?</p>		
		<p>Possible suggestion would be by the first of April and no later than the first of June. Any help you can give us on these matters would be greatly appreciated. Thank you for your time.</p>		
10/22/99	<p>Jeffrey & Rebecca Propst Parents HC81 Box 33B Seneca Rocks, WV 26884</p>	<p>We feel that Policy 7212 doesn't do anything to help our situation in Pendleton county. The State Board voted to change the Policy to allow intercounty busing. A suggestion would be to allow a county board of education to cross county lines to pick up children enrolled in their schools. All children deserve the safest means of transportation to school, which is a county school bus, regardless of the circumstances of their enrollment. We don't believe that children who transfer our of their own county should be discriminated against.</p>		

Date	Individual/Organization	Comments	Action/Type	Rationale
10/22/99	Stephanie D. Turner Parent HC59 Box 5A Seneca Rocks, WV 26884	The Grant County Board of Education and Pendleton County Board of Education will continue to be sluggish in determining the transportation needs, unless they are forced to approve the decision on a definite and final date. The parents and children need an answer so that our minds are at ease. The schools within both of these counties are excellent. I feel being employed in Grant County, that my children should attend Grant County Schools. The school is closer and more convenient. My son Cotdy Evans has done very well at Petersburg Elementary and has gained more confidence in himself. He is receiving the education that will lead him in life, and it would be a great discouragement for him not to excel because of a transportation disagreement.		
10/22/99	Laura Huffman Parent PO Box 19 Onego, WV 26886	I do not think that this proposed change clarifies matters at all, in fact, I believe that it makes the policy harder to understand and open to several interpretations. The proposed change does not accomplish what the Board intended, which was to provide transportation to the children who have transferred to a school in another county. The county that the children have transferred to should be allowed and encouraged to provide transportation across county lines to children enrolled in their schools. This was the original intent of the State Board when they voted to change the current policy.		

0011psb/1a

**POLICY 7212: Intercounty Student Transfer Appeal
Comments/Suggestions**



Directions. Please use this form in commenting on proposed Policy 7212. Additional sheets may be attached if needed.

Individual/Organization: Robert P. Mason

Position: Assistant Superintendent

Name of County, School, Business, etc: Mineral County Schools

Street Address: One Baker Place

City/State/Zip: Keyser, WV 26726

Comments/Suggestions

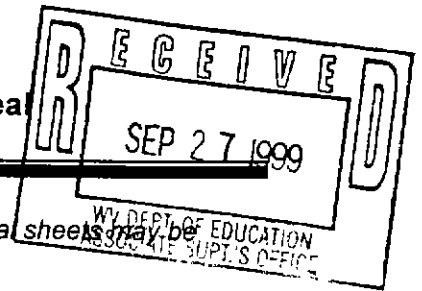
126-189-3

yes !!!

Return comments by October 22, 1999 to:

William J. Luff, Jr.
Associate State Superintendent
West Virginia Department of Education
Building 6, Room 360
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
E-mail: w/luff@access.k12.wv.us
Fax: (304) 558-0048

**POLICY 7212: Intercounty Student Transfer Appeal
Comments/Suggestions**



Directions: Please use this form in commenting on proposed Policy 7212. Additional sheets may be attached if needed.

Individual/Organization: Carol M. Hall

Position: Editor

Name of County, School, Business, etc: Mountain Messenger Newspaper

Street Address: Rt 2 Box 230A P.O. Box 429
LEWISBURG, WV

City/State/Zip: LEWISBURG WV 26041 26041

Comments/Suggestions

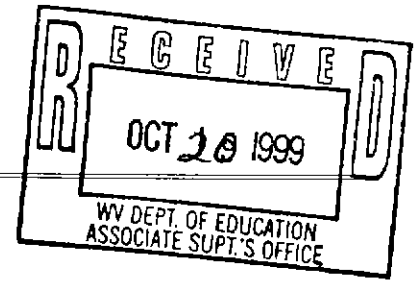
126-189-3

I think this is a good, and necessary,
change.

Return comments by October 22, 1999 to:

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Associate State Superintendent
West Virginia Department of Education
Building 6, Room 360
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
E-mail: wjuff@access.k12.wv.us
Fax: (304) 558-0048

From: William Luff <wluff@access.k12.wv.us>
To: Darcel Vermillion <dvermill@access.k12.wv.us>
Date: Wednesday, October 20, 1999 12:48 PM
Subject: Fw: revision of policy 7212



Please put this with comments to Policy 7212.

> From: Bob Phares <rephares@access.mountain.net>
> To: wluff@access.k12.wv.us
> Subject: revision of policy 7212
> Date: Wednesday, October 20, 1999 10:34 AM

>
> PENDLETON CITIZENS FOR COMMUNITY SCHOOLS
> P.O. BOX 205
> CIRCLEVILLE, WV 26804

>
> October 18, 1999

>
> Mr. William J. Luff, Jr.
> Associate State Superintendent
> West Virginia Department of Education
> Building 6, Room 360
> 1900 Kanawha Boulevard, East
> Charleston, West Virginia 25305-0330

> Dear Mr. Luff: Re: Policy
7212
> Revision

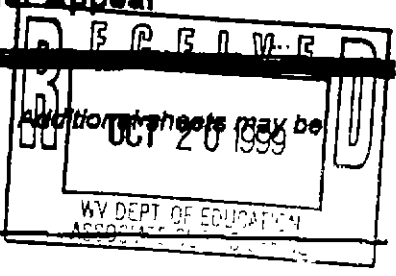
>
> It does not seem to us that the proposed revision to Section 3.8 does much
> to clarify the
> situation like now exists with the Pendleton/Grant County controversy.
> After all, it was
> this controversy that initiated the recognized need that there had to be
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> The state must
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- > County line. Isn't it true that mileage is often given to parents who have
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- > Section 1, Art.
- > 12, of the Constitution, is in favor of making everything deemed necessary
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- > education cost-free.
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- > The idea that there must be a plan before there is any consideration given
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- > "The county in which student has transferred from -- that county cannot
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- > been approved in previous years. This resulted in a lot of unnecessary
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- > Pendleton County
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- > inter-county
- > transfer requests. If so, it would seem to us that their policy
- conflicts
- > with the state policy
- > as cited above as well as existing Section 3.7 of Policy 7212.
- >
- > Thank you for the opportunity to comment on this revision. We hope these
- > comments
- > will be useful, and will be looking forward to receiving a copy of the
- > final draft.

>
> Sincerely,
>
> s/rep
>
> Robert E. Phares, Ph.D.
> Vice-President, PCCS
>

**POLICY 7212: Intercounty Student Transfer Appeal
Comments/Suggestions**

Directions: Please use this form in commenting on proposed Policy 7212. Additional sheets may be attached if needed.



Individual/Organization: R. Paul Clayton

Position: Superintendent

Name of County, School, Business, etc: Pendleton County Schools

Street Address: P. O. Box 888

City/State/Zip: Franklin, WV 26807

Comments/Suggestions

126-189-3

Based upon the significant budget implications associated with the potential costs that attend the transportation of students to adjoining counties, it is imperative that decisions by other county school districts or by the State Superintendent (upon appeals of transfer decisions) do not obligate districts to participate in transportation cost sharing arraignments without their consent.

As written, a single district could establish a plan for the transfer of students to or from an adjoining county. Disagreement with the plan by an effected school district could be overcome through the appeal procedure and the effected school district would arguably be obligated to enter into a transportation cost sharing agreement. The following substitute language is recommended

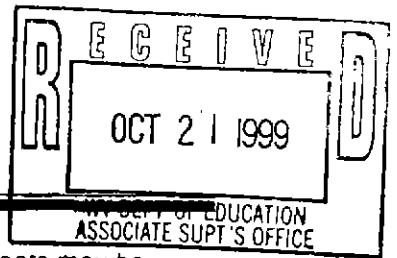
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Return comments by October 22, 1999 to:

*William J. Luff, Jr.
Associate State Superintendent
West Virginia Department of Education
Building 6, Room 380
1900 Kanawha Boulevard, East
Charleston, West Virginia 26305-0330
E-mail: wjlmf@access.k12.wv.us
Fax: (304) 558-0048*

1881dav/19a

POLICY 7212: Intercounty Student Transfer Appeal
Comments/Suggestions



Directions Please use this form in commenting on proposed Policy 7212. Additional sheets may be attached if needed

Individual/Organization: Linda J. Judy

Position: Parent

Name of County, School, Business, etc: Reside in Pend. Co / Attend school in Grant Co

Street Address: HC 73 Box 38

City/State/Zip: Riverton, WV 26814

567-3018 Home 567-3002 Work

Comments/Suggestions

126-189-3

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1881dav/19a

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3

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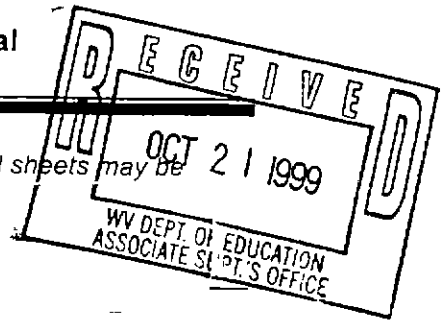
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Please feel free to call me
6AM - 2PM 567-3002 After 2PM
567-3018.

A concerned parent
Linda Judy

POLICY 7212: Intercounty Student Transfer Appeal
Comments/Suggestions

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Individual/Organization: Dorothy M. Bennett

Position: President

Name of County, School, Business, etc.: The North Fork School Transportation Corporation

Street Address: P.O. Box 178

City/State/Zip: Circleville, W. Va. 26804 Pendleton Co.

Comments/Suggestions

126-189-3

If I understand this policy 7212 - it would appear (we)
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2

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for counties, to implement a more timely fashion for
such transfers to be handled?

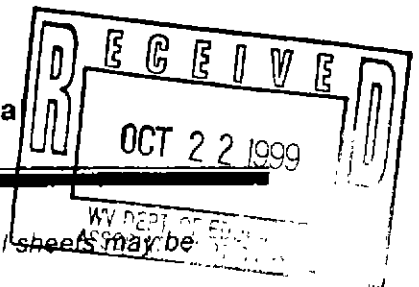
Possible suggestion would be by the first of April and
no later than the first of June.

Any help you can give us on these matters would
be greatly appreciated. Thank you for your time.

Sincerely,

Mar Dorothy J. Bennett
P.O. Box 178
(Circleville, W. Va. 26804)

**POLICY 7212: Intercounty Student Transfer Appeal
Comments/Suggestions**



Directions. Please use this form in commenting on proposed Policy 7212. Additional sheets may be attached if needed.

Individual/Organization: Jeffrey + Rebecca Propst

Position: Parents

Name of County, School, Business, etc: Grant County - Petersburg Elem.

Street Address: HC81 Box 33 B

City/State/Zip: Seneca Rocks WV. 26884

Comments/Suggestions

126-189-3

We feel that Policy 7212 doesn't do anything to help are situation in Pendleton County.

The State Board voted to change the Policy to allow Intercounty Busing.

A suggestion would be to allow a County Board of Education to cross County lines to pick up children enrolled in their schools. All children deserve the safest means of transportation to school, which is a County School Bus, regardless of the circumstances of their enrollment.

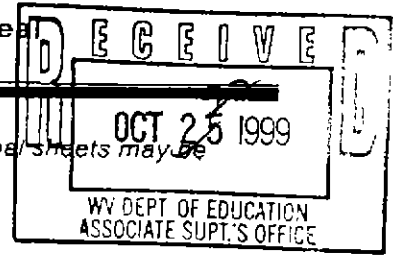
We don't believe that children who transfer out of their own County should be discriminated against.

Jeff & Rebecca Propst

Return comments by October 22, 1999 to:

*William J. Luff, Jr
Associate State Superntendent
West Virginia Department of Education
Building 6, Room 360
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
E-mail wjuff@access.k12.wv.us
Fax (304) 558-0048*

POLICY 7212: Intercounty Student Transfer Appeal
Comments/Suggestions



Directions Please use this form in commenting on proposed Policy 7212. Additional sheets may be attached if needed.

Individual/Organization: Stephanie D. Turner

Position: Parent

(Name of County), School, Business, etc: (Pendleton Co) Petersburg Elem.

Street Address: HC 59 Box 5A

City/State/Zip: Seneca Rocks, WV 26884

Comments and Suggestions

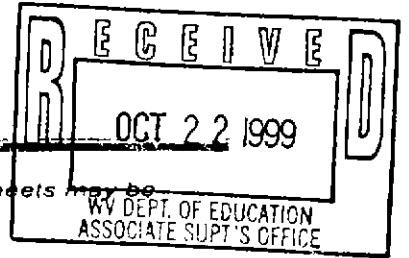
The Grant County Board of Education and Pendleton County Board of Education will continue to be sluggish in determining the transportation needs, unless they are forced to approve the decision on a definite and final date. The parents and children need an answer so that our minds are at ease. The schools within both of these counties are excellent I feel with my employment in Grant County, that my children should attend Grant County Schools. The school is closer and more convenient. My son Cotdy Evans has done every well at Petersburg Elem. And has gained more confidence in himself. He is receiving the education that will lead him in life, and it would be a great discouragement for him not to excel because of a transportation disagreement.

Return comments by October 22, 1999 to:

over

William J. Luff, Jr.
Associate State Superintendent
West Virginia Department of Education
Building 6, Room 360
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
E-mail wluff@access.k12.wv.us
Fax: (304) 558-0048

POLICY 7212: Intercounty Student Transfer Appeal
Comments/Suggestions



Directions Please use this form in commenting on proposed Policy 7212 Additional sheets may be attached if needed

Individual/Organization: Laura Huffman

Position: Parent

Name of County, School, Business, etc: Grant Co./Petersburg High

Street Address: PO Box 19

City/State/Zip: Onega, WV 26886

Comments/Suggestions

126-189-3

I do not think that this proposed change clarifies matters at all, in fact, I believe that it makes the policy harder to understand and open to several interpretations. The proposed change does not accomplish what the Board intended, which was to provide transportation to the children who have transferred to a school in another county. The county that the children have transferred to should be allowed and encouraged to provide transportation across county lines to children enrolled in their schools. This was the original intent of the State Board when they voted to change the current policy.

Return comments by October 22, 1999 to:

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West Virginia Department of Education
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