



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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8/14/2024 2:12 PM

Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Education TITLE-SERIES: 126-081

RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Attendance (4110)

CITE STATUTORY AUTHORITY: 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); and, W. Va. Bd. of Educ. v. Bd. of Educ., 239 W. Va. 705, 806 S.E. 2d 136 (2017)

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

September 16, 2024

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Kelli D Talbott -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 81
ATTENDANCE (4110)**

§126-81-1. General.

1.1. Scope. -- This legislative rule establishes guidelines for the development of county attendance policies.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; W. Va. Code §§16-3-4, 17B-2-3, 17B-2-5, 18-2-5, 18-2-5c, 18-5-15, 18-8-1, 18-8-2, 18-8-3, 18-8-4, 18-8-5, 18-8-11, 50-1-8; and, Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et seq. (McKinney-Vento Act).

1.3. Filing Date. -- August 14, 2024.

1.4. Effective Date. -- September 16, 2024.

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces W. Va. 126CSR81, Policy 4110, Attendance, filed December 16, 2020, and effective January 15, 2021.

§126-81-2. Purpose.

2.1. The West Virginia Board of Education (WVBE) recognizes a direct relationship exists between students' daily school attendance and academic performance, graduation, and the development of good work habits. This attendance policy promotes students' daily school attendance. Each county shall be required to develop and implement a county attendance policy and assist their schools with developing and implementing a plan to address attendance using a Multi-Tiered System of Support (MTSS) framework in accordance with this policy. Daily attendance is necessary for students to meet their schools' academic program standards, as each day's learning builds on the work previously completed. While students and parents/guardians/custodians have the ultimate responsibility for daily school attendance, the laws of West Virginia require school administrators to enforce regular attendance of compulsory school-aged students and to provide a safe learning environment through engaging, high-quality instruction to encourage regular attendance.

§126-81-3. Definitions.

3.1. Absence. Not being physically present for any reason or failing to engage in virtual or remote learning in accordance with county policies.

3.1.a. All documentation relating to absences shall be provided to the school not later than three instructional days after the first day the student returns to school. In the event documentation is not provided to the school within three instructional days after the first day the student returns to school, the absences are considered unexcused.

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3.1.b. Excused Student Absences. Absences that result from:

3.1.b.1. failure of the bus to run;

3.1.b.2. medical or dental appointment with a valid written excuse from the physician or dentist; and

3.1.b.3. personal illness or injury of the student;

3.1.b.3.A. The total absences permitted under this section combined with absences permitted under section 3.1.b.4 (personal illness or injury of a student's family member) must not exceed 10 per school year unless supported by a physician's note.

3.1.b.4. personal illness or injury of the student's parent/guardian/custodian, or family member, provided:

3.1.b.4.A. the excuse for such an absence must provide a reasonable explanation for the student's absence caused by the illness or injury in the family, and

3.1.b.4.B. the total absences permitted under this section combined with absences permitted under section 3.1.b.3 (personal illness or injury of the student) must not exceed 10 per school year;

3.1.b.5. documented chronic medical conditions that may require multiple or regular absences. These conditions must be documented annually with a valid physician's note that explains the condition and anticipated impact on attendance. The necessity for the absences must be approved and reviewed quarterly by the Student Assistance Team (SAT), Individualized Education Program (IEP) team, or Section 504 team as defined by W. Va. 126CSR16, Policy 2419, Regulations for the Education of Students with Exceptionalities (Policy 2419);

3.1.b.6. documented disabilities consisting of any mental or physical impairments that substantially limit one or more major life activities and are documented annually with a valid physician's note that explains the disability and the anticipated impact on attendance. The necessity for the absences must be approved and reviewed quarterly by the SAT, IEP team, or Section 504 team;

3.1.b.7. death in the family;

3.1.b.8. judicial obligation or court appearance involving the student; or

3.1.b.9. military requirements for students enlisted or enlisting in the military;

3.1.c. Unexcused Student Absence. Any absence not specifically included in the definition of Excused Student Absences.

3.2. Absence Measure. A measure of the extent to which a student misses instructional time across all modes of learning, including in-person, virtual, and other settings, as defined in section 3.16.

3.2.a. Full-day absence: being absent 80 percent or more of the school day.

3.2.b. Three quarter-day absence: being absent 60-79 percent of the school day.

3.2.c. Half-day absence: being absent 40-59 percent of the school day.

3.2.d. Quarter-day absence: being absent 20-39 percent of the school day.

3.3. Allowable Deductions for Schools. Absences that result from failure of the bus to run and students not in attendance due to disciplinary measures which are not included in the chronic absenteeism calculation.

3.4. Attendance. A measure of exposure to instruction across all modes of learning, including in-person, virtual, and other settings, as defined in section 3.17.

3.5. Attendance Rate. The number of days present divided by the number of membership days multiplied by 100.

3.6. Chronic Absenteeism. Missing 10 percent or more of instructional days for any reason except the allowable deductions defined in section 3.3.

3.7. Compulsory School Age. Begins with the school year in which the sixth birthday is reached prior to July 1 of such year or upon enrolling in a publicly supported kindergarten program and continues to the seventeenth birthday for as long as the student continues to be enrolled in a school system after the seventeenth birthday.

3.8. Dropout. A student who:

3.8.a. was enrolled in school at some time during the previous school year and was not enrolled on October 1 of the current school year;

3.8.b. has not graduated from high school, obtained a high-school equivalency diploma, or completed a state- or county-approved education program; and

3.8.c. does not meet any of the following exclusionary conditions:

3.8.c.1. transfer to another in- or out-of-state public school system, private school, home school, or state- or county-approved education program;

3.8.c.2. temporary school-recognized absence due to suspension or illness; or

3.8.c.3. death.

3.9. Dropout Date. The school day following the dropout's last day of attendance.

3.10. Enrollment. A student who is officially enrolled when one of the following conditions occur:

3.10.a. was enrolled the previous year;

3.10.b. appears at school to enroll with or without a parent/guardian/custodian; or

3.10.c. appears at school to enroll with or without a parent/guardian/custodian and with or without records.

3.11. Enrollment Count. A status count that reports the number of students on the attendance register as required by the West Virginia Department of Education (WVDE).

3.12. Homeless Children and Youth (McKinney-Vento Act). Individuals who lack a fixed, regular, and adequate nighttime residence and includes:

3.12.a. children and youth who share the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, camping grounds, due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; and/or are abandoned in hospitals or other locations;

3.12.b. children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation;

3.12.c. children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

3.12.d. migratory children who qualify as homeless because the children or youth are living in circumstances as described in the above descriptions.

3.13. Jaycie's Law. A support plan for pregnant and parenting students to stay in school and earn a diploma. (See Appendix A for guidance.)

3.14. Meaningful Contact. Two-way communication between the school administrator or other school designee and the student's parent/guardian/custodian to discuss the student's attendance record in an effort to prevent subsequent truancy or other legal proceedings relating to compulsory school attendance and minimize additional absences. Methods of meaningful contact include, but are not limited to, phone calls, video conferencing, home visits, and the use of digital platforms.

3.15. Membership Days. The days present plus the days absent.

3.16. School of Origin (McKinney-Vento Act). The school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including a preschool.

3.17. Student Presence. Students may be present for instruction in the following settings.

3.17.a. In-school. Participation in educational activities at a school building.

3.17.b. Alternate Setting. Participation in educational activities in a location other than the school building due to specific approved circumstances, such as out of school placement and alternative learning programs.

3.17.c. Homebound/Hospital Instruction. Participation in homebound or hospital instruction due

to an illness, injury, or other circumstances which warrant home or hospital confinement.

3.17.d. Virtual Learning/Engagement. Participation in virtual or remote learning at a location other than a school building, including engagement in a virtual school, a planned hybrid schedule, or a non-traditional learning day as defined by local policy.

3.17.e. School Approved Activity. Participation in school, county, or state-approved curricular or extracurricular activities.

3.18. System of Support Plan (SOS Plan). A plan to be developed by schools which integrate services using a Multi-Tiered System of Support (MTSS) framework. MTSS frameworks utilize evidence-based strategies to promote students' academic success, behavioral and mental health, including social and emotional needs, trauma sensitivity, bullying prevention, dropout prevention, and truancy reduction to ensure a school climate and culture that fosters learning and personal-social development. This plan shall include the following tiers and components and additional evidence-based strategies as appropriate.

3.18.a. Universal Prevention. Ensuring positive attendance messaging and campaigns by establishing procedures for:

3.18.a.1. selecting a school-based team or SAT, to support attendance;

3.18.a.2. collecting meaningful and actionable data and determining the protocol for analyzing data;

3.18.a.3. making and documenting meaningful contact with families/guardians/custodians after three and five days of unexcused absences and as needed;

3.18.a.4. implementing school-level motivational strategies based on the needs of the school; and

3.18.a.5. recognition for attendance, including improved attendance.

3.18.b. Targeted Intervention. Process of identifying students with a pattern of excessive absenteeism through school-based student support teams or SAT with an attendance focus. Establish procedures for:

3.18.b.1. determining root causes of the absences to select evidence-based interventions based on need;

3.18.b.2. reviewing interventions to determine effectiveness; and

3.18.b.3. reporting all cases of unexcused absences arising within the school that require the services of an attendance director.

3.18.c. Intensive Interventions. Process of collaborating with outside agencies for interagency case management. truancy diversion, and the judicial system when necessary. Establish procedures for:

3.18.c.1. identifying all agencies and stakeholders to assist students based on need;

3.18.c.2. providing adequate counseling for issues related to attendance.

3.18.c.3. collaborating with truancy diversion and the judicial system when necessary.

3.19. Transfer. A process by which a student ends enrollment or attendance in one location and begins enrollment or attendance in a second location (e.g., within a county, between counties, or out-of-state). This process can be evidenced through a transcript request or other documentation that the student is continuing elementary or secondary education.

§126-81-4. Responsibilities.

4.1. The WVBE shall:

4.1.a. encourage daily attendance and mandate that county school systems adequately address the loss of instructional time.

4.1.b. define allowable deductions for purposes of state attendance reports and statistics. Schools shall not be held accountable for absences resulting from allowable deductions. These absences shall not be calculated in the school's/county's attendance rate.

4.2. The WVDE shall:

4.2.a. establish a statewide leadership network of regional groups to address attendance;

4.2.b. assist counties with developing an SOS Plan with their schools to address significant loss of instructional time; and

4.2.c. provide attendance-focused professional development and technical assistance to counties.

4.3. Each county board of education shall:

4.3.a. establish an attendance policy. Each county's attendance policy shall address the following components:

4.3.a.1. a philosophy declaring the county board's intent to increase attendance by assisting schools with developing and implementing a plan to address attendance which integrates services using a MTSS framework;

4.3.a.2. definitions of compelling circumstances under which students may attend school for fewer than four full years and/or may be scheduled for courses for less than the full instructional day W. Va. 126CSR42, Policy 2510, Assuring the Quality of Education: Regulations for Education Programs (Policy 2510);

4.3.a.3. definitions of extenuating circumstances for absences which may require homebound/ hospital instruction as outlined in Policy 2510; and

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4.3.a.4. procedures and reasonable timelines requiring students with Excused and Unexcused Absences to make up schoolwork;

4.3.b. develop a system enlisting parent/guardian/custodian support for daily school attendance by students;

4.3.c. provide opportunities for input from teachers, principals, attendance directors, parents/guardians/custodians, and community leaders when developing or revising the attendance policy;

4.3.d. employ a certified county director of school attendance as required by W. Va. Code §18-8-3; and

4.3.e. support and require the county attendance director to implement and execute the duties as defined in W. Va. Code §18-8-4.

4.4. County board of education staff shall:

4.4.a. support schools with creating positive and safe learning environments through engaging, high-quality instruction;

4.4.b. develop a process to notify students and their parents/guardians/custodians of the county attendance policy and their responsibility and accountability for regular school attendance;

4.4.c. ensure accurate attendance records and related documentation shall be maintained for every student enrolled in public school;

4.4.d. ensure all students shall be scheduled in the defined high school coursework, college courses, CTE programs, credit recovery, Option Pathway, experiential learning, or virtual college courses for the full instructional day during grades 9-12 per Policy 2510;

4.4.e. assure that a student may not be suspended solely for failure to attend class;

4.4.f. report student attendance information reflecting the allowable deductions defined by the WVBE;

4.4.g. report all school dropouts to the WVDE; and

4.4.h. ensure that the county attendance policy is posted on the county school system's website and readily available to the public;

4.5. The attendance director and his or her assistants shall:

4.5.a. devote as much time as is required to the duties of attendance director during the instructional term and at any other times as the duties of an attendance director are required. All attendance directors and his or her assistants hired for more than 200 days may be assigned other duties determined by the superintendent during the period in excess of 200 days. Under the direction of the superintendent, the county attendance director is responsible for efficiently administering school

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attendance in the county by:

4.5.a.1. ensuring the implementation of the “SOS Plans” within their county, including encouraging the attendance of students and imparting upon the parents, guardians, and custodians the importance of attendance and the seriousness of failing to do so;

4.5.a.2. ensuring accurate attendance records and related documentation shall be maintained for every student enrolled in public school;

4.5.a.3. cooperating with existing state and federal agencies charged with enforcing child labor laws;

4.5.a.4. promoting attendance in the county by compiling data for schools and by furnishing suggestions and recommendations for publication through media or in any manner directed by the superintendent;

4.5.a.5. participating in teachers’ conferences with parents/guardians/custodians and students as appropriate;

4.5.a.6. assisting in other ways as directed by the superintendent to improve school attendance;

4.5.a.7. making home visits of students who have excessive Unexcused Absences or if requested by the chief administrator, principal, or assistant principal;

4.5.a.8. supporting and requiring the principal to implement and execute the duties as defined in W. Va. Code §18-8-5;

4.5.a.9. serving as the liaison for homeless children and youth as defined in W. Va. Code §18-8-4 and the McKinney-Vento Act. The attendance director shall:

4.5.a.9.A. ensure that public notice of the educational rights of students in homeless situations is disseminated in locations frequented by parents, guardians, and/or custodians of such students;

4.5.a.9.B. ensure that parents/guardians/custodians are informed of educational and related opportunities available to their children, and are provided with meaningful opportunities to participate in the education of their children;

4.5.a.9.C. ensure that parents/guardians/custodians are informed of, and assisted in accessing, all transportation services for their children, including to the school of origin;

4.5.a.9.D. ensure unaccompanied youth are informed of their status and help unaccompanied youth choose and enroll in a school, after considering the youth’s wishes, and provide the youth with notice of the right to appeal the county’s decision;

4.5.a.9.E. immediately assist in obtaining immunizations or record of immunizations or other medical records for those students who do not have them, and assure that students are enrolled in

school while the records are being obtained;

4.5.a.9.F. ensure that homeless children and youths are identified by school personnel and through coordination activities with other entities and agencies;

4.5.a.9.G. ensure that homeless children and youths enroll in, and have a full and equal opportunity to succeed in, schools of that county;

4.5.a.9.H. ensure that homeless families, children, and youth receive educational services for which such families, children, and youths are eligible including Head Start and preschool programs administered by the local educational agency, including early intervention services under Public Law 108-446, Individuals with Disabilities Education Improvement Act of 2004 (IDEA), and referrals to health care services, dental services, mental health services, and other appropriate services; and

4.5.a.9.I. ensure that enrollment disputes are mediated as outlined in the McKinney-Vento Act.

4.6. In addition to those duties directly relating to the administration of attendance, the attendance director and his or her assistant may:

4.6.a. assist schools with establishing data practices for collecting meaningful and actionable data. They may also support the schools in determining the protocol for analyzing data and selecting a school-based team to support attendance;

4.6.b. make complaint against the parent/guardian/custodian before a magistrate of the county in the case of 10 total Unexcused Absences of a student during a school year. If it appears from the complaint that there is a probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent/guardian/custodian may be charged in a complaint. Initial service of the summons or warrant issued pursuant to the provisions of W. Va. Code §18-8-4 shall be attempted within 10 calendar days of the receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later;

4.6.b.1. when calculating Unexcused Absences for the purpose of making complaints against a parent/guardian/custodian before a magistrate, Unexcused Absences resulting from suspensions or expulsions from school shall not be considered;

4.6.c. require a properly attested birth certificate or an affidavit from the parent/guardian/custodian of the student, stating the age of the student when any doubt exists as to the age of a student absent from school. In the performance of their duties, the attendance director or his or her assistant has authority to take without warrant any student absent from school in violation of W. Va. Code §18-8-4(h) and to place the student in the school in which the student is or should be enrolled; and

4.6.d. require a student maintain satisfactory attendance (satisfactory being defined as no Unexcused Absences) during one complete semester following the restriction of the student's driver's license.

4.7. The school shall:

4.7.a. ensure positive and safe learning environments through engaging, high-quality instruction;

4.7.b. select a school-based or SAT team with an attendance focus to meet the requirements of W. Va. Code §18-8-5. This team will determine the practices for collecting actionable data, the protocol for analyzing the data, and reporting the findings to the attendance director or his or her assistants. The report should include:

4.7.b.1. all cases of Unexcused Absences arising within the school that require the services of an attendance director;

4.7.b.2. documentation of meaningful contact after three and five days of Unexcused Absences.

4.7.c. meet with the parent/guardian/custodian of a student who has accumulated five Unexcused Absences from school during any quarter of the school year;

4.7.c.1. a student whose educational services are guided by an existing SAT Plan, IEP, or Section 504 Plan may warrant special consideration when a pattern of single, multiple, or chronic absences exists. The student's current status should be reviewed by the SAT, IEP team, or Section 504 team as deemed appropriate and in accordance with state and federal laws;

4.7.d. create an SOS Plan for universal prevention and targeted and intensive interventions to address absenteeism at their school, as defined in section 3.18;

4.7.e. ensure accurate attendance records and related documentation shall be maintained for every student enrolled in public school;

4.7.e.1. an up-to-date daily record of attendance for every student shall be maintained;

4.7.e.2. students who are physically absent from school must be documented as absent. This record may become a legal document;

4.7.e.3. there shall be written procedures for:

4.7.e.3.A. notifying parents/guardians/custodians about absences;

4.7.e.3.B. monitoring absences; and

4.7.e.3.C. notifying the attendance director of Unexcused Absences when their services are required;

4.7.e.4. appoint a designated school attendance coordinator (principal or designee) who collects classroom attendance data and makes appropriate referrals to the attendance director.

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4.7.f. assure that a student may not be suspended solely for failure to attend class; and

4.7.g. ensure all students shall be scheduled in the defined high school course work, college courses, CTE programs, credit recovery, Option Pathway, experiential learning, or virtual college courses for the full instructional day during grades 9-12 per Policy 2510.

4.7.h. ensure each parent/guardian/custodian is aware of their responsibility for fully cooperating in and completing the enrollment process by providing:

4.7.h.1. immunization documentation (W. Va. Code §16-3-4);

4.7.h.2. copy of a certified birth certificate or affidavit (W. Va. Code §18-2-5c);

4.7.h.3. signed suspension and expulsion document (W. Va. Code §18-5-15); and

4.7.h.4. any other documents required by federal, state, and/or local policies or code.

§126-81-5. Severability.

5.1. If any provision of this policy or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this policy.

Appendix A: Jaycie's Law

Responsibilities

County boards shall make reasonable efforts to encourage school-aged parents to remain on track for graduation.	Provide academic support such as, but not limited to: <ul style="list-style-type: none"> ● virtual Instruction; and ● homebound Instruction.
The schools shall refer the students to an organization that seeks to provide a range of services to pregnant women and their families. Please see the suggested definitions of these organizations as defined in W. Va. Code §16-66-1.	Provide a list of pregnancy or postpartum assistance organizations within the county and surrounding counties, such as, but not limited to: <ul style="list-style-type: none"> ● organizations traditionally known as crisis pregnancy organizations; ● maternity homes; ● adoption agencies; and ● social service agencies.

Attendance Guidance

Excuse all absences due to pregnancy or parenting-related conditions, including: <ul style="list-style-type: none"> ● labor; ● delivery recovery; and ● prenatal and postnatal medical appointments. 	WVDE will provide guidance on coding these absences.
Provide eight weeks of Excused Absences for the mother for the birth of the child.	A doctor's excuse must be provided for up to the initial eight weeks. Absences beyond eight weeks after birth shall require separate excuses. WVDE will provide guidance on coding these absences.
Provide two weeks of Excused Absences for the putative father within the first ten weeks of the baby's birth.	WVDE will provide guidance on coding these absences.
Provide an Excused Absence for parenting students whose child is sick.	A doctor's excuse must identify the child's illness requiring the parenting student's absence. Absences will only be excused for one parent unless the child's illness requires hospitalization. WVDE will provide guidance on coding these absences.