

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 86
STANDARDS FOR SCHOOL NUTRITION (4321.1)**

§126-86-1. General.

1.1. Scope - This legislative rule establishes nutrition standards for foods sold, served and/or distributed to students in schools during the school day. The procedures relate both to nutritional standards of school meals and other foods and beverages sold, served or distributed to students. Further, this rule includes recommendations pertaining to all foods sold, served or distributed on school premises.

1.2. Authority - W. Va. Constitution, Article XII, §2 and W. Va. Code §18-2-5.

1.3. Filing Date. – January 11, 2008.

1.4. Effective Date. – July 1, 2008.

1.5. Repeal of Former Rule. This legislative rule repeals and replaces W. Va. §126CSR86, West Virginia Board of Education (WVBE) Policy 4321.1, *Standards for School Nutrition*, filed October 18, 2004 and effective November 17, 2004.

§126-86-2. Purpose.

2.1. Research has shown that schools play an important role in shaping students' health behaviors. Students spend a major part of their day in the school environment. It is vital that this environment support the development of a healthy lifestyle, offer opportunities for students to make healthy and informed selections, and prepare students for academic success. In West Virginia schools, federally funded school nutrition programs are available to provide nutritious foods to all students. It is intended that these child nutrition programs be the main source of foods and beverages available at school. These programs have specific requirements to ensure that adequate nutrients are offered to promote health. Other foods and beverages, when available, should also provide necessary nutrients and contribute to an overall healthy eating environment. Schools are uniquely positioned to model and reinforce these healthful eating behaviors. This policy reflects an integrated approach to ensuring a school environment that promotes optimal nutrition for all students. The intent of this policy is to encourage and enable schools to provide students with nutritious food and beverage choices that will enhance learning and promote healthy behaviors that can be maintained throughout life.

§126-86-3. Operational Definitions.

3.1. *Bottled water* is defined as plain natural water containing no additives.

3.2. *Candy* is defined as any food that, as served in its finished form, contains, by weight, more than 35% sugar (in crystalline form or in solution as syrup, both monosaccharides and disaccharides) and/or other sweetening agents, or any food product commonly referred to as "candy".

3.3. *Chewing gum* is defined as a preparation of chicle or other plastic substance sweetened and/or flavored for chewing.

3.4. *Competitive foods* are defined as all foods and beverages sold, served or distributed in competition with meals served under the United States Department of Agriculture's (USDA) Child Nutrition Programs in the food service areas during the meal service periods.

3.5. *Elementary school*, for purposes of this rule, is defined as a school serving any students in grades pre-kindergarten up to and including grade four.

3.6. *Enrollment* is defined as "head count".

3.7. *Flavored ice bar* is defined as a frozen confection consisting of water mixed with flavored syrups and/or powders, sugars and/or other sweetening agents, binders, stabilizers and/or emulsifiers.

3.8. *Food service area* is defined as any area on school premises where reimbursable meals are served and/or consumed by students.

3.9. *Full-time* is defined as a 12-month employment period with exclusive nutrition program responsibilities.

3.10. *High school*, for the purposes of this rule, is defined as a school with a grade configuration of 9-12, 10-12 or 11-12.

3.11. *In-school snacks* are defined as nutritious snacks that are not federally subsidized and provided at cost through the child nutrition program during the school day.

3.12. *Meal service period* is defined as 20 minutes before the first child is served a meal until 20 minutes after the last child receives a meal.

3.13. *Milkshakes* are defined as non-fat and/or 1% low-fat milk milkshake products that provide a minimum of 8 oz. fluid milk equivalency that meets the USDA meal pattern requirement or West Virginia's Option B meal pattern requirement.

3.14. *Nutritious choices* are defined as fruits, vegetables, plain water, 100% fruit or vegetable juices; non-fat and/or 1% low-fat milk, cheese, yogurt; grain foods containing whole grain as the first listed ingredient; nuts and/or seeds.

3.15. *Other foods and beverages* are defined as any food or beverage, sold, served or distributed to students including snacks from vending machines, school stores, parties,

and school day fund raising activities, except those served as part of the child nutrition program meals and snacks. Other foods do not include those brought to school by individual students for their own consumption.

3.16. *Reward* is defined as something given in recompense or compensation for service, merit, achievement or some other type of worthy behavior.

3.17. *School day* is defined as the period of time between the arrival of the first student at the school building and the end of the last instructional period.

3.18. *School premises* is defined as school or county board of education property.

§126-86-4. Nutrition Standards for School Nutrition Programs.

4.1. All foods or beverages made available on school premises during the school day must meet the requirements of this policy.

4.2. For all schools, county boards of education shall select one of two West Virginia Department of Education (WVDE) Lunch Menu Planning Options: Option A (see section 4.3), based on current meal patterns, the current *Dietary Guidelines for Americans* and nutrient analysis standards as defined in section 4.3.1. or Option B (see section 4.4), based on a food component meal pattern, current *Dietary Guidelines for Americans* and nutrient analysis standards as defined in section 4.3.1. The Breakfast Meal Pattern proposes a single implementation option (see section 4.5).

4.3. Lunch Implementation Option A.

4.3.1. School lunches shall meet current WVDE meal pattern requirements and averaged over a period of one week:

a. provide at least one-third of students' Recommended Dietary Allowances (RDAs) for calories, protein, calcium, iron, vitamins A and C;

b. limit calories from fat to no more than 30%; saturated fat to less than 10%, and trans fat not to exceed 0.5 grams per product;

c. limit sodium to no more than 1100 milligrams;

d. provide at least 6 grams of naturally occurring dietary fiber;

e. offer water;

f. omit any foods or beverages containing non-nutritive/artificial sweeteners; and

g. meet the current *Dietary Guidelines for Americans*.

4.3.2. Require additional foods be provided to pregnant or lactating students so that breakfast and lunch together, or in combination with a snack, provide:

- a. a total of 5 oz. of protein foods, 1 oz. of which shall be 1 oz. cheese, 1 cup yogurt or 8 oz. fluid milk;
 - b. 3 servings from the grain group, preferably from whole grains;
 - c. 1 1/4 cups from the fruit and vegetable group;
 - d. 16 fl. oz. from milk group; and
 - e. 1 cup of fruit in place of one serving of the grain group once a week
- shall be allowed.

4. 4. Lunch Implementation Option B Minimum Requirements*.

COMPONENT	PRE-K-2	Grades 3-4	Grades 5-8	Grades 9-12
Fruit/Vegetable** Offer fresh produce whenever possible	$\frac{3}{4}$ cup At least $\frac{1}{4}$ cup fresh 5 times/week	1 cup At least $\frac{1}{4}$ cup fresh 5 times/week	1 cup At least $\frac{1}{2}$ cup fresh 5 times/week	$1\frac{1}{4}$ cup At least $\frac{1}{2}$ cup fresh 5 times/week
Meat/Meat Alternate** Emphasize lean and lower sodium choices Serve dried beans, dried peas or lentils at least once/week	$1\frac{1}{2}$ oz At least $\frac{1}{4}$ cup dried beans, dried peas or lentils/week	2 oz At least $\frac{1}{4}$ cup dried beans, dried peas or lentils/week	2 oz At least $\frac{1}{2}$ cup dried beans, dried peas or lentils/week	2 oz At least $\frac{1}{2}$ cup dried beans, dried peas or lentils/week
Bread/Bread Alternate** Emphasize whole grain products	1/day At least 5 servings/week must contain at least 33% whole grain or 5 g whole grain per 1 oz	1/day At least 5 servings/week must contain at least 33% whole grain or 5 g whole grain per 1 oz	1/day At least 5 servings/week must contain at least 33% whole grain or 5 g whole grain per 1 oz	1/day At least 5 servings/week must contain at least 33% whole grain or 5 g whole grain per 1 oz
Total servings per week	(7/week)	(9/week)	(11/week)***	(11/week)***
Milk Offer only milk with 1% or less butterfat.	8 fl oz	8 fl oz	8 fl oz	8 fl oz
Water Encourage adequate water consumption	Offer water	Offer water	Offer water	Offer water

* Require additional foods for pregnant and lactating students as specified in "Lunch Implementation Option A". (see section 4.3.2.).

** Snack Option may be chosen (see section 10.1.).

*** When 11 servings of bread/bread alternate are served per week, a total of two of the bread servings, but not more than one per day, may be grain-based desserts.

4.5. Breakfast Implementation*.

COMPONENT	Grades Pre-K-12
MILK Offer lower fat choices	8 fl oz offer only milk with 1% or less butterfat
FRUIT/VEGETABLE Offer daily a fruit, 100% juice or vegetable that is a good source of vitamin C	1/2 cup
MAY CHOOSE ONE SERVING FROM EACH OF THE FOLLOWING COMPONENTS OR TWO SERVINGS FROM ONE	
BREAD/BREAD ALTERNATE Offer whole grain varieties daily Offer low fat, low sugar, high fiber choices Cereals shall contain no more than 35% of calories from sugars	1 or 2 servings
MEAT/MEAT ALTERNATE Encourage low-fat and low-sodium choices daily	1 serving recommended

* Require additional foods for pregnant and lactating students as specified in "Lunch Implementation Option A".

§126-86-5. Nutrition Standards for Other Foods and Beverages.

5.1. All *other foods and beverages* made available on school premises during the school day must meet the requirements set forth in this policy. In order to promote healthy eating habits, the consumption of fruits, vegetables, whole grains and non-fat and/or 1% low-fat dairy products should be encouraged.

5.1.1. *Other foods and beverages* available to students on school premises shall contribute to students' nutrient requirements and should not add unnecessary calories, fat, sugar or sodium. While West Virginia law allows county boards to permit the sale of soft drinks to students in high schools, the West Virginia Board of Education strongly recommends that only water, 100% fruit and/or vegetable juice and non-fat and/or 1% low-fat milk, flavored or unflavored be sold, served or distributed during the school day. It is required that all *other foods and beverages* available during the school day reflect the following requirements:

- a. Limit total calories to no more than 200 per product/package;
- b. Limit total fat to no more than 35% of calories per product/package excluding nuts, seeds or cheese;
- c. Limit saturated fat to less than 10% of the total calories;
- d. Limit trans fat to less than or equal to 0.5 grams per product/package;
- e. Reduce sugar content of food items to no more than 35% of calories per product excluding fruits;
- f. Limit sodium to no more than 200 milligrams per product/package;
- g. At all grade levels, it is recommended that only water, 100% fruit and/or vegetable juice and non-fat and/or 1% low-fat milk, flavored or unflavored be sold, served or distributed during the school day. However, W. Va. Code §18-2-6a permits the sale of other juice beverages with a minimum of 20% real juice;
- h. No candy, soft drinks, chewing gum or flavored ice bars will be sold, served or distributed during the school day, except that, W. Va. State Code §18-2-6a permits the sale of soft drinks to students in county high schools except during breakfast and lunch periods.
- i. The WVBE strongly recommends that other juice beverages not contain added sugar;
- j. Limit fruit/vegetable juice portion sizes to no more than 4 oz. for elementary students and no more than 8 oz. for middle/high school students per product/package;

k. Prohibit the sale, service or distribution of coffee and coffee-based products during the school day;

l. Prohibit caffeine containing beverages with the exception of those containing trace amounts of naturally occurring caffeine substances; and

m. Prohibit the sale, service or distribution of any foods containing non-nutritive/artificial sweeteners.

5.1.2. Except for foods served in the school nutrition programs, no food or beverage shall be sold, served or distributed to students in elementary schools from the time the first child arrives at school until 20 minutes after all students are served lunch.

5.1.3. Foods and beverages shall not be offered as a reward or used as a means of punishment or disciplinary action for any student during the school day.

5.1.4. Foods and beverages may not be sold, served or distributed in competition with the federal child nutrition programs in the food service areas during the meal service periods.

5.1.5. *Other foods and beverages* may not be sold, served or distributed in such a way as to encourage the distribution or purchase of these items as a ready substitute for, or in addition to, reimbursable meals.

5.1.6. Wherever and whenever foods are sold, served or distributed on school premises, outside the school day, such foods shall include nutritious choices.

5.1.7. Food and beverage contracts must comply with WV 126 CSR 202, WVBE Policy 8200, *Purchasing Policies and Procedures Manual for Local Educational Agencies*. All contracts shall be approved and signed by the county board or the county superintendent, if approval authority has been delegated by the board to the superintendent. County boards of education are statutorily created and given authority to contract. Individual schools do not have such authority. All food and beverage contracts or agreements regarding public schools and vendors shall meet all purchasing standards as set forth in policy and code and shall be competitively negotiated. Contracts that extend beyond a fiscal year shall contain a clause allowing the board to terminate the contract at the end of each year. Contracts shall facilitate the WVBE efforts to offer and promote nutritious food and beverage choices.

5.2. Due to special dietary needs and food safety concerns, foods and beverages brought or delivered from outside sources may be consumed only by individual students for which they were brought or delivered, and not by the general student population. Organized food events and celebrations held during the school day shall be regulated and monitored by school personnel to meet the requirements of this policy.

§126-86-6. Marketing Other Foods and Beverages During the School Day.

6.1. On school premises, from the arrival of the first child at school until the departure of the last regularly scheduled school bus, all fund raising activities involving foods and beverages shall comply with the standards set forth in this policy. (see section 5.1.)

6.2. County boards of education should minimize marketing other foods and beverages in the high school setting by locating their distribution in low student traffic areas and by ensuring that the exterior of vending machines does not depict commercial logos of products or suggest that the consumption of vended items conveys a health or social benefit.

§126-86-7. À La Carte Sales.

7.1. All meals must be priced and served as a unit. Only fluid milk, non-fat and/or 1% low-fat milkshakes and bottled water may be sold as à la carte items for breakfast and lunch at any grade level.

§126-86-8. Availability of Drinking Water.

8.1. In addition to milk, safe drinking water shall be offered with meals for student consumption in all child nutrition programs. Cups must be available with any water dispenser for easy student access.

8.2. Schools shall make available plain, unflavored water throughout the school day at no charge.

§126-86-9. Adequate Time for Meal Consumption.

9.1. Adequate time shall be allowed for student meal consumption. Minimum time allowance (eating time for each student after being served the meal) for student consumption of meals shall be ten minutes for breakfast and 20 minutes for lunch. Activities may not be scheduled during meal service times to distract or limit student participation in the nutrition programs. Recess before lunch is strongly encouraged in elementary schools.

9.2. If a school offers an education schedule that utilizes the meal service period for academic purposes, the child nutrition program must provide an adequate reimbursable meal to students.

§126-86-10. Snack Options.

10.1. Child Nutrition Program Snack Option. Schools may choose to allow adequate time for consumption of food by extending the meal period or by providing a snack under the following stipulations: (Note: Prior WVDE approval is required to provide the fruit/vegetable snack option for lunch.)

- a. The snack may be offered from a separate credible meal pattern menu item at breakfast or lunch for consumption later;
- b. The snack item may be a single serving of bread/bread alternate, fruit or vegetable;
- c. If the snack option is chosen, school administrators and teachers should support this effort by providing students with the time and opportunity to eat these snacks during the day;
- d. Timing of the snack should be determined by the individual school choosing this option;
- e. The price of meals may not be increased solely as a result of choosing this option; (Note: No federal reimbursements exist for this snack option.); and
- f. Schools choosing this snack option may elect to sell the same snack foods at cost to students who do not purchase a school meal.

10.2. In-school Snack Program. A nutritious snack may be provided to students through the child nutrition program during the school day. Food items planned should be age appropriate to prevent choking and adjusted to meet the nutritional needs of the child based on age. It is recommended that snack choices include fruits/vegetables, whole grains and non-fat and/or 1% low-fat dairy. The county child nutrition director shall work collaboratively with school personnel to approve an in-school snack program that provides nutritious snacks at cost to children during the school day.

§126-86-11. Staffing.

11.1. Each county superintendent shall designate a school nutrition program director according to the criteria listed below. The school nutrition director must hold an authorization endorsed as School Nutrition Program Director that is approved and issued by the WVDE.

11.1.1. An applicant for initial authorization must provide evidence of satisfying the following:

- a. A minimum of a bachelor's degree with a 2.5 overall grade point average (GPA);
- b. At least 6 semester hours of course work in nutrition and/or food service management; and
- c. Receive the recommendation of the county superintendent verifying that the applicant is the most qualified candidate for the position.

11.1.2. The authorization shall be valid for one school year and shall expire on June 30.

11.1.3. The applicant for renewal of the authorization for School Nutrition Program Director must provide evidence of satisfying the following:

a. Completion of 15 clock hours of staff development related to Child Nutrition Programs and offered or granted prior approval by the WVDE; and

b. Recommendation of the superintendent in the county in which the applicant is or was employed.

11.2. One authorized School Nutrition Program Director shall be appointed for each county. Upon WVDE approval, a full-time School Nutrition Program Director may be employed with multi-county oversight responsibilities not to exceed two counties.

11.3. The employment of a full-time School Nutrition Program Director at the county level is strongly recommended. Suggested staffing shall be based on the following:

11.3.1. One full-time authorized School Nutrition Program Director;

11.3.2. One assistant School Nutrition Program Director for each county where enrollment exceeds 7,000 students; and

11.3.3. Two secretaries for food service operations at the county level where enrollment exceeds 7,000 students.

11.4. It is strongly recommended that county Child Nutrition Program staff avail themselves to professional dietetic services to assist in planning and implementing Child Nutrition Program requirements.

§126-86-12. Local Wellness Policy.

12.1. The Child Nutrition and WIC Reauthorization Act of 2004, Section 204 of Public Law 108-265, requires that all local education agencies participating in the National School Lunch Program develop a local wellness policy by the first day of the 2006-2007 school year. The local wellness policy provides an opportunity for schools to create an environment that promotes wellness. Sponsors must at a minimum complete an assessment of each school to identify areas of improvement. Policy provisions must exceed current state and federal minimum requirements to demonstrate improvement.

12.2. Development of the policy shall involve a broad spectrum of the school and community members including health care providers, food service personnel, teachers, students, parents, board members and educational administrators.

12.3. The policy must address each of the following areas:

12.3.1. Nutrition education;

12.3.2. Physical activity;

12.3.3. Nutrition guidelines for all foods and beverages available on school campus; and

12.3.4. Other school-based activities to promote student wellness.

12.4. The policy must include an evaluation plan for measuring the implementation of the policy and progress that is being made.

12.5. A timeline must be established for implementation, assessment and evaluation of the policy. A county-wide assessment must be conducted biannually to determine progress in targeted areas and to identify areas needing improvement.

12.6. The Local Wellness Policy must be county board approved.

12.7. The county-wide policy must govern all schools and must be submitted to the WVDE's, Office of Child Nutrition biannually. Additionally, the policy must include current revisions and evidence of yearly progress.

12.8. Failure to submit the local wellness policy to the WVDE's, Office of Child Nutrition as required may result in a non-compliance violation and suspension of federal meal reimbursements pending compliance with local wellness policy requirements.

§126-86-13. Accountability and Compliance.

13.1. County boards of education and local school administrators shall provide a safe and healthy learning environment for all students and proper accountability for all funds received from food and beverage sales. Methods for monitoring compliance may include, but are not limited to:

13.1.1. Coordinated Review Effort (CRE), School Meals Initiative Review (SMI), Independent Audits, annual site monitoring by food service directors, and reviews conducted by the WVDE.

13.2. Compliance with the standards set forth in this policy is required to enable schools to provide students with nutritious food and beverage choices that will enhance learning and promote healthy behaviors that can be maintained throughout life. School child nutrition programs shall be the main source of foods and beverages available at school. These programs have specific requirements to ensure that adequate nutrients are offered to promote health.

13.2.1. Noncompliance with the rules and standards stipulated in section 126-86-4 of this policy may result in sanctions that include suspension or recovery of federal reimbursements.

13.2.2. Noncompliance with the rules and standards stipulated in section 126-86-5 of this policy may result in sanctions that include a recovery of local general funds and/or removal of vending privileges.

13.2.3. Noncompliance with the rules and standards stipulated in section 126-86-11 of this policy may result in sponsor disqualification from Child Nutrition Program's State Revenue Matching distribution pending compliance. Failure to complete the annually required 15 clock hours of staff development related to Child Nutrition Programs and offered or granted prior approval by the WVDE shall result in a rollover of deficient hours into the next school year(s).

13.2.4. Noncompliance with the rules and standards stipulated in section 126-86-12 of this policy may result in the institution of a probationary period requiring an approved corrective action plan.

§126-86-14. Nutrition Advisory Council.

14.1. A broad-based Nutrition Advisory Council shall be established by the WVDE for the purposes of keeping the WVBE apprised of current research findings in nutrition and assessing potential implications of findings for program development and implementation.

§126-86-15. Evaluation Component.

15.1. An evaluation/assessment component shall be established by the WVDE for the purpose of determining the effectiveness of this policy.

§126-86-16. Severability.

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