



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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8/14/2024 2:15:22 PM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Education TITLE-SERIES: 126-051

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

RULE NAME: Health Promotion and Disease Prevention (2423)

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)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 09/16/2024 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Carol Ward, Coordinator

ADDRESS: WVDE Office of Student Support and Well-being, Capitol Bldg. 6, Suite 700
1900 Kanawha Blvd., E, Charleston, West Virginia 25305

EMAIL: carol.l.ward@k12.wv.us

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Policy 2423 establishes the standards that shall be included in county policies to ensure student health, prevent disease, and educate students and school personnel on communicable diseases.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Policy 2423 is being repealed and replaced to ensure health promotion and disease prevention protocols are consistent with current evidence-based practice to protect student and employee health in the school setting.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There will be no economic impact on revenues of state government as a result of the proposed amendment of 126CSR51, Policy 2423.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There will be no economic impact on special revenue accounts as a result of the proposed amendment of 126CSR51, Policy 2423.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

There will be no economic impact on the state or its residents as a result of the proposed amendment of 126CSR51, Policy 2423.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2024 Increase/Decrease (use "-")	2025 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

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

There will be no economic impact on revenues of state government, special revenue accounts, or the state or its residents as a result of the proposed amendment of 126CSR51, Policy 2423.

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.

**Policy 2423, Health Promotion and Disease Prevention
List of Stakeholders**

West Virginia Department of Education

External Stakeholders

- Julie Bertram, Certified School Nurse, Wood County
- Angie Foster, Certified School Nurse, Raleigh County
- Tiffany Frame, Certified School Nurse, Wetzel County
- Tonya Hagy, Certified School Nurse, Mingo County
- Elizabeth Krall, Certified School Nurse, Putnam County
- Diana Simmons, Certified School Nurse, Taylor County
- Kristi Smith, Certified School Nurse, Hardy County
- Donna Wadsworth, Certified School Nurse, Raleigh County

Internal Stakeholders

- David Lee, Director, Office of Student Support and Well-being
- Ashley Torres, Coordinator, Office of Technical and Adult Education
- Carol Ward, Coordinator, Office of Student Support and Well-being

126CSR51

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 51
HEALTH PROMOTION AND DISEASE PREVENTION (2423)**

§126-51-1. General.

1.1. Scope. -- This legislative rule requires the establishment of county policies related to health promotion and prevention of communicable diseases.

1.2. Authority. -- West Virginia Constitution, Article XII, §2, W. Va. Code §§16-3-4, 16-3-5, 16-3C-1 through 16-3C-9, 16-3D-1 through 16-3D-3, 18-2-5, 18-5-9, 18-5-17, 18-5-22, 18-5-34, and 18A-5-1.

1.3. Filing Date. -- .

1.4. Effective Date. -- .

1.5. Repeal of Former Rules. -- This rule repeals and replaces W. Va. 126CSR51, Policy 2423, Health Promotion and Disease Prevention (Policy 2423), filed August 13, 2015, and effective September 14, 2015.

§126-51-2. Purpose.

2.1. This policy establishes the standards that shall be included in county policies to ensure student health, prevent disease, and educate students and school personnel on communicable diseases.

§126-51-3. Application.

3.1. County boards of education shall develop or amend communicable disease policies, hereinafter referred to as health promotion and disease prevention policies, to include provisions intended to protect the health of the students and school employees while also fostering a healthy environment conducive to learning. The policies shall reflect an understanding of health promotion and disease prevention and be designed to maintain student and school employee health.

3.2. The school nurse shall lead the development and implementation of county board policy. County boards of education shall seek additional assistance from school employees, parents/guardians, public health officials, medical personnel, and community leaders in developing their health promotion and disease prevention policies.

3.3. County boards of education shall work cooperatively through public and private partnerships, including the local health department, to enforce and adhere to the provisions of W. Va. Code §§18A-5-1, 16-3-4, 16-3D-1, 16-3-5, 16-3C-1 through 16-3C-9, 18-2-5, 18-5-9, 18-5-17, 18-5-22, and 18-5-34 for health promotion, disease prevention, control, and containment of communicable disease in schools.

§126-51-4. Definitions.

4.1. Advisory Committee on Immunization Practices (ACIP). Reports to the Director of the United

States Centers for Disease Control and Prevention and consists of medical and public health experts who develop recommendations regarding the use of vaccines to control diseases in the United States.

4.2. American Academy of Pediatrics (AAP). National organization of pediatricians, founded in 1930, committed to attaining optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults.

4.3. Bureau for Public Health (BPH). Division of West Virginia Department of Health (WVDH) that functions as the agency designated to oversee the state's health system designed to deliver best practices for health and wellness to the citizens of West Virginia.

4.4. Casual Contact. Level of contact at which a person is not subject to contracting a communicable disease from another person.

4.5. Centers for Disease Control and Prevention (CDC). One of the eleven major divisions of the United States Department of Health and Human Services operating as the principal agency in the United States government responsible for protecting the health and safety of all Americans and leading public health efforts to prevent and control infectious and chronic diseases, injuries, workplace hazards, disabilities, and environmental health threats.

4.6. Commissioner (Commissioner) of BPH. WVDH official who serves as the State Health Officer, or designee, as defined in W. Va. Code §16-1-2.

4.7. Communicable Disease. Illness caused by an infectious agent, or its toxins, that occurs through the direct or indirect transmission of the infectious agent from its products of an infected individual.

4.8. HealthCheck. Component of the West Virginia's Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) for child preventive health relating to Medicaid for children under 21 years old. An annual comprehensive examination is recommended for all children ages 3 to 20 years old and more frequently if less than three years old. HealthCheck meets vision, hearing, developmental, speech, language, oral health, or other comprehensive health screening requirements. The HealthCheck screening form is the preferred documentation method for licensed health care providers to record screenings; however, documentation formats may vary.

4.9. Health or Safety Emergency Event Disclosure. Situation that presents imminent danger, a threat to students and/or community members, or requires an immediate need for information to avert or diffuse serious threats to the safety or health of a student or other persons. Health or safety emergency provisions of 20 U.S.C. §1232g; The Family Educational Rights and Privacy Act of 1988 (FERPA), and FERPA: Final Regulations Part II, 34 CFR Part 99, permit the disclosure of personally identifiable information from students' education records to state health officials relative to an outbreak of a communicable disease.

4.10. Immunization Officer. Physician appointed and employed by the Commissioner to make determinations upon request for an exemption to the compulsory immunization requirements pursuant to W. Va. Code §16-3-4.

4.11. Occupational Safety and Health Administration (OSHA). Division of the United States Department of Labor that provides standards and guidelines for America's workers' health and safety by establishing and enforcing standards; providing training, outreach, and education; establishing

partnerships; and encouraging the improvement of workplace safety and health.

4.12. Oral Health Examination. Evaluation to determine the students' oral health performed, recorded, and documented by a dentist or dental hygienist.

4.13. Oral Health Program (OHP). Program managed by WVDH, within the BPH, designed to promote and improve the oral health of West Virginia citizens by providing preventive education, improving access to oral health care, and monitoring the oral health status of citizens.

4.14. School Nurse. Registered Nurse licensed by the West Virginia Board of Registered Professional Nurses, established pursuant to W. Va. Code §30-7-1, et seq., who meets the requirements for certification contained in W. Va. 126CSR136, Policy 5202, Minimum Requirements for the Licensure of Professional/Paraprofessional Personnel and Advanced Salary Classifications. The county board of education or the county health department shall employ the school nurse pursuant to W. Va. Code §18-5-22.

4.15. Standard/Universal Precautions. Safeguards applicable to the care of all students and school employees irrespective of their disease. Universal Precautions is a standard set of guidelines established to prevent the transmission of bloodborne pathogens from exposure to blood and all body fluids in situations where it is not easy to differentiate between body fluids.

4.16. Student. For purposes of this policy, an individual who attends classes or participates in extracurricular activities or programs operated by a West Virginia public school.

4.17. West Virginia Department of Health (WVDH). Lead public health agency responsible for providing a wide range of necessary health and life-saving services and information to individuals and communities in West Virginia.

4.18. West Virginia Secondary School Activities Commission (WVSSAC). Private, voluntary, non-profit organization comprised of the principals or designees of West Virginia public and private secondary schools who have elected to delegate the control, supervision, and regulation of their interscholastic, band, and robotics activities to the Commission.

4.19. West Virginia Statewide Immunization Information System (WVSIIS). Statewide computerized data system for reporting and tracking vaccine administration. The system consolidates individuals' immunization records, calibrates and forecasts recommended vaccinations, generates reminder notices for overdue immunizations, identifies improper vaccine administrations, conducts inventory management and systematic accountability, and provides general immunization practice management functions. Health care providers are required to report all administrations of vaccines pursuant to W. Va. Code §16-3-4 and BPH rules W. Va. 64CSR7, Reportable Diseases, Events and Conditions (W. Va. 64SCR7), and W. Va. 64CSR95, Immunization Requirements and Recommendations for Children Attending School and Enrolled in State-Regulated Health Care (W. Va. 64CSR95), for documentation in this system.

§126-51-5. Health Promotion through School Screenings/Examinations.

5.1. West Virginia schools promote healthy behavior and learning. The school nurse, as the school health expert, is qualified to lead the coordination of health promotion for students and school personnel through screenings, supporting school health requirements, and offering other health recommendations.

Health services for public schools may be provided through various partnerships including, but not limited to, partnerships established with local agencies, state agencies, community organizations, and/or health care providers.

5.2. HealthCheck. New students enrolling in a West Virginia public school at first entry of either pre-kindergarten (Pre-K) or kindergarten shall have on file within 45 days of enrollment or prior to the first day of school attendance, a record of a HealthCheck screening or other comprehensive health screening comparable to the HealthCheck protocol. All screening forms shall be signed and dated by the student's licensed health care provider and completed within the past 12 calendar months. County boards of education may retain the right to conduct follow-up screenings pursuant to W. Va. 126CSR28, Policy 2525, West Virginia's Universal Access to a Quality Early Education System (Policy 2525) and W. Va. Code §18-5-17. Students determined to have impairments or disabilities shall be referred to the appropriate school personnel for additional screening.

5.3. Oral Health. New students enrolling in West Virginia public school at first entry of either Pre-K or kindergarten shall have on file within 45 days of enrollment or prior to the first day of school attendance, a record of an oral health examination. The oral health examination shall be signed and dated by the student's dental provider and completed within the past 12 calendar months. Provided, if the student does not have proof of an oral health examination, the student may be enrolled in the Oral Health Program (OHP). The OHP provides an oral health assessment from a dental provider regardless of the ability to pay if the parent/guardian provides consent. The student's enrollment in OHP is sufficient to meet the oral health requirement established in this section.

5.4. Tuberculin Skin Test. West Virginia continues to be a state with low incidence rates of tuberculosis; therefore, tuberculin skin testing for out-of-state student transfers and new school employees and/or volunteers is no longer statutorily required. Provided, suspected tuberculosis cases shall be addressed as follows:

5.4.a. students determined or suspected of having active tuberculosis shall be temporarily removed from school while their cases are reviewed and evaluated by a licensed health care provider and the local health officer. Students shall return to school when a licensed health care provider and the local health officer, in consultation with the Commissioner or designee, indicate that it is safe and appropriate for them to return pursuant to W. Va. Code §16-3D-3;

5.4.b. school employees determined or suspected to have active tuberculosis shall have their employment suspended until the local health officer, in consultation with the Commissioner, approves the employee to return to work;

5.4.c. the Commissioner may require selective testing of students and school employees for tuberculosis when there is reason to believe that they may have been exposed to the tuberculosis organism or they are exhibiting signs and/or experiencing symptoms indicative of the disease; and,

5.4.d. the school nurse shall identify and refer any student or school employee to the local health department when they have reason to suspect that the student or employee has been exposed to tuberculosis or they are exhibiting signs and/or experiencing symptoms indicative of the disease.

§126-51-6. Disease Prevention Measures through Immunizations.

126CSR51

6.1. Students shall comply with the required immunization schedule established by the Commissioner. The Commissioner, or the Immunization Officer, shall make determinations on request for a medical exemption to the compulsory immunization requirements established by the BPH.

6.1.a. The Commissioner is authorized to appoint an Immunization Officer to make determinations on request for a medical exemption to the compulsory immunization requirements established by the BPH.

6.1.b. A medical exemption request shall be made by a licensed physician and include an acknowledgment that the physical condition of the student is one that immunization is contraindicated or a specific precaution to a particular vaccine exists.

6.1.c. The Immunization Officer's decision relating to a request for an exemption to the compulsory immunization requirements may be appealed to the State Health Officer. The final determination of the State Health Officer is subject to a right of appeal pursuant to W. Va. Code §29A-5-1 et. seq.

6.1.d. Each student's immunization record shall be a public health record to be entered in WVSIIS and reviewed annually.

6.2. All children entering Pre-K, kindergarten, or any West Virginia public school for the first time shall provide official documentation from a licensed health care provider that the child has received the required immunizations upon enrollment pursuant to W. Va. Code §16-3-4 and W. Va. 64CSR95. All Pre-K students shall also meet requirements in accordance with Policy 2525.

6.3. Following recommendations from ACIP, students entering grade 7 and grade 12 shall provide official documentation from a licensed health care provider that the student has received the two additional vaccines required by W. Va. 64CSR95 and W. Va. Code §16-3-4 as follows:

6.3.a. a student between the ages of 11 and 12 shall receive one dose of Tdap and meningococcal vaccination prior to entering grade 7;

6.3.b. a student enrolling in the school system at age 13, 14, or 15 who has not received a meningococcal vaccination shall receive the meningococcal vaccination and provide official documentation from a licensed health care provider that the student has received a meningococcal booster prior to entering grade 12; and,

6.3.c. a student enrolling in the school system at age 16 or older who has not been previously vaccinated with meningococcal vaccination shall receive a meningococcal vaccination; however, the student is not required to provide documentation from a licensed health care provider that the student received a booster prior to entering grade 12.

6.4. The WVSSAC shall consider eligible for participation in interscholastic athletic events and other extracurricular activities of secondary schools, a student receiving home instruction pursuant to W. Va. Code §18-8-1(c); a participant of the Hope Scholarship Program pursuant to W. Va. Code §18-8-1(m) and as provided in W. Va. Code §18-31-1, et seq.; or, participates in a microscool or learning pod pursuant to W. Va. Code §18-8-1(n); provided, the student agrees to obey all WVSSAC rules including, but not limited to, rules governing awards, all-star games, parental consents, physical examinations, and

vaccinations applicable to high school athletes.

§126-51.7. Quality Assurance for School-Based Services.

7.1. All community services performed in the school setting shall be provided as agreed to by the school and community partner(s). The services shall be evidence-based and aligned with best practices and guidelines designed to promote academic, health, and social needs of students.

7.1.a. Immunizations shall incorporate the protocols established by the ACIP and BPH Immunization Services.

7.1.b. HealthCheck examination, or a comparable comprehensive well child examination, shall include the protocols established by AAP Bright Futures and the WVDH HealthCheck Program.

7.1.c. Oral health services shall include the protocols established by the OHP Program.

7.1.d. Tuberculin skin test shall include the protocols established under the Tuberculosis Control Program under the BPH.

7.1.e. Other services shall include the protocols required by relevant law, rule, and/or policy.

§126-51-8. Disease Prevention Measures through Practice and Education.

8.1. County boards of education shall incorporate hand washing into their policy, in accordance with W. Va. 126CSR25A, Policy 2422.7, Standards for Basic and Specialized Health Care Procedures and Standards for the Possession and Use of Medical Cannabis By a Student (Policy 2422.7), and as specified in the Basic and Specialized Health Care Procedures Manual for West Virginia Public Schools found on the WVDE's website. Good hand hygiene is the single most effective safeguard in preventing the spread of communicable diseases in the school setting; therefore, all students in West Virginia public schools shall be encouraged to participate in a daily routine of hand washing especially before eating; after blowing their nose, coughing, or sneezing; going to the restroom; and any other time deemed necessary by a school employee.

8.2. All public schools shall include instruction for students in grade 6 through grade 12 in the prevention, transmission, and spread of HIV/AIDS and other sexually transmitted diseases (STDs) and sexually transmitted infections (STIs) in accordance with W. Va. 126CSR44E, Policy 2520.5, West Virginia College- and Career-Readiness Standards for Wellness Education (Policy 2520.5), and W. Va. Code §18-2-9. An opportunity shall be afforded to the parents/guardians of the students subject to instruction in the prevention, transmission, and spread of HIV/AIDS and other STDs/STIs to examine the course curriculum requirements and instructional materials. Parents/guardians may exempt their children from participating in the instruction by providing written notice to the school principal pursuant to W. Va. Code §18-2-9.

8.3. County boards of education shall provide in-service training to all school personnel on the prevention, transmission, and treatment of AIDS pursuant to W. Va. Code §18-5-15d.

§126-51-9. Disease Control Measures.

126CSR51

9.1. Distinctions shall be made related to communicable diseases in the school setting versus diseases known not to be spread by casual contact including, but not limited to, HIV/ AIDS, Hepatitis B, Hepatitis C, and other similar diseases.

9.2. A designated employee, such as the school nurse, shall validate each reported case of a disease known not to be spread by casual contact pursuant to W. Va. Code §18A-5-1 and §18-5-22.

9.3. The school nurse shall report to the school administrator any student or school employee known to have, or suspected of having, any infectious disease known to be spread by casual contact and considered to be a health danger to the school population. The county superintendent may exclude a school employee from school when reliable evidence, or information from a qualified source, confirms the school employee potentially has a communicable disease that is known to be spread by any form of casual contact and is considered a health danger to the school population.

9.3.a. A student or school employee shall be prohibited from entering the school or participating in school-related activities, in accordance with the guidelines established by AAP, CDC, and WVDH until a licensed health care provider verifies in writing that the student or school employee's current condition is no longer considered contagious or a danger to the school population.

9.3.b. All reportable communicable diseases shall be referred to the local health department in accordance with W. Va. 64CSR7.

9.3.c. In the event of a suspected communicable disease outbreak as defined by the Commissioner, public schools, and/or county boards of education shall release student personally identifiable information to appropriate public health officials as permitted by FERPA's Health and Safety Emergency Event Disclosure and W. Va. 126CSR94, Policy 4350, Procedures for the Collection, Maintenance, and Disclosure of Student Data (Policy 4350).

9.3.d. School employees shall adhere to any guidance issued by the local health departments relating to reportable communicable diseases.

9.3.e. School employees are required to adhere to the procedures established in W. Va. 64CSR7, governing the reporting of certain diseases and conditions, unusual health events, and clusters or outbreaks of disease to the WVDH.

9.3.f. School administrators, school nurses, and other health care providers working in schools shall be responsible for reporting, assisting with, or managing outbreaks, and any necessary contact tracing and management of the communicable diseases in accordance with W. Va. 64CSR7. School administrators and school nurses are required to attend any training provided by the local health department relating to surveillance reporting of communicable diseases within the school.

9.3.g. Foodborne, respiratory, severe acute respiratory syndrome (SARS) outbreaks, and a case or outbreak of a reportable condition including, but not limited to, vaccine preventable diseases, hepatitis, meningitis and encephalitis, shall be reported to the state, regional, and/or local public health department, along with the Commissioner or their staff. These agencies may request student or school employee personally identifiable information for cases and/or contacts of cases based on surveillance data. The release of personally identifiable information to public health officials is classified as a Health and Safety Emergency under FERPA permitting schools to release information necessary to protect public

health.

9.4. Mandatory screening for communicable diseases known not to be spread by casual contact is not required for school entry, employment, or continued employment.

9.5. School personnel shall be trained in standard/universal precautions established by the United States Department of Labor Occupational Safety and Health Administration (<http://www.osha.gov/>).

§126-51-10. Confidentiality.

10.1. Confidentiality and release of student health information and records shall be protected and maintained in accordance with Policy 4350 and FERPA.

§126-51-11. Severability.

11.1. 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.

**W. Va. 126CSR51, Policy 2423, Health Promotion and Disease Prevention
Comment Response Form**

Comment Period Ends: September 16, 2024

NOTICE: *Comments, as submitted, shall be filed with the West Virginia Secretary of State's Office and open for public inspection and copying for a period of not less than five years.*

The following form is provided to assist those who choose to comment on **Policy 2423, Health Promotion and Disease Prevention**. Additional sheets may be attached, if necessary.

Name: _____ Organization: _____

Title: _____

City: _____ State: _____

Please check the box below that best describes your role.

- | | | |
|---|--|---|
| <input type="checkbox"/> Superintendent | <input type="checkbox"/> Higher Educator | <input type="checkbox"/> Parent/Family |
| <input type="checkbox"/> Principal | <input type="checkbox"/> Teacher | <input type="checkbox"/> Community Member |
| <input type="checkbox"/> Professional Support Staff | <input type="checkbox"/> Service Personnel | <input type="checkbox"/> Other |

COMMENTS/SUGGESTIONS
§126-51-1. General.
§126-51-2. Purpose.
§126-51-3. Application.
§126-51-4. Definitions.
§126-51-5. Health Promotion through School Screenings/Examinations.
§126-51-6. Disease Prevention Measures through Immunizations.
§126-51-7. Quality Assurance for School-Based Services.
§126-51-8. Disease Prevention Measures through Practice and Education.

**W. Va. 126CSR51, Policy 2423, Health Promotion and Disease Prevention
Comment Response Form**

§126-51-9. Disease Control Measures.

§126-51-10. Confidentiality.

§126-51-11. Severability.

Please direct all comments to:

Carol Ward, Coordinator
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West Virginia Department of Education
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Charleston, West Virginia 25305-0330
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