

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 378

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[Originating in the Committee on the Judiciary;

reported on February 8, 2016.]

1 A BILL to amend and reenact §18-8-4 and §18-8-8 of the Code of West Virginia, 1931, as
2 amended, all relating generally to truancy intervention; expanding definition of excused
3 absence; exempting absences for chronic medical condition or disability which may be
4 reasonably accommodated by the school; requiring parent to request reasonable
5 accommodation; defining “chronic medical condition or disability”; requiring written
6 excuses or documentation from a medical provider in certain cases; limiting number of
7 days which may be excused absences; defining “immediate family”; requiring verification
8 of absence for judicial obligation or court appearance; allowing principal to authorize
9 excused absences for other reason or for longer periods of time with the approval of the
10 county superintendent; removing notice requirement after three days absence; requiring
11 written excuses or documentation to be submitted within certain time frame; defining the
12 term “reasonable accommodation”; and modifying the effect of student suspensions on
13 enforcement of the provisions of compulsory attendance enforcement.

Be it enacted by the Legislature of West Virginia:

1 That §18-8-4 and §18-8-8 of the Code of West Virginia, 1931, as amended, be amended
2 and reenacted, all to read as follows:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

**§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and
hearings.**

1 (a) The county attendance director and ~~the assistants~~ assistant directors shall diligently
2 promote regular school attendance. The director and ~~assistants~~ assistant directors shall:

3 (1) Ascertain the reasons for unexcused absences from school of students of compulsory
4 school age and students who remain enrolled beyond the compulsory school age as defined
5 under section one-a of this article; and

6 (2) Take ~~such~~ steps as that are, in their discretion, best calculated to encourage the
7 attendance of students and to impart upon the parents and guardians the importance of
8 attendance and the seriousness of failing to do so; ~~and~~.

9 ~~(3)~~ (b) For the purposes of this article, the following definitions shall apply:

10 (A) ~~(1)~~ "Excused absence" shall be defined to include includes:

11 ~~(i)~~(A) Personal illness or injury of the student, or in the family if the illness or injury prohibits
12 a student from school attendance. A student shall provide written documentation from a medical
13 provider stating the illness or injury precludes school attendance when a student's illness or injury
14 caused that student to be absent for three or more consecutive days of school, or ten days in any
15 ninety-day period: *Provided, That excused absences caused by personal illness or injury of the*
16 student verified only by a note from a parent, guardian or custodian are limited to five in any one
17 semester or ten in a school year. After a student has been absent for personal illness or injury
18 five times in a semester or ten times in a school year, any further absences shall be unexcused
19 unless verified by a physician;

20 (B) Personal illness or injury of a member of the student's family who regularly resides
21 with the student, if the family member requires the active assistance of the student during the
22 illness or injury and there is no other individual who can assist the family member: *Provided, That*
23 any absence lasting longer than two days pursuant to this paragraph shall not be considered
24 excused unless written documentation is provided by a medical provider confirming that the
25 student's absence from school is necessary for the ongoing care of the family member;

26 ~~(ii)~~(C) A ~~Medical-medical~~ or dental appointment with written excuse or documentation of
27 the appointment from ~~physician or dentist~~ a medical or dental provider;

28 ~~(iii)~~(D) A ~~Chronic chronic~~ medical condition or disability that ~~impacts~~ precludes attendance,
29 unless the chronic medical condition or disability can be reasonably accommodated by the school,
30 and the school has apprised the student and his parent, guardian or custodian of the
31 accommodation. A student claiming that his or her chronic medical condition or disability
32 precludes his or her attendance at school shall provide a written excuse or documentation from a
33 medical provider stating that the chronic medical condition or disability necessitates that the
34 student be absent from school. Upon reaching the requisite number of absences to constitute a

35 chronic medical condition, the student's parent, guardian or custodian shall contact the school to
36 ascertain if reasonable accommodation can be made to allow the student to attend school. For
37 the purposes of this paragraph, a chronic medical condition or disability is a medical condition or
38 disability that causes the student to be absent for five or more consecutive days or ten days or
39 more in any ninety-day period;

40 ~~(iv)~~(E) Participation in home or hospital instruction due to an illness or injury or other
41 extraordinary circumstance ~~that~~ warrants home or hospital confinement;

42 ~~(v)~~(F) A ~~Calamity~~ calamity, such as a fire or flood;

43 ~~(vi)~~(G) A ~~Death~~ death in the student's immediate family. As used in this paragraph
44 "immediate family" means mother, father, aunt, uncle, siblings, grandparents, guardian, custodian
45 or a family member residing in the child's home. An excused absence under this paragraph is
46 limited to three days and the student shall provide documentation of the death;

47 ~~(vii)~~(H) School-approved or county-approved curricular or extra-curricular activities;

48 ~~(viii)~~(I) A ~~Judicial~~ judicial obligation or court appearance involving the student, if supported
49 by written documentation from an attorney, probation officer, judge, magistrate or Department of
50 Health and Human Resources worker;

51 ~~(ix)~~(J) A ~~Military~~ military requirement for students enlisted or enlisting in the military;

52 ~~(x)~~(K) Personal or academic circumstances approved by the principal; and

53 ~~(xi)~~(L) ~~Such~~ Any other situations ~~as may be further~~ determined by the county board:

54 Provided, That handling of absences of students with disabilities shall be in accordance consistent
55 with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state
56 regulations and rules adopted in compliance therewith with the act: *Provided, however, That a*
57 school principal, with the approval of the county superintendent of schools, may authorize that an
58 unexcused absence be determined an excused absence based on all of the specific facts and
59 circumstances.

60 (2) ~~An "Unexcused unexcused absence" shall be~~ is any absence not specifically included
61 in the definition of "excused absence".

62 ~~(b) In the case of three total unexcused absences of a student during a school year, the~~
63 ~~attendance director or assistant shall serve written notice to the parent, guardian or custodian of~~
64 ~~the student that the attendance of the student at school is required and that if the student has five~~
65 ~~unexcused absences, a conference with the principal or other designated representative will be~~
66 ~~required.~~

67 (c) In order for the absence to be excused, the student or his or her parent, guardian or
68 custodian shall supply the written excuses or documentation to the person at the student's school
69 designated to receive the excuses or documentation within five days after returning to school from
70 the absence.

71 (d) For purposes of this section, a student's illness, injury or chronic medical condition is
72 reasonably accommodated if the school provides necessary and appropriate adjustments to
73 school practices which allow the student's attendance while ensuring the student's health and
74 safety and that of his or her fellow students.

75 ~~(e)~~(e) In the case of five total unexcused absences, the attendance director or assistant
76 shall serve written notice to the parent, guardian or custodian of the student that within five days
77 of receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report
78 in person to the school the student attends for a conference with the principal or other designated
79 representative of the school in order to discuss and correct the circumstances causing the
80 unexcused absences of the student, including the adjustment of unexcused absences based upon
81 ~~such~~ the meeting.

82 ~~(d)~~(f) In the case of ten total unexcused absences of a student during a school year, the
83 attendance director or assistant directors shall make a complaint against the parent, guardian or
84 custodian before a magistrate of the county. If it appears from the complaint that there is probable
85 cause to believe that an offense has been committed and that the accused has committed it, a
86 summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to
87 serve the summons or to arrest persons charged with offenses against the state. More than one

88 parent, guardian or custodian may be charged in a complaint. Initial service of a summons or
89 warrant issued pursuant to the provisions of this section shall be attempted within ten calendar
90 days of receipt of the summons or warrant and subsequent attempts at service shall continue until
91 the summons or warrant is executed. ~~or until the end of the school term during which the complaint~~
92 ~~is made, whichever is later.~~

93 ~~(e)~~(g) The magistrate court clerk, or the clerk of the circuit court performing the duties of
94 the magistrate court as authorized in section eight, article one, chapter fifty of this code, shall
95 assign the case to a magistrate within ten days of execution of the summons or warrant. The
96 hearing shall be held within twenty days of the assignment to the magistrate, subject to lawful
97 continuance. The magistrate shall provide to the accused at least ten days' advance notice of the
98 date, time and place of the hearing.

99 ~~(f)~~(h) When any doubt exists as to the age of a student absent from school, the attendance
100 director and ~~assistants have authority to~~ assistant directors may require a properly attested birth
101 certificate or an affidavit from the parent, guardian or custodian of the student, stating the age of
102 the student. In the performance of his or her duties, the county attendance director and ~~assistants~~
103 ~~have authority to~~ assistant directors may take without warrant any student absent from school in
104 violation of the provisions of this article and ~~to~~ place the student in the school in which he or she
105 is or should be enrolled.

106 ~~(g)~~(i) The county attendance director and ~~assistants~~ assistant directors shall devote such
107 time as is required by section three of this article to the duties of attendance director in accordance
108 with this section during the instructional term and at such other times as the duties of an
109 attendance director are required. All attendance directors and ~~assistants~~ assistant directors hired
110 for more than two hundred days may be assigned other duties determined by the superintendent
111 during the period in excess of two hundred days. The county attendance director is responsible
112 under direction of the county superintendent for efficiently administering school attendance in the
113 county.

114 ~~(h)~~(i) In addition to those duties directly relating to the administration of attendance, the
115 county attendance director and assistant directors also shall perform the following duties:

116 (1) Assist in directing the taking of the school census to see that it is taken at the time and
117 in the manner provided by law;

118 (2) Confer with principals and teachers on the comparison of school census and
119 enrollment for the detection of possible nonenrollees;

120 (3) Cooperate with existing state and federal agencies charged with enforcing child labor
121 laws;

122 (4) Prepare a report for submission by the county superintendent to the State
123 Superintendent of Schools on school attendance, at ~~such~~ the times and in ~~such~~ the required detail
124 ~~as may be required~~. The state board shall promulgate a legislative rule pursuant to article three-
125 b, chapter twenty-nine-a of this code that sets forth student absences that are excluded for
126 accountability purposes. The absences that are excluded by the rule include, but are not limited
127 to, excused student absences, students not in attendance due to disciplinary measures and
128 absent students for whom the attendance director has pursued judicial remedies to compel
129 attendance to the extent of his or her authority. The attendance director shall file with the county
130 superintendent and county board at the close of each month a report showing activities of the
131 school attendance office and the status of attendance in the county at the time;

132 (5) Promote attendance in the county by compiling data for schools and by furnishing
133 suggestions and recommendations for publication through school bulletins and the press, or in
134 ~~such~~ the manner ~~as~~ directed by the county superintendent ~~may direct~~;

135 (6) Participate in school teachers' conferences with parents and students;

136 (7) Assist in ~~such~~ any other ~~ways~~ way as directed by the county superintendent ~~may direct~~
137 for improving school attendance;

138 (8) Make home visits of students who have excessive unexcused absences, as provided
139 ~~above~~ in this section, or if requested by the chief administrator, principal or assistant principal;
140 and

141 (9) Serve as the liaison for homeless children and youth.

~~§18-8-8. Child suspended for failure to comply with requirements and regulations treated as unlawfully absent.~~

§18-8-8. Effect of school suspension on enforcement of the provisions of this article.

1 ~~If a child be suspended from school because of improper conduct or refusal of such child~~
2 ~~to comply with the requirements of the school, the school shall immediately notify the county~~
3 ~~superintendent of such suspension, and specify the time or conditions of such suspension.~~
4 ~~Further admission of the child to school may be refused until such requirements and regulations~~
5 ~~be complied with. Any such child shall be treated by the school as being unlawfully absent from~~
6 ~~the school during the time he or she refuses to comply with such requirements and regulations,~~
7 ~~and any person having legal or actual control of such child shall be liable to prosecution under~~
8 ~~the provisions of this article for the absence of such child from school: *Provided*, That the county~~
9 ~~board of education does not exclude or expel the suspended child from school.~~

10 (a) When a child is absent from school due to a suspension, absences are unexcused for
11 purposes of this article if the suspension is based on an intentional act of the student.

12 (b) Days a student is absent from school due to a suspension from school for an intentional
13 act of the student are not attributable to the student's parent, guardian or custodian for purposes
14 of enforcement of this article, unless the parent, guardian or custodian encouraged, condoned or
15 aided or abetted the conduct causing the suspension.