

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2549

BY DELEGATES ROHRBACH, LINVILLE, R. THOMPSON AND

PORTERFIELD

[Introduced January 21, 2019; Referred
to the Committee on Education then the Judiciary.]

1 A BILL to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended, relating
 2 to compulsory school attendance; unexcused absences; and reducing the time, from 10
 3 to five the number of unexcused absences by a student, when a complaint may be made
 4 against a parent or guardian.

Be it enacted by the Legislature of West Virginia:

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 shall diligently promote regular
 2 school attendance. The director and assistants shall:

3 (1) Ascertain 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 §18-8-1a of this code;

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

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

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

11 (i) Personal illness or injury of the student or in the family;

12 (ii) Medical or dental appointment with written excuse from physician or dentist;

13 (iii) Chronic medical condition or disability that impacts attendance;

14 (iv) Participation in home or hospital instruction due to an illness or injury or other
 15 extraordinary circumstance that warrants home or hospital confinement;

16 (v) Calamity, such as a fire or flood;

17 (vi) Death in the family;

18 (vii) School-approved or county-approved curricular or extra-curricular activities;

- 19 (viii) Judicial obligation or court appearance involving the student;
- 20 (ix) Military requirement for students enlisted or enlisting in the military;
- 21 (x) Personal or academic circumstances approved by the principal; and
- 22 (xi) Such other situations as may be further determined by the county board: *Provided,*

23 That absences of students with disabilities shall be in accordance with the Individuals with
24 Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in
25 compliance therewith.

26 (B) "Unexcused absence" ~~shall be~~ is any absence not specifically included in the definition
27 of "excused absence".

28 (b) ~~In the case of~~ If there are three total unexcused absences of a student during a school
29 year, the attendance director or assistant shall serve written notice to the parent, guardian or
30 custodian of the student that the attendance of the student at school is required and that if the
31 student has five unexcused absences, a conference with the principal or other designated
32 representative will be required.

33 (c) ~~In the case of~~ If there are five total unexcused absences, the attendance director or
34 assistant shall serve written notice to the parent, guardian or custodian of the student that within
35 five days of receipt of the notice the parent, guardian or custodian, accompanied by the student,
36 shall report in person to the school the student attends for a conference with the principal or other
37 designated representative of the school in order to discuss and correct the circumstances causing
38 the unexcused absences of the student, including the adjustment of unexcused absences based
39 upon such meeting.

40 (d) ~~In the case of~~ If there are ~~ten~~ five total unexcused absences of a student during a
41 school year, the attendance director or assistant shall make complaint against the parent,
42 guardian or custodian before a magistrate of the county. If it appears from the complaint that there
43 is probable cause to believe that an offense has been committed and that the accused has
44 committed it, a summons or a warrant for the arrest of the accused shall issue to any officer

45 authorized by law to serve the summons or to arrest persons charged with offenses against the
46 state. More than one parent, guardian or custodian may be charged in a complaint. Initial service
47 of a summons or warrant issued pursuant to the provisions of this section shall be attempted
48 within 10 calendar days of receipt of the summons or warrant and subsequent attempts at service
49 shall continue until the summons or warrant is executed or until the end of the school term during
50 which the complaint is made, whichever is later.

51 (e) The magistrate court clerk, or the clerk of the circuit court performing the duties of the
52 magistrate court as authorized in §50-1-8 of this code, shall assign the case to a magistrate within
53 ten days of execution of the summons or warrant. The hearing shall be held within 20 days of the
54 assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the
55 accused at least 10 days' advance notice of the date, time and place of the hearing.

56 (f) When any doubt exists as to the age of a student absent from school, the attendance
57 director and assistants ~~have authority to~~ may require a properly attested birth certificate or an
58 affidavit from the parent, guardian or custodian of the student, stating age of the student. In the
59 performance of his or her duties, the county attendance director and assistants ~~have authority to~~
60 may take without warrant any student absent from school in violation of the provisions of this
61 article and to place the student in the school in which he or she is or should be enrolled.

62 (g) The county attendance director and assistants shall devote such time as is required
63 by §18-8-3 of this code to the duties of attendance director in accordance with this section during
64 the instructional term and at such other times as the duties of an attendance director are required.
65 All attendance directors and assistants hired for more than 200 days may be assigned other duties
66 determined by the superintendent during the period in excess of 200 days. The county attendance
67 director is responsible under direction of the county superintendent for efficiently administering
68 school attendance in the county.

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

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

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

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

77 (4) Prepare a report for submission by the county superintendent to the State
78 Superintendent of Schools on school attendance, at such times and in such detail as may be
79 required. The state board shall promulgate a legislative rule pursuant to §29A-3B-1 *et seq.* of this
80 code that sets forth student absences that are excluded for accountability purposes. The
81 absences that are excluded by the rule include, but are not limited to, excused student absences,
82 students not in attendance due to disciplinary measures and absent students for whom the
83 attendance director has pursued judicial remedies to compel attendance to the extent of his or
84 her authority. The attendance director shall file with the county superintendent and county board
85 at the close of each month a report showing activities of the school attendance office and the
86 status of attendance in the county at the time;

87 (5) Promote attendance in the county by compiling data for schools and by furnishing
88 suggestions and recommendations for publication through school bulletins and the press, or in
89 such manner as the county superintendent may direct;

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

91 (7) Assist in such other ways as the county superintendent may direct for improving school
92 attendance;

93 (8) Make home visits of students who have excessive unexcused absences, as provided
94 above, or if requested by the chief administrator, principal or assistant principal; and

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

NOTE: The purpose of this bill is to change the time, from 10 to five days the number of unexcused absences by a student, when a complaint may be made against a parent or guardian.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.