

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4482

BY DELEGATES WESTFALL, WAGNER, COOPER, AMBLER,

D. EVANS, PERRY AND MOYE

[Introduced February 10, 2016; Referred
to the Committee on Education.]

1 A BILL to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended, relating
 2 to restricting that excused absences for personal illness, when involving “family members”
 3 of a student, as is currently prescribed in current code, are restricted to parents’ or
 4 guardians’ illnesses; providing the parent or guardian must provide a statement from a
 5 medical, osteopathic or chiropractic physician, or physician’s assistant, confirming the
 6 existence of the illness or injury that is the purported basis for a student’s excused
 7 absence; providing an application for home schooling may be denied by the county
 8 superintendent of schools if the student for whom the request is made has three or more
 9 unexcused absences during the school year at the time the application is made; and
 10 providing parents denied an application for home schooling may reapply during the next
 11 grading period following the denial.

Be it enacted by the Legislature of West Virginia:

1 That §18-8-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted
 2 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 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 section one-a of this article;

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~~ his or her parent or guardian:

12 Provided, That, the parent or guardian must provide a statement from a medical, osteopathic or
13 chiropractic physician, or physician's assistant, confirming the existence of the illness or injury;

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

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

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

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

19 (vi) Death in the family;

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

21 (viii) Judicial obligation or court appearance involving the student;

22 (ix) Military requirement for students enlisted or enlisting in the military;

23 (x) Personal or academic circumstances approved by the principal; and

24 (xi) Such other situations as may be further determined by the county board: *Provided,*

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

28 (B) "Unexcused absence" shall be any absence not specifically included in the definition
29 of "excused absence".

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

35 (c) In the case of five total unexcused absences, the attendance director or assistant shall

36 serve written notice to the parent, guardian or custodian of the student that within five days of
37 receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report
38 in person to the school the student attends for a conference with the principal or other designated
39 representative of the school in order to discuss and correct the circumstances causing the
40 unexcused absences of the student, including the adjustment of unexcused absences based upon
41 such meeting.

42 (d) In the case of ten total unexcused absences of a student during a school year, the
43 attendance director or assistant shall make complaint against the parent, guardian or custodian
44 before a magistrate of the county. If it appears from the complaint that there is probable cause to
45 believe that an offense has been committed and that the accused has committed it, a summons
46 or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the
47 summons or to arrest persons charged with offenses against the state. More than one parent,
48 guardian or custodian may be charged in a complaint. Initial service of a summons or warrant
49 issued pursuant to the provisions of this section shall be attempted within ten calendar days of
50 receipt of the summons or warrant and subsequent attempts at service shall continue until the
51 summons or warrant is executed or until the end of the school term during which the complaint is
52 made, whichever is later.

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

59 (f) When any doubt exists as to the age of a student absent from school, the attendance
60 director and assistants have authority to require a properly attested birth certificate or an affidavit
61 from the parent, guardian or custodian of the student, stating age of the student. In the

62 performance of his or her duties, the county attendance director and assistants have authority to
63 take without warrant any student absent from school in violation of the provisions of this article
64 and to place the student in the school in which he or she is or should be enrolled.

65 (g) The county attendance director and assistants shall devote such time as is required
66 by section three of this article to the duties of attendance director in accordance with this section
67 during the instructional term and at such other times as the duties of an attendance director are
68 required. All attendance directors and assistants hired for more than two hundred days may be
69 assigned other duties determined by the superintendent during the period in excess of two
70 hundred days. The county attendance director is responsible under direction of the county
71 superintendent for efficiently administering school attendance in the county.

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

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

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

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

80 (4) Prepare a report for submission by the county superintendent to the State
81 Superintendent of Schools on school attendance, at such times and in such detail as may be
82 required. The state board shall promulgate a legislative rule pursuant to article three-b, chapter
83 twenty-nine-a of this code that sets forth student absences that are excluded for accountability
84 purposes. The absences that are excluded by the rule include, but are not limited to, excused
85 student absences, students not in attendance due to disciplinary measures and absent students
86 for whom the attendance director has pursued judicial remedies to compel attendance to the
87 extent of his or her authority. The attendance director shall file with the county superintendent and

88 county board at the close of each month a report showing activities of the school attendance office
89 and the status of attendance in the county at the time;

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

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

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

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

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

99 (i) Notwithstanding any provision of law to the contrary, in the event a parent or guardian
100 applies for home schooling for a student whose unexcused absences during the school year are
101 three or more unexcused absences, the county superintendent may deny the request for home
102 schooling: *Provided*, That in the event a parent or guardian's application for home schooling is
103 denied pursuant to this subsection, the parent or guardian may reapply during the next grading
104 period following the denial.

NOTE: The purposes of this bill are as follows: (1) Restricting that excused absences for personal illness, when involving "family members" of a student, as currently prescribed in current code, are restricted to parents' or guardians' illnesses; (2) providing the parent or guardian must provide a statement from a medical, osteopathic or chiropractic physician or physician's assistant confirming the existence of the illness or injury when a student misses school due to a parent or guardian's illness or injury; (3) providing an application for home schooling may be denied by the county superintendent of schools if the student for whom the request is made has three or more unexcused absences during the school year at the time the application is made; and (4) providing parents denied an application for home schooling may reapply during the next grading period following the denial.

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