

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 2702**

BY DELEGATES WESTFALL, COOPER, AMBLER, WAGNER,

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[Originating in the Committee on Education;

March 15, 2017]



1 A BILL to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended, relating  
2 to documentation of unexcused absences from compulsory school attendance; limiting  
3 excused absences for personal illness or injury in the family to those of student's parent,  
4 guardian or custodian and requiring confirming statement from medical provider; requiring  
5 all documentation related to absences be provided to school no later than three days of  
6 occurrence; authorizing notice in the case of three unexcused absences to be made by  
7 means other than written; removing provision for designated representative of principal for  
8 conference on unexcused absences and clarifying responsibility of administrative head or  
9 other chief administrator of school for meeting; and making other technical clarifications.

*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~~ includes:

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

12            (ii) Personal illness or injury of the student's parent, guardian, custodian, or family  
13 member: *Provided*, That the excuse must provide a reasonable explanation for why the student's  
14 absence was necessary and caused by the illness or injury in the family: *Provided, however*, That  
15 the principal may request additional documentation including, but not limited to, a statement from  
16 a medical, osteopathic or chiropractic physician, physician's assistant, or nurse practitioner  
17 confirming the existence of the family member's illness or injury;

18            ~~(ii)~~ (iii) Medical or dental appointment with written excuse from physician or dentist;

19            ~~(iii)~~ (iv) Chronic medical condition or disability that impacts attendance;

20            ~~(iv)~~ (v) Participation in home or hospital instruction due to an illness or injury or other  
21 extraordinary circumstance that warrants home or hospital confinement;

22            ~~(v)~~ (vi) Calamity, such as a fire or flood;

23            ~~(vi)~~ (vii) Death in the family;

24            ~~(vii)~~ (viii) School-approved or county-approved curricular or extra-curricular activities;

25            ~~(viii)~~ (ix) Judicial obligation or court appearance involving the student;

26            ~~(ix)~~ (x) Military requirement for students enlisted or enlisting in the military;

27            ~~(x)~~ (xi) Personal or academic circumstances approved by the principal; and

28            ~~(xi)~~ (xii) Such other situations as may be further determined by the county board: *Provided*,  
29 That absences of students with disabilities shall be in accordance with the Individuals with  
30 Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in  
31 compliance therewith; and.

32            (B) "Unexcused absence" ~~shall be~~ means any absence not specifically included in the  
33 definition of "excused absence"; and

34            (4) All documentation relating to absences shall be provided to the school not later than  
35 three instructional days after the first day the student returns to school.

36            ~~(b) In the case of three total unexcused absences of a student during a school year, the~~  
37 ~~attendance director or assistant shall serve written notice~~ by written or other means to the parent,

38 ~~guardian or custodian of the student that the attendance of the student at school is required and~~  
39 ~~that if the student has five unexcused absences, a conference with the principal, administrative~~  
40 ~~head or other chief administrator or other designated representative will be required.~~

41 (b) In the case of five total unexcused absences, the attendance director or assistant shall  
42 serve written notice to the parent, guardian or custodian of the student that within five days of  
43 receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report  
44 in person to the school the student attends for a conference with the principal, administrative head  
45 or other chief administrator ~~or other designated representative~~ of the school in order to discuss  
46 and correct the circumstances causing the unexcused absences of the student, including the  
47 adjustment of unexcused absences based ~~upon such~~ on the meeting.

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

59 (d) The magistrate court clerk, or the clerk of the circuit court performing the duties of the  
60 magistrate court as authorized in section eight, article one, chapter fifty of this code, shall assign  
61 the case to a magistrate within ten days of execution of the summons or warrant. The hearing  
62 shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance.

63 The magistrate shall provide to the accused at least ten days' advance notice of the date, time  
64 and place of the hearing.

65 (e) When any doubt exists as to the age of a student absent from school, the attendance  
66 director and assistants have authority to require a properly attested birth certificate or an affidavit  
67 from the parent, guardian or custodian of the student, stating age of the student. In the  
68 performance of his or her duties, the county attendance director and assistants have authority to  
69 take without warrant any student absent from school in violation of the provisions of this article  
70 and to place the student in the school in which he or she is or should be enrolled.

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

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

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

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

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

86 (4) Prepare a report for submission by the county superintendent to the State  
87 Superintendent of Schools on school attendance, at such times and in such detail as may be  
88 required. The state board shall promulgate a legislative rule pursuant to article three-b, chapter

89 twenty-nine-a of this code that ~~sets~~ set forth student absences that are excluded for accountability  
90 purposes. The absences that are excluded by the rule shall include, but are not limited to, excused  
91 student absences, students not in attendance due to disciplinary measures and absent students  
92 for whom the attendance director has pursued judicial remedies to compel attendance to the  
93 extent of his or her authority. The attendance director shall file with the county superintendent and  
94 county board at the close of each month a report showing activities of the school attendance office  
95 and the status of attendance in the county at the time;

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

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

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

102 (8) Make home visits of students who have excessive unexcused absences, as provided  
103 ~~above~~ in subsection-a of this section, or if requested by the chief administrator, principal or  
104 assistant principal; and

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

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