

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2702

BY DELEGATES WESTFALL, COOPER, AMBLER, WAGNER,

MOYE, ATKINSON, MARCUM AND HIGGINBOTHAM

[Passed April 8, 2017; in effect July 1, 2017.]

1 AN ACT 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 the
3 excused absences for personal illness or injury in the family to those of student's parent,
4 guardian or custodian; requiring all documentation related to absences be provided to
5 school no later than three days of occurrence; authorizing schools to have discretion
6 whether to give notice in the case of three unexcused absences; giving schools the
7 discretion whether to give said notice by written or other means to a parent after three
8 absences; giving discretion for attendance director or assistant to make a complaint
9 against parent after ten total unexcused absences; and clarifying responsibility of
10 administrative head or other chief administrator of school for meeting; and making other
11 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;

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

10 (A) "Excused absence" includes:

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

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;

15 (iii) Medical or dental appointment with written excuse from physician or dentist;

16 (iv) Chronic medical condition or disability that impacts attendance;

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

19 (vi) Calamity, such as a fire or flood;

20 (vii) Death in the family;

21 (viii) School-approved or county-approved curricular or extra-curricular activities;

22 (ix) Judicial obligation or court appearance involving the student;

23 (x) Military requirement for students enlisted or enlisting in the military;

24 (xi) Personal or academic circumstances approved by the principal; and

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

29 (B) "Unexcused absence" means any absence not specifically included in the definition of
30 "excused absence"; and

31 (4) All documentation relating to absences shall be provided to the school no later than
32 three instructional days after the first day the student returns to school.

33 (b) In the case of three total unexcused absences of a student during a school year, the
34 attendance director or assistant may serve notice by written or other means to the parent,
35 guardian, or custodian of the student that the attendance of the student at school is required and

36 that if the student has five unexcused absences, a conference with the principal, administrative
37 head or other chief administrator will be required.

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

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

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

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

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

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

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

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

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

83 (4) Prepare a report for submission by the county superintendent to the State
84 Superintendent of Schools on school attendance, at such times and in such detail as may be
85 required. The state board shall promulgate a legislative rule pursuant to article three-b, chapter
86 twenty-nine-a of this code that set forth student absences that are excluded for accountability
87 purposes. The absences that are excluded by rule shall include, but are not limited to, excused

88 student absences, students not in attendance due to disciplinary measures and absent students
89 for whom the attendance director has pursued judicial remedies to compel attendance to the
90 extent of his or her authority. The attendance director shall file with the county superintendent and
91 county board at the close of each month a report showing activities of the school attendance office
92 and the status of attendance in the county at the time;

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

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

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

99 (8) Make home visits of students who have excessive unexcused absences, as provided
100 in subsection (a) of this section, or if requested by the chief administrator, principal or assistant
101 principal; and

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect July 1, 2017.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2017.

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Governor