

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 3**

BY SENATORS TRUMP, PLYMALE, RUCKER, JEFFRIES,

SYPOLT AND WOELFEL

[Introduced February 8, 2017; referred  
to the Committee on Education]

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.**

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

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

8 (2) Take ~~such~~ steps as that are, in their discretion, best calculated to encourage the  
 9 attendance of students and to impart upon the parents and guardians the importance of

10 attendance and the seriousness of failing to do so. ~~and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

84           ~~(d)~~ (f) In the case of ten total unexcused absences of a student during a school year, the  
85 attendance director or assistant directors shall make a complaint against the parent, guardian or  
86 custodian before a magistrate of the county. If it appears from the complaint that there is probable  
87 cause to believe that an offense has been committed and that the accused has committed it, a

88 summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to  
89 serve the summons or to arrest persons charged with offenses against the state. More than one  
90 parent, guardian or custodian may be charged in a complaint. Initial service of a summons or  
91 warrant issued pursuant to the provisions of this section shall be attempted within ten calendar  
92 days of receipt of the summons or warrant and subsequent attempts at service shall continue until  
93 the summons or warrant is executed. ~~or until the end of the school term during which the complaint~~  
94 ~~is made, whichever is later~~

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

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

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

114 under direction of the county superintendent for efficiently administering school attendance in the  
115 county.

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

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

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

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

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

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

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

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

- 140 (8) Make home visits of students who have excessive unexcused absences, as provided
- 141 ~~above~~ in this section, or if requested by the chief administrator, principal or assistant principal;
- 142 and
- 143 (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~~ 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.

NOTE: The purpose of this bill is to revise the law in regard to student absences from school.

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