

WEST VIRGINIA LEGISLATURE

2019 EXTRAORDINARY SESSION

Introduced

House Bill 141

BY DELEGATE COOPER

[Introduced May 20, 2019]

1 A BILL to amend and reenact §18-5-45 of the Code of West Virginia, 1931, as amended, relating
 2 to school calendar and testing; requiring students to take achievement tests; exempting
 3 students who test at certain level from attending school past a certain date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-45. School calendar.

1 (a) As used in this section:

2 (1) "Instructional day" means a day within the instructional term which meets the following
 3 criteria:

4 (A) Instruction is offered to students for at least the minimum number of minutes as follows:

5 (i) For early childhood programs as provided in subsection (d) section forty-four of this
 6 article;

7 (ii) For schools with grade levels kindergarten through and including grade five, 315
 8 minutes of instructional time per day;

9 (iii) For schools with grade levels six through and including grade eight, 330 minutes of
 10 instructional time per day; and

11 (iv) For schools with grade levels nine through and including grade twelve, 345 minutes of
 12 instructional time per day.

13 (B) Instructional time is used for instruction and cocurricular activities; and

14 (C) Other criteria as the state board determines appropriate.

15 (2) "Cocurricular activities" are activities that are closely related to identifiable academic
 16 programs or areas of study that serve to complement academic curricula as further defined by
 17 the state board; and

18 (3) "Instruction delivered through alternative methods" means a plan developed by a
 19 county board and approved by the state board for teachers to assign and grade work to be
 20 completed by students on days when schools are closed due to inclement weather or other

21 unforeseen circumstances.

22 (b) *Findings.* –

23 (1) The primary purpose of the school system is to provide instruction for students.

24 (2) The school calendar, as defined in this section, is designed to define the school term
25 both for employees and for instruction.

26 (3) The school calendar shall provide for 180 separate instructional days or an equivalent
27 amount of instructional time as provided in this section.

28 (c) The county board shall provide a school term for its schools that contains the following:

29 (1) An employment term that excludes Saturdays and Sundays and consists of at least
30 200 days, which need not be successive. The beginning and closing dates of the employment
31 term may not exceed 48 weeks;

32 (2) Within the employment term, an instructional term for students of no less than 180
33 separate instructional days, which includes an inclement weather and emergencies plan designed
34 to guarantee an instructional term for students of no less than 180 separate instructional days,
35 subject to the following:

36 (A) A county board may increase the length of the instructional day as defined in this
37 section by at least 30 minutes per day to ensure that it achieves at least an amount of instructional
38 time equivalent to 180 separate instructional days within its school calendar and:

39 (i) Apply up to five days of this equivalent time to cancel days lost due to necessary school
40 closures;

41 (ii) Plan within its school calendar and not subject to cancellation and rescheduling as
42 instructional days up to an additional five days or equivalent portions of days, without students
43 present, to be used as determined by the county board exclusively for activities by educators at
44 the school level designed to improve instruction; and

45 (iii) Apply any additional equivalent time to recover time lost due to late arrivals and early
46 dismissals;

47 (B) Subject to approval of its plan by the state board, a county board may deliver
48 instruction through alternative methods on up to five days when schools are closed due to
49 inclement weather or other unforeseen circumstances and these days are instructional days
50 notwithstanding the closure of schools; and

51 (C) The use of equivalent time gained by lengthening the school day to cancel days lost,
52 and the delivery of instruction through alternative methods, both as defined in this section, shall
53 be considered instructional days for the purpose of meeting the 180 separate day requirement
54 and as employment days for the purpose of meeting the 200 day employment term.

55 (3) Within the employment term, noninstructional days shall total 20 and shall be
56 comprised of the following:

57 (A) Seven paid holidays;

58 (B) Election day as specified in §18A-5-2 of this code;

59 (C) Six days to be designated by the county board to be used by the employees outside
60 the school environment, with at least four outside the school environment days scheduled to occur
61 after the 130th instructional day of the school calendar;

62 (D) One day to be designated by the county board to be used by the employees for
63 preparation for opening school and one day to be designated by the county board to be used by
64 the employees for preparation for closing school: *Provided*, That the school preparation days may
65 be used for the purposes set forth in paragraph (E) of this subdivision at the teacher's discretion;
66 and

67 (E) The remaining days to be designated by the county board for purposes to include, but
68 not be limited to:

69 (i) Curriculum development;

70 (ii) Professional development;

71 (iii) Teacher-pupil-parent conferences;

72 (iv) Professional meetings;

73 (v) Making up days when instruction was scheduled but not conducted; and

74 (vi) At least six two-hour blocks of time for faculty senate meetings with at least one two-
75 hour block of time scheduled in the first month of the employment term, at least one two-hour
76 block of time scheduled in the last month of the employment term and at least one two-hour block
77 of time scheduled in each of the months of October, December, February and April; and

78 (4) Scheduled out-of-calendar days that are to be used for instructional days in the event
79 school is canceled for any reason.

80 (d) A county board of education shall develop a policy that requires additional minutes of
81 instruction in the school day or additional days of instruction to recover time lost due to late arrivals
82 and early dismissals.

83 (e) If it is not possible to complete 180 separate instructional days with the current school
84 calendar and the additional five days of instructional time gained by increasing the length of the
85 instructional day as provided in subsection (c) of this section are insufficient to offset the loss of
86 separate instructional days, the county board shall schedule instruction on any available
87 noninstructional day, regardless of the purpose for which the day originally was scheduled, or an
88 out-of-calendar day and the day will be used for instruction of students: *Provided*, That the
89 provisions of this subsection do not apply to:

90 (1) Holidays;

91 (2) Election day;

92 (3) Saturdays and Sundays; and

93 (4) The five days or equivalent portions of days planned within the school calendar
94 exclusively for activities by educators at the school level to improve instruction that are gained by
95 increasing the length of the instructional day as provided in subsection (c) of this section.

96 (f) The instructional term shall commence and terminate on a date selected by the county
97 board.

98 (g) The state board may not schedule the primary statewide assessment program more

99 than 30 days prior to the end of the instructional year unless the state board determines that the
100 nature of the test mandates an earlier testing date.

101 (h) The following applies to cocurricular activities:

102 (1) The state board shall determine what activities may be considered cocurricular;

103 (2) The state board shall determine the amount of instructional time that may be consumed
104 by cocurricular activities; and

105 (3) Other requirements or restrictions the state board may provide in the rule required to
106 be promulgated by this section.

107 (i) Extracurricular activities may not be used for instructional time.

108 (j) Noninstructional interruptions to the instructional day shall be minimized to allow the
109 classroom teacher to teach.

110 (k) Prior to implementing the school calendar, the county board shall secure approval of
111 its proposed calendar from the state board or, if so designated by the state board, from the state
112 superintendent.

113 (l) In formulation of a school's calendar, a county school board shall hold at least two public
114 meetings that allow parents, teachers, teacher organizations, businesses and other interested
115 parties within the county to discuss the school calendar. The public notice of the date, time and
116 place of the public hearing must be published in a local newspaper of general circulation in the
117 area as a Class II legal advertisement, in accordance with the provisions of §59-3-1 *et seq.* of this
118 code.

119 (m) The county board may contract with all or part of the personnel for a longer term of
120 employment.

121 (n) The minimum instructional term may be decreased by order of the state superintendent
122 in any county declared a federal disaster area and in any county subject to an emergency or
123 disaster declaration by the Governor when the event causing the declaration is substantially
124 related to the loss of instructional days in the county.

125 (o) Notwithstanding any provision of this code to the contrary, the state board may grant
126 a waiver to a county board for its noncompliance with provisions of §18-1-1 *et seq.*, §18A-1-1 *et*
127 *seq.*, §18B-1-1 *et seq.*, and §18C-1-1 *et seq.* of this code to maintain compliance in reaching the
128 mandatory 180 separate instructional days established in this section.

129 (p)(1) Twenty instructional days prior to the end of the instructional year all students shall
130 take achievement tests in subjects as determined by the West Virginia Department of Education
131 (WVDE). The assessment may be the testing procedures currently being used. County boards
132 shall, however, devise and administer assessment instruments for grades not currently being
133 tested. The WVDE shall determine achievement criteria for each subject tested.

134 (2) Notwithstanding any provision in this article to the contrary, students who meet the
135 achievement level set by WVDE in subdivision one of this subsection are not required to attend
136 the last 5 instructional days. Students who do not score at the predetermined achievement level
137 shall participate in reteach activities for the final 5 instructional days. At the end of the 5 days of
138 the reteach activities the students shall be retested, thus determining which students have
139 achieved a passing grade. The current policy on retention and promotion will be followed in
140 respect to students not achieving a satisfactory score. The status of students with exceptional
141 needs shall be in accordance with current policy as established by the WVDE.

142 ~~(p)~~ (q) The state board shall promulgate a rule in accordance with the provisions of 29A-
143 3b-1 *et seq.* of this code for the purpose of implementing the provisions of this section.

NOTE: The purpose of this bill is to modify the school calendar and testing; to require students to take achievement tests; and to exempt students who test at certain level from attending school past a certain instructional days.

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