

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2690

BY DELEGATE HIGGINBOTHAM

[Introduced February 23, 2021; Referred to the
Committee on Education]

1 A BILL to amend and reenact §18-4-4 of the Code of West Virginia, 1931, as amended, relating
 2 to providing for excused absences from compulsory school attendance for exclusion,
 3 expulsion or suspension when no other reasonable alternative placement for learning has
 4 been provided.

Be it enacted by the Legislature of West Virginia:

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) Exclusion, suspension or expulsion pursuant to §18A-4-1 et seq. of this code when
- 26 no other reasonable alternative placement for learning has been provided; and
- 27 ~~(xii)~~ (xiii) Such other situations as may be further determined by the county board:
- 28 *Provided*, That absences of students with disabilities shall be in accordance with the Individuals
- 29 with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted
- 30 in compliance therewith; and
- 31 (B) “Unexcused absence” means any absence not specifically included in the definition of
- 32 “excused absence”; and
- 33 (4) All documentation relating to absences shall be provided to the school no later than
- 34 three instructional days after the first day the student returns to school.
- 35 (b) In the case of three total unexcused absences of a student during a school year, the
- 36 attendance director, assistant, or principal shall make meaningful contact with the parent,
- 37 guardian, or custodian of the student to ascertain the reasons for the unexcused absences and
- 38 what measures the school may employ to assist the student in attending and not incurring any
- 39 additional unexcused absences.
- 40 (c) In the case of five total unexcused absences, the attendance director or assistant or
- 41 principal shall again make meaningful contact with the parent, guardian, or custodian of the
- 42 student to ascertain the reasons for the unexcused absences and what measures the school may
- 43 employ to assist the student in attending school and not incurring any additional unexcused
- 44 absences.

45 (d) In the case of 10 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 §50-1-8 of this code, shall assign the case to a magistrate within
58 10 days of execution of the summons or warrant. The hearing shall be held within 20 days of the
59 assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the
60 accused at least 10 days' advance notice of the date, time and place of the hearing.

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

67 (g) The county attendance director and assistants shall devote such time as is required
68 by section three of this article to the duties of attendance director in accordance with this section
69 during the instructional term and at such other times as the duties of an attendance director are
70 required. All attendance directors and assistants hired for more than 200 days may be assigned

71 other duties determined by the superintendent during the period in excess of 200 days. The county
72 attendance director is responsible under direction of the county superintendent for efficiently
73 administering school attendance in the county.

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

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

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

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

82 (4) Prepare a report for submission by the county superintendent to the State
83 Superintendent of Schools on school attendance, at such times and in such detail as may be
84 required. The State Board shall promulgate a legislative rule pursuant to §29A-3B-1 *et seq.* of this
85 code that set forth student absences that are excluded for accountability purposes. The absences
86 that are excluded by rule shall include, but are not limited to, excused student absences, students
87 not in attendance due to disciplinary measures and absent students for whom the attendance
88 director has pursued judicial remedies to compel attendance to the extent of his or her authority.
89 The attendance director shall file with the county superintendent and county board at the close of
90 each month a report showing activities of the school attendance office and the status of
91 attendance in the county at the time;

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

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

96 (7) Assist in such other ways as the county superintendent may direct for improving school

- 97 attendance;
- 98 (8) Make home visits of students who have excessive unexcused absences, as provided
- 99 in subsection-a of this section, or if requested by the chief administrator, principal or assistant
- 100 principal; and
- 101 (9) Serve as the liaison for homeless children and youth.

Note: The purpose of this bill is to provide for excused absence from compulsory school attendance due to exclusion, suspension or expulsion in certain circumstances.

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