

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Originating**

### **House Bill 3306**

BY DELEGATES JENNINGS, ELLINGTON, HORST AND

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[Originating in the Committee on Education; reported  
on March 23, 2021]



1 A BILL to amend and reenact §18-5-45 of the Code of West Virginia, 1931, as amended, relating  
2 to virtual instruction; permitting incorporation of instruction through virtual methods in  
3 instructional day; and permitting instructional days to be satisfied by virtual learning  
4 classes.

*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 one hundred eighty separate instructional days  
27 or an equivalent 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 two hundred days, which need not be successive. The beginning and closing dates of the  
31 employment term may not exceed forty-eight weeks;

32 (2) Within the employment term, an instructional term for students of no less than one  
33 hundred eighty separate instructional days, which includes an inclement weather and  
34 emergencies plan designed to guarantee an instructional term for students of no less than one  
35 hundred eighty separate instructional days, 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 thirty minutes per day to ensure that it achieves at least an amount of  
38 instructional time equivalent to one hundred and eighty separate instructional days within its  
39 school calendar and:

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

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

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

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

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

56 (D) A county board may provide instruction through virtual methods utilizing offerings  
57 provided through the West Virginia Virtual School pursuant to §18-2E-9 of this code, and through  
58 the county board or a multicounty consortium pursuant to §18-5F-1 et seq. of this code, and may  
59 incorporate instruction through virtual methods in their instructional day consistent with sound  
60 educational practice: *Provided*, That up to ten instructional days may be satisfied by virtual  
61 learning classes.

62 (3) Within the employment term, noninstructional days shall total twenty and shall be  
63 comprised of the following:

64 (A) Seven paid holidays;

65 (B) Election day as specified in section two, article five, chapter eighteen-a of this code;

66 (C) Six days to be designated by the county board to be used by the employees outside  
67 the school environment, with at least four outside the school environment days scheduled to occur  
68 after the one hundred and thirtieth instructional day of the school calendar;

69 (D) One day to be designated by the county board to be used by the employees for  
70 preparation for opening school and one day to be designated by the county board to be used by  
71 the employees for preparation for closing school: *Provided*, That the school preparation days may

72 be used for the purposes set forth in paragraph (E) of this subdivision at the teacher's discretion;  
73 and

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

76 (i) Curriculum development;

77 (ii) Professional development;

78 (iii) Teacher-pupil-parent conferences;

79 (iv) Professional meetings;

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

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

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

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

90 (e) If it is not possible to complete one hundred eighty separate instructional days with the  
91 current school calendar and the additional five days of instructional time gained by increasing the  
92 length of the instructional day as provided in subsection (c) of this section are insufficient to offset  
93 the loss of separate instructional days, the county board shall schedule instruction on any  
94 available noninstructional day, regardless of the purpose for which the day originally was  
95 scheduled, or an out-of-calendar day and the day will be used for instruction of students: *Provided,*  
96 That the provisions of this subsection do not apply to:

97 (1) Holidays;

98 (2) Election day;

99 (3) Saturdays and Sundays; and

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

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

105 (g) The state board may not schedule the primary statewide assessment program more  
106 than thirty days prior to the end of the instructional year unless the state board determines that  
107 the nature of the test mandates an earlier testing date.

108 (h) The following applies to cocurricular activities:

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

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

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

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

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

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

120 (l) In formulation of a school's calendar, a county school board shall hold at least two public  
121 meetings that allow parents, teachers, teacher organizations, businesses and other interested  
122 parties within the county to discuss the school calendar. The public notice of the date, time and  
123 place of the public hearing must be published in a local newspaper of general circulation in the

124 area as a Class II legal advertisement, in accordance with the provisions of article three, chapter  
125 fifty-nine of this code.

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

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

132 (o) Notwithstanding any provision of this code to the contrary, the state board may grant  
133 a waiver to a county board for its noncompliance with provisions of chapter eighteen, eighteen-a,  
134 eighteen-b and eighteen-c of this code to maintain compliance in reaching the mandatory one  
135 hundred eighty separate instructional days established in this section.

136 (p) The state board shall promulgate a rule in accordance with the provisions of article  
137 three-b, chapter twenty-nine-a of this code for the purpose of implementing the provisions of this  
138 section.

NOTE: The purpose of this bill is to permit the incorporation of instruction by virtual methods in the school day and to permit up to ten instructional days to be satisfied by virtual learning classes.

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