

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENGROSSED

House Bill 3548

By Delegates Clark, Ferrell, Longanacre, Hanna,
Maynor, Jennings, Hite, Walker, Ellington and Toney

[Introduced February 14, 2023; Referred
to the Committee on Education]

1 A BILL to amend and reenact §18A-4-14 of the Code of West Virginia, 1931, as amended, relating
2 to requiring state board rule providing uniform procedure, prohibition, form and benefit
3 regarding a teacher's voluntary exchange of duty-free lunch recess to perform duties at the
4 school.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-14. Duty-free lunch and daily planning period for certain employees.

1 (a) Notwithstanding §18A-2-7 of this code, every teacher who is employed for a period of
2 time more than one half the class periods of the regular school day and every service person
3 whose employment is for a period of more than three and one-half hours per day and whose pay is
4 at least the amount indicated in the state minimum pay scale as set forth in §18-4-8a shall be
5 provided a daily lunch recess of not less than 30 consecutive minutes, and the employee shall not
6 be assigned any responsibilities during this recess. The recess shall be included in the number of
7 hours worked, and no county shall increase the number of hours to be worked by an employee as
8 a result of the employee being granted a recess under this section.

9 (b) Every teacher who is regularly employed for a period of time more than one half the
10 class periods of the regular school day shall be provided at least one planning period within each
11 school day to be used to complete necessary preparations for the instruction of pupils. No teacher
12 may be assigned any responsibilities during this period, and no county shall increase the number
13 of hours to be worked by a teacher as a result of such teacher being granted a planning period
14 subsequent to the adoption of this section (March 13, 1982). Educators shall receive uninterrupted
15 time for planning periods each day. Administrators may not require a teacher to use the planning
16 period time allotted to complete duties beyond instructional planning, including, but not limited to,
17 administrative tasks and meetings.

18 The duration of the planning period shall be in accordance with the following:

19 (1) For grades where the majority of the student instruction is delivered by only one
20 teacher, the planning period shall be no less than 40 minutes; and

21 (2) For grades where students take separate courses during at least four separate periods
22 of instruction, most usually delivered by different teachers for each subject, the planning period
23 shall be the length of the usual class period taught by the teacher, but no less than 40 minutes.
24 Principals, and assistant principals, where applicable, shall cooperate in carrying out the
25 provisions of this subsection, including, but not limited to, assuming control of the class period or
26 supervision of students during the time the teacher is engaged in the planning period. Substitute
27 teachers may also be utilized to assist with classroom responsibilities under this subsection:
28 *Provided*, That any substitute teacher who is employed to teach a minimum of two consecutive
29 days in the same position shall be granted a planning period pursuant to this section.

30 (c) Nothing in this section prevents any teacher from exchanging his or her ~~lunch recess or~~
31 a planning period or any service person from exchanging his or her lunch recess for any
32 compensation or benefit mutually agreed upon by the employee and the county superintendent or
33 his or her agent: *Provided*, That a teacher and the superintendent or his or her agent may not
34 agree to terms which are different from those available to any other teacher granted rights under
35 this section within the individual school or to terms which in any way discriminate among those
36 teachers within the individual school, and a service person granted rights under this section and
37 the superintendent or his or her agent may not agree to terms which are different from those
38 available to any other service personnel within the same classification category granted rights
39 under this section within the individual school or to terms which in any way discriminate among
40 those service personnel within the same classification category within the individual school.

41 (d) Nothing in this section prevents any teacher from volunteering to exchange and
42 exchanging his or her lunch recess in accordance with a rule promulgated by the state board in
43 accordance with §29A-3B-1 et seq. of this code. The rule promulgated by the state board shall
44 include at least the following:

45 (1) A uniform method for notifying teachers of the duties at the school for which a teacher
46 may voluntarily exchange his or her lunch recess to perform, and the process for volunteering to
47 make the exchange;

48 (2) A uniform prohibition on direct, in-person contact by administrators to request, coerce
49 or order a teacher to exchange his or her lunch recess to perform the duties;

50 (3) A uniform form for documenting the terms of the agreement between a teacher and the
51 superintendent or his or her agent for the exchange of the teacher's lunch recess to perform the
52 duties; and

53 (4) A uniform benefit for the exchange of the lunch recess by a teacher to perform the
54 duties equal to 6.25 percent of the teacher's daily rate of pay.

NOTE: The purpose of this bill is to provide for uniform procedures, agreement forms and benefits to ensure a teacher's exchange of his or her duty-free lunch to perform duties at the school is a voluntary exchange.

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