

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3260

By Delegate Young

Introduced March 07, 2025; referred to the Committee

on Education

1 A BILL to amend and reenact §18-5-45 and §18-5-45a of the Code of West Virginia, 1931, as
2 amended, relating to removing the 180 mandatory days of school, and moving to a model
3 based on hours.

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 the
17 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

unforeseen circumstances.

(b) *Findings.* –

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

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

(3) The school calendar shall provide for ~~one hundred eighty separate instructional days or an equivalent amount of instructional time as provided in this section~~ a model for attendance and instruction based on a set amount of hours. The West Legislature shall work with the West Virginia Department of Education, the State Board of Education, and county school boards to develop a new model to establish the minimum number of hours per day and per school year to be spent on instructional time.

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

(1) An employment term that excludes Saturdays and Sundays and consists of at least two hundred days, which need not be successive. The beginning and closing dates of the employment term may not exceed forty-eight weeks;

(2) Within the employment term, an instructional term for students of no less than one hundred eighty separate instructional days, which includes an inclement weather and emergencies plan designed to guarantee an instructional term for students of no less than one hundred eighty separate instructional days, subject to the following:

(A) A county board may increase the length of the instructional day as defined in this section by at least thirty minutes per day to ensure that it achieves at least an amount of instructional time equivalent to ~~one hundred and eighty separate instructional days~~ the required number of hours within its school calendar and:

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

(ii) Plan within its school calendar and not subject to cancellation and rescheduling as

instructional days up to an additional five days or equivalent portions of days, without students present, to be used as determined by the county board exclusively for activities by educators at the school level designed to improve instruction; and

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

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

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

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

(A) Seven paid holidays;

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

(C) Six days to be designated by the county board to be used by the employees outside the school environment, with at least four outside the school environment days scheduled to occur after the one hundred and thirtieth instructional day of the school calendar; (D) One day to be designated by the county board to be used by the employees for preparation for opening school and one day to be designated by the county board to be used by the employees for preparation for closing school: *Provided*, That the school preparation days may be used for the purposes set forth in paragraph (E) of this subdivision at the teacher's discretion; and

(E) The remaining days to be designated by the county board for purposes to include, but

not be limited to:

(i) Curriculum development;

(ii) Professional development;

(iii) Teacher-pupil-parent conferences;

(iv) Professional meetings;

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

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

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

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

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

(1) Holidays;

(2) Election day;

(3) Saturdays and Sundays; and

(4) The five days or equivalent portions of days planned within the school calendar

exclusively for activities by educators at the school level to improve instruction that are gained by increasing the length of the instructional day as provided in subsection (c) of this section.

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

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

(h) The following applies to cocurricular activities:

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

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

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

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

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

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

(l) In formulation of a school's calendar, a county school board shall hold at least two public meetings that allow parents, teachers, teacher organizations, businesses and other interested parties within the county to discuss the school calendar. The public notice of the date, time and place of the public hearing must be published in a local newspaper of general circulation in the area as a Class II legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

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

employment.

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

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

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

§18-5-45a. Legislative findings; time lost due to work stoppage or strike; effect on pay and extracurricular activities; closure of schools due to work stoppage or strike prohibited.

(a) *Legislative findings.* —

(1) The West Virginia Supreme Court of Appeals held, in *Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass'n*, 183 W.Va. 15 (1990), that "[p]ublic employees have no right to strike in the absence of express legislation or, at the very least, appropriate statutory provisions for collective bargaining, mediation, and arbitration".

(2) Public employees in West Virginia have no right, statutory or otherwise, to engage in collective bargaining, mediation, or arbitration, and any work stoppage or strike by public employees is hereby declared to be unlawful. Furthermore, any work stoppage or strike by employees of a county board of education poses a serious disruption to the thorough and efficient system of free schools, guaranteed to the children of West Virginia by section one, article XII of the Constitution of West Virginia.

(3) Section 18-5-45 of this code is designed to define the school term both for employment

of school personnel and for instruction of students. The employment term consists of at least 200 days and, within the employment term, an instructional term for students must consist of at least 180 separate instructional days a required number of hours as set forth in §18-5-45 of this code. Section 18-5-45 of this code also defines the minimum length of an instructional day, requires county boards to develop a policy for additional minutes of instruction to recover time lost due to late arrivals and early dismissals, and allows schools with an instructional day in excess of certain minimums to apply this equivalent instructional time to cancel time lost due to necessary closures and other purposes designed to improve instruction. Furthermore, §18-5-45 of this code allows a county board, subject to approval of its plan by the state board, to deliver instruction through alternative methods for a maximum of five days, when schools are closed and provides that these days are considered to be instructional days, notwithstanding the closure of schools.

(4) The Legislature intended, by providing for equivalent instructional time and the use of alternative methods to deliver instruction on days when schools are closed, as defined in §18-5-45 of this code, to: (1) Provide flexibility for collaborative time and other methods of improving instruction; and (2) lessen the disruption of the planned school calendar if rescheduling and adding instructional days became necessary to make up lost days due to closures pursuant to §18-4-10(5) of this code, when conditions are detrimental to the health, safety, or welfare of pupils. The Legislature did not intend with the enactment of these provisions to permit a reduction in the instructional term for students or in the employment term for personnel when the conditions causing the closure of the school are a concerted work stoppage or strike by the employees.

(b) For the purposes of this section, an employee of a county board of education is considered to be participating in a concerted work stoppage or strike if, on any day during a concerted stoppage of work or interruption of operations by the employees of the county board of education:

(1) The employee does not report to work as required by his or her contract of employment;

(2) The employee is not on leave, as specifically permitted by any provision of this code:

39 *Provided*, That nothing in this section permits an employee to use personal leave in connection
40 with a work stoppage or strike in violation of §18A-4-10 of this code; and

41 (3) The employee is not otherwise prevented from reporting to work based on
42 circumstances beyond the employee's control, that are unrelated to the employee's participation
43 in the ongoing concerted work stoppage or strike, as determined by the county superintendent.

44 (c) The provisions of §18-5-45 of this code, permitting accrued and equivalent instructional
45 time to cancel days lost, and the delivery of instruction through alternative methods, do not apply
46 to and may not be used to cancel days lost due to a concerted work stoppage or strike.
47 Notwithstanding any provision of this code to the contrary, the state board may not grant a waiver
48 to a county board of education for its noncompliance with the 200-day minimum employment term
49 or the ~~180-day~~ required hours of minimum instructional term requirements if such noncompliance
50 is the result of a concerted work stoppage or strike.

51 (d) Notwithstanding §18A-5-2 of this code or any other provision of this code to the
52 contrary, if an employee remains employed by the county board of education, notwithstanding his
53 or her participation in a concerted work stoppage or strike, which the Legislature hereby
54 determines to be a ground for termination, the county board of education shall withhold the
55 prorated salary or hourly pay of each employee participating in the concerted work stoppage or
56 strike for each day that such employee participates in a concerted work stoppage or strike, and
57 such sums shall be forfeited to the county board of education.

NOTE: The purpose of this bill is to remove the 180 mandatory days of school and move to a model based on hours.

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