WEST VIRGINIA CODE: §18-8-4

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants, and hearings.

(a) For the purposes of this article, the following definitions apply:

(1) "Excused absence" means:

(A) A medical or dental appointment with written excuse from physician or dentist;

(B) Personal illness or injury of the student accompanied by a timely written excuse from the student's parent, guardian, or custodian: *Provided*, That the total absences under this section combined with absences permitted under paragraph (C) of this subdivision do not exceed more than 10 per school year unless supported by a physician's note: *Provided, however*, That a medically documented chronic health condition or disability that adversely impacts in-person attendance approved by a county school board or the principal is not subject to this limitation, and that absences of students with disabilities shall be in accordance with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in compliance therewith;

(C) Personal illness or injury of the student's parent, guardian, custodian, or family member: *Provided*, That the excuse must provide a reasonable explanation for why the student's absence was necessary and caused by the illness or injury in the family, and the total absences under this section in combination with paragraph (B) of this subdivision may not exceed more than 10 excuses per school year;

(D) Death in the family;

(E) School-approved or county-approved curricular or extra-curricular activities;

(F) A judicial obligation or court appearance involving the student;

(G) A military requirement for students enlisted or enlisting in the military;

(H) Up to five college visits; and

(I) A student in any West Virginia Department of Education recognized and sanctioned student organization to enhance student enrichment and success, including, but not limited to, SkillsUSA, Future Business Leaders of America (FBLA), Health Occupations Students of America (HOSA), the Common Ground Partnership, or 4-H or FFA-sanctioned activity or program, subject to the following:

(i) A student who participates in an activity or program sanctioned in paragraph (I) of this subdivision shall be credited as present by the school in which the student is enrolled in the

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same manner as a student participating in an educational field trip. A school principal, or the principal's designee, shall not count a student absent for participating in an activity or program sanctioned in paragraph (I) of this subdivision.

(ii) An agent of a sanctioned organization set forth in paragraph (I) of this subdivision shall provide documentation as proof of a student's participation in an activity or program sanctioned in paragraph (I) of this subdivision.

(iii) A student shall make up any schoolwork missed while the student was participating in an activity or program sanctioned by paragraph (I) of this subdivision and shall not have the student's class grades adversely affected for lack of attendance or participation due to the student's participation in an activity or program sanctioned in paragraph (I) of this subdivision.

(iv) A school principal, or the principal's designee, shall not credit a student who participates in an activity or program sanctioned in paragraph (I) of this subdivision as present if the student's participation in the activity or program sanctioned in paragraph (I) of this subdivision occurs during any period of time for which the student has been suspended, expelled, or assigned to an alternative school or alternative program under this chapter and the student's suspension, expulsion, or assignment to an alternative school or alternative program would preclude the student from participating in an educational field trip.

(J) The total amount of excused absences under paragraphs (E), (H), and (I) of this subdivision may not exceed more than 10 per school year.

(K) Nothing in this section shall interfere with the Every Student Succeeds Act (2015), which does not differentiate between excused and unexcused absences.

(2) "Meaningful contact" means two-way communication by the school administrator or other school designee and the student’s parent, guardian, or custodian to discuss the student’s attendance record in an effort to prevent subsequent truancy or other legal proceedings relating to compulsory school attendance, and to minimize additional absences. Methods of meaningful contact include, but are not limited to, phone calls, video conferencing, home visits, and the use of digital platforms.

(3) "System of Support Plan" (“SOS Plan") refers to a plan to be developed by the State Board of Education designed to encourage students to attend school. It shall, at a minimum, require county attendance directors, principals, or other school designees to make periodic contact with the parent, guardian, or custodian of a student subject to compulsory school attendance to ascertain the reason or reasons for the student’s absence or absences and what measures the school may employ to assist the student in attending school and not incurring additional absences. It shall also impart upon the student’s parents, guardians, and custodians the importance of the student’s attendance and the seriousness of failing to do so.

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(4) "Unexcused absence" means any absence not specifically included in the definition of "excused absence".

(b) The county attendance director and his or her assistants shall diligently promote regular school attendance. The director and assistants shall:

(1) Ascertain the reasons for unexcused absences from school of students of compulsory school age; and students who remain enrolled beyond the compulsory school age;

(2) Ensure the implementation of the SOS Plan as developed by the state board, including encouraging the attendance of students and imparting upon the parents, guardians, and custodians the important of attendance and the seriousness of failing to do so.

(c) All documentation relating to absences shall be provided to the school no later than three instructional days after the first day the student returns to school. In the event documentation is not provided to the school within three instructional days after the first day the student returns to school, the absences are unexcused.

(d) In the case of three total unexcused absences of a student during a school year, the attendance director, his or her assistant, or the principal shall make meaningful contact with the parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences and what measures the school may employ to assist the student in attending and not incurring any additional unexcused absences.

(e) In the case of five total unexcused absences, the attendance director, his or her assistant or the principal shall again make meaningful contact with the parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences and what measures the school may employ to assist the student in attending school and not incurring any additional unexcused absences.

(f) In the case of 10 total unexcused absences of a student during a school year, the attendance director or assistant may make a complaint against the parent, guardian, or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent, guardian, or custodian may be charged in a complaint. Initial service of a summons or warrant issued pursuant to the provisions of this section shall be attempted within 10 calendar days of receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

(g) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in §50-1-8 of this code, shall assign the case to a magistrate within 10 days of execution of the summons or warrant. The hearing shall be held within 20

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days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least 10 days' advance notice of the date, time, and place of the hearing.

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

(i) The county attendance director and his or her assistants shall devote as much time as is required to the duties of attendance director in accordance with this section during the instructional term and at any other times as the duties of an attendance director are required. All attendance directors and assistants hired for more than 200 days may be assigned other duties determined by the superintendent during the period in excess of 200 days. The county attendance director is responsible under direction of the county superintendent for efficiently administering school attendance in the county.

(j) In addition to those duties directly relating to the administration of attendance, the county attendance director and his or her assistant directors also shall perform the following duties:

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

(2) Confer with principals and teachers on the comparison of the school census and enrollment for the detection of possible non-enrollees;

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

(4) Promote attendance in the county by compiling data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in any manner directed by the county superintendent;

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

(6) Assist in any other ways directed by the county superintendent for improving school attendance;

(7) Make home visits of students who have excessive unexcused absences, as provided in subsection (a) of this section, or if requested by the chief administrator, principal, or assistant principal; and

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(8) Serve as the liaison for homeless children and youth.

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