WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

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ENROLLED

House Bill No. 4040

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

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Passed January 26, 2010

In Effect July 1, 2010
AN ACT to amend and reenact §18-5-45 of the Code of West Virginia, 1931, as amended, relating to requiring county boards to adopt contingency plans designed to guarantee one hundred eighty separate days of instruction for students; authorizing county boards of education to select the beginning date and ending date of the instructional term of the school calendar; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §18-5-45 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-45. School calendar.

(a) As used in this section, the following terms have the following meanings:

(1) “Instructional day” means a day within the instructional term which meets the following criteria:
(A) Instruction is offered to students for at least the minimum amounts of time provided by state board rule;

(B) Instructional time is used for instruction, cocurricular activities and approved extracurricular activities and, pursuant to the provisions of subdivision twelve, subsection (b), section five, article five-a of this chapter, faculty senates; and

(C) Such other criteria as the state board determines appropriate.

(2) “Accrued instructional time” means instructional time accruing during the instructional term from time added to the instructional day beyond the time required by state board rule for an instructional day. Accrued instructional time may be accumulated and used in larger blocks of time during the school year for instructional or noninstructional activities as further defined by the state board.

(3) “Extracurricular activities” are activities under the supervision of the school such as athletics, noninstructional assemblies, social programs, entertainment and other similar activities as further defined by the state board.

(4) “Cocurricular activities” are activities that are closely related to identifiable academic programs or areas of study that serve to complement academic curricula as further defined by the state board.

(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 traditionally has provided for one hundred eighty actual days of instruction but numerous circumstances have combined to cause the actual number of instructional days to be less than one hundred eighty.

(4) The quality and amount of instruction offered during the instructional term is affected by the extracurricular and cocurricular activities allowed to occur during scheduled instructional time.

(5) Within reasonable guidelines, the school calendar should be designed at least to guarantee that one hundred eighty actual days of instruction are possible.

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

(1) An employment term for teachers of no less than two hundred days, exclusive of Saturdays and Sundays; and

(2) Within the employment term, an instructional term for students of no less than one hundred eighty separate instructional days, which shall include an icy conditions and emergencies plan designed to guarantee an instructional term for students of no less than one hundred eighty separate instructional days.

(d) The instructional term for students shall include one instructional day in each of the months of October, December, February, April and June which is an instructional support and enhancement day scheduled by the board to include both instructional activities for students and professional activities for teachers to improve student instruction. Instructional support and enhancement days are subject to the following provisions:
(1) Two hours of the instructional support and enhancement day shall be used for instructional activities for students. The instructional activities for students are subject to the following provisions:

(A) The instructional activities for students require the direct supervision or involvement by teachers;

(B) The instructional activities for students shall be limited to two hours;

(C) The instructional activities for students shall be determined and scheduled at the local school level;

(D) The instructional activities for students may include, but are not limited to, both in-school and outside of school activities such as student mentoring, tutoring, counseling, student research and other projects or activities of an instructional nature, community service, career exploration, parent and teacher conferences, visits to the homes of students, college and financial aid workshops and college visits;

(E) To ensure that the students who attend are properly supervised, the instructional activities for students shall be arranged by appointment with the individual school through the principal, a teacher or other professional personnel at the school; and

(F) Each school shall establish a policy relating to the use of the two-hour block scheduled for instructional activities for students;

(2) The instructional support and enhancement day shall include a two-hour block of time for professional activities for teachers during which the faculty senate shall have the opportunity to meet;
(3) All time remaining in the school day after meeting the requirements of subdivisions (1) and (2) of this subsection, not including the duty-free lunch period, shall be used for other professional activities for teachers to improve student instruction which may include, but are not limited to, professional staff development, curriculum team meetings, individualized education plan meetings and other meetings between teachers, principals, aides and paraprofessionals to improve student instruction as determined and scheduled at the local school level;

(4) Notwithstanding any other provision of law or policy to the contrary, the presence of any specific number of students in attendance at the school for any specific period of time shall not be required on instructional support and enhancement days and the transportation of students to the school shall not be required;

(5) Instructional support and enhancement days are also a scheduled work day for all service personnel and shall be used for training or other tasks related to their job classification if their normal duties are not required; and

(6) Nothing in this section may be construed to require that the instructional activities for students, faculty senate meetings and other professional activities for teachers be scheduled in any certain order.

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

(f) Noninstructional days shall total twenty and shall be comprised of the following:

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

(3) Six days to be designated by the county board to be used by the employees outside the school environment; and

(4) Six days to be designated by the county board for any of the following purposes:

(A) Curriculum development;

(B) Preparation for opening and closing school;

(C) Professional development;

(D) Teacher-pupil-parent conferences;

(E) Professional meetings; and

(F) Making up days when instruction was scheduled but not conducted.

(g) Three of the days described in subdivision (4), subsection (f) of this section shall be scheduled prior to the commencement of the instructional term for the purposes of preparing for the opening of school and staff development.

(h) At least one of the days described in subdivision (4), subsection (f) of this section shall be scheduled after the termination of the instructional term for the purpose of preparing for the closing of school.

(i) At least four of the days described in subdivision (3), subsection (f) of this section shall be scheduled after March 1.
(j) At least two of the days described in subdivision (4), subsection (f) of this section will be scheduled for professional development. The professional development conducted on these days will be consistent with the goals established by the state board pursuant to the provisions of section twenty-three-a, article two of this chapter.

(k) Subject to the provisions of subsection (h) of this section, all noninstructional days will be scheduled prior to the termination of the instructional term.

(l) The state board may not schedule the primary statewide assessment program prior to May 15 of the instructional year unless the state board determines that the nature of the test mandates an earlier testing date.

(m) If, on or after March 1, the county board determines that it is not possible to complete one hundred eighty separate days of instruction, the county board shall schedule instruction on any available noninstructional day, regardless of the purpose for which the day originally was scheduled, and the day will be used for instruction, subject to the following:

(1) The noninstructional days scheduled for professional development shall be the last available noninstructional days to be rescheduled as instructional days;

(2) On or after March 1, the county board also may require additional minutes of instruction in the school day to make up for lost instructional days in excess of the days available through rescheduling and, if in its judgment it is reasonable and necessary to improve student performance, to avoid scheduling instruction on noninstructional days previously scheduled for professional development; and
(3) The provisions of this subsection do not apply to:

(1) Holidays; and

(2) Election day.

(n) The following applies to accrued instructional time:

(1) Except as provided in subsection (m) of this section, accrued instructional time may not be used to avoid one hundred eighty separate days of instruction;

(2) Accrued instructional time may not be used to lengthen the time provided in law for faculty senates;

(3) The use of accrued instructional time for extracurricular activities will be limited by the state board;

(4) Accrued instructional time may be used by schools and counties to provide additional time for professional staff development and continuing education as may be needed to improve student performance and meet the requirements of the federal mandates affecting elementary and secondary education. The amount of accrued instructional time used for this purpose may not exceed three instructional days; and

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

(o) 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.

(p) The following applies to extracurricular activities:

(1) Except as provided by subdivision (3) of this subsection, extracurricular activities may not be scheduled during instructional time;

(2) The use of accrued instructional time for extracurricular activities will be limited by the state board; and

(3) The state board shall provide for the attendance by students of certain activities sanctioned by the Secondary School Activities Commission when those activities are related to statewide tournaments or playoffs or are programs required for Secondary School Activities Commission approval.

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

(r) Nothing in this section prohibits establishing year-round schools in accordance with rules to be established by the state board.

(s) 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.

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

(u) The minimum instructional term may be decreased by order of the state superintendent in any county declared a
(v) Where the employment term overlaps a teacher’s or service personnel’s participation in a summer institute or institution of higher education for the purpose of advancement or professional growth, the teacher or service personnel may substitute, with the approval of the county superintendent, the participation for up to five of the noninstructional days of the employment term.

(w) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect July 1, 2010.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the ___ day of December, __2010.___

Governor
PRESENTED TO THE GOVERNOR

FEB 9, 2010

Time 9:15 AM