



West Virginia DEPARTMENT OF
EDUCATION

Payroll Implications of School Calendar Issues

Amy Willard, CPA, Director of School Finance

May 17, 2018

HB 2711 School Calendar Changes

HB 2711 made several significant changes to the school calendar statutes that were effective for the 2017-18 school year. State Board Policy 3234 was updated accordingly. The primary changes were as follows:

HB 2711 School Calendar Changes

County boards of education are permitted to add 30 minutes of equivalent instructional time to the required daily minutes in return for the ability to:

- Use 5 days of equivalent instructional time to make up cancelled instructional days AND
- Schedule 5 days (or the equivalent portion of 5 days) as part of the planned school calendar where students do not attend for activities by educators at the school level designed to improve instruction.
- Use any remaining equivalent time to recover lost time due to late arrivals and early dismissals (Section 5.4.b.3 of Policy 3234).



HB 2711 School Calendar Changes

- Subject to approval of a plan by the State Board, county boards are permitted to deliver instruction through alternative methods for up to five days when schools are closed due to inclement weather or other circumstances.
- These are referred to as Non-traditional Instructional Days (NTIDs) in State Board Policy 3234.
- The State Board requires that these plans outline the alternative delivery methods and work schedules for all 200-day employees as part of the plan submission process.
- Note that these plans are also approved by local county boards of education.



HB 2711 School Calendar Changes

The statute is specific that both the use of equivalent instructional time and the use of the NTIDs are considered both instructional days for the purposes of meeting the required 180 days of instruction and employment days for the purposes of meeting the required 200 day employment term.

HB 2711 School Calendar Changes

The statute also gives a priority to the order in which make-up days should be utilized to achieve the 180 separate days of instruction. Cancelled instructional days should be made up in the following order:

1. (a) Equivalent Instructional Time (counts as up to 5 days of instruction)
 (b) NTIDs (up to 5 days count as instructional days with approved plan only)
2. (a) Noninstructional days available to be used as make up days (OS days, etc.)
 (b) Out of Calendar Days

HB 2711 School Calendar Changes

WVC 18-5-45(e)(4) was very specific that the 5 days available from equivalent time that are scheduled for educator activities to improve instruction cannot be used as make-up days. However, counties can seek permission from WVDE to move those days to make the instructional term more logical for student learning and more convenient for parents based on the volume of school closures incurred by the county.

Make-Up Day Example

- For example, if a county misses 20 days of school due to inclement weather but has added the 30 minutes of equivalent instructional time to their calendar at the beginning of the year and has an approved alternative instruction plan from the State Board, they could make up the 20 missed days as follows:
 - 5 Equivalent Time Days
 - 5 NTIDs
 - 4 Unused OS (Outside School Environment) Days Remaining in the Calendar
 - 1 Unused TP (Parent Teacher Conference) Day Remaining in the Calendar
 - 1 CD (Curriculum Development) Day Remaining in the Calendar
 - 4 Out of Calendar Days
- ****This is an example only. The available noninstructional days will vary county by county depending on the initial school calendar and when the missed days occur.**

Equivalent Instructional Time vs. Accrued Time

- State Board Policy 3234 makes a distinction between Equivalent Instructional Time and Accrued Time.
- Per Section 4.4, Equivalent Instructional Time is “minutes added to the minimum instructional day which ensure that over the course of the instructional term, students will receive instruction for the amount of time equivalent to 180 separate instructional days.”
 - Per Section 5.4.a = 30 minute minimum
- Per Section 4.1, Accrued time is “time added to the minimum instructional day, which ensure county boards are able to provide sufficient time to cover late arrivals, early dismissals, and faculty senates held during an instructional day.”
 - Per Section 5.4.a = 1-29 minutes



WVC §18A-5-2

WVC §18A-5-2 governs the payroll treatment of missed instructional days. The statute indicates the following:

- That a school employee’s pay per pay period may not be changed as a result of a school closing not being counted as a day of employment
- That the employee must be paid the same amount they would have been paid during the pay period if a school closing had not occurred



General Payroll Rule

As a result of WVC §18A-5-2, a county board cannot adjust a regular employee's pay during the current pay period due to the cancelled instructional day. The employee's pay would normally only be adjusted later if the employee did not work a required make-up day.

Situations Where Employee Doesn't Work the Required Make-Up Day

- If an employee does not work on a required make up day and is out of "personal leave without cause" days, the employee's pay should be docked for failure to complete the full contract term.
- County boards of education have the discretion to allow a "compensatory time" arrangement where the individual could work on an alternative day, but county boards are not required to make such arrangements. Generally, such an arrangement should be a benefit to the county.

Retirement Prior to Make-Up Day

If an employee retires prior to a make-up day for a school closure, the retiree should only be paid for their actual contract days worked during the school year (including any days being made up with equivalent time since the statute is specific that those days count as employment days toward the 200-day contract term).

Paid Leave of Absence

- If an employee is on a paid leave of absence during the time of a school closure and later works the make-up day, the employee should NOT be docked for personal leave for the day that school was closed.
- If an employee is on a paid leave of absence during a day that is cancelled and will be made up using equivalent instructional time, the employee should NOT be docked for a personal leave for the day that school was closed.

Failure to Work Required Schedule on an NTID

Because the NTIDs require 200-day employees to actually work in some capacity, if the employee doesn't actually fulfill those requirements outlined in the approved plan, the employee's pay for the day could be docked for failure to work a contract day if the employee does not have "personal leave without cause" available to cover the absence. Regular sick leave cannot be used except for the reasons outlined in WVC §18A-4-10, which does not include inclement weather conditions.

How do Equivalent Time Days Impact Central Office Personnel?

- County boards of education are NOT required to give central office personnel days off for any cancelled days that are not made up due to the use of equivalent instructional time.
- In a State Superintendent Interpretation dated March 21, 1988, a county inquired whether the Superintendent could require central office personnel to work on both a "snow day" and the make-up day (which was an outside-school- environment day). The response was that YES, because WVC 18A-5-2(d)(2) indicates that county boards may provide appropriate alternate work schedules for professional and service personnel on "snow days." Hence, work can properly be assigned to central office employees on the "snow day." This was upheld by the WV Grievance Board.
- Although this particular question was regarding OS days, the same logic would apply to equivalent time days.

Employees who Split Schedule Between the Central Office and a School Location

If a county has an employee who works a half-day at a school and a half-day at the central office, he or she would need to follow the schedules at each location. For example, school-level employees do not report due to the weather but central office personnel are required to report, the employee would not be required to work the portion of their shift at the school but would need to report to the portion of their shift located at the central office.

Federal Disaster Areas and Emergency Declarations by the Governor

- Per WVC 18-5-45(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.”
- The State Superintendent is not required to decrease the instructional term in these situations, but has the authority under statute to exercise his or her discretion to reduce the minimum instructional term and not require the missed days to be made up.
- This was exercised during FY18 for Wood County Schools due to the industrial warehouse fire that resulted in a State of Emergency declaration by the Governor. The minimum instructional term was reduced by 5 days.

Compensatory Time

- As mentioned previously, county boards of education are permitted to offer compensatory time to employees.
- The Fair Labor Standards Act (FLSA) and West Virginia Code contain various requirements related to compensatory time for non-exempt employees (which are generally service personnel).
- The FLSA requires that an agreement or understanding between the employer and employee exist prior to the performance of work.
- WVC §21-5C-3(f)(2) further requires that the agreement be in writing and be recorded in the employer's record of hours worked. The statute goes on to state that the written agreement may be modified at the request of either the employer or the employee, but under no circumstances can the changes in the agreement deny an employee compensatory time previously acquired.



Compensatory Time, Cont'd

- An employer may use discretion as to when an employee is permitted to use compensatory time earned and may establish limits as to how long compensatory time may be carried.
- For example, an employer may require that any compensatory time earned be used within 30, 45, or 60 days after being earned, or by the end of the fiscal year.
- WVC §21-5C-3(f)(5)(B) requires that compensatory time be used within one year from the time it is earned.



Compensatory Time, Cont'd

- **To preclude any misunderstandings, county boards should establish written procedures as to how compensatory time may be earned and taken.**
- Additional guidance regarding compensatory time can be found in the FLSA Compliance Guide located at the link below:

<https://wvde.us/wp-content/uploads/2018/02/FLSA-COMPLIANCE-GUIDE.pdf>

Statutory References for School Calendar Payroll Issues

§18-5-45. School calendar.

(a) As used in this section:

(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 number of minutes as follows:

(i) For early childhood programs as provided in subsection (d) section forty-four of this article;

(ii) For schools with grade levels kindergarten through and including grade five, 315 minutes of instructional time per day;

(iii) For schools with grade levels six through and including grade eight, 330 minutes of instructional time per day; and

(iv) For schools with grade levels nine through and including grade twelve, 345 minutes of instructional time per day.

(B) Instructional time is used for instruction and cocurricular activities; and

(C) Other criteria as the state board determines appropriate.

(2) "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; and

(3) "Instruction delivered through alternative methods" means a plan developed by a county board and approved by the state board for teachers to assign and grade work to be 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.

(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 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 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 established in this section.

(p) 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.

§18A-5-2. Holidays; closing of schools; time lost because of such; special Saturday classes.

(a) Schools shall be closed on Saturdays and on the following days which are designated as legal school holidays: Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King's birthday, Memorial Day and West Virginia Day. Schools also shall be closed on any day on which a primary election, general election or special election is held throughout the state or school district and on any day appointed and set apart by the president or the Governor as a holiday of special observance by the people of the state.

(b) When any of the above designated holidays, except a special election, falls on Saturday, the schools shall be closed on the preceding Friday. When any designated holiday falls on Sunday, the schools shall be closed on the following Monday.

(c) Special classes may be conducted on Saturdays for pupils and by teachers and service personnel. Saturday classes shall be conducted on a voluntary basis and teachers and service personnel shall be remunerated in ratio to the regularly contracted pay.

(d) Any school or schools may be closed by proper authorities on account of the prevalence of contagious disease, conditions of weather or any other calamitous cause over which the board has no control.

(1) Under any or all of the above provisions, the time lost by the school closings may not be counted as days of employment and may not be counted as meeting a part of the requirements of the minimum term of one hundred eighty days of instruction. A school employee's pay per pay period may not change as a result of a school closing not being counted as a day of employment, and the employee shall be paid the same amount during any pay period in which a school closing occurs that the employee would have been paid during the pay period if a school closing had not occurred.

(2) On the day or days when a school or schools are closed, county boards may provide appropriate alternate work schedules for professional and service personnel affected by the closing of any school or schools under any or all of the provisions of this subsection. Professional and service personnel shall receive pay the same as if school were in session.

(3) Insofar as funds are available or can be made available during the school year, the board may extend the employment term for the purpose of making up time that might affect the instructional term.

(e) In addition to any other provisions of this chapter, the board further is authorized to provide in its annual budget for meetings, workshops, vacation time or other holidays through extended employment of personnel at the same rate of pay.

§18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.

(a) Personal Leave.

(1) At the beginning of the employment term, any full-time employee of a county board is entitled annually to at least one and one-half days personal leave for each employment month or major fraction thereof in the employee's employment term. Unused leave shall be accumulative without limitation and is transferable within the state. A change in job assignment during the school year does not affect the employee's rights or benefits.

(2) A regular full-time employee who is absent from assigned duties due to accident, sickness, death in the immediate family, or life threatening illness of the employee's spouse, parents or child, or other cause authorized or approved by the board, shall be paid the full salary from his or her regular budgeted salary appropriation during the period which the employee is absent, but not to exceed the total amount of leave to which the employee is entitled.

(3) Each employee is permitted to use three days of leave annually without regard to the cause for the absence. Personal leave without cause may not be used on consecutive work days unless authorized or approved by the employee's principal or immediate supervisor, as appropriate. The employee shall give notice of leave without cause to the principal or immediate supervisor at least twenty-four hours in advance, except that in the case of sudden and unexpected circumstances, notice shall be given as soon as reasonably practicable. The principal or immediate supervisor may deny use of the day if, at the time notice is given, either fifteen percent of the employees or three employees, whichever is greater, under the supervision of the principal or immediate supervisor, have previously given notice of their intention to use that day for leave. Personal leave may not be used in connection with a concerted work stoppage or strike. Where the cause for leave originated prior to the beginning of the employment term, the employee shall be paid for time lost after the start of the employment term. If an employee uses personal leave which the employee has not yet accumulated on a monthly basis and subsequently leaves the employment, the employee is required to reimburse the board for the salary or wages paid for the unaccumulated leave.

(4) The State Board shall maintain a rule to restrict the payment of personal leave benefits and the charging of personal leave time used to an employee receiving a workers' compensation benefit from a claim filed against and billed to the county board by which the person is employed. If an employee is awarded this benefit, the employee shall receive personal leave compensation only to the extent the compensation is required, when added to the workers' compensation benefit, to equal the amount of compensation regularly paid the employee. If personal leave compensation equal to the employee's regular pay is paid prior to the award of the workers' compensation benefit, the amount which, when added to the benefit, is in excess of the employee's regular pay shall be deducted from the employee's subsequent pay. The employee's accrued personal leave days shall be charged only

for such days as equal the amount of personal leave compensation required to compensate the employee at the employee's regular rate of pay.

(5) The county board may establish reasonable rules for reporting and verification of absences for cause. If any error in reporting absences occurs, the county board may make necessary salary adjustments:

(A) In the next pay after the employee has returned to duty; or

(B) In the final pay if the absence occurs during the last month of the employment term.

(b) Leave Banks.

(1) Each county board shall establish a personal leave bank that is available to all school personnel. The board may establish joint or separate banks for professional personnel and school service personnel. Each employee may contribute up to two days of personal leave per school year. An employee may not be coerced or compelled to contribute to a personal leave bank.

(2) The personal leave bank shall be established and operated pursuant to a rule adopted by the county board. The rule:

(A) May limit the maximum number of days used by an employee;

(B) Shall limit the use of leave bank days to an active employee with fewer than five days accumulated personal leave who is absent from work due to accident or illness of the employee; and

(C) Shall prohibit the use of days to:

(i) Qualify for or add to service for any retirement system administered by the state; or

(ii) Extend insurance coverage pursuant to section thirteen, article sixteen, chapter five of this code.

(D) Shall require that each personal leave day contributed:

(i) Is deducted from the number of personal leave days to which the donor employee is entitled by this section;

(ii) Is not deducted from the personal leave days without cause to which a donor employee is entitled if sufficient general personal leave days are otherwise available to the donor employee;

(iii) Is credited to the receiving employee as one full personal leave day;

(iv) May not be credited for more or less than a full day by calculating the value of the leave according to the hourly wage of each employee; and

(v) May be used only for an absence due to the purpose for which the leave was transferred. Any transferred days remaining when the catastrophic medical emergency ends revert back to the leave bank.

(3) The administration, subject to county board approval, may use its discretion as to the need for a substitute where limited absence may prevail, when an allowable absence does not:

(i) Directly affect the instruction of the students; or

(ii) Require a substitute employee because of the nature of the work and the duration of the cause for the absence.

(4) If funds in any fiscal year, including transfers, are insufficient to pay the full cost of substitutes for meeting the provisions of this section, the remainder shall be paid on or before the thirty-first day of August from the budget of the next fiscal year.

(5) A county board may supplement the leave provisions in any manner it considers advisable in accordance with applicable rules of the state Board and the provisions of this chapter and chapter eighteen of this code.

126CSR73

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 73
SCHOOL CALENDAR (3234)**

§126-73-1. General.

1.1. Scope. -- This legislative rule sets forth general regulations related to the adoption of the annual school calendar by the county boards of education (county boards).

1.2. Authority. -- W. Va. Constitution, Article XII, §2 and W. Va. Code §§18-1-2, 18-2-5, 18-5A-5, 18-5-45, and 18A-5-2.

1.3. Filing Date. -- November 9, 2017.

1.4. Effective Date. -- December 11, 2017.

1.5. Repeal of Former Rule. -- The legislative rule repeals and replaces W. Va. 126CSR73, West Virginia Board of Education (WVBE) Policy 3234, School Calendar, filed February 12, 2016, and effective July 1, 2016.

§126-73-2. Purpose.

2.1. The purpose of this rule is to set forth general criteria for adoption of the annual school calendar to provide county boards and multi-county vocational centers as much flexibility as possible to develop a calendar that meets student and local school needs.

§126-73-3. Application.

3.1. These regulations apply to the adoption of the school calendars for the 2017-2018 school year and subsequent years. These regulations apply to county boards and to schools under the supervision of the WVBE and/or West Virginia Department of Education (WVDE).

§126-73-4. Definitions.

4.1. Accrued time. -- Time added to the minimum instructional day, which ensure county boards are able to provide sufficient time to cover late arrivals, early dismissals, and faculty senates held during an instructional day as defined in section 4.6. (See section 5.4 for application.)

4.2. Co-curricular activity. -- An activity that is closely related to identifiable academic programs or areas of study that serve to complement the academic and technical curricula for students.

4.3. County boards. -- The governing body charged with the supervision and control of a county board, which is composed of five members, nominated and elected by the voters of the respective county.

126CSR73

4.4. Equivalent instructional time. -- Minutes added to the minimum instructional day which ensure that over the course of the instructional term, students will receive instruction for the amount of time equivalent to 180 separate instructional days as defined in section 4.6. (See section 5.4 et seq. for application).

4.5. Extracurricular activity. -- An activity that is not part of the required instructional day or curricular offerings but that is under the supervision of the school. Examples include athletics, non-instructional assemblies, social programs, entertainment, and other similar activities.

4.6. Instructional day. -- Pursuant to W. Va. Code §18-5-45, instruction is offered to students for at least the minimum number of minutes as follows:

4.6.a. grade Pre-K: Minimum of 1500 Minutes per week/48,000 minutes per year. Instruction is offered to students for at least the minimum number of minutes specified by W. Va. 126CSR28, WVBE Policy 2525, West Virginia's Universal Access to a Quality Early Education System.

4.6.b. grades K-5: Minimum of 315 minutes per day.

4.6.c. grades 6-8: Minimum of 330 minutes per day.

4.6.d. grades 9-12: Minimum of 345 minutes per day.

4.6.e. The instructional day is used for instruction and/or co-curricular activities.

4.6.f. The instructional day may be used for educator collaboration and professional learning teams as specified by W. Va. 126CSR149, WVBE Policy 5500, Professional Learning for West Virginia Educators (Policy 5500), while students are provided instruction through alternative methods without requiring early dismissal or late arrival of students.

4.6.g. The instruction provided to students is aligned to the state approved content standards.

4.7. Non-traditional instructional day (NTID). -- A period of instructional time or day when the instruction is delivered to students through alternative methods. A county board may develop a plan subject to approval by the state board for teachers to assign and grade work to be completed by students on days when students are away from the classroom or schools are closed due to inclement weather or other unforeseen circumstances. Instruction may be provided to students when students are not in the classroom or school for any reason. Educators may accomplish instruction with the utilization of technology or other methods to provide instruction remotely when students are away from the school facility.

4.8. Minimum employment term. -- An employment term for regular, full-time county board employees of at least 200 days, which do not need to be successive, exclusive of Saturdays and Sundays. Pursuant to W. Va. Code §18-5-45(c)(i), the minimum employment term shall be no less than ten months with each month defined as 20 employment days.

4.9. Non-instructional day. -- A day within the minimum employment term, excluding holidays, in which no instruction to students is provided, (e.g. (P) Preparation Day, (C) Continuing Education Day, (CD) Curriculum Development Day, etc.).

126CSR73

4.10. Out-of-calendar day. -- A nonpaid day that is not included as a part of the minimum employment term.

4.11. School year. -- Pursuant to W. Va. Code §18-1-2, the school year begins on the first day of July and ends on the thirtieth day of June.

§126-73-5. School Calendar.

5.1. Each county board must develop a school calendar each year and submit the proposed calendar to the State Superintendent of Schools, or designee, by the established deadline. Multi-county vocational centers may develop a school calendar or adopt the calendar of a partnering county and submit proposed plans to the State Superintendent of Schools or designee.

5.2. The school calendar shall provide: (A) an instructional term for students of no less than 180 separate instructional days or equivalent instructional time gained by increasing the number of minutes by a minimum of 30 minutes to the required number of instructional minutes per programmatic level in the instructional day, and (B) a minimum employment term for employees of no less than 200 days.

5.3. A county board may provide for a longer instructional term for students, but must increase the employment term by a comparable number of days.

5.4. Each county board must develop inclement weather and emergency policies designed to guarantee that 180 separate instructional days or equivalent instructional time is provided to students.

5.4.a. The policy must provide for the addition of accrued instructional time (1-29 minutes per instructional day) or equivalent instructional time (30 minute minimum) added to the instructional day, beyond the state required minimum, or that entire additional days of instruction be added, to recover time lost due to late arrivals and early dismissals.

5.4.b. When the equivalent instructional time added to the instructional day, beyond the state required minimum, is at least 30 minutes per day (i.e. elementary school: $315 + 30 = 345$ minutes, middle school: $330 + 30 = 360$ minutes, high school, $345 + 30 = 375$ minutes), a school has achieved sufficient equivalent instructional time to:

5.4.b.1. Avoid rescheduling or adding instructional days to make-up for five instructional days missed due to school closures for inclement weather or other emergencies. The county may credit the equivalent instructional time for up to five instructional days cancelled during the instructional term with notice to the WVBE;

5.4.b.2. Schedule up to five days or equivalent portions of days within the instructional term as professional learning days for educators in lieu of instructional days for students. These days or equivalent portions of days are not subject to cancellation or being rescheduled to make-up for instructional days lost. The days must be used as determined by the county board, must be used without students present and must be used exclusively for activities by educators at the school level which are designed to improve instruction; and

5.4.b.3. Use any remaining equivalent instructional time to recover time lost due to late arrivals

and early dismissals.

5.4.c. The policy may include NTID on an instructional day or days, up to five, when a school or schools are closed due to inclement weather or other emergency. The NTID must be in accordance with a plan developed by the county board and approved by the WVBE. An NTID is an instructional day notwithstanding the closure of a school or schools and shall be credited as such on the day the instruction is delivered.

5.5. Pursuant to W. Va. Code Chapter §18-5-45(o), the WVBE may grant a waiver to a county board for noncompliance with the provisions of W. Va. Code §§18, 18A, 18B, and 18C to maintain compliance in reaching the mandatory 180 separate days of instruction.

5.6. The limitation on the delivery and application of NTID to days when a school or schools are closed due to inclement weather or other emergency as provided in this policy are not intended and may not be construed to limit the use of non-traditional instruction as an instructional delivery strategy when students may not be in the classroom or school for reasons other than a closure.

§126-73-6. Employment Term.

6.1. The school calendar shall provide for an employment term that meets the following criteria:

6.1.a. An employment term of at least 200 days, which need not be successive, excluding Saturdays and Sundays, for all regular, full-time employees.

6.1.b. The length of the employment term (from the beginning to closing dates) cannot exceed 48 weeks, pursuant to W. Va. Code §18-5-45(c)(1).

6.1.c. The minimum employment term shall consist of no less than 180 separate days or equivalent days of instruction, and 20 non instructional days, comprised of the following:

6.1.c.1. Seven paid holidays (any combination of the school holidays included in W. Va. Code §18A-5-2, which are: Independence Day, Labor Day, Veteran’s Day, Thanksgiving Day, Christmas Day, New Year’s Day, Martin Luther King’s Birthday, Memorial Day, or West Virginia Day). The remaining school holidays are to be scheduled as nonpaid, out-of-calendar days, and are to be considered as such for all 200-day employment contracts;

6.1.c.2. An election day, as specified in W. Va. Code §18A-5-2;

6.1.c.3. Six days to be designated as outside the school environment, at least four of which must be scheduled after the 130th day of instruction of the school calendar;

6.1.c.4. The school calendar shall designate one non-instructional day for teachers as a preparation day for opening school and another for teachers as a preparation day for closing school.

6.1.c.5. The remaining days to be designated by the county board for purposes to include, but not be limited to:

6.1.c.5.A. curriculum development;

126CSR73

6.1.c.5.B. professional learning opportunities;

6.1.c.5.C. teacher-pupil-parent conferences;

6.1.c.5.D. professional meetings;

6.1.c.5.E. making up days when instruction was scheduled but not conducted;

6.1.c.5.F. scheduled out-of-calendar days that are to be used for instructional days in the event school is cancelled for any reason.

6.1.c.6. County boards are also required to designate time sufficient to meet the requirements of Policy 5500, and W.Va. 126CSR150A, WVBE Policy 5500.02, County Service Personnel Staff Development Councils, during the minimum employment term. All professional and service personnel are required to complete professional learning hours and/or processes as specified in the respective policies.

§126-73-7. Instructional Term.

7.1. The school calendar shall provide an instructional term for students of no less than 180 separate days of instruction or the equivalent of such time.

7.2. The minimum instructional term may be decreased by order of the State Superintendent of Schools in any county declared a federal disaster area and in any county subject to an emergency or disaster declaration by the Governor where the event causing the declaration is substantially related to a reduction of instructional days.

7.3. Equivalent instructional time may be used only for the purposes specified in this policy and may not be used for any other purposes or applied in any other manner to avoid one hundred eighty separate days of instruction.

7.4. If it is not possible to provide 180 separate or equivalent instructional days within the school calendar as originally scheduled, the county board must schedule instruction on any available non-instructional day (other than holidays, election day, or Saturdays and Sundays), regardless of the purpose for which the day was originally scheduled, or use a day that was scheduled as an out-of-calendar day. County boards have the ability to apply for a waiver in accordance with the provisions of W. Va. Code §18-5-45(o) to assist with meeting the mandatory 180 days of instruction.

7.5. If an out-of-calendar day is used as a make-up instructional day, the originally scheduled instructional day that was cancelled becomes the out-of-calendar day (unpaid day). In accordance with W. Va. Code §18A-5-2, an employee's pay is not to be adjusted during a pay period because of this revision in the school calendar.

7.6. Pursuant to W. Va. 126CSR42, WVBE Policy 2510, Assuring the Quality of Education: Regulations for Education Programs, co-curricular activities may, by their nature, be scheduled without regard to the use of equivalent instructional time.

7.7. Extracurricular activities do not count toward meeting the minimum instructional time for an instructional day. Equivalent instructional time may not be used to accommodate the scheduling of extracurricular activities during instructional days.

§126-73-8. Faculty Senate Meetings.

8.1. Pursuant to W. Va. Code §18-5A-5, the school calendar must provide to each faculty senate a two-hour block of time for a faculty senate meeting on a day scheduled for the opening of school prior the beginning of the instructional term and on a day scheduled for the closing of school before the end of the employment term. In addition to the opening and closing of school, faculty senate meetings are to be held during the months of October, December, February, and April, for a total of six two-hour meetings. Faculty senate meetings can be held on days set aside for late arrivals and early dismissals, or part of a non-instructional day. The portion of the non-instructional day scheduled for the faculty senate meeting shall be considered as part of the purpose for which the non-instructional day is scheduled.

8.2. Faculty senates may also schedule a meeting during an instructional day if sufficient equivalent instructional time has been set aside by a school; however, every school in the county must have set aside sufficient time for all faculty senates in the county to meet in this manner.

8.4. A faculty senate may also meet for an unlimited block of time during a non-instructional day to discuss and plan strategies to improve student instruction and to conduct other faculty senate business.

8.5. A faculty senate may elect to schedule a meeting on an instructional day outside of the instructional time for students, and take compensatory time off on the non-instructional day that is provided by the county board for its meeting, as long as the meeting takes place prior to the day that is scheduled in the school calendar.

8.6. If a non-instructional day that is originally scheduled for faculty senates to meet is cancelled due to inclement weather, the county board may, but is not required to, reschedule the non-instructional day in order for the faculty senates to meet.

§126-73-9. Public Hearings.

9.1. Prior to voting on a final school calendar, each county board must hold at least two public hearings that allow all interested parties to discuss the school calendar.

9.2. Pursuant to W. Va. Code §18-5-45, public notices of the hearings must be published as a Class II legal advertisement in accordance with the provisions of W. Va. Code §59-3-1 et seq. This means the legal advertisement must be published once a week for two successive weeks in a qualified newspaper published in the publication area. Notices for both hearings can be published in one advertisement. The first notice must be published at least ten days prior to the first meeting to provide sufficient time for interested parties to plan on attending the hearing.

§126-73-10. Submission of School Calendar to WVBE for Approval.

10.1. Pursuant to W. Va. Code §18-5-45(k), prior to implementing the school calendar, county boards shall secure approval of its proposed calendar from the WVBE.

126CSR73

10.2. Unless the WVBE requests otherwise, the authority to approve the school calendars is delegated to the State Superintendent of Schools. This does not include the approval of waiver requests.

10.3. The school calendar, and any additional requested information, must be submitted in accordance with the annual instructions issued by the State Superintendent of Schools.

§126-73-11. Severability.

11.1. If any provision of this rule or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this rule.