



**WEST VIRGINIA
SECRETARY OF STATE**

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 5 -- NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR
A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY Education

RULE TYPE Legislative Exempt AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 126-

RULE NAME School Calendar (3234) 073

CITE AUTHORITY W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d
839 (1988)

RULE IS LEGISLATIVE EXEMPT

Yes

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839
(1988)

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE, THE
EFFECTIVE DATE OF THIS RULE IS

Friday, July 01, 2016

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Jill M Newman -- By my signature, I certify that I am the person authorized to file legislative rules, in
accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 126-073



Rule Id: 10013



Document: 27401

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 (hereinafter county boards) and multi-county vocational centers.

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

1.3. Filing Date – February 12, 2016.

1.4. Effective Date - July 1, 2016.

1.5. Revision of Former Rule - This legislative rule revises W. Va. 126CSR73, West Virginia Board of Education (hereinafter WVBE) Policy 3234, "School Calendar," filed December 12, 2013, and effective January 13, 2014.

§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 so that they can develop a calendar that meets students' needs.

§126-73-3. Application.

3.1. These regulations apply to the adoption of the school calendars for the 2016-17 school year and all subsequent years.

§126-73-4. Definition.

4.1. Accrued instructional time - Instructional time earned during the instructional term from time added to the instructional day beyond the minimum instructional time required by W. Va. 126CSR42, WVBE Policy 2510, Assuring the Quality of Education: Regulations for Education Programs (hereinafter Policy 2510).

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 school district, which is composed of five members, nominated and elected by the voters of the

respective county

4.4. 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.

4.5. Instructional day – Pursuant to W. Va. Code §18-5-45, an instructional day means a day within the 180 day instructional term, including the days used to reschedule canceled instructional days, that meets the following criteria:

4.5.a. Instruction is offered to students for at least the minimum amount of hours specified by W. Va. 126CSR28, WVBE Policy 2525, West Virginia's Universal Access to Early Education System (hereinafter Policy 2525) for pre-kindergarten and Policy 2510 for grades kindergarten through twelve.

4.5.b. The instructional day is used for instruction and/or cocurricular activities.

4.5.c. The instructional day is used for collaboration and professional learning teams as specified by W. Va. 126CSR149, WVBE Policy 5500, Professional Learning for West Virginia Educators, without requiring early dismissal or late arrival of students.

4.5.d. The instruction provided meets the West Virginia content standards.

4.6. Minimum employment term – An employment term for regular, full-time county board employees of at least 200 days, exclusive of Saturdays and Sundays, which do not need to be successive. Pursuant to W. Va. Code §18A-4-8, the minimum employment term shall be no less than ten months with each month defined as 20 employment days.

4.7. Multi-County vocational center – One of the seven vocational centers created by the WVBE pursuant to the provisions of W. Va. Code §18-2B-2 to provide vocational programs to students of two or more counties.

4.8. Non instructional day - A day within the minimum 200 day employment term in which no instruction is provided.

4.9. Out-of-calendar day – A nonpaid day that is not included as a part of the minimum 200 day employment term.

4.10. 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 and multi-county vocational center must develop a school calendar each year and submit the proposed calendar to the State Superintendent of Schools, or designee, by the established deadline.

5.2. The school calendar shall provide an instructional term for students of no less than 180 separate days of instruction and 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 an inclement weather and emergency policy designed to guarantee that 180 separate days of instruction are provided to students.

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

5.6. Pursuant to W. Va. Code §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.

§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, excluding Saturdays and Sundays, for all regular, full-time employees, which need not be successive.

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 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 remaining days to be designated by the county board for purposes to include, but not be limited to:

6.1.c.4.A. curriculum development;

6.1.c.4.B. preparation for opening and closing school;

6.1.c.4.C. professional development;

6.1.c.4.D. teacher-pupil-parent conferences;

6.1.c.4.E. professional meetings;

6.1.c.4.F. making up days when instruction was scheduled but not conducted;

6.1.c.4.G. scheduled out-of-calendar days that are to be used for instructional days in the event school is canceled for any reason.

6.1.c.5. County boards are also required to meet the requirements of W. Va. 126CSR149, WVBE Policy 5500, Professional Learning for West Virginia Educators and W. Va. 126CSR150A, WVBE 5500.02, County Service Personnel Staff Development Councils during the minimum 200-day employment term. All professional and service personnel are required to complete professional development 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.

7.2. Each county board of education must develop a policy that requires additional minutes of instruction be added to the school day, or that entire additional days of instruction be added, to recover time lost due to late arrivals and early dismissals.

7.3. County boards of education, however, will not be required to add additional minutes to the instructional day if all affected schools have accumulated sufficient accrued instructional time through their regular schedules that can be used to make-up the missed time caused by late arrivals and early dismissals.

7.4. Accrued instructional time may be only used to recover instructional time lost due to: the late arrival or early dismissal of students due to inclement weather, the prevalence of contagious disease; other calamitous cause over which the board has no control; professional development activities; or to accommodate the scheduling of faculty senate meetings on instructional days. Accrued instructional time cannot be used to avoid one hundred eighty separate days of instruction.

7.5. If it is not possible to provide 180 separate 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.

7.6. If an out-of-calendar day is used as a make-up instructional day, the originally scheduled instructional day that was canceled 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.

7.7. Pursuant to Policy 2510, cocurricular activities may, by their nature, be scheduled without

regard to the use of accrued instructional time.

7.8. Extracurricular activities do not count towards meeting the minimum instructional time for an instructional day. Accrued 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.

8.2. The school calendar must also provide four additional two-hour blocks of time during non instructional days, with each two-hour block of time scheduled once at least every 45 instructional days. 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.

8.3. Faculty senates may also schedule a meeting during an instructional day if sufficient accrued instructional time has been earned by a school; however, every school in the district must have earned sufficient time for all faculty senates in the district 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 canceled 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.

10.2. Unless the WVBE requests otherwise, the authority to approve the school calendars is delegated to the State Superintendent. 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.

§126-73-11. Approval of Appropriate Alternatives.

11.1. Pursuant to W. Va. Code §18-2-5, the WVBE may approve certain alternatives with respect to instructional time proposed by a county board or school that meet the spirit and intent of applicable statutes and are intended solely to optimize student learning.

11.2. Successful schools are distinguishable from unsuccessful schools by the frequency and extent to which teachers discuss professional practices, collectively design materials, and inform and critique each other through collaborative planning, examination of student data, and participation in high quality professional learning experiences. To achieve this result, the WVBE must have reasonable discretion to balance the local autonomy and flexibility needed by schools to deliver a thorough and efficient education as evidenced in a proposal that includes:

11.2.a. sufficient time within the instructional term to promote the improvement of instruction and instructional practices;

11.2.b. school-level determination of alternatives affecting time within the school day that provide teachers with:

11.2.b.1. sufficient planning time to develop engaging, differentiated instruction for all students in all classes, and

11.2.b.2. collaborative time for teachers to undertake and sustain instructional improvement.

11.2.c. consideration of how learning time must not be assumed to be solely the time that a student is seated at a desk, but can also include time in the school day during which actively engages students in the learning process; and

11.2.d. articulation of how schools are provided the opportunity to determine which methods will be utilized to ensure teachers can plan individually and collectively to maximize learning time, such as:

11.2.d.1. scheduling;

11.2.d.2. using special subject teachers and guest presenters;

11.2.d.3. dedicating time set aside for professional learning experiences and/or staff development;

11.2.d.4. implementing alternative staff utilization patterns;

11.2.d.5. providing opportunities for administrators to teach; and/or

11.2.d.6. utilizing accrued instructional time.

§126-73-12. Severability.

12.1. 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.