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**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Education TITLE-SERIES: 126-073
RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: School Calendar (Policy 3234)
CITE STATUTORY 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)

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

December 11, 2017

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**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.

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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)(ii), 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.).

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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

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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;

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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(e) 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.

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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 to 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.

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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.