

HB 4478

FILED

2008 MAR 12 AM 4: 48

OFFICE OF THE  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2008



**ENROLLED**

**House Bill No. 4478**

(By Delegates M. Poling, Paxton, Wysong, Rodighiero,  
Ellis, Duke, Rowan, Gall and Wells)



Passed March 4, 2008

In Effect Ninety Days from Passage

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(BY DELEGATES M. POLING, PAXTON, WYSONG, RODIGHIERO,  
ELLIS, DUKE, ROWAN, GALL AND WELLS)

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[Passed March 4, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §18A-5-8 of the Code of West Virginia, 1931, as amended, relating to authority of certain aides to exercise control over students; compensation; transfers and limitations thereof; and expanding the classifications of service personnel for which transfers during the instructional term are limited.

*Be it enacted by the Legislature of West Virginia:*

That §18A-5-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

**§18A-5-8. Authority of certain aides to exercise control over students; compensation; transfers.**

1 (a) Within the limitations provided in this section, any  
2 aide who agrees to do so shall stand in the place of the parent  
3 or guardian and shall exercise such authority and control over  
4 students as is required of a teacher as provided in section one  
5 of this article. The principal shall designate aides in the

6 school who agree to exercise that authority on the basis of  
7 seniority as an aide and shall enumerate the instances in  
8 which the authority shall be exercised by an aide when  
9 requested by the principal, assistant principal or professional  
10 employee to whom the aide is assigned.

11 (b) The authority provided for in subsection (a) of this  
12 section does not extend to suspending or expelling any  
13 student, participating in the administration of corporal  
14 punishment or performing instructional duties as a teacher or  
15 substitute teacher. However, the authority extends to  
16 supervising students undergoing in-school suspension if the  
17 instructional duties required by the supervision are limited  
18 solely to handing out class work and collecting class work.  
19 The authority to supervise students undergoing in-school  
20 suspension does not include actual instruction.

21 (c) An aide designated by the principal under subsection  
22 (a) of this section shall receive a salary not less than one pay  
23 grade above the highest pay grade held by the service person  
24 under section eight-a, article four of this chapter and any  
25 county salary schedule in excess of the minimum  
26 requirements of this article.

27 (d) An aide may not be required by the operation of this  
28 section to perform noninstructional duties for an amount of  
29 time which exceeds that required under the aide's contract of  
30 employment or that required of other aides in the same school  
31 unless the assignment of the duties is mutually agreed upon  
32 by the aide and the county superintendent, or the  
33 superintendent's designated representative, subject to county  
34 board approval.

35 (l) The terms and conditions of the agreement shall be in  
36 writing, signed by both parties, and may include additional  
37 benefits.

38       (2) The agreement shall be uniform as to aides assigned  
39 similar duties for similar amounts of time within the same  
40 school.

41       (3) Aides have the option of agreeing to supervise  
42 students and of renewing related assignments annually. If an  
43 aide elects not to renew the previous agreement to supervise  
44 students, the minimum salary of the aide shall revert to the  
45 pay grade specified in section eight-a, article four of this  
46 chapter for the classification title held by the aide and any  
47 county salary schedule in excess of the minimum  
48 requirements of this article.

49       (e) For the purposes of this section, aide means any aide  
50 class title as defined in section eight, article four of this  
51 chapter regardless of numeric classification.

52       (f) Subject to the limitations set forth in subsection (g) of  
53 this section, an aide may transfer to another position of  
54 employment one time only during any one half of a school  
55 term, unless otherwise mutually agreed upon by the aide and  
56 the county superintendent, or the superintendent's designee,  
57 subject to county board approval. During the first year of  
58 employment as an aide, an aide may not transfer to another  
59 position of employment during the first one-half school term  
60 of employment unless mutually agreed upon by the aide and  
61 county superintendent, subject to county board approval.

62       (g) Autism mentors and aides providing services to  
63 children diagnosed as autistic or with autism spectrum  
64 disorder; and paraprofessionals, interpreters and aides  
65 providing one-on-one services to students with  
66 exceptionalities as required by the students' individualized  
67 education programs (IEP).

68 (1) Legislative findings and intent.

69 (A) The Legislature finds that it is not in the best interest  
70 of a student with autism or a student with an exceptionality  
71 whose IEP requires one-on-one services to have multiple  
72 teachers, mentors, aides, paraprofessionals, interpreters or  
73 any combination thereof during the instructional term; and

74 (B) It is the intent of the Legislature that filling positions  
75 through transfers of personnel from one position to another  
76 after the fifth day prior to the beginning of the instructional  
77 term be kept to a minimum for autism mentors and aides who  
78 work with students with autism and for paraprofessionals,  
79 interpreters and aides who work with students with  
80 exceptionalities whose IEPs require one-on-one services.

81 (2) Transfer limitations and conditions.

82 (A) Notwithstanding the provisions of subsection (f) of  
83 this section, after the fifth day prior to the beginning of the  
84 instructional term, a service person may not transfer to  
85 another position in the county during that instructional term,  
86 unless he or she does not have valid certification, if the  
87 service person is employed and assigned as an autism mentor  
88 or aide who works with students with autism, or as a  
89 paraprofessional, interpreter or aide who works with a  
90 student with an exceptionality whose IEP requires one-on-  
91 one services.

92 (B) The provisions of this subsection are subject to the  
93 following conditions:

94 (i) The aide, autism mentor, paraprofessional or  
95 interpreter may apply for any posted, vacant position with  
96 the successful applicant assuming the position at the  
97 beginning of the next instructional term;

98           (ii) The county board, upon recommendation of the  
99           superintendent, may fill a position before the beginning of the  
100          next instructional term when it is determined to be in the best  
101          interest of the students; and

102          (iii) The county superintendent shall notify the State  
103          Board when a service person who is subject to the provisions  
104          of this subsection is transferred to another position after the  
105          fifth day prior to the beginning of the instructional term;

106          (h) Regular service personnel employed in a category of  
107          employment other than aide who seek employment as an aide  
108          shall hold a high school diploma or shall have received a  
109          general educational development certificate and shall have  
110          the opportunity to receive appropriate training pursuant to  
111          subsection (j), section thirteen, article five, chapter eighteen  
112          of this code and section two, article twenty of said chapter.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Chandy White*  
Chairman Senate Committee

*[Signature]*  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

*Darrell Gibbs*  
Clerk of the Senate

*Suzanne R. Lee*  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
President of the Senate

*[Signature]*  
Speaker of the House of Delegates

The within *approved* this the *12th*  
day of *March*, 2008.

*[Signature]*  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 7 X 2008

Time 9:35 pm