WEST VIRGINIA CODE CHAPTER 18 ARTICLE 5

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§18-5-1. Supervision and control of county school districts; number, nomination and election of members.

Each county school district shall be under the supervision and control of a county board of education, which shall be composed of five members, nominated and elected by the voters of the respective county without reference to political party affiliation. No more than two members shall be elected from the same magisterial district.

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§18-5-1a. Eligibility of members; training requirements.

(a) A person who is a member of a county board:

(1) Shall be a citizen and resident in the county in which he or she serves on the county board. A person who is a candidate for membership on a county board or who is a member-elect of a county board shall be a citizen and resident in the county in which he or she seeks to serve on the county board;

(2) May not be employed by the county board on which he or she serves, including employment as a teacher or service person;

(3) May not engage in the following political activities:

(A) Become a candidate for or hold any other public office, other than to succeed himself or herself as a member of a county board subject to the following:

(i) A candidate for a county board, who is not currently serving on a county board, may hold another public office while a candidate if he or she resigns from the other public office prior to taking the oath of office as a county board member.

(ii) The term "public office" as used in this section does not include service on any other board, elected or appointed, profit or nonprofit, under the following conditions:

(I) The person does not receive compensation; and

(II) The primary scope of the board is not related to public schools.

(B) Become a candidate for, or serve as, an elected member of any political party executive committee;

(C) Become a candidate for, or serve as, a delegate, alternate or proxy to a national political party convention;

(D) Solicit or receive political contributions to support the election of, or to retire the campaign debt of, any candidate for partisan office;

(4) May engage in any or all of the following political activities:

(A) Make campaign contributions to partisan or bipartisan candidates;

(B) Attend political fundraisers for partisan or bipartisan candidates;

(C) Serve as an unpaid volunteer on a partisan campaign;

(D) Politically endorse any candidate in a partisan or bipartisan election; or

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(E) Attend a county, state, or national political party convention.

(b) A member or member-elect of a county board, or a person desiring to become a member of a county board, may make a written request to the West Virginia Ethics Commission for an advisory opinion to determine if another elected or appointed position held or sought by the person is an office or public office which would bar service on a county board pursuant to subsection (a) of this section.

(1) Within 30 days of receipt of the request, the Ethics Commission shall issue a written advisory opinion in response to the request and publish the opinion in a manner which, to the fullest extent possible, does not reveal the identity of the person making the request.

(2) A county board member who relies in good faith upon an advisory opinion issued by the West Virginia Ethics Commission to the effect that holding a particular office or public office is not a bar from membership on a county board and against whom proceedings are subsequently brought for removal from the county board on the basis of holding that office or offices, is entitled to reimbursement by the county board for reasonable attorney's fees and court costs incurred by the member in defending against these proceedings, regardless of the outcome of the proceedings.

(3) A vote cast by the member at a meeting of the county board may not be invalidated due to a subsequent finding that holding the particular office or public office is a bar to membership on the county board.

(4) Good faith reliance on a written advisory opinion of the West Virginia Ethics Commission that a particular office or public office is not a bar to membership on a county board is an absolute defense to any civil suit or criminal prosecution arising from any proper action taken within the scope of membership on the county board, becoming a member-elect of the county board or seeking election to the county board.

(c) To be eligible for election or appointment as a member of a county board, a person shall possess at least a high school diploma or a general educational development (GED) diploma. This provision does not apply to members or members-elect who have taken office prior to May 5, 1992, and who serve continuously from that date forward.

(d) A person elected to a county board after July 1, 2024, may not assume the duties of county board member unless he or she has first attended and completed an orientation training relating to boardsmanship governance effectiveness, and fiscal management, which shall be provided between the date of election and the beginning of the member's term of office under the following conditions:

(1) A portion or portions of subsequent training such as that offered in the orientation training may be provided to members after they have commenced their term of office;

(2) Attendance in the orientation training provided between the date of election and the

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beginning of the member's term of office permits the member-elect to assume the duties of county board member, as specified in this section: *Provided*, That any county board member who is unable to attend the initial orientation training for good cause, is required to complete a make-up orientation training within 30 days of being sworn in as a county board member;

(3) Members appointed to the county board shall attend and complete an orientation training within 30 days of being appointed; and

(4) The provisions of this subsection relating to orientation training do not apply to members who have taken office prior to July 1, 2025, and who serve continuously from that date forward.

(e) Annually, effective July 1, 2025, each member of a county board shall receive twelve hours of training in areas relating to boardsmanship, governance effectiveness, fiscal management, and school performance issues including, but not limited to, pertinent state and federal statutes such as the "Process for Improving Education" set forth in §18-2E-5 of this code and the Every Student Succeeds Act (ESSA), the Individuals with Disabilities Education and Improvement Act of 2004 (IDEA), and their respective administrative rules: Provided, That the state board may require any county board member to attend additional training if they believe that the training would be beneficial in assisting the member in successfully fulfilling his or her duties on the county board as requested by the State Superintendent.

(1) All training required in this section shall be approved by the state board and conducted by the West Virginia School Board Association or other organization or organizations approved by the state board:

(A) The state board may exclude time spent in training on school performance issues from the requisite twelve-hour requirement; and

(B) If the state board elects to exclude time spent in training on school performance issues from the requisite twelve hours, the state board shall limit the training to a feasible and practicable amount of time.

(2) Failure to attend and complete the orientation training, annual training, or training required by the state board, without good cause, as determined by the state board by duly promulgated legislative rules, constitutes neglect of duty under §6-6-7 of this code.

(f) In the final year of any four-year term of office, a member shall satisfy the annual training requirement unless the county board member is not seeking reelection. Failure to comply with the training requirements of this section without good cause, as defined by the state board by duly promulgated legislative rules, constitutes neglect of duty under §6-6-7 of this code.

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(g) The state board shall appoint a committee named the "County Board Member Training Standards Review Committee" whose members shall include the chair of the Senate Committee on Education and the chair of the House Committee on Education, or their respective designees, which shall serve as non-voting ex officio members. The County Board Member Training Standards Review Committee shall, at a minimum, meet annually. Subject to state board approval, the committee shall determine which trainings and training organizations shall be approved, and whether county board members have satisfied the annual training requirement. Members of the committee serve without compensation but may be reimbursed by their agencies or employers for all reasonable and necessary expenses actually incurred in the performance of their duties under this subsection.

(h) On or before January 1, 2026, and annually on or before January 1 thereafter, the State Superintendent shall report to the Legislative Oversight Commission on Education Accountability on the activities of the County Board Member Training Standards Review Committee, the types of training provided to county board members, the level of training participation by county board members, and the number of board meetings held.

(i) Notwithstanding the provisions of §6-5-5 of this code, no person who has been convicted of an offense under the provisions of §61-8A-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code in which the victim is a minor may hold office as a member of a county board.

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§18-5-1b. Election; terms of office.

As the terms of county school board members who presently hold office expire, members shall be elected for four-year terms at the time of each regular primary election commencing with the year one thousand nine hundred ninety. The terms of such members shall begin on July 1, next following the primary election at which they were elected.

The term of office of any member of any county board of education shall immediately cease, and a vacancy shall exist, upon occurrence of ineligibility as prescribed in section one-a of this article.

This section shall in no manner be construed so as to affect the unexpired terms of county school board members who hold office or were elected under prior existing law.

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§18-5-1c. Organization of board; evaluation.

(a) On the first Monday of July, following each biennial primary election, each respective county board shall organize and shall elect a president from its own membership for a two-year term. The county board shall report promptly to the state superintendent the name of the member elected as county board president.

(b) Annually, each county board shall assess its own performance using an instrument approved by the state board. In developing or making determinations on approving evaluation instruments, the state board may consult with the West Virginia school board association or other appropriate organizations. The evaluation instrument selected shall focus on the effectiveness of the county board in the following areas:

(1) Dealing with its various constituency groups and with the general public;

(2) Providing a proper framework and the governance strategies necessary to monitor and approve student achievement on a continuing basis; and

(3) Enhancing the effective utilization of the policy approach to governance.

At the conclusion of the evaluation, the county board shall make available to the public a summary of the evaluation, including areas in which the board concludes improvement is warranted.

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§18-5-2. Filling vacancies.

(a) The board shall, by appointment, fill within forty-five days any vacancy that occurs in its membership. In the event that the board does not fill the vacancy within forty-five days, the state Superintendent of Schools shall appoint a person to fill the vacancy.

(b) (1) When the vacancy occurs after the eighty-fourth day before a general election, and the affected term of office ends on June 30 following the next primary election, the person appointed to fill the vacancy shall continue in office until the completion of the term.

(2) When the vacancy occurs after the eighty-fourth day before a general election and not later than the close of candidate filing for the next succeeding primary election, and the affected term of office does not end on June 30 following the next primary election, an election for the unexpired term shall be held at the next primary election, and the appointment shall continue until June 30 following the primary election with the duly elected and certified successor taking office on July 1, following the primary election and serving until the expiration of the original term of office.

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than eighty-four days before the general election, the vacancy shall be filled by election in the general election, and the appointment shall continue until a successor is elected and certified.

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§18-5-3. Oath of members.

Every board member shall take the oath prescribed by section 5, article IV of the Constitution, before performing any of the duties of his office. The oath shall be filed with the secretary of the board.

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§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

(a) The county board shall meet on the dates provided by law, and at any other times the county board deems necessary. Subject to adequate public notice, nothing in this section prohibits the county board from conducting regular meetings in facilities within the county other than the county board office. At any meeting authorized in this section and held in compliance with the provisions of §18A-1-1 *et seq*. of this code, the county board may employ qualified teachers, or those who will qualify by the time they assume their duties, necessary to fill existing or anticipated vacancies for the current or next ensuing school year. Meetings of the county board shall be held in compliance with the provisions of §18A-1-1 *et seq*. of this code for purposes relating to the assignment, transfer, termination and dismissal of teachers and other school employees.

(b) Special meetings may be called by the president or any three members, but no business may be transacted other than that designated in the call.

(c) In addition, a public hearing shall be held concerning the preliminary operating budget for the next fiscal year not fewer than ten days after the budget has been made available to the public for inspection and within a reasonable time prior to the submission of the budget to the state board for approval. Reasonable time shall be granted at the hearing to any person who wishes to speak regarding any part of the budget. Notice of the hearing shall be published as a Class I legal advertisement in compliance with the provisions of §59-3-1 et. seq. of this code.

(d) A majority of the members of the county board constitutes the quorum necessary for the transaction of official business.

(e) Board members shall receive compensation at the rate of $260 per meeting attended, unless the Board votes to approve a lower rate, but they may not receive pay for more than 40 meetings in any one fiscal year. Board members who serve on an administrative council of a multicounty vocational center also may receive compensation for attending up to twelve meetings of the council at the same rate as for meetings of the county board: *Provided*, That council meetings are not counted as board meetings for purposes of determining the limit on compensable board meetings*: Provided, however*, That a county board member who is in default of a training requirement established in §18-5-1a of this code shall not, until after the default is cured, receive compensation for any meeting held during the period of default. For purposes of compensation, a member in default of a training requirement may cure the default by completing the unfulfilled training requirements within three months of the default. Upon curing the default, the member shall receive compensation, without interest, for the meetings held during the period of default: *Provided, further*, That up to five paid meetings may be provided when planning for activities such as running an election for excess levy, construction bond hearings, school closure hearings, personnel hearings, student expulsion hearings, and in the case of a disaster: And provided further, That members shall be paid for up to two trainings.

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(f) Members also shall be paid, upon the presentation of receipts, for all necessary traveling expenses, including all authorized meetings, incurred on official business, at the order of the county board: *Provided*, That the presentation of receipts is not required for payment for mileage.

(g) When, by a majority vote of its members, a county board considers it a matter of public interest, the county board shall join the West Virginia School Board Association and may join the National School Board Association and shall pay the dues prescribed by the associations and approved by action of the respective county boards. Membership dues and actual traveling expenses incurred by board members for attending meetings of the West Virginia School Board Association shall be paid by their respective county boards out of funds available to meet actual expenses of the members, but no allowance may be made except upon presentation of receipts.

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§18-5-5. Corporate character and general powers of board; exemption of school property from legal process and taxes.

The county board of education shall be a corporation by the name of "The Board of Education of the county of .....," and as such may sue and be sued, plead and be impleaded, contract and be contracted with. It shall succeed and be subrogated to all the rights of former magisterial and independent district boards and may institute and maintain any and all actions, suits and proceedings now pending or which might have been brought and prosecuted in the name of any former board for the recovery of any money or property, or damage to any property due to or vested in the former board, and shall also be liable in its corporate capacity for all claims legally existing against the board of which it is a successor. The board shall, according to law, hold and dispose of any real estate or personal property belonging to the former corporation or its predecessors, or that may hereafter come into its possession.

The board according to law and the intent of the instrument conferring title, shall receive, hold and dispose of any gift, grant or bequest.

All public school property used for school purposes shall be exempt from execution or other process, and free from lien or distress for taxes or municipal, county or state levies.

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§18-5-6. Validation of titles to land in possession of board.

The county board shall have title to any land or school site which for five years has been in the undisputed possession of the county board or any Board of Education of a magisterial district, or subdistrict, or independent district, and to which title cannot be shown by any other claimant. Such land shall be held and used for school purposes, as provided by section eight of this article.

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§18-5-7. Sale of school property at public auction; rights of grantor of lands in rural communities; oil and gas leases; disposition of proceeds; lease of school property.

(a) Except as set forth in subsection (b) of this section, if at any time a county board determines that any building or any land is no longer needed for school purposes, the county board may sell, dismantle, remove or relocate the building and sell the land on which it is located at public auction, after proper notice and on such terms as it orders, to the highest responsible bidder.

(b) Notwithstanding the provisions of subsection (a) of this section, in rural communities, the grantor of the lands or his or her heirs or assigns has the right to purchase at the sale, the land, exclusive of the buildings on the land and the mineral rights, at the same price for which it was originally sold: Provided, That the sale to the board was not a voluntary arms length transaction for valuable consideration approximating the fair market value of the property at the time of the sale to the board: Provided, however, That the provisions of this section may not operate to invalidate any provision of the deed to the contrary.

(c) The county board, by the same method set forth in subsection (a) of this section for the sale of school buildings and lands, may, in lieu of offering the property for sale, enter into a lease for oil or gas or other minerals any lands or school sites owned in fee by it. The proceeds of the sales and rentals shall be placed to the credit of the fund or funds of the district as the county board may direct.

(d) The county board may make any sale of property subject to the provision that all liability for hazards associated with the premises are to be assumed by the purchaser. In any sale by the county board of improved property in which the actual consideration is less than $10,000 or in any sale of unimproved property in which the actual consideration is less than $1,000, the county board shall make any sale of property subject to the provision that all liability for hazards associated with the premises are to be assumed by the purchaser. The county board shall inform any prospective purchaser of known or suspected hazards associated with the property.

(e) Except as provided by the provisions of subsection (b) of this section, where a county board determines that any school property is no longer needed for school purposes, the county board may, upon determining that it will serve the best interests of the school system and the community, offer the property for lease. The procedure set forth in subsection (a) of this section relating to sale of school buildings and lands shall apply to leasing the school property. Any lease authorized by the provisions of this subsection shall be in writing. The writing shall include a recitation of all known or reasonably suspected hazards associated with the property, an assumption by the lessee of all liability related to all hazards, whether disclosed or not, and provisions wherein the lessee assumes all liability for any actions arising from the property during the term of the lease.

(f) Notwithstanding any provision of this section to the contrary, the provisions of this section concerning sale or lease at public auction may not apply to a county board selling,

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leasing or otherwise disposing of its property for a public use to the State of West Virginia, or its political subdivisions, including county commissions, for an adequate consideration without considering alone the present commercial or market value of the property.

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§18-5-7a. Disposition of school property in flood control projects.

(a) If at any time the board ascertains that any land or part thereof then being used for school purposes is to be included in any federal flood control project the board may:

(1) Sell, dismantle, remove or relocate any buildings thereon;

(2) Contract with the United States of America, or any instrumentality, agency or political subdivision thereof, for the sale or exchange of its interest in the land or any part thereof; and

(3) Without auction sell or exchange its interest in the land or any part thereof to the United States of America, or any instrumentality, agency or political subdivision thereof, in accordance with the terms and provisions of the contract.

(b) If the flood control project is proposed in a county where the state Board of Education has intervened in the operation of the county school system pursuant to the provisions of section five, article two-e of this chapter or any other Constitutional or statutory authority to intervene, the powers granted in this section are vested in the state board.

(c) Notwithstanding the provisions of section seven of this article, neither the grantor of the land or any part thereof nor his heirs or assigns has the right to purchase the land or any part thereof or have any other rights whatever under section seven of this article.

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§18-5-7b. Charitable or community use of unneeded buildings.

If, in the sound judgment of the board, the needs of the community require the use of property not needed for school purposes, for charitable, economic development or other community use, notwithstanding the provisions of section seven of this article, the board may convey by deed or by lease, for nominal consideration, to a private, nonprofit, tax-exempt organization, such tax-exempt status having been granted by the Internal Revenue Service under the provisions of 26 United States code section 501 (c) (3) through (8) inclusive, (19) or (23), upon such terms and conditions as will permit title to revert to the board if the organization is dissolved or ceases to use the property for the intended purpose within the first five years of such conveyance: Provided, That such reversion provision shall be subordinated to such extent as may be required solely in order to obtain a loan for the purpose of improving the property. In any absolute conveyance under this section, the transfer shall be subject to the provisions that all liability for hazards associated with the premises are to be assumed by the recipient. The board shall inform any prospective donee of known or suspected hazards associated with the property.

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§18-5-8. Condemnation of land necessary for educational purposes.

The board shall purchase by condemnation or otherwise, the land necessary for school buildings, playgrounds, athletic fields, experiments in agriculture, warehouses, bus garages, and other educational purposes, and may make necessary expenditures for the improvement of the land.

The board may petition the circuit court to condemn such lands, or easements in such lands, necessary or convenient for educational purposes for school buildings, playgrounds, athletic fields, experiments in agriculture, warehouses, bus garages, or extensions, improvements, or additions thereto. The rights, powers, and privileges of eminent domain in a board shall be coextensive with the rights, powers, and privileges of the state.

Condemnation proceedings shall be in the name of the board and according to the provisions of chapter fifty-four of the code.

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§18-5-9. Schoolhouses, buildings and equipment; health of pupils; repairs; medical and dental clinics.

The board shall provide:

(1) By purchase, lease, building or otherwise, a sufficient number of suitable schoolhouses and other buildings to meet the educational needs of its district;

(2) The necessary furniture, fixtures, apparatus, fuel and all necessary supplies for the schools;

(3) For the health and cleanliness of the pupils;

(4) For the repair and good order of the school grounds, buildings and equipment.

The board may also provide for medical and dental clinics.

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§18-5-9a. Energy-savings contracts.

(a) For the purposes of this section:

(1) "Energy-conservation measures" means goods or services, or both, to reduce energy consumption operating costs of school facilities. These include, but are not limited to, installation of two or more of the following:

(A) Insulation of a building structure and systems within a building;

(B) Storm windows or doors, caulking or weather stripping, multi-glazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems or other window or door modifications that reduce energy consumption;

(C) Automatic energy control systems;

(D) Heating, ventilating or air conditioning systems, including modifications or replacements;

(E) Replacement or modification of lighting fixtures to increase energy efficiency;

(F) Energy recovery systems;

(G) Co-generation systems that produce steam or another form of energy for use by the county board of education in a building or complex of buildings owned by the Board of Education; or

(H) Energy-conservation maintenance measures that provide long-term operating cost reductions of the building's present cost of operation.

(2) "Energy-savings contract" means a contract for the evaluation and recommendation of energy operations conservation measures and for implementation of one or more such measures. The contract shall provide that payments, except obligations upon termination of the contract before its expiration, are to be made over time. A county board of education may supplement these payments with federal, state or local funds to reduce the annual cost or to lower the initial amount to be financed.

(3) "Qualified provider" means a person, firm or corporation experienced in the design, implementation and installation of energy-conservation measures.

(b) County boards of education are hereby authorized to enter into performance-based contracts with qualified providers of energy-conservation measures for the purpose of reducing energy operating costs of school buildings.

(c) A board of education may enter into an energy-savings contract with a qualified provider to significantly reduce energy operating costs. Before entering into such a contract or before

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the installation of equipment, modifications or remodeling to be furnished under such a contract, the qualified provider shall first issue a proposal summarizing the scope of work to be performed. Such a proposal shall contain estimates of all costs of installation, modifications or remodeling including the costs of design, engineering, installation, maintenance, repairs or debt service as well as estimates of the amounts by which energy operating costs will be reduced. If the board finds, after receiving the proposal, that the proposal includes more than one energy-conservation measure designed to save energy operating costs, the board may enter into a contract with the provider pursuant to this section.

(d) An energy-savings contract shall include the following:

(1) A guarantee of a specific minimum amount of money that the board will save in energy operating costs each year during the term of the contract; and

(2) A statement of all costs of energy-conservation measures including the costs of design, engineering, installation, maintenance, repairs and operations.

(e) An energy-savings contract which is performance-based and includes a guarantee of savings and a comprehensive approach of energy-conservation measures for improving comfort is subject to competitive bidding requirements. The requirements of article five-a, chapter twenty-one of this code as to prevailing wage rates shall apply to the construction and installation work performed under such a contract.

(f) A board may enter into a "lease with an option to purchase" contract for the purchase and installation of energy-conservation measures if the term of the lease does not exceed fifteen years and the lease contract includes the provisions hereinafter contained in subsection (g) and meets federal tax requirements for tax-exempt municipal leasing or long-term financing.

(g) An energy-savings contract may extend beyond the fiscal year in which it first becomes effective except that such a contract may not exceed a fifteen-year term and shall be void unless such agreement provides the board the option to terminate the agreement during each fiscal year of the contract. The board may include in its annual budget for each fiscal year any amounts payable under long-term energy-savings contracts during that fiscal year.

(h) Nothing contained in this section requires or permits the replacement of jobs performed by service personnel employed by the local school board pursuant to sections eight and eight-a, article four, chapter eighteen-a of the code, as amended.

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§18-5-9b. Implementation of the Integrated Pest Management Program.

By August 15, 1995, the board shall implement the integrated pest management program promulgated under rules by the Department of Agriculture under authority of section four, article sixteen-a, chapter nineteen of this code.

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§18-5-10. Approval by state board of plans and specifications for buildings.

The state board may require all plans and specifications for the erection of school buildings to comply with the requirements of law. They may require all county boards to submit all plans and specifications for their approval.

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§18-5-11. Joint establishment of schools.

(a) The boards of two or more adjoining counties may jointly establish and maintain schools. The title to the school shall be vested in the board of the county in which the school is located. The agreement by which the school is established shall be reduced to writing and entered of record in the minutes of each board.

(b) The boards of the several districts shall determine the site of the proposed school and the amount to be expended for its establishment and equipment.

(1) The participating counties shall enter a formal agreement regarding the manner in which the cost for the acquisition of the property and equipment shall be apportioned.

(2) The board in the district in which the building is located shall be vested with the control and management of the school, except as may otherwise be provided in the agreement between the counties.

(c) The annual operating costs shall be the responsibility of the county in which the joint school is located and subject to the allowance transfer set forth in section fourteen, article nine-a of this chapter unless otherwise provided in the agreement between the counties..

(d) For a county board that sends students to a jointly established school in another county and that provides transportation for those students or that otherwise contributes to the support services or instructional program of the school, the net enrollment of the county for the purposes of calculating its basic foundation program as provided in article nine-a of this chapter, only, shall be increased by fifteen one hundredths multiplied by the number of full-time equivalent students from the county who are enrolled in the jointly established school.

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§18-5-11a. Joint governing partnership board pilot initiative.

(a) The Legislature finds that many examples exist across the state of students who reside in one county, but who attend the public schools in an adjoining county.

(1) These arrangements have been accommodated by the boards of the adjoining counties and applicable statutes to serve best the interests of the students by enabling them to attend a school closer to their homes.

(2) Typically, these arrangements have evolved because school closures or construction of new schools in the student's county of residence have made a cross-county transfer to an existing school in an adjoining county a more convenient, practical and educationally sound option.

(b) The Legislature further finds that as population changes continue to occur, the boards of adjoining counties may best serve the interests of their students and families by establishing a new school in partnership to be attended by students residing in each of the counties. Particularly in the case of elementary grade level schools established in partnership between adjoining counties, the Legislature finds that each of the county boards, as well as the parents of students from each of the counties attending the school, have an interest in the operation of the school and the preparation of the students for success as they transition to the higher grade levels in the other schools of their respective home counties. Therefore, in the absence of a well defined governance structure that accommodates these interests, the purpose of this section is to provide for a joint governing partnership board pilot initiative.

(c) The pilot initiative is limited to the joint establishment by two adjoining counties of a school including elementary grade levels for which a memorandum of understanding on the governance and operation of the school has been signed. The pilot initiative is subject to amendment of the agreement as may be necessary to incorporate at least the following features of a joint governing partnership board:

(1) The joint governing partnership board is comprised of the county superintendent of each county, the president of the county board of each county or his or her designee, and a designee of the state superintendent;

(2) The board shall elect a chair from among its membership for a two-year term and may meet monthly or at the call of the chair.

(A) Meetings of the board are subject to the open governmental proceedings laws applicable to county boards.

(B) The boards of the respective counties are responsible for the expenses of its members and shall apportion other operational expenses of the board upon mutual agreement.

(C) Once the jointly established school is opened, the meetings of the board shall be held at the school.

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(3) All provisions of law applicable to the establishment, operation and management of an inter-county school including, but not limited to, section eleven, article five and section fourteen, article nine-a of this chapter and article eight-i, article four, chapter eighteen-a of this code apply, except that the joint governing partnership board may exercise governing authority for operation and management of the school in the following areas:

(A) Personnel.

(1) Notwithstanding any other laws for employment, evaluation, mentoring, professional development, suspension and dismissal of public school employees, the powers and duties of the county superintendent are vested in the joint governing partnership board with respect to the employees employed by the county in which the school is located or assigned to the school from the partner county. Pursuant to the provisions of section eight-i, article four, chapter eighteen-a of this code, employees who are hired by the county board of the receiving county shall accrue seniority in both the sending and receiving counties during the time in which they continue to be employed at the jointly established school. Upon losing a position at the jointly established school due to reduction in force or involuntary transfer, an employee shall displace a less senior employee in the county of employment which immediately preceded employment at the jointly established school. Once an employee from the sending county voluntarily transfers or resigns from a position at the jointly established school and is no longer employed in the receiving county, the employee's seniority and any other statutory rights in the receiving county cease.

(2) When initially filling service and professional employee positions at the jointly established school, the counties shall follow the procedures established in section eight-i, article four, chapter eighteen-a of this code. For the initial school year of the jointly established school's opening only, the receiving county may not fill any vacancies created by the retirement or voluntary transfer of employees of the receiving county school from February 1 of the school year immediately preceding the opening of the school until January 1 following the opening of the jointly established school until the receiving county has received the list of employees created pursuant to the provisions of subsection (c), section eight-i, article four, chapter eighteen-a of this code. The receiving county may not fill any of the vacancies referenced in this subsection until the vacancies have been offered to qualified individuals from the certified list.

(3) The employees of the jointly established school are the employees of the employing county board and the partnership board may make recommendations concerning these employment matters to the employing board it considers necessary and appropriate.

(B) Curriculum.

(1) The joint governing partnership board is responsible for the formulation and execution of the school's strategic improvement plan and technology plan to meet the goals for student and school performance and progress.

(2) In its formulation of these plans, the partnership board shall consider the curriculum and plans of the respective county boards to ensure preparation of the students at the school for their successful transition into the higher grade level schools of the respective counties;

(C) Finances. The joint governing partnership board shall control and may approve the expenditure of all funds allocated to the school for the school budget from either county and may solicit and receive donations, apply for and receive grants and conduct fund raisers to supplement the budget; and

(D) Facilities. Consistent with the policies in effect concerning liability insurance coverage, maintenance and appropriate uses of school facilities for the schools of the county in which the school is located, the joint governing partnership board governs the use of the school facility and ensures equitable opportunities for access and use by organizations and groups from both counties.

(d) The joint governing partnership board may adopt policies for the school that are separate from the policies of the respective counties and, working in concert with its local school improvement council, may propose alternatives to the operation of the school which require the request of a waiver of policy, interpretation or statute from either or both county boards, the state board or the Legislature as appropriate.

(e) The superintendents and presidents of county boards of adjoining counties that have in effect on the effective date of this section a memorandum of understanding on the governance and operation of a jointly established school shall report to the Legislative Oversight Commission on Education Accountability on or before November 1, 2013, on the status of implementation of this section.

(1) Once established, the joint governing partnership board established under this pilot initiative shall remain in effect for five consecutive school years unless authority for the pilot initiative is repealed.

(2) The Legislative Oversight Commission on Education Accountability may request the superintendents and the presidents of the county boards to provide periodic updates on this pilot initiative. Also, at the conclusion of the five-year pilot initiative, they shall report their recommendations on the viability of the joint governing partnership board approach and any recommended changes to the Legislative Oversight Commission on Education Accountability.

(A) When the five-year period is concluded, by affirmative vote of both boards, the joint governing partnership board shall remain in effect; or

(B) The agreement between the boards for the governance and operation of the school shall revert to the terms in effect on the effective date of this section, subject to amendment by agreement of the boards.

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§18-5-12. Bond of contractors.

Boards shall require all persons contracting for the building or repairing of school property, where the contract exceeds $25,000 to execute a bond, with approved security, in the amount of the contract price.

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§18-5-12a.

Repealed.

Acts, 1983 Reg. Sess., Ch. 35.

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§18-5-13. Authority of boards generally.

Subject to the provisions of this chapter and the rules of the state board, each county board may:

(a) Control and manage all of the schools and school interests for all school activities and upon all school property owned or leased by the county, including:

(1) Requiring schools to keep records regarding funds connected with the school or school interests, including all receipts and disbursements of all funds collected or received by:

(A) Any principal, teacher, student or other person in connection with the schools and school interests;

(B) Any program, activity or other endeavor of any nature operated or conducted by or in the name of the school; and

(C) Any organization or body directly connected with the school;

(2) Allowing schools to expend funds for student, parent, teacher and community recognition programs. A school may use only funds it generates through a fund-raising or donation-soliciting activity. Prior to commencing the activity, the school shall:

(A) Publicize the activity as intended for this purpose; and

(B) Designate for this purpose the funds generated;

(3) Auditing the records and conserving the funds, including securing surety bonds by expending board moneys. The funds described in this subsection are quasipublic funds, which means the moneys were received for the benefit of the school system as a result of curricular or noncurricular activities;

(b) Establish:

(1) Schools, from preschool through high school;

(2) Vocational schools; and

(3) Schools and programs for post-high school instruction, subject to approval of the state board;

(c) Close any school:

(1) Which is unnecessary and assign the students to other schools. The closing shall occur pursuant to official action of the county board. Except in emergency situations when the timing and manner of notification are subject to approval by the state superintendent, the county board shall notify the affected teachers and service personnel of the county board

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action not later than the first Monday in April. The board shall provide notice in the same manner as set forth in section four of this article; or

(2) Pursuant to subsection (e) of this section;

(d) Consolidate schools;

(e) Close any elementary school whose average daily attendance falls below twenty students for two consecutive months. The county board may assign the students to other schools in the district or to schools in adjoining districts. If the teachers in the closed school are not transferred or reassigned to other schools, they shall receive one month's salary;

(f) Provide transportation according to rules established by the county board, as follows:

(1) To provide at public expense adequate means of transportation:

(A) For all children of school age who live more than two-miles distance from school by the nearest available road;

(B) For school children participating in county board-approved curricular and extracurricular activities;

(C) Across county lines for students transferred from one district to another by mutual agreement of both county boards. The agreement shall be recorded in the meeting minutes of each participating county board and is subject to subsection (h) of this section; and

(D) Within available revenues, for students within two-miles distance of the school; and

(2) To provide transportation for participants in projects operated, financed, sponsored or approved by the Bureau of Senior Services. This transportation shall be provided at no cost to the county board. All costs and expenses incident in any way to this transportation shall be borne by the bureau or the local or county affiliate of the bureau;

(3) Any school bus owned by the county board may be operated only by a bus operator regularly employed by the county board, except as provided in subsection (g) of this section;

(4) Notwithstanding any other provision of this code to the contrary and pursuant to rules established by the state board, the county board may provide for professional or service employees to be certified to drive county board-owned and insured vehicles: *Provided*, That:

(A) No more than 10 passengers including the driver may be transported at one time;

(B) Not more than two of these vehicles may be used for any school-sponsored activity; and

(C) The certified employees may use the vehicles to transport students for school-sponsored activities, but may not use the vehicles to transport students between school and home.

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(5) Notwithstanding any other provision of this code to the contrary, students may be transported to a school-sponsored activity in a county-owned or leased vehicle that does not meet school bus or public transit ratings: *Provided*, That no more than 10 passengers including the driver may be transported at one time: *Provided, however*, That this section does not prohibit a parent, guardian, or other adult approved in writing by the parent or guardian from transporting students in a privately-owned vehicle;

(6) Students may be transported to a school-sponsored activity in a vehicle that has a seating capacity of 16 or more passengers which is not owned and operated by the county board only as follows:

(A) The state board shall promulgate a rule to establish requirements for:

(i) Automobile insurance coverage;

(ii) Vehicle safety specifications;

(iii) School bus or public transit ratings; and

(iv) Driver training, certification and criminal history record check; and

(B) The vehicle owner shall provide to the county board proof that the vehicle and driver satisfy the requirements of the state board rule; and

(7) Buses shall be used to transport 19 or more passengers for extracurricular activities as provided in this section only when the insurance coverage required by this section is in effect;

(g) Lease school buses pursuant to rules established by the county board.

(1) Leased buses may be operated only by bus operators regularly employed by the county board, except that these buses may be operated by bus operators regularly employed by another county board in this state if bus operators from the owning county are unavailable.

(2) The lessee shall bear all costs and expenses incurred by, or incidental to the use of, the bus.

(3) The county board may lease buses to:

(A) Public and private nonprofit organizations and private corporations to transport school-age children for camps or educational activities;

(B) Any college, university or officially recognized campus organization for transporting students, faculty and staff to and from the college or university. Only college and university students, faculty and staff may be transported pursuant to this paragraph. The lease shall include provisions for:

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(i) Compensation for bus operators;

(ii) Consideration for insurance coverage, repairs and other costs of service; and

(iii) Any rules concerning student behavior;

(C) Public and private nonprofit organizations, including education employee organizations, for transportation associated with fairs, festivals and other educational and cultural events. The county board may charge fees in addition to those charges otherwise required by this subsection;

(h) To provide at public expense for insurance coverage against negligence of the drivers of school buses, trucks or other vehicles operated by the county board. Any contractual agreement for transportation of students shall require the vehicle owner to maintain insurance coverage against negligence in an amount specified by the county board;

(i) Provide for the full cost or any portion thereof for group plan insurance benefits not provided or available under the West Virginia Public Employees Insurance Act. Any of these benefits shall be provided:

(1) Solely from county board funds; and

(2) For all regular full-time employees of the county board;

(j) Employ teacher aides; to provide in-service training for the aides pursuant to rules established by the state board; and, prior to assignment, to provide a four-clock-hour program of training for a service person assigned duties as a teacher aide in an exceptional children program. The four-clock-hour program shall consist of training in areas specifically related to the education of exceptional children;

(k) Establish and operate a self-supporting dormitory for:

(1) Students attending a high school or participating in a post high school program; and

(2) Persons employed to teach in the high school or post high school program;

(l) At the county board's discretion, employ, contract with or otherwise engage legal counsel in lieu of using the services of the prosecuting attorney to advise, attend to, bring, prosecute or defend, as the case may be, any matters, actions, suits and proceedings in which the county board is interested;

(m) Provide appropriate uniforms for school service personnel;

(n) Provide at public expense for payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by the county board, subject to rules established by the county board;

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(o) Allow designated employees to use publicly provided carriage to travel from their residences to their workplace and return. The use:

(1) Is subject to the supervision of the county board; and

(2) Shall be directly connected with, required by and essential to the performance of the employee's duties and responsibilities;

(p) Provide at public expense adequate public liability insurance, including professional liability insurance, for county board employees;

(q)(1) Enter into cooperative agreements with one or more county boards or educational services cooperative to provide improvements to the instructional needs of each district. The cooperative agreements may be used to employ specialists in a field of academic study or for support functions or services for the field.

(2) Enter into cooperative agreements with one or more county boards to facilitate coordination and cooperation in areas of service to reduce administrative and/or operational costs, including the consolidation of administrative, coordinating, and other county level functions into shared functions to promote the efficient administration and operation of the public school systems including, but not limited to:

(A) Purchasing;

(B) Operation of specialized programs for exceptional children;

(C) Employment of any school personnel as defined in §18A-1-1 of this code;

(D) Professional development;

(E) Technology including, but not limited to WVEIS; and

(F) Billing for school-based Medicaid services in schools throughout the state.

Each such cooperative agreement shall be in writing and agreed to by each county board participating in the cooperative agreement. Each cooperative agreement that is an employment agreement may be entered into on a case-by-case basis. Notwithstanding the geographic quadrants as provided in §18-5-13b of this code, school systems may enter into cooperative agreements with any school system in the state.

(3) Enter into a cooperative agreement with other county boards to establish educational services cooperatives as provided in §18-5-13c of this code.

(r) Provide information about vocational and higher education opportunities to exceptional students. The county board shall provide in writing to the students and their parents or guardians information relating to programs of vocational education and to programs

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available at state institutions of higher education. The information may include sources of available funding, including grants, mentorships and loans for students who wish to attend classes at institutions of higher education;

(s) Enter into agreements with other county boards for the transfer and receipt of any funds determined to be fair when students are permitted or required to attend school in a district other than the district of their residence. These agreements are subject to the approval of the state board; and

(t) Enter into job-sharing arrangements, as defined in section one, article one, chapter eighteen-a of this code, with its employees, subject to the following provisions:

(1) A job-sharing arrangement shall meet all the requirements relating to posting, qualifications and seniority, as provided in §18A-4-1 *et seq*. of this code;

(2) Notwithstanding any contrary provision of this code or legislative rule and specifically §5-16-1 *et seq*. of this code, a county board that enters into a job-sharing arrangement:

(A) Shall provide insurance coverage to the one employee mutually agreed upon by the employees participating in that arrangement; and

(B) May not provide insurance benefits of any type to more than one of the job-sharing employees, including any group plan available under the State Public Employees Insurance Act;

(3) Each job-sharing agreement shall be in writing on a form prescribed and furnished by the county board. The agreement shall designate specifically one employee only who is entitled to the insurance coverage. Any employee who is not designated is not eligible for state public employees insurance coverage regardless of the number of hours he or she works;

(4) All employees involved in the job-sharing agreement shall meet the requirements of §5-16-2 (3) of this code; and

(5) When entering into a job-sharing agreement, the county board and the participating employees shall consider issues such as retirement benefits, termination of the job-sharing agreement and any other issue the parties consider appropriate. Any provision in the agreement relating to retirement benefits may not cause any cost to be incurred by the retirement system that is more than the cost that would be incurred if a single employee were filling the position; and

(u) Under rules it establishes for each child, expend an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

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§18-5-13a. School closing or consolidation.

(a) In addition to the provisions of §18-5-13 of this code, prior to any final decision of a county board on any proposal to close or consolidate any school, except in cases in which a construction bond issue was passed by the voters and which bond issue included the schools to be closed or consolidated, the county board shall:

(1) Prepare and reduce to writing its reasons and supporting data regarding the school closing or consolidation, and an impact statement on the school closing or consolidation. The written reasons and impact statement, as applicable, shall:

(A) Be available for public inspection in the office of the county school superintendent during the 30 days preceding the date of the public hearing required by this section;

(B) Be delivered in duplicate to the:

(i) Principal of a school which is proposed to be closed or consolidated, and of any school which will receive the students who are relocated as a result of the closure or consolidation; and

(ii) The chair, if any, of the local school improvement council representing a school which is proposed to be closed or consolidated, and any school which will receive the students who are relocated as a result of the closure or consolidation;

(C) Comply with the rule relating to the written statement of reason promulgated pursuant to subsection (b) of this section; and

(D) Comply with the rule relating to the impact statement promulgated pursuant to subsection (c) of this section;

(2) Provide notice for a public hearing. The notice shall be advertised through a Class III legal advertisement, pursuant to the provisions of §59-3-1 *et seq*. of this code for the three weeks prior to the date of the hearing. The notice shall contain the time and place of the hearing and the proposed action of the county board. Additionally, the notice shall contain the statement that the hearing location is subject to change if at the time the meeting is called to order, it is determined that the meeting location is of insufficient size. A copy of the notice shall be posted at any school which is proposed to be closed or consolidated, and at any school which will receive the students who are relocated as a result of the closure or consolidation, in conspicuous working places for all professional and service personnel to observe. The notice shall be posted at least 30 days prior to the date of the hearing;

(3) Conduct a public hearing which meets the following criteria:

(A) At least a quorum of the county board members and the county superintendent from the county wherein an affected school is located shall attend and be present at the public hearing;

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(B) Members of the public may be present, submit statements and testimony, and question county school officials at the public hearing;

(C) A separate hearing shall be held for each school closed or consolidated;

(D) More than one hearing may be held during any one day;

(E) The hearing shall be held in a facility of sufficient size to accommodate all those who desire to attend;

(F) If, at the time the hearing is called to order, it is determined by the board that insufficient space is available to accommodate all those who desire to attend, the hearing shall be recessed and moved to a new location of sufficient size to accommodate all those who desire to attend. If the meeting location is changed due to insufficient capacity, the county board shall cause the new meeting location to be posted at the original meeting location; and

(G) The hearing is subject to the requirements set forth in the rule promulgated in accordance with subsection (d) of this section; and

(4) Receive findings and recommendations from any local school improvement council representing an affected school relating to the proposed closure or consolidation prior to or at the public hearing.

(b) If a county board is required to prepare an impact statement pursuant to subsection (a) of this section, the board shall give the impact statement substantial weight when making a decision on any proposal to close or consolidate a school.

(c) The state board shall promulgate a rule, in accordance with §29A-3B-1 *et seq*. of this code, detailing the type of supporting data a county board shall include as part of its written statement of reason required by this section for school closing or consolidation. The rule shall require at least any data required by the state board to amend a county's comprehensive educational facilities plan.

(d) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq*. of this code detailing information that a county board shall include as part of its impact statement required by this section for school closing or consolidation. The rule shall require at least the impact on the following:

(1) The students, which at least shall include the transportation time of the affected students;

(2) The financial health of the county, which at least shall include the anticipated cost or savings;

(3) The enrollment of schools designated by the county board to receive the students as it

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relates to the capacity of the school;

(4) The school personnel employed by the county board, which at least shall include the anticipated increase or decrease in the number employed, and if a decrease in school employees is anticipated, the number of school employees that are anticipated to be decreased through attrition and the number anticipated to be decreased through a reduction in force; and

(5) The community.

(e)The state board shall promulgate a rule, in accordance with §29A-3B-1 *et seq*. of this code, that establishes the procedure to be followed by county boards when conducting a public hearing on the issues of school consolidation and closing.

(1) The rule shall provide standards for at least the following:

(A) The appropriate forum and venue for public hearings to be held;

(B) A process for affording interested parties the opportunity for their perspectives to be expressed;

(C) Establishing, where necessary, reasonable restrictions on the amount of time allowed each individual desiring to speak so that all parties wishing to speak at the hearing are given an equal amount of time; and

(D) Scheduling and organizing public hearings when more than one school within a county is proposed for consolidation or closure.

(2) It is the purpose of this subsection to provide for uniformity among the counties in the procedures followed when scheduling, organizing, and conducting public hearings on the issues of school consolidation and closure.

(f) The state board shall promulgate the rules required by this section by June 1, 2023.

(g) Any project currently in progress, or approved by the county board on the effective date of this section, shall not be subject to the 2023 amended provision of this legislation.

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§18-5-13b. County Superintendents' Advisory Council, purpose, reports.

(a) The County Superintendents' Advisory Council, ("the Council") is hereby established. The purpose of the council is to promote collaboration among county districts and to provide input to the State Board of Education and state superintendent on issues facing school systems.

(b) After the effective date of this section, but no later than June 1, 2017, all fifty-five county superintendents shall convene to divide the state into four geographic quadrants for the purpose of carrying out the work of the council as described herein.

(c) County superintendents' responsibilities –

(1) County superintendents belonging to the same geographic quadrant shall meet to select a county superintendent to represent the geographic quadrant. The method of selection of the representative is at the discretion of each geographic quadrant. The representative of each geographic quadrant will represent the council at the state level.

(2) County superintendents of each geographic quadrant shall meet as necessary to identify coordination and cooperation in areas of service to reduce administrative and/or operational costs, including the consolidation of administrative, coordinating, and other county level functions into shared functions to promote the efficient administration and operation of the public school systems. These areas of service include, but are not limited to, the cooperative agreement areas as provided in subsection (q), section thirteen of this article.

(d) The representative from each of the four geographic quadrants of the council shall identify issues facing their geographic quadrants and present them at the state level as follows:

(1) Meet semiannually with the State Superintendent of Schools;

(2) Meet annually with the State Board of Education; and

(3) Provide an annual report to Legislative Oversight Commission on Education Accountability and the Governor on or before June 30 of each year.

(e) At least one meeting in each geographic quadrant annually shall include on the meeting agenda a discussion of any recommendations of the county boards in the quadrant for changes in laws or policies needed to better empower them to meet the state's education goals. A report of these recommendations, if any, shall be included in the annual report to Legislative Oversight Commission on Education Accountability and the Governor.

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§18-5-13c. Educational services cooperatives; purpose; establishment; governance; authorized functions and services.

(a) Pursuant to subsection (q), section thirteen of this article, a county board is authorized to enter into a cooperative agreement with one or more other county boards to establish educational services cooperatives which shall serve as regional units to provide for high quality, cost effective lifelong education programs and services to students, schools, school systems, and communities in accordance with this section. Each educational services cooperative may serve as a regional public multi-service agency to develop, manage, and provide such services or programs as determined by its governing council and as provided in this section or otherwise provided in this code. All references in this code to regional education service agencies or RESA's mean an educational services cooperative as authorized under this section.

(b) The regional education service agencies previously established by section twenty-six, article two of this chapter and W. Va. 126CSR72, filed October 15, 2015, and effective November 16, 2015, shall remain and may continue to operate in accordance with said section and rule unless and until modified by a cooperative agreement entered into by county boards within the boundaries of the agency or dissolved by said county boards: Provided, That on July 1, 2018, the regional education service agencies as provided under prior provisions of section twenty-six, article two of this chapter are dissolved. If a regional education service agency is reconfigured pursuant to a cooperative agreement or is dissolved, all property, equipment and records held by the regional education service agency necessary to effectuate the purposes of this section shall be transferred or liquidated and disbursed in accordance with the following priority order: (1) To any successor educational services cooperative substantially covering the same geographical area; (2) To the county boards who were members of the regional education service agency as agreed upon by those counties; or (3) To the state board or to other appropriate entities as provided by law.

(c) An educational services cooperative shall be under the direction and control of a governing council consisting of the following members:

(1) The county superintendent of each county participating in the cooperative agreement;

(2) A member of the board of education from each county participating in the cooperative agreement selected by the county board of education as provided in the bylaws of the governing council of the educational services cooperative; and

(3) The following representatives, if any, to be selected by the educational services cooperative administrator with the consent of the governing council:

(A) Representatives of institutions of higher education and community and technical colleges serving the geographical area covered by the educational services cooperative;

(B) One non-superintendent chief instructional leader employed by a member county;

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(C) One school principal employed by a member county;

(D) One teacher employed by a member county; and

(E) Additional members representing business and industry, or other appropriate entities, as the governing council determines fit to meet its responsibilities.

(d) The governing council of an educational services cooperative:

(1) Shall adopt bylaws concerning the appointment and terms of its members, including the authorization of designees by its members, the selection of officers and their terms, the filling of vacancies, the appointment of task forces and study groups, the evaluation of the executive director and staff and any other provisions necessary for the operation of the educational services cooperative. A quorum for governing council meetings shall be a simple majority of the number of members of each governing council;

(2) Shall appoint an individual to serve as the educational services cooperative administrator who shall serve at the will and pleasure of the governing council and shall implement the policies of the governing council.

(3) May employ regular full-time and part-time staff, as necessary, after a majority of the members of a governing council, by vote, verify that such employment is necessary for effective provision of services and to perform services or other projects that may require staff and support services for effective implementation. Staff who are hired into a position that requires a specified certification must maintain the certification for the duration of employment. The governing council is the sole employer of the educational services cooperative's personnel it employs and shall be responsible for any benefit and liability programs necessitated by such employment. Employees of the educational services cooperative are considered state employees for the purposes of participation in the state's public employees' insurance and retirement programs. A recipient of personnel services from the educational services cooperative is not deemed an employer because of the exercise of supervision or control over any personnel services provided;

(4) May purchase, hold, encumber and dispose of real property, in the name of the educational services cooperative, for use as its office or for any educational service provided by the educational services cooperative if a resolution to do so is adopted by a two−thirds vote of the members of the governing council and then approved by three−fourths of the county boards in the educational services cooperative by majority vote of each county board;

(5) Shall operate as Local Educational Agencies (LEA's) for financial purposes, including grants and cooperative purchasing, and collectively as essential agencies responsible for performing service functions to the total community. An educational services cooperative is eligible as an LEA to participate in partnership with or on behalf of any county school system or school in those programs that will accomplish implementation of the strategic plan and/or state education initiative of the system or school, or to further statutory priorities consistent

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with educational services cooperative operations;

(6) May receive, expend and disburse funds from the state and federal governments, from member counties, or from gifts and grants and may contract with county boards of education, the West Virginia Department of Education, institutions of higher education, persons, companies, or other agencies to implement programs and services at the direction of the council. The state board, department of education, or any member county board may request implementation of programs and services by the educational services cooperative. An educational services cooperative may also receive funds from profit-generating enterprises, the funds of which will contribute to the educational services cooperative initiatives. Each educational services cooperative is encouraged to partner with member school systems, particularly those designated as low-performing, and other organizations as appropriate to attract and leverage resources available from federal programs to maximize its capacity for meeting the needs of member schools and school systems. Educational services cooperatives are recognized as eligible LEA's for the purposes of applying, on behalf of school systems, for grant funds consistent with performing regional services and functions and/or supportive of education initiatives of the educational services cooperative;

(7) Upon the request of one or more county boards of education, or by the state board as permitted or contracted, and if directed by law, an educational services cooperative may assume responsibility for one or more functions otherwise performed by one or more county boards of education;

(8) May offer technical assistance, including targeted comprehensive staff development services, or other technical assistance to any member school or school system, and give priority to those schools and school systems that are found to be out of compliance with a state law or federal law;

(9) May serve as repositories of research-based teaching and learning practices, and shall use technology, particularly web-based technology, to ensure maximum access to such practices by public schools in the region and state; and

(10) Shall develop and/or implement any other programs or services as directed by law or the governing council, or requested by individual member counties or groups of member counties subject to available funds. The Legislature expects that the assistance and programs developed and/or implemented by the educational services cooperatives may differ among the schools, counties and educational services cooperatives.

(e) The administrator of each educational services cooperative shall submit annually a plan to the governing council that identifies the programs and services which are suggested for implementation by the educational services cooperative during the following year. The plan shall contain components of long-range planning determined by the governing council. These programs and services may include, but are not limited to, the following areas:

(1) Administrative services;

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(2) Curriculum development;

(3) Data processing;

(4) Distance learning and other telecommunication services;

(5) Evaluation and research;

(6) Staff development;

(7) Media and technology centers;

(8) Publication and dissemination of materials;

(9) Pupil personnel services;

(10) Planning;

(11) Secondary, postsecondary, community, adult, and adult vocational education;

(12) Teaching and learning services, including services for students with special talents and special needs;

(13) Employee personnel and employment services;

(14) Vocational rehabilitation;

(15) Health, diagnostic, and child development services and centers;

(16) Leadership or direction in early childhood and family education;

(17) Community services;

(18) Fiscal services and risk management programs;

(19) Legal services;

(20) Technology planning, training, and support services;

(21) Health and safety services;

(22) Student academic challenges;

(23) Cooperative purchasing services; and

(24) Other programs and services as may be provided pursuant to other provisions of this Code.

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(f) The educational services cooperative administrator, with advice and assistance of the governing council, may select as its fiscal agent one of the county boards of education comprising the educational services cooperative. The county board so selected may maintain a separate bank account or accounts for the receipt and disbursement of all educational services cooperative funds and perform the accounting functions specified in the policies adopted by the state board. A county board of education serving as a fiscal agent may not initiate action, direct the programs or substitute its judgment for that of the educational services cooperative administrator as advised by the governing council. The county board of education may reject an action of the educational services cooperative administrator if sufficient funds are not available, or if it perceives a legal conflict. The educational services cooperative administrator shall make arrangements for an annual audit to be conducted in accordance with the requirements of the OMB Uniform Guidance (2 C.F.R. 200) and the cost of the audit shall be incurred by the educational services cooperative. Prior to making those arrangements, the educational services cooperative administrator must coordinate with the respective fiscal agent to ensure the audit addresses all applicable issues.

(g) Notwithstanding any other provision of this code to the contrary, employees of educational services cooperatives shall be reimbursed for travel, meals and lodging at the same rate as state employees under the travel management office of the Department of Administration.

(h) Notwithstanding any other provision of this code to the contrary, county board members serving on governing councils of educational services cooperatives may receive compensation at a rate not to exceed $100 per meeting attended, not to exceed fifteen meetings per year. County board members serving on governing councils may be reimbursed for travel at the same rate as state employees under the rules of the travel management office of the Department of Administration. A county board member may not be an employee of an educational services cooperative.

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§18-5-13d. Use of school facilities for funeral and memorial services.

(a) Public schools in this state serve as an integral part of the community and the death of a community member of distinction who was a military service member or veteran who served under honorable conditions, or who served as a first responder, can have a significant impact on students and the surrounding community.

(b) Notwithstanding any other provision of this code or any policy currently in place, county boards of education shall allow school facilities in the county to be used for the funeral or memorial service, or both funeral and memorial services, of a community member of distinction who was a military service member or veteran who served under honorable conditions or who served as a first responder, consistent with this section. County boards may set up a process by which requests to use school facilities for such purposes may be made. County boards may not be responsible for additional costs incurred as a result of holding the funeral or memorial service at the school facility.

(c) Any funeral or memorial service held at a school facility may not disrupt or interfere with classroom instruction, any other scheduled school event or activity, or other official governmental use, such as when a school serves as a polling place for an election.

WV Legislature

§18-5-14. Policies to promote school board effectiveness.

(a) No later than January, 2020, each county board shall adopt policies that promote school board effectiveness and may modify the policies as necessary. The policies shall address the following objectives:

(1) Establishing direct links between the county board and its local school improvement councils and between the county board and its faculty senates for the purpose of enabling the county board to receive information, comments and suggestions directly from the councils and faculty senates regarding the broad guidelines for oversight procedures, standards of accountability and planning for future needs as required by this section. To further development of these linkages, each county board shall:

(A) Meet at least annually with the local school improvement council of each school deemed to be low performing under the accountability system established by the state board. The meeting or meetings shall be held at a time and in a manner to be determined by the county board;

(B) At least 30 days before a meeting with the local school improvement council of a school deemed to be low performing, develop and submit to the council an agenda for the meeting which requires the school principal and council chair or a member designated by the chair, to address the dialogue of its meeting or meetings at which the parents, students, school employees, business partners and other interested parties were given the opportunity to make specific suggestions on how to address issues which are seen to affect the school's academic performance. The principal, council chair or other designated member shall also address any reports by the county superintendent with respect to the school's performance and progress, and any one or more of the following issues as determined by the county board:

(i) School performance;

(ii) Curriculum;

(iii) Status of the school in meeting the school's strategic improvement plan established pursuant to §18-2E-5 of this code; and

(iv) Status of the school in meeting the relevant parts of the county's strategic improvement plan established pursuant to §18-2E-5 of this code;

(C) Make written requests for information from the local school improvement council throughout the year or hold community forums to receive input from the affected community as the county board considers necessary; and

(D) Nothing in this subdivision prohibits a county board from meeting with and requesting information from representatives of any of its local school improvement councils such times and in such manner determined by the county board.

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(2) Providing for the development of direct links between the county board and the community at large allowing for community involvement at regular county board meetings and specifying how the county board will communicate regularly with the public regarding important issues;

(3) Providing for the periodic review of personnel policies of the district in order to determine their effectiveness;

(4) Setting broad guidelines for the school district, including the establishment of specific oversight procedures, the development and implementation of standards of accountability and the development of long-range plans to meet future needs as required by this section; and

(5) Using school-based accountability and performance data provided by the state board and other available data in county board decision-making to meet the education goals of the state and other goals as the county board may establish.

(b) On or before August 1, of each year, county school boards shall review the policies listed in subsection (a) of this section and may modify these policies as necessary.

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§18-5-15. Ages of persons to whom schools are open; enrollment of suspended or expelled student.

(a) The public schools shall be open for the full instructional term to all persons who have attained the entrance age as stated in section five, article two and section eighteen, article five, chapter eighteen of this code: Provided, That any student suspended or expelled from public or private school shall only be permitted to enroll in public school upon the approval of the superintendent of the county where the student seeks enrollment: Provided, however, That in making such decision, the principal of the school in which the student may enroll shall be consulted by the superintendent and the principal may make a recommendation to the superintendent concerning the student's enrollment in his or her new school: Provided further, That if enrollment to public school is denied by the superintendent, the student may petition the board of Education where the student seeks enrollment.

(b) Persons over the age of twenty-one may enter only those programs or classes authorized by the state Board of Education and deemed appropriate by the county board of education conducting any such program or class: Provided, That authorization for such programs or classes shall in no way serve to affect or eliminate programs or classes offered by county boards of education at the adult level for which fees are charged to support such programs or classes.

WV Legislature

§18-5-15a. Study of multicultural education for school personnel.

County boards of education shall upon employment and every three years thereafter, provide a program, during at least one noninstructional day of the school term, for the study of multicultural education for all school personnel as defined in subsection (a), section one, article one, chapter eighteen-a of this code. The study provided shall be in compliance with regulations to be developed by the state Board of Education.

As used in this section, multicultural education means the study of the pluralistic nature of American society, including its values, institutions, organizations, groups, status positions and social roles.

WV Legislature

§18-5-15b. Pledge of allegiance to the flag.

Every instructional day in the public schools of this state shall be commenced with a pledge of allegiance to the flag of the United States. Pupils who do not wish to participate in this exercise shall be excused from making such pledge.

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§18-5-15c. County boards of education; training in prevention of child abuse and neglect and child assault; regulations; funding.

(a) In recognition of the findings of the Legislature as set forth in §49-2-401 of this code, the Legislature further finds that public schools are able to provide a special environment for the training of children, parents, and school personnel in the prevention of child abuse and neglect and child assault and that child abuse and neglect prevention and child assault prevention programs in the public schools are an effective and cost-efficient method of reducing the incidents of child abuse and neglect, promoting a healthy family environment, and reducing the general vulnerability of children.

(b) County boards of education shall, to the extent funds are provided, establish programs for the prevention of child abuse and neglect and child assault. The programs shall be provided to students, parents and school personnel as considered appropriate. The programs comply with rules developed by the state Board of Education with the advice and assistance of the Department of Human Services and the West Virginia State Police: *Provided*, That any programs which substantially comply with the rules adopted by the board and were in effect prior to the adoption of the rules may be continued.

(c) Funds for implementing the child abuse and neglect prevention and child assault prevention programs may be allocated to the county boards of education from the children's trust fund established pursuant to the provisions of §49-2-401 of this code or appropriated for such purpose by the Legislature.

(d) County boards of education shall request from the state Criminal Identification Bureau the record of any and all criminal convictions relating to child abuse, sex-related offenses, or possession of controlled substances with intent to deliver the controlled substances or all of its future employees. This request shall be made immediately after the effective date of this section, and thereafter as warranted.

(e) Contractors or service providers or their employees may not make direct, unaccompanied contact with students or access school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or employees have not previously been convicted of a qualifying offense, as defined in §15-12-2 of this code. For the purposes of this section, contractor and service provider shall be limited to any vendor, individual, or entity under contract with a county school board. County school boards may require contractors and service providers to verify the criminal records of their employees before granting contact or access. Where prior written consent is obtained, county school boards may obtain information from the Central Abuse Registry regarding contractors, service providers, and their employees for the purposes of this subsection. Where a contractor or service provider gives his or her prior written consent, the county school board also may share information provided by the Central Abuse Registry with other county school boards for the purposes of satisfying the requirements of this subsection.

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§18-5-15d. In-service training programs in the prevention, transmission, spread and treatment of acquired immune deficiency syndrome; parent attendance.

Under guidelines established by the Department of Education in consultation with the department of health, training programs on the prevention, transmission, spread and treatment of acquired immune deficiency syndrome shall be provided by the county boards as in-service training for all school personnel. The county boards shall encourage the attendance of parents at these programs and notify such parents to the fullest extent practicable, including notification in written form and by publication.

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§18-5-15e.

Repealed.

Acts, 2014 Reg. Sess., Ch. 47.

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§18-5-15f. Affirmation regarding the suspension or expulsion of a pupil from school.

(a) Prior to the admission of a pupil to any public school in West Virginia, the county superintendent shall require the pupil's parent(s), guardian(s) or custodian(s) to provide, upon registration, a sworn statement or affirmation indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in West Virginia or another state. Any person willfully making a materially false statement or affirmation shall be guilty of a misdemeanor and, upon conviction, the penalty shall be the same as provided for "false swearing" pursuant to section three, article five, chapter sixty-one of this code.

(b) Prior to the admission of a pupil to any public school, the principal of that school or his or her designee shall consult the uniform integrated regional computer information system (commonly known as the West Virginia Education Information System) described in subsection (f), section twenty-six, article two, chapter eighteen of this code, to determine whether the pupil requesting admission is, at the time of the request for admission, serving a suspension or expulsion from another public school in West Virginia.

(c) The State Board of Education shall provide for the West Virginia Education Information System to disallow the recording of the enrollment of any pupil who is, at the time of attempted enrollment, serving a suspension or expulsion from another public school in West Virginia, and for that system to notify the user who has attempted to record the enrollment that the pupil may not be enrolled, and to notify that user of the reason therefor.

(d) Notwithstanding any other provision of this code to the contrary, any pupil who has been suspended or expelled from school pursuant to section one-a, article five, chapter eighteen-a of this code, or who has been suspended or expelled from a public or private school in another state, due to actions described in section one-a, article five, chapter eighteen-a of this code, may not be admitted to any public school within the State of West Virginia until the period of suspension or expulsion has expired.

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§18-5-15g. Vocational education classes for homeschooled and private schooled students.

County boards of education shall permit students who are homeschooled or attend private schools to enroll and take classes at the county's vocational schools, if any are provided and as capacity allows, at no expense or cost greater than expenses or costs normally charged to public school students: *Provided*, That if a homeschool or private school student is not permitted to enroll in a county vocational school, the county shall notify the parent or guardian of the student in writing and a copy of the written notification shall also be sent to the West Virginia Department of Education.

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§18-5-16. Student transfers; definitions; appeals; calculating net enrollment; fees for transfer.

(a) Establishment of attendance zones within counties. — The county board may establish attendance zones within the county to designate the schools within its district that resident students typically attend: *Provided*, That a county board may permit any eligible elementary, middle or high school resident student to apply for enrollment in any school with grade level capacity and existing programs and services currently outside any established attendance zone in which the student resides. Upon the written request of any parent or guardian, or person legally responsible for any resident student, the superintendent may grant a resident student's transfer request from one school or program to another within the county so long as grade level capacity and the program and services exist at the time of the request. Counties with a critical need shortage policy may further review the request to determine if appropriate staffing is available in the requested grade, program, service, or content area. A superintendent may not transfer a resident student from one school to another within the county for reasons affecting the best interests of the schools without the consent of the student's parent or legal guardian. Any aggrieved person may appeal a transfer or denial of transfer by the county superintendent to the county board. When making enrollment decisions, a county superintendent or county board may not distinguish between students on the basis of residential or potential disability status. A county superintendent or county board may determine if appropriate staff, resources, services and programs are in place to meet the disability needs of the student at the requested school. A decision of the county board may be appealed to the state superintendent of schools, whose decision shall be final.

(b) Definitions. — For the purposes of this section, unless a different meaning clearly appears from the context:

(1) "Nonresident student" means a student who resides in this state and who is enrolled in or is seeking enrollment in a county school district other than the county school district in which the student resides.

(2) "Open enrollment" means a policy adopted and implemented by a county board to allow nonresident students to enroll in any school within the district. Open enrollment is distinct from a mutual agreement of two county boards regarding mass transfer of students, as contemplated in §18-5-13(f)(1)(C) of this code.

(c) Enrollment policies for nonresident students. — County boards shall establish and implement an open enrollment policy for nonresident students without charging tuition and without obtaining approval from the board of the county in which a student resides and transfers. This policy shall clearly establish an open enrollment process and enrollment application period for nonresident students to enroll in any school within the district. The process for enrollment application shall be clearly publicized to parents and the general public, including dates and timelines, and shall be made available on the board's website. As part of the open enrollment policy, county boards shall also establish a process for nonresident students to enroll in any school within the district on a case-by-case basis at any

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time during the academic year so long as all other requirements are met including that the student has not previously transferred within the same school year. The open enrollment policy shall not discriminate against nonresident students on the basis of their residential address or any potential disability status. Enrollment policies are subject to the following:

(1) A county board may give enrollment preference to:

(A) Siblings of students already enrolled through the open enrollment policy;

(B) Secondary students who have completed 10th grade and, due to family relocation, become nonresident students, but express the desire to remain in a specific school to complete their education;

(C) Students who are children, grandchildren, or legal wards of employees;

(D) Students whose legal residences, though geographically within another county, are more proximate to a school within the receiving county, whether calculated by miles or transportation time;

(E) Students who reside in a portion of a county where topography, impassable roads, long bus rides, or other conditions prevent the practicable transportation of the student to a school within the county, and a school within a contiguous county is more easily accessible; and

(F) The county board to which the student wishes to be transferred may not refuse a transfer by virtue of the student transferring from a private, parochial, church, or religious school holding an exemption approved pursuant to §18-8-1(k) of this code: *Provided*, That nothing in this paragraph shall be construed to allow a county board to give an enrollment preference to a student transferring from a private, parochial, church, or religious school holding an exemption approved pursuant to §18-8-1(k) of this code.

(2) A county shall comply with all enrollment requirements for children who are in foster care or who meet the definition of unaccompanied youth prescribed in the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(6)).

(3) The county board for the county educating the nonresident student may provide an adequate means of transportation to nonresident students when students have complied with the procedure for obtaining authorization to attend school outside their county of residence, subject to the following:

(A) County boards of education are not required to uniformly provide nonresident student transportation, and may consider whether a nonresident student meets the eligibility criteria for free or reduced price lunch and milk established within the Richard B. Russell National School Lunch Act (42 U.S.C. § 1758); and

(B) The county board for the county educating the nonresident student shall provide

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transportation to and from the school of attendance, or to and from an agreed pickup point on a regular transportation route, or for the total miles traveled each day for the nonresident student to reach the school of enrollment if the nonresident student is a student with disabilities and has an individualized education program that specifies that transportation is necessary for fulfillment of the program.

(4) An application may only be denied by a county board of education due to lack of grade level capacity, lack of programs or services due to areas identified in the county board critical need policy, or the commission of Level 3 or Level 4 inappropriate behavior as defined by West Virginia Board of Education Policy 4373 in the last year. The denial shall be in writing, sent to the parent or guardian of the nonresident student and the West Virginia Department of Education within three business days of the decision, and include the reason and explanation for the denial and information on appealing the denial of the application. If a nonresident student fails to fill out or submit an open enrollment application correctly, a county board shall provide an explanation of ways in which the application may be corrected and submitted for necessary approval.

(d) Appeal. — The State Board of Education shall establish a process whereby a parent or guardian of a student may appeal to the State Superintendent the refusal of a county board to accept the transfer of the student. If during the appeal process, the State Superintendent discovers that the education and the welfare of the student could be enhanced, the State Superintendent may direct that the student may be permitted to attend a school in the receiving county.

(e) Net enrollment. — For purposes of net enrollment as defined in §18-9A-2 of this code, whenever a student is transferred on a full-time basis from one school district to another district pursuant to the provisions of this section, the county to which the student is transferred shall include the student in its net enrollment, subject to the following:

(1) If a student transfers after the second month of any school year, the county to which the student transferred may issue, in the following fiscal year, an invoice to the county from which the student transferred for the amount, determined on a pro rata basis, that the county now responsible for educating the student otherwise would have received under the state basic foundation program established in §18-9A-1 *et seq*. of this code had such student been included in the county's prior year's net enrollment;

(2) If a student in grades kindergarten through 12 transfers after the second month of any school year, the county to which the student transferred may issue, in the following fiscal year, an invoice to the county from which the student transferred for the amount the county now responsible for educating the student otherwise would have received under aid to exceptional students had such student been included in the county's prior year's child count enrollment;

(3) If a student in prekindergarten transfers after the child count of exceptional students is certified for any school year, the county to which the student transferred may issue, in the

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following fiscal year, an invoice to the county from which the student transferred for the amount the county now responsible for educating the student otherwise would have received under aid to exceptional students had such student been included in the county's prior year's child count enrollment; and

(4) The county from which the student transferred shall reimburse the county to which the student transferred for the amount of the invoice.

(f) Transfers between states. — Transfer of students from this state to another state shall be upon such terms, including payment of tuition, as shall be mutually agreed upon by the board of the receiving county and the authorities of the school or district from which the transfer is made.

(g) No parent, guardian, or person acting as parent or guardian is required to pay for the transfer of a student or for the tuition of the student after the transfer when the transfer is carried out under the terms of this section.

(h) Nothing in this section supersedes the eligibility requirements for participation in extra-curricular activities established by the Secondary School Activities Commission.

(i) Each county board shall report annually to the State Department of Education the number of resident and nonresident student transfers approved by the county board for the preceding school calendar year, as well as the number of resident and nonresident student transfer applications denied and the reasons for those denials. On or before June 30 of each year, the State Department of Education shall compile the information from the county boards and report the information to the Legislative Oversight Commission on Education Accountability. Information regarding the annual number of resident and nonresident student transfer approvals and denials shall also be made available on each county board's website.

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§18-5-16a. Authorization to transfer pupils from one district to another; mandatory transfer; payment of tuition; net enrollment.

(a) The provisions of this section expire effective July 1, 2020: Provided, That any agreement made pursuant to this section prior to July 1, 2020, shall remain in effect.

(b) Whenever, in the opinion of the board of education of any county, the education and welfare of a pupil will be enhanced, the board of education of such county shall have the authority to transfer any such pupil or pupils on a part-time or full-time basis from one school district to another school district within the state: Provided, That the boards of education of both the transferor and the transferee districts agree to the same by official action of both boards as reflected in the minutes of their respective meetings.

(c) Any pupil attending a school in a district of this state adjacent to the district of residence during the school year 1984-1985, is authorized to continue such attendance in the adjacent district, and, upon written request therefor by the parent or guardian, any person who is entitled to attend the public schools of this state and who resides in the same household and is a member of the immediate family of such pupil is authorized to enroll in such adjacent district. The transferor and transferee school districts shall effectuate any transfer herein authorized in accordance with the provisions of this section.

(d) Whenever a pupil is transferred from one school district to another district on a full-time or part-time basis, the board of education of the school district in which the pupil is a bona fide resident shall pay to the board of education of the school district to which the pupil is transferred a tuition that is agreed upon by both such boards. Tuition for each full-time pupil shall not exceed the difference between the state aid per pupil received by the county to which the pupil is transferred and the county cost per pupil in the county to which said pupil is transferred.

(e) For purposes of net enrollment as defined in §18-9A-2 of this code: (1) Whenever a pupil is transferred on a full-time basis from one school district to another district pursuant to the provisions of this section, the county to which the pupil is transferred shall include such pupil in its net enrollment; and (2) whenever a pupil is transferred on a part-time basis from one school district to another school district pursuant to the provisions of this section, the county in which the student is a bona fide resident shall count the pupil in its net enrollment.

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§18-5-16b.

Expired

WV Legislature

§18-5-17. Compulsory preenrollment hearing, vision and speech and language testing; developmental screening for children under compulsory school age.

(a) All children entering public school for the first time in this state shall be given prior to their enrollments screening tests to determine if they might have vision or hearing impairments or speech and language disabilities. County boards of education may provide, upon request, such screening tests to all children entering nonpublic school. County boards of education shall conduct these screening tests for all children through the use of trained personnel. Parents or guardians of children who are found to have vision or hearing impairments or speech and language disabilities shall be notified of the results of these tests and advised that further diagnosis and treatment of the impairments or disabilities by qualified professional personnel is recommended.

(b) County boards of education shall provide or contract with appropriate health agencies to provide, upon the request of a parent or guardian residing within the district, developmental screening for their child or children under compulsory school attendance age: Provided, That a county board is not required to provide such screening to the same child more than once in any one school year. Developmental screening is the process of measuring the progress of children to determine if there are problems or potential problems or advanced abilities in the areas of understanding language, perception through sight, perception through hearing, motor development and hand-eye coordination, health, and psycho-social or physical development. The boards shall coordinate the provision of developmental screening with other public agencies and the interagency plan for exceptional children under section eight, article twenty of this chapter to avoid the duplication of services and to facilitate the referral of children and their parents or guardians who need other services. The county boards shall provide notice to the public of the availability of these services.

(c) The state Board of Education is hereby authorized to promulgate rules consistent with this section. The state superintendent is directed to apply for federal funds, if available, for the implementation of the requirements of this section.

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§18-5-18. Kindergarten programs.

(a) County boards shall provide kindergarten programs for all children who have attained the age of five prior to September 1 of the school year in which the pupil enters the kindergarten program and may, pursuant to the provisions of section forty-four of this article, establish kindergarten programs designed for children below the age of five. The programs for children who shall have attained the age of five shall be full-day everyday programs.

(b) Beginning in the school year 2019-2020, county boards shall provide kindergarten programs for all children who have attained the age of five prior to July 1 of the school year in which the pupil enters the kindergarten program and may, pursuant to the provisions of section forty-four of this article, establish kindergarten programs designed for children below the age of five. The programs for children who shall have attained the age of five shall be full-day everyday programs.

(c) Persons employed as kindergarten teachers, as distinguished from paraprofessional personnel, shall be required to hold a certificate valid for teaching at the assigned level as prescribed by rules established by the state board. The state board shall establish the minimum requirements for all paraprofessional personnel employed in kindergarten programs established pursuant to the provisions of this section and no such paraprofessional personnel may be employed in any kindergarten program unless he or she meets the minimum requirements. Beginning July 1, 2014, any person previously employed as an aide in a kindergarten program and who is employed in the same capacity on and after that date and any new person employed in that capacity in a kindergarten program on and after that date shall hold the position of aide and either Early Childhood Classroom Assistant Teacher I, Early Childhood Classroom Assistant Teacher II or Early Childhood Classroom Assistant Teacher III. Any person employed as an aide in a kindergarten program that is eligible for full retirement benefits before July 1, 2020, may remain employed as an aide in that position and shall be granted an Early Childhood Classroom Assistant Teacher permanent authorization by the state superintendent pursuant to section two-a, article three, chapter eighteen-a of this code.

(d) The state board, with the advice of the state superintendent, shall establish and prescribe guidelines and criteria relating to the establishment, operation and successful completion of kindergarten programs in accordance with the other provisions of this section. Guidelines and criteria so established and prescribed also are intended to serve for the establishment and operation of nonpublic kindergarten programs and shall be used for the evaluation and approval of those programs by the state superintendent, provided application for the evaluation and approval is made in writing by proper authorities in control of the programs. The state superintendent, annually, shall publish a list of nonpublic kindergarten programs, including Montessori kindergartens that have been approved in accordance with the provisions of this section. Montessori kindergartens established and operated in accordance with usual and customary practices for the use of the Montessori method which have teachers who have training or experience, regardless of additional certification, in the use of

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the Montessori method of instruction for kindergartens shall be considered to be approved.

(e) Pursuant to the guidelines and criteria, and only pursuant to the guidelines and criteria, the county boards may establish programs taking kindergarten to the homes of the children involved, using educational television, paraprofessional personnel in addition to and to supplement regularly certified teachers, mobile or permanent classrooms and other means developed to best carry kindergarten to the child in its home and enlist the aid and involvement of its parent or parents in presenting the program to the child; or may develop programs of a more formal kindergarten type, in existing school buildings, or both, as the county board may determine, taking into consideration the cost, the terrain, the existing available facilities, the distances each child may be required to travel, the time each child may be required to be away from home, the child's health, the involvement of parents and other factors as each county board may find pertinent. The determinations by any county board are final and conclusive.

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§18-5-18a. Maximum teacher-pupil ratio.

(a) County boards of education shall provide sufficient personnel, equipment, and facilities as will ensure that each classroom, or classrooms having two or more grades that include one or more of the kindergarten through sixth grades shall not have more pupils for each teacher as follows, unless the state superintendent has excepted a specific classroom upon application therefor by a county board as provided in this section:

(1) For kindergarten, not more than 20 pupils for each teacher and one early childhood classroom assistant teacher or aide in classrooms with more than 10 pupils;

(2) For first, second, and third grades, not more than 25 pupils for each teacher and one early childhood classroom assistant teacher, aide or paraprofessional in classrooms with more than 12 pupils: *Provided*, That the early childhood classroom assistant teacher/aide/paraprofessional requirement for classrooms with more than 12 pupils shall be effective beginning the 2023-2024 school year, for first grade classrooms; shall be effective beginning the 2024-2025 school year, for second grade classrooms; and shall be effective beginning the 2025-2026 school year, for third grade classrooms: *Provided, however*, That if all grade level classrooms are already being served by an early childhood classroom assistant teacher/aide/paraprofessional by the school year required, the county board has the discretion to add the assistant teachers/aides/paraprofessionals in first, second, and third grade classrooms of the greatest need beginning July 1, 2023, and completing full implementation by July 1, 2026; and

(3) For grades four, five, and six, not more than 25 pupils for each teacher.

(b) County boards may satisfy the requirements of subsection (a) of this section by employing a full-time interventionist instead of an early childhood assistant teacher, aide, or paraprofessional, subject to the following:

(1) A full-time interventionist hired pursuant to this subsection and assigned to up to two classrooms satisfies the requirements of subsection (a) of this section for both classrooms: *Provided*, That this subdivision does not apply to kindergarten and first grade classrooms and notwithstanding subdivision (2) of this subsection or any other provision of code to the contrary, any early childhood assistant teacher, aide, paraprofessional, or interventionist assigned to a kindergarten or first grade classroom only satisfies the requirements of subsection (a) of this section if the assignment to that classroom is full-time;

(2) If no full-time interventionist is available, a county board may satisfy the requirements of subsection (a) of this section by employing a part-time interventionist. The part-time interventionist may only be assigned to one classroom for the purposes of satisfying the requirements of subsection (a) of this section; and

(3) County boards are not required to employ an interventionist even if there are an insufficient number of early childhood assistant teachers, aides, and paraprofessionals

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available to fill all the positions required by subsection (a) of this section.

(c) County school boards may not maintain a greater number of classrooms having two or more grades that include one or more of the grade levels referred to in this section than were in existence in said county as of January 1, 1983.

(d) The state superintendent is authorized, consistent with sound educational policy, to:

(1) Permit on a statewide basis, in grades four through six, more than 25 pupils per teacher in a classroom for the purposes of instruction in physical education; and

(2) Permit more than 20 pupils per teacher in a specific kindergarten classroom and 25 pupils per teacher in a specific classroom in grades four through six during a school year in the event of extraordinary circumstances as determined by the state superintendent after application by a county board of education.

(e) The state board shall establish guidelines for the exceptions authorized in this section, but in no event shall the superintendent except classrooms having more than three pupils above the pupil-teacher ratio as set forth in this section.

(f) The requirement for approval of an exception to exceed the 20 pupils per kindergarten teacher per session limit or the 25 pupils per teacher limit in grades four through six is waived in schools where the schoolwide pupil-teacher ratio is 25 or less in grades four through six: *Provided*, That a teacher shall not have more than three pupils above the teacher/pupil ratio as set forth in this section. Any kindergarten teacher who has more than 20 pupils per session and any classroom teacher of grades four through six who has more than 25 pupils, shall be paid additional compensation based on the affected classroom teacher's average daily salary divided by 20 for kindergarten teachers, or 25 for teachers of grades four through six, for every day times the number of additional pupils enrolled up to the maximum pupils permitted in the teacher's classroom. All such additional compensation shall be paid from county funds exclusively.

Notwithstanding any other provision of this section to the contrary, commencing with the school year beginning on July 1, 1996, a teacher in grades one, two, or three, or classrooms having two or more such grade levels, shall not have any pupils above the teacher/pupil ratio as set forth in this section.

(g) No provision of this section is intended to limit the number of pupils per teacher in a classroom for the purpose of instruction in choral, band, or orchestra music.

(h) Each school principal shall assign students equitably among the classroom teachers, taking into consideration reasonable differences due to subject areas and/or grade levels.

(i) The state board shall collect from each county board of education information on class size and the number of pupils per teacher for all classes in grades seven through 12. The state board shall report such information to the Legislative Oversight Commission on

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Education Accountability before January 1, of each year.

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§18-5-18b. School counselors in public schools.

(a) A school counselor means a professional educator who holds a valid school counselor's certificate in accordance with §18A-1-1 of this code.

(b) Each county board shall provide counseling services for each pupil enrolled in the public schools of the county.

(c) The school counselor shall work with individual pupils and groups of pupils in providing developmental, preventive and remedial guidance and counseling programs to meet academic, social, emotional, and physical needs; including programs to identify and address the problem of potential school dropouts. The school counselor also may provide consultant services for parents, teachers, and administrators and may use outside referral services, when appropriate, if no additional cost is incurred by the county board.

(d) The state board may adopt rules consistent with the provisions of this section that define the role of a school counselor based on the "National Standards for School Counseling Programs" of the American School Counselor Association. A school counselor is authorized to perform such services as are not inconsistent with the provisions of the rule as adopted by the state board. To the extent that any funds are made available for this purpose, county boards shall provide training for counselors and administrators to implement the rule as adopted by the state board.

(e) Each county board shall develop a comprehensive drop-out prevention program utilizing the expertise of school counselors and any other appropriate resources available.

(f) School counselors shall be full-time professional personnel, shall spend at least 80 percent of work time in a direct counseling relationship with pupils, and shall devote no more than 20 percent of the workday to administrative activities: *Provided*, That such activities are directly related to their counseling duties: *Provided further*, That school counselors may not perform the following duties without a written agreement:

(1) Administering cognitive, aptitude, and achievement testing programs: *Provided*, That school counselors may administer make up tests and any tests that are required for virtual students, should no other person be available to administer the test;

(2) Routinely signing excuses for students who are tardy or absent;

(3) Performing disciplinary actions or assigning discipline consequences;

(4) Routinely covering classes when teachers are absent or to create teacher planning time;

(5) Maintaining student records: *Provided*, That school counselors may have access to student records;

(6) Computing grade-point averages: *Provided*, That school counselors may compute grade-

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point averages for the purpose of determining a student's eligibility for scholarships or post-secondary goals;

(7) Routinely supervising classrooms or common areas;

(8) Keeping clerical records: *Provided*, That school counselors may access clerical records;

(9) Coordinating Individual Education Plans: *Provided*, That this does not preclude school counselors from otherwise participating in Individual Education Plans when appropriate;

(10) Coordinating 504 Plans: *Provided*, That this does not preclude school counselors from otherwise participating in 504 Plans when appropriate; and

(11) Coordinating Student Assistance Teams: *Provided*, That this does not preclude school counselors from otherwise participating in Student Study Teams when appropriate.

(g) Beginning with the 2024—25 school year, school counselors shall participate in the training set forth below.

(1) At least once every two years, school counselors serving students in grades Pre-K through 12 shall participate in the School Counselors Conference, which shall address the following components:

(A) Career Counseling and Life Planning;

(B) Career awareness;

(C) Career and life planning;

(D) Career and life success;

(E) Opportunities with Career Technical Education available in West Virginia;

(F) Post secondary options;

(G) Academic Counseling and Personalized Planning;

(H) Academic motivation;

(I) Goal setting;

(J) Academic scheduling;

(K) Personalized Education Plans;

(L) Dual credit;

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(M) Learning skills;

(N) Personal and Social Counseling;

(O) Decision making;

(P) Personal responsibility;

(Q) Conflict resolution; and

(R) Prevention.

(2) Every two years, school counselors serving students in grades seven through 12 shall receive training regarding building and trades and apprenticeship programs available to students in West Virginia. This training shall be administered by the department of education and provided at no cost to the counselors.

(h) Beginning August 1, 2025, each county shall employ two school counselors to each 1000 students to net enrollment: *Provided*, That this requirement may not be construed to increase the number of eligible professional student support personnel positions to each 1,000 students in net enrollment for which an allowance is required under subdivision (1), subsection (b) of §18-9A-8 of this code. The counties may follow the ratio of one counselor to every 400-450 students in elementary and middle school and one counselor to every 250-300 students in high school. (i) Nothing in this section prohibits a county board from exceeding the provisions of this section, or requires any specific level of funding by the Legislature.

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§18-5-18c. Early childhood programs; eligibility and standards for placement; guidelines and criteria.

County boards shall provide by the school year one thousand nine hundred eighty-nine--ninety, and continuing thereafter, programs and instructional procedures that recognize the variability in achievement, development, and background experience of the early childhood years.

Such programs and instructional procedures may include, but shall not be limited to, developmental kindergarten, developmental first grade, early first grade, transitional first grade, and/or developmental second grade.

Placement of children in any of the aforementioned early childhood programs shall be based on the judgment of the teacher and other professional personnel after consultation with the parent or guardian and in accordance with the evaluation model for children as set forth in section two, article two-e of this chapter. Counties may designate one or more classes or schools for such early childhood programs and may transport children to these schools.

Provisions shall be made for early childhood teachers to communicate on a regular basis with other teachers, professional personnel and representatives of other appropriate agencies.

The state board shall establish and prescribe guidelines and criteria relating to the establishment, operation and successful completion of early childhood programs in accordance with the other provisions of this section and high quality educational programs.

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§18-5-18d.

Repealed.

Acts, 2007 Reg. Sess., Ch. 9.

WV Legislature

§18-5-18e. Study of limits on the number of pupils per teacher in a classroom in elementary and middle schools.

[Repealed.]

WV Legislature

§18-5-19. Night schools and other school extension activities; use of school property for public meetings, etc.

County boards may establish and maintain evening classes or night schools, continuation or part-time day schools, alternative schools and vocational schools, wherever practicable to do so, and shall admit adult persons and all other persons, including persons of foreign birth. County boards may admit school-age children and youth to these classes or schools under the circumstances prescribed by a State Board of Education policy governing alternative education programs. County boards may use school funds for the financial support of such schools and to use the schoolhouses and their equipment for these purposes. Any such classes of schools shall be conducted in accordance with the rules of the state board.

County boards may provide for the free, comfortable and convenient use of any school property to promote and facilitate frequent meetings and associations of the people for discussion, study, recreation and other community activities, and may secure, assemble and house material for use in the study of farm, home and community problems, and may provide facilities for the dissemination of information useful on the farm, in the home or in the community.

In addition to the liability protection for organized use outlined in section nineteen-d of this article, county boards are not liable for any loss or injury arising from the use of school property made available for unorganized recreation. County boards are liable for their acts or omissions which constitute gross negligence or willful and wanton conduct which is the proximate cause of injury or property damage.

WV Legislature

§18-5-19a. Special classes for war veterans; authority of county boards to contract therefor and to receive assistance.

The Board of Education of any county shall have authority to enter into contracts of agreement with authorized officials of the "war Veterans' Administration" for the education of veterans in special classes of the elementary and high schools of the county. By reason of such contracts, the county board of education shall have authority to receive tuitions, fees and other forms of assistance that may now or later be made available by act of the Congress for the education of war veterans. Any funds so accruing to such board from tuitions, fees or other forms of financial assistance shall be credited to the current expense fund of the county board of education and reported each year as of June thirtieth in the manner required for other financial reports of the board.

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§18-5-19b. Adult education classes and programs; tuition and student assistance loans; authority of county boards to contract with federal agencies.

(a) The Board of Education of any county shall have authority to provide classes and programs for adult education and to charge tuition for members of such classes and/or programs, such tuitions not to exceed in any case the actual cost of operation of such classes and/or programs. The county board of education shall also have authority to enter into contracts of agreement with authorized agencies of the federal government for the education of adults and to provide, assemble and house materials and equipment for efficient instruction in any and all such classes and/or programs, contract for instruction for the term of the class and/or program to be offered, and to use school facilities by way of buildings and equipment under the control of said board. Any funds accruing from such tuitions shall be credited to adult education in the current expense fund of the county board of education and reported each year as of June thirtieth in the manner required for other financial reports of the board.

(b) Student assistance loans for attendance in adult education classes and/or programs shall be available in accordance with the applicable provisions of article twenty-two-d of this chapter to an eligible student pursuant to regulations promulgated by the state Board of Education, who shall administer such loan program as it relates to adult education classes and/or programs, and who shall stand in the place of the board of regents for purposes of loans received pursuant to this section. The limitations on investment provided for in section four of said article twenty-two-d shall remain in full force and effect.

State board regulations shall be in accordance with the provisions of article twenty-two-d to the extent practicable, except that the regulations shall provide for the following:

(1) The eligible student must be a high school graduate or equivalent or must be eighteen years of age;

(2) Maximum loan amounts and the maximum number of loans received by any eligible student shall be prescribed by regulation of the state board;

(3) The loan agreement may provide for the repayment of interest only until such time as the eligible student is no longer enrolled in the approved adult education class and/or program. However, in all cases, repayment of the principal shall commence at such time as the eligible student is no longer enrolled in the adult education class or program for which a loan or loans were received pursuant to this section: Provided, That an eligible student who enrolls in an institution of higher education subsequent to such adult education enrollment may defer such payment until completion or withdrawal from the institution of higher education; and

(4) Notwithstanding the time in which the eligible lending institution may provide for the repayment of the loan, the linked deposit shall be terminated at the maturity date next succeeding complete repayment or five years after cessation of enrollment, whichever is

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sooner.

The state board is not liable to any eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible student.

(c) The Board of Education of any county shall have authority to enter into contracts of agreement with temporary teachers for the purpose of teaching adult education classes or programs which do not exceed ninety days or seven hundred twenty hours. The appointment of a temporary teacher is a contract of agreement for the duration of the class or program, and the temporary teacher shall not accrue benefits of retirement, personal leave, medical or life insurance, seniority rights, or any other provisions relating to salaries, wages and benefits pursuant to article four, chapter eighteen-a of this code: Provided, That such temporary appointment does not preclude the benefits mandated by federal law, workers' compensation and liability insurance coverage for the duration of the class or program.

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§18-5-19c. Division of Technical and Adult Education Services.

(a) The State Superintendent of Schools has authority to establish in the state Department of Education a Division of Technical and Adult Education Services, and to provide for suitable coordination and supervision of the educational programs established in sections nineteen-a and nineteen-b of this article. All programs established under those sections are under rules of the state Board of Education.

(b) The Legislature finds that:

(1) The General Educational Development (GED) exam is an implement for success that can transform the future of a graduate;

(2) For an individual who has not attained a high school diploma, achieving a High School Equivalency Diploma can increase employment opportunities and earning potential;

(3) Individuals who will benefit from a High School Equivalency Diploma often lack the credentials necessary for employment, and therefore lack the resources to afford the costs of the GED exam; and

(4) Many individuals for whom the GED exam is unattainable are likely to remain in a state of poverty.

(c) The state board shall develop and administer a program to provide the GED exam fee for an eligible individual pursuing a High School Equivalency Diploma. The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to implement the program.

(1) The rule shall provide for eligibility requirements as follows:

(A) Successful completion of a GED preparation program;

(B) Successful completion of the GED Official Practice Test;

(C) Standards for measuring successful completion of the program and test required by this subdivision;

(D) GED exam registration with a GED testing center that is approved by the state board; and

(E) Any other requirements established by the state board.

(2) The state board shall provide the GED exam fee directly to the GED testing center.

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§18-5-19d. Conditional immunity from liability for community activities; liability insurance; authority of State Board of Risk and Insurance Management.

(a)(1) If the requirements of this subsection are met, the board of education is not liable under any theory of vicarious or imputed liability for the acts or omissions of:

(A) Any person, organization or association using school property for a community activity described in section nineteen of this article;

(B) Any member, employee or agent of such person, organization or association; or

(C) Any person attending or participating in the community activity other than an employee of the board while acting within the scope of employment.

(2) The limitation of liability extended the board of education pursuant to this subsection does not apply unless:

(A) The person, organization or association using school property for a community activity has in effect, at the time of the act or omission described in subdivision (1) of this subsection, a contract of insurance which provides general comprehensive liability coverage of any claim, demand, action, suit or judgment by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person arising out of the use of school property for a community activity described in subdivision (1) of this subsection;

(B) The contract of insurance provides for the payment of any attorney fees, court costs and other litigation expenses incurred by the board in connection with any claim, demand, action, suit or judgment arising from such alleged negligence or other act; and

(C) The insurance coverage is in the amounts specified in the provisions of section five-a, article twelve, chapter twenty-nine of this code.

(3)(A) The insurance described in subdivision (2) of this subsection may be obtained privately or may be obtained pursuant to the provisions of this subdivision. If requested by any person, organization or association seeking such insurance coverage, the State Board of Risk and Insurance Management is authorized to provide such insurance and to enter into any necessary contract of insurance to further the intent of this subdivision.

(B) Where provided by the State Board of Risk and Insurance Management, the cost of the insurance, as determined by the such board, shall be paid by the person, organization or association and may include administrative expenses. All funds received by such board shall be deposited with the West Virginia Board of Investments for investment purposes.

(C) The State Board of Risk and Insurance Management is hereby authorized and empowered to negotiate and effect settlement of any and all claims covered by the insurance provided by such board pursuant to this subdivision to the extent the board is authorized and empowered to negotiate and effect settlement of claims described in section five, article

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twelve, chapter twenty-nine of this code.

(4) As used in this subsection, "organization" or "association" means a bona fide, not for profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, eleemosynary, incorporated or unincorporated association or organization or a rescue unit or other similar volunteer community service organization or association, but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon.

(b) In addition to the liability protection for organized use outlined in this section, county boards are not liable for any loss or injury arising from the use of school property made available for unorganized recreation. County boards are liable for their acts or omissions which constitute gross negligence or willful and wanton conduct which is the proximate cause of injury or property damage.

(c) Nothing in this section shall affect the rights, duties, defenses, immunities or causes of action under other statutes or the common law of this state which may be applicable to boards of education.

WV Legislature

§18-5-19e. Computer science and cybersecurity instruction for adult learners.

(a) The State Superintendent of Schools, or designee, shall seek, apply for, and if received, administer, and distribute through the division of PK through 12 Adult Instruction & Career Engagement, any grants or other financial assistance that the Federal government and other public or private sources shall make available for purposes of providing computer science and cybersecurity instruction to adults.

(b) The State Superintendent of Schools, or designee, shall use or distribute any grants or other financial assistance received from the Federal government, and other public or private sources for purposes of providing computer science and cybersecurity instruction to adults, to school districts, public charter schools, area career and technology centers, job service and West Virginia Workforce centers, public libraries, adult education centers, and learning centers that qualify as non-profit entities under 26 U.S.C.S. §501(c)(3), not to exceed $300,000 per recipient. This shall occur on a biennium basis beginning on July 1, 2024, and ending June 30, 2026.

(c) School districts, public charter schools, public libraries, area career and technology centers, job service and West Virginia Workforce centers, adult education centers, and learning centers that qualify as non-profit entities under 26 U.S.C.S. §501(c)(3) shall use all or part of the grant money or financial assistance received to cover the expenditures, including instruction compensation, incurred in providing computer science and cybersecurity courses to adults.

(d) The State Superintendent of Schools shall have authority to provide for the suitable coordination and supervision necessary to implement the purposes of this section.

(e) All computer science and cybersecurity instruction for adult learners established under this section shall be under regulations of the State Department of Education.

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§18-5-19f. Adult education taskforce.

(a) The Legislature finds that:

(1) While adult learning centers are part of the West Virginia Department of Education, that department is not obligated to fund these adult learning centers;

(2) Funding for adult learning centers derives its income from many areas without any regularity;

(3) A taskforce to study and consider funding options, the existing funding sources, and the best approach to provide direct funding for the adult learning centers would stabilize the regularity of funding these centers.

(b) The State Superintendent of Schools shall establish in the West Virginia Department of Education a taskforce to consider options for direct funding of adult education learning centers.

(c) The taskforce shall include at a minimum the State Superintendent of Schools, or his or her designee, the head of the adult education learning centers, and geographically diverse representatives from the community, including, but not limited to, representation from business and the community college system, appointed by the State Superintendent of Schools, in consultation with the Chancellor for Community and Technical College Education.

(d) The State Superintendent of Schools shall determine the number of members of the taskforce and eligibility to serve.

(e) The meetings of the taskforce shall be open to the public and follow the Open Governmental Meetings Act.

(f) The taskforce shall be created and begin its meetings on or before July 1, 2024, and submit a report of recommendations to the Legislative Oversight Commission on Education Accountability by December 1, 2024.

(g) The provisions of the section shall sunset on December 31, 2025.

WV Legislature

§18-5-20. School libraries; librarian.

The board may provide libraries for its schools and may purchase books, bookcases, and other things necessary therefor, and shall pay the cost of such libraries out of school funds of the county. In connection with any such school library, the board may employ a full-time librarian or may require one of the teachers at the school to serve as a part-time librarian. Any such full-time librarian or any such teacher-librarian, who holds a degree in library science based upon the successful completion of a full year of graduate work at an institution qualified and approved to offer such degree, and who holds a collegiate elementary, first-class high school, or other certificate of equal rank, shall be paid the same salary as is prescribed by law for teachers holding a master's degree.

The board shall have authority to employ during the vacation period a librarian for any school having a library of one hundred or more volumes, and to pay such librarian out of the school funds of the county an amount to be determined by the board. Any librarian so appointed shall keep the library open at least one day a week, at which time the patrons and pupils of the school may draw books from the library under such rules and regulations for the care and return thereof as the board may prescribe.

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§18-5-21. Free textbooks.

The Board of Education of every county may purchase the necessary textbooks to be used in the free schools by the pupils thereof. All textbooks so purchased shall be kept in charge by the county superintendent and furnished to the pupils of the free schools of the county as hereinafter provided. All such books shall be furnished by the county board as prescribed by law, and purchased at the net wholesale price.

In such case, at the commencement of every term, the county superintendent shall deliver to the teachers of the various schools the textbooks necessary for the use of the several pupils enrolled therein for the ensuing term of school and shall take from them receipts showing the number and kind of textbooks so received. It shall be the duty of the teachers to take charge of such textbooks and to distribute them among the pupils of their schools as needed; and said teachers shall have and exercise general control of all such textbooks, and at the close of the school term, and before receiving an order for salary for the last month of such term, shall collect and gather together all textbooks so used and deliver them to the county superintendent.

If any of the textbooks delivered to any pupils shall be unnecessarily injured or destroyed, they shall be replaced by the pupils who injured or destroyed them.

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§18-5-21a. Textbooks to be furnished pupils whose parents are unable to provide same.

The Board of Education of every county shall provide the textbooks to be used in the free schools for the pupils whose parents, in the judgment of the board, are unable to provide the same; such textbooks shall be those adopted by the state Board of Education.

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§18-5-21b. Textbooks may be furnished to pupils in private schools whose parents are unable to provide same.

The Board of Education of every county, upon application of the proper authorities of any private school, may likewise provide state-adopted textbooks for use of the pupils enrolled therein whose parents, in the judgment of the board, are unable to provide same.

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§18-5-21c. Distribution of free textbook funds; determination of amount county shall receive.

In accordance with the provisions of this act the state Superintendent of Schools shall distribute among the several counties of the state each year such amounts of free textbook money as the Legislature may provide for such distribution. The amount of money that a county shall so receive shall be determined as follows:

Each county shall share in state aid for the purchase of state-adopted textbooks according to the ratio which its total net enrollment in public schools, grades one to eight inclusive, for the preceding school year, bears to the total net enrollment in public schools for the state as a whole, grades one to eight inclusive, for the preceding year.

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§18-5-21d. "Free textbook account"; use of surplus; order of preference in providing free textbooks; purchase of library books, supplementary materials, and used textbooks.

The money allocated to a county board of education under this act shall be kept by such county board in a separate account to be known as the "free textbook account" and may be used for no other purpose except as otherwise provided by this section. Any balances being held in the "textbook aid account," as provided by law, are by this act authorized and directed to be transferred to said "free textbook account" to be used in accordance with the provisions of this act.

After complying with sections twenty-one-a and twenty-one-b of this article, the county board of education shall use any proceeds remaining in the "free textbook account" for the purchase (including replacement and repair) of textbooks for all pupils enrolled in the public schools of the county, grades one to eight inclusive, who are not provided with free textbooks under the requirements of sections twenty-one-a and twenty-one-b of said article. Such textbooks shall be those adopted by the state Board of Education for the elementary schools of the state.

The order of preference used in providing free textbooks for such pupils shall be either by grade preference in accordance with the plan as stated in subsection one below, or by subject preference in accordance with the plan as stated in subsection two below. The county board of education shall be required to adopt the one of these plans considered preferable for the county, and shall so advise the state Superintendent of Schools in writing before the plan so chosen is made operative through the requisition or purchase of textbooks in accordance therewith.

(1) In furnishing free textbooks by grade preference, the order of such preference shall be to begin with grade one and to continue by consecutive grades to and including grade eight.

(2) In furnishing free textbooks by subject preference, the order of such preference shall be to begin with the lowest grade and to continue by consecutive grades through grade eight as follows: Reading, arithmetic, history, health and elementary science, music, English, geography, writing, spelling, civics: Provided, That the order of subject preference as specified in subsection two above may be changed with prior approval of the state Board of Education, upon written application of any county stating reasons for wishing to make such change.

In any county in which the provisions of sections twenty-one-a, twenty-one-b, and twenty-one-d of this article shall have been fully complied with, any proceeds yet available in the "free textbook account" shall be used for the purchase of approved library books and other supplementary materials for grades one to eight: Provided, That such purchase shall have the prior approval of the state Board of Education.

In providing free textbooks to pupils under the provisions of this act, the county board of

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education shall have authority to purchase state-adopted textbooks from pupils who own them, or from their parents, at a price commensurate with the usable value of said books at the time, but in no case to exceed one half the original purchase price of the textbook to the pupil as determined by reference to the official contract price entered into between the publisher and the state Board of Education at the time of adoption of said textbook. All such purchases shall conform to the order of preference, either by grade or by subject, adopted by the county board of education under the provisions of subsection one and two above of this section for furnishing free textbooks to the pupils of said county.

Nothing in this act shall be construed to prevent a county board of education from supplementing its "free textbook account" with county school funds available for that purpose and so approved in the annual school budget.

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§18-5-21e. Rules and regulations for care, distribution and use of free textbooks; reports by county boards; funds may be withheld from county for violation of rules.

The state Board of Education shall have authority to prescribe rules and regulations governing the care, distribution and use of free textbooks including their rebinding, reconditioning, replacement, return and storage, and such other measures as may be necessary for efficient and economical administration.

The state Board of Education is further authorized to prescribe and require reports to be made by the various county boards of education concerning the expenditures and distributions and conditions of inventories at such time and in such form as the board may require.

The State Superintendent of Schools is authorized to withhold the state allotment of free textbook money from any county for violation of the rules and regulations herein authorized.

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§18-5-22. Medical and dental inspection; school nurses; specialized health procedures; establishment of council of school nurses.

(a) County boards shall provide proper medical and dental inspections for all pupils attending the schools of their county and have the authority to take any other action necessary to protect the pupils from infectious diseases, including the authority to require from all school personnel employed in their county, certificates of good health and of physical fitness.

(b) Each county board shall employ full time at least one school nurse for every one thousand five hundred kindergarten through seventh grade pupils in net enrollment or major fraction thereof: Provided, That each county shall employ full time at least one school nurse: Provided, however, That a county board may contract with a public health department for services considered equivalent to those required by this section in accordance with a plan to be approved by the state board: Provided further, That the state board shall promulgate rules requiring the employment of school nurses in excess of the number required by this section to ensure adequate provision of services to severely handicapped pupils. An appropriation may be made to the state department to be distributed to county boards to support school health service needs that exceed the capacity of staff as mandated in this section. Each county board shall apply to the state superintendent for receipt of this funding in a manner set forth by the state superintendent that assesses and takes into account varying acuity levels of students with specialized health care needs.

(c) Any person employed as a school nurse must be a registered professional nurse properly licensed by the West Virginia Board of Examiners for Registered Professional Nurses in accordance with article seven, chapter thirty of this code.

(d) Specialized health procedures that require the skill, knowledge and judgment of a licensed health professional may be performed only by school nurses, other licensed school health care providers as provided in this section, or school employees who have been trained and retrained every two years who are subject to the supervision and approval by school nurses. After assessing the health status of the individual student, a school nurse, in collaboration with the student's physician, parents and, in some instances, an individualized education program team, may delegate certain health care procedures to a school employee who shall be trained pursuant to this section, considered competent, have consultation with, and be monitored or supervised by the school nurse: Provided, That nothing in this section prohibits any school employee from providing specialized health procedures or any other prudent action to aid any person who is in acute physical distress or requires emergency assistance. For the purposes of this section "specialized health procedures" means, but is not limited to, catheterization, suctioning of tracheostomy, naso-gastric tube feeding or gastrostomy tube feeding. "School employee" means "teachers" as defined in section one, article one of this chapter and "aides" as defined in section eight, article four, chapter eighteen-a of this code. Commencing with the school year beginning on July 1, 2002, "school employee" also means "secretary I", "secretary II" and "secretary III" as defined in section eight, article four, chapter eighteen-a of this code: Provided, however, That a "secretary I",

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"secretary II" and "secretary III" shall be limited to the dispensing of medications.

(e) Any school service employee who elects, or is required by this section, to undergo training or retraining to provide, in the manner specified in this section, the specialized health care procedures for those students for which the selection has been approved by both the principal and the county board shall receive additional pay of at least one pay grade higher than the highest pay grade for which the employee is paid: Provided, That any training required in this section may be considered in lieu of required in-service training of the school employee and a school employee may not be required to elect to undergo the training or retraining: Provided, however, That commencing with July 1, 1989, any newly employed school employee in the field of special education is required to undergo the training and retraining as provided in this section: Provided further, That if an employee who holds a class title of an aide is employed in a school and the aide has received the training, pursuant to this section, then an employee in the field of special education is not required to perform the specialized health care procedures.

(f) Each county school nurse, as designated and defined by this section, shall perform a needs assessment. These nurses shall meet on the basis of the area served by their regional educational service agency, prepare recommendations and elect a representative to serve on the council of school nurses established under this section.

(g) There shall be a council of school nurses which shall be convened by the state Board of Education. This council shall prepare a procedural manual and shall provide recommendations regarding a training course to the Commissioner of the Bureau for Public Health who shall consult with the state Department of Education. The state board then has the authority to promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to implement the training and to create standards used by those school nurses and school employees performing specialized health procedures. The council shall meet every two years to review the certification and training program regarding school employees.

(h) The State Board of Education shall work in conjunction with county boards to provide training and retraining every two years as recommended by the Council of School Nurses and implemented by the rule promulgated by the state board.

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§18-5-22a. Policy for the administration of medications.

All county boards of education shall develop a specific medication administration policy which establishes the procedure to be followed for the administration of medication at each school.

No school employee shall be required to administer medications: Provided, That nothing herein shall prevent any school employee to elect to administer medication after receiving training as provided herein: Provided, however, That any school employee in the field of special education whose employment commenced on or after July 1, 1989, may be required to administer medications after receiving training as provided herein.

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§18-5-22b. Providing for self-administration of asthma medication; definitions; conditions; indemnity from liability; rules.

(a) For the purposes of this section, the following words have the meanings specified unless the context clearly indicates a different meaning:

(1) "Medication" means asthma medicine, prescribed by:

(A) A physician licensed to practice medicine in all its branches; or

(B) A physician assistant who has been delegated the authority to prescribe asthma medications by a supervising physician; or

(C) An advanced practice registered nurse who has a written collaborative agreement with a collaborating physician. Such agreement shall delegate the authority to prescribe the medications for a student that pertain to the student's asthma and that have an individual prescription label.

(2) "Self-administration" or "self-administer" means a student's discretionary use of prescribed asthma medication.

(b) A student enrolled in a public, private, parochial or denominational school located within this state may possess and self-administer asthma medication subject to the following conditions:

(1) The parents or guardians of the student have provided to the school:

(A) A written authorization for the self-administration of asthma medication; and

(B) A written statement from the physician or advanced practice registered nurse which contains the name, purpose, appropriate usage and dosage of the student's medication and the time or times at which, or the special circumstances under which, the medication is to be administered;

(2) The student has demonstrated the ability and understanding to self-administer asthma medication by:

(A) Passing an assessment by the school nurse evaluating the student's technique of self-administration and level of understanding of the appropriate use of the asthma medication; or

(B) In the case of nonpublic schools that do not have a school nurse, providing to the school from the student's physician or advanced practice registered nurse written verification that the student has passed such an assessment; and

(3) The parents or guardians of the student have acknowledged in writing that they have

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read and understand a notice provided by the county board or nonpublic school that:

(A) The school, county school board or nonpublic school and its employees and agents are exempt from any liability, except for willful and wanton conduct, as a result of any injury arising from the self-administration of asthma medication by the student; and

(B) The parents or guardians indemnify and hold harmless the school, the county board of education or nonpublic school and its employees or guardians and agents against any claims arising out of the self-administration of the medication by the student.

(c) The information provided to the school pursuant to subsection (b) of this section shall be kept on file in the office of the school nurse or, in the absence of a school nurse, in the office of the school administrator.

(d) Permission for a student to self-administer asthma medication is effective for the school year for which it is granted and shall be renewed each subsequent school year if the requirements of this section are met.

(e) Permission to self-administer medication may be revoked if the administrative head of the school finds that the student's technique of self-administration and understanding of the use of the asthma medication is not appropriate or is willfully disregarded.

(f) A student with asthma who has met the requirements of this section may possess and use asthma medication:

(1) In school;

(2) At a school-sponsored activity;

(3) Under the supervision of school personnel; or

(4) Before or after normal school activities, such as before school or after school care on school operated property.

(g) The state board shall promulgate rules necessary to effectuate the provisions of this section in accordance with the provisions of article three-b, chapter twenty-nine-a of this code.

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§18-5-22c. Providing for the maintenance and use of epinephrine auto-injectors; administration of injections; notice; indemnity from liability; rules.

(a) A public, private, parochial or denominational school located within this state may possess and maintain at the school a supply of epinephrine auto-injectors for use in emergency medical care or treatment for an anaphylactic reaction. A prior diagnosis for a student or school personnel requiring the use of epinephrine auto-injectors is not necessary to permit the school to stock epinephrine auto-injectors. Epinephrine auto-injectors shall be maintained by the school in a secure location which is only accessible by medical personnel and authorized nonmedical personnel and not by students.

(b) An allopathic physician licensed to practice pursuant to the provisions of article three, chapter thirty of this code or an osteopathic physician licensed to practice pursuant to the provisions of article fourteen, chapter thirty of this code may prescribe within the course of his or her professional practice standing orders and protocols for use when necessary by a school which wishes to maintain epinephrine auto-injector pursuant to the provisions of this section.

(c) A school nurse, as set forth in section twenty-two of this article, may administer an epinephrine auto-injector to a student or school personnel during regular school hours or at a school function when the school nurse medically believes the individual is experiencing an anaphylactic reaction. A school nurse may use the school supply of epinephrine auto-injectors for a student or school personnel authorized to self-administer that meet the requirements of a prescription on file with the school.

(d) Nonmedical school personnel who have been trained in the administration of an epinephrine auto-injector and who have been designated and authorized by the school or county board to administer the epinephrine auto-injector are authorized to administer an epinephrine auto-injector to a student or school personnel during regular school hours or at a school function when the authorized and designated nonmedical school personnel reasonably believes, based upon their training, that the individual is experiencing an anaphylactic reaction. Nonmedical school personnel may use the school supply of epinephrine auto-injectors for a student or school personnel authorized to self-administer that meet the requirements of a prescription on file with the school.

(e) School transportation employees, including bus drivers, who have been trained in the administration of an epinephrine auto-injector and who have been designated and authorized by the school or county board to administer an epinephrine auto-injector may administer an epinephrine auto-injector to a student or school personnel during transportation to or from a school function when the school transportation employee reasonably believes, based upon his or her training, that the individual is experiencing an anaphylactic reaction. A school transportation employee may use the individual's personal supply of epinephrine auto-injectors or the school's supply of epinephrine auto-injectors for a student or school personnel authorized to self-administer that meet the requirements of a prescription on file with the school: Provided, That a school transportation employee shall defer to an individual

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possessing a higher degree of medical training or the parent of the child experiencing an anaphylactic reaction, if either are present at the time of the reaction; Provided, however, That the school transportation employee, trained and authorized to administer epinephrine auto-injectors, is not subject to the terms of section twenty-two of this article.

(f) Prior notice to the parents of a student of the administration of the epinephrine auto-injector is not required. Immediately following the administration of the epinephrine auto-injector, the school shall provide notice to the parent of a student who received an auto-injection.

(g) A school nurse, a trained school transportation employee, or trained and authorized nonmedical school personnel who administer an epinephrine auto-injection to a student or to school personnel as provided in this section is immune from liability for any civil action arising out of an act or omission resulting from the administration of the epinephrine auto-injection unless the act or omission was the result of the school nurse, school transportation employee, or trained and authorized nonmedical school personnel's gross negligence or willful misconduct.

(h) For the purposes of this section, all county boards of education may participate in free or discounted drug programs from pharmaceutical manufacturers to provide epinephrine auto-injectors to schools in their counties which choose to stock auto-injectors.

(i) All county boards of education are required to collect and compile aggregate data on incidents of anaphylactic reactions resulting in the administration of school maintained epinephrine auto-injectors in their county during a school year and forward the data to the state superintendent of schools. The state superintendent of schools shall prepare an annual report to be presented to the Joint Committee on Government and Finance as set forth in article three, chapter four of this code, by December 31 of each year.

(j) The State Board of Education, as defined in article two of this chapter, shall consult with the state health officer, as defined in section four, article three, chapter thirty of this code, and promulgate rules necessary to effectuate the provisions of this section in accordance with the provisions of article three-b, chapter twenty-nine-a of this code. The rules shall provide, at a minimum, for:

(1) The criteria for selection and minimum requirements of nonmedical school personnel and school transportation employees who may administer epinephrine auto-injectors following the necessary training;

(2) The training requirements necessary for nonmedical school personnel and school transportation employees to be authorized to administer an epinephrine auto-injection;

(3) Training on anaphylaxis and allergy awareness for food service workers in the school system, if easily available locally;

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(4) Storage requirements for maintaining the epinephrine auto-injectors within the schools;

(5) Comprehensive notice requirements to the parents of a student who was administered a school maintained epinephrine auto-injection including who administered the injection, the rational for administering the injection, the approximate time of the injection and any other necessary elements to make the student's parents fully aware of the circumstances surrounding the administration of the injection;

(6) Any and all necessary documentation to be kept and maintained regarding receipt, inventory, storage and usage of all epinephrine auto-injectors;

(7) Detailed reporting requirements for county boards of education on incidents of use of school maintained epinephrine auto-injectors during a school year; and

(8) Any other requirements necessary to fully implement this section.

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§18-5-22d. Providing for the maintenance and use of opioid antagonist; administration; notice; indemnity from liability; rules.

(a) A public, private, parochial or denominational school located within this state may possess and maintain at the school a supply of an opioid antagonist for use in emergency medical care or treatment for an adverse opioid event. Opioid antagonists shall be maintained by the school in a secure location which is only accessible by medical personnel and authorized nonmedical personnel and not by students.

(b) A school nurse, as set forth in section twenty-two of this article, is authorized to administer an opioid antagonist to a student, school personnel or a person during regular school hours, at a school function, or at an event on school property when the school nurse medically believes the individual is experiencing an adverse opioid event.

(c) Nonmedical school personnel who have been trained in the administration of an opioid antagonist and who have been designated and authorized by the school to administer the opioid antagonist are authorized to administer an opioid antagonist to a student, school personnel or a person during regular school hours, at a school function, at an event on school property when the authorized and designated nonmedical school personnel reasonably believes, based upon their training, that the individual is experiencing an adverse opioid event.

(d) Prior notice to the parents of a student of the administration of the opioid antagonist is not required. Immediately following the administration of the opioid antagonist, the school shall provide notice to the parent of a student who received the opioid antagonist.

(e) A school nurse or trained and authorized nonmedical school personnel who administer an opioid antagonist as provided in this section is immune from liability for any civil action arising out of an act or omission resulting from the administration of the opioid antagonist unless the act or omission was the result of the school nurse or trained and authorized nonmedical school personnel's gross negligence or willful misconduct.

(f) All county boards of education are required to collect and compile aggregate data on adverse opioid events resulting in the administration of school maintained opioid antagonist in their county during a school year and forward the data to State Superintendent of Schools. The State Superintendent of Schools shall prepare an annual report to be presented to the Joint Committee on Government and Finance as set forth in article three, chapter four of this code, by December 31 of each year.

(g) Nothing in this section requires a public, private, parochial or denominational school located within this state to possess an opioid antagonist. A public, private, parochial or denominational school located within this state or a county board of education is immune from liability from any civil action arising from the public, private, parochial or denominational school located within this state not possessing an opioid antagonist in the school.

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(h) The State Board of Education, as defined in article two of this chapter, shall consult with the State Health Officer, as defined in section four, article three, chapter thirty of this code, and promulgate rules necessary to effectuate the provisions of this section in accordance with the provisions of article three-b, chapter twenty-nine-a of this code. The rules shall provide, at a minimum, for:

(1) The criteria for selection and minimum requirements of nonmedical school personnel who may administer opioid antagonist following the necessary training;

(2) The training requirements necessary for nonmedical school personnel to be authorized to administer an opioid antagonist;

(3) Training on what constitutes an adverse opioid event;

(4) Storage requirements for maintaining the opioid antagonist within the schools;

(5) Comprehensive notice requirements to the parents of a student who was administered a school maintained opioid antagonist including who administered the antagonist, the rational for administering the antagonist, the approximate time of the administration of the opioid antagonist and any other necessary elements to make the student's parents fully aware of the circumstances surrounding the administration of the antagonist;

(6) Any and all necessary documentation to be kept and maintained regarding receipt, inventory, storage and usage of all opioid antagonist;

(7) Detailed reporting requirements for county boards of education on incidents of use of school maintained opioid antagonist during a school year; and

(8) Any other requirements necessary to fully implement this section.

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§18-5-22e. Cardiac response plans.

(a) For the purposes of this section, the following terms are defined:

"Automated external defibrillator" means a lightweight, portable device that delivers an electric shock through the chest to the heart.

"Cardiac emergency response plan" or "the plan" means a written document that establishes the specific steps to reduce death from cardiac arrest.

"School" means any elementary or secondary school under the jurisdiction of a county board of education.

"Sudden cardiac arrest" means when the heart malfunctions and stops beating unexpectedly.

"Youth sports league team" means any team that is a member of an entity that organizes and establishes rules for competitive youth sports activities other than the West Virginia Secondary School Activities Commission or any other entity that organizes and establishes rules for competitive youth sports activities exclusively for teams that are created by and represent schools.

(b) A school shall develop a cardiac emergency response plan that provides for the following:

(1) A school with an athletic department or organized athletic program shall develop a cardiac emergency response plan that addresses the appropriate use of school personnel to respond to incidents involving an individual experiencing sudden cardiac arrest or a similar life-threatening emergency while attending or participating in an athletic practice or event while on school grounds and that is venue specific and practiced annually;

(2) A school shall develop a cardiac emergency response plan that addresses the appropriate use of school personnel to respond to incidents involving an individual experiencing sudden cardiac arrest or a similar life-threatening emergency while on school grounds outside of athletic events; and

(3) School staff trained in first-aid, CPR, and automated external defibrillator use that follow evidence-based guidelines including, but not limited to, licensed coaches, school nurses, and athletic trainers.

(c) Prior to the start of each athletic season, a school subject to this section shall hold an informational meeting for students, parents, guardians, or other persons having care or charge of a student, regarding the warning signs of sudden cardiac arrest for children of all ages.

(d) No student may participate in an athletic activity until the student has submitted to a designated school official, a form signed by the student and the parent, guardian, or other person having care or charge of the student, stating that the student and the parent,

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guardian, or other person having care or charge of the student have received and reviewed a copy of the cardiac emergency response plan developed by the school and posted on its webpage. A completed form shall be submitted each school year in which the student participates in an athletic activity.

(e) No individual may coach an athletic activity unless the individual has completed, on an annual basis, the sudden cardiac arrest training course approved by the Department of Education.

(f) A student shall not be allowed to participate in an athletic activity if either of the following is the case:

(1) The student is known to have exhibited syncope or fainting at any time prior to or following an athletic activity and has not been evaluated and cleared for return after exhibiting syncope or fainting; or

(2) The student experiences syncope or fainting while participating in, or immediately following, an athletic activity.

(g) If a student is not allowed to participate in or is removed from participation in an athletic activity under subsection (f) of this section, the student shall not be allowed to return to participation until the student is evaluated and cleared for return in writing by any of the following: (1) A physician authorized under §30-3-1 *et seq*. and §30-14-1 *et seq*. of this code;

(2) A certified nurse practitioner, or certified nurse specialist; or

(3) A physician assistant licensed under §30-3E-1 *et seq*. and §30-14A-1 *et seq*. of this code.

(h) School officials shall work directly with local emergency service providers to integrate the plan into the community's EMS responder protocols, which shall include, at a minimum, the following:

(1) Establishing a cardiac emergency response team;

(2) Activating the team in response to a sudden cardiac arrest;

(3) Implementing automated external defibrillator placement and routine maintenance within the school;

(4) Disseminating the plan throughout the school campus;

(5) Maintaining ongoing staff training in CPR/AED use;

(6) Plan for practicing skills learned;

(7) Integrating local EMS with the plan;

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(8) Ongoing and annual review and evaluation of the plan; and

(9) Appropriate automated external defibrillator placement.

(i) The State Board of Education may promulgate a legislative rule pursuant §29A-3B-1 *et seq*. of this code to ensure compliance with this section by county school boards.

(j) A county board of education may accept gifts, grants, and donations, including in-kind donations designated for the purchase of an automatic external defibrillator that meets the standards established by the United States Food and Drug Administration and for the costs incurred to inspect and maintain such device and train staff in the use of such device.

(k) Coaches and any other personnel supervising a youth sports league team that plays or practices on school grounds shall:

(1) Receive a copy of the cardiac emergency response plan;

(2) Locate and be aware of the automated external defibrillator placement on the school grounds;

(3) Maintain ongoing staff training in CPR/AED use; and

(4) Practice the skills learned.

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§18-5-23. Dental clinics and treatment.

The Board of Education in any school district or independent school district may, in its discretion, establish and maintain dental clinics or courses for teaching mouth hygiene; and may provide for and furnish treatment, if requested by the parent or guardian or deemed necessary by the board of Education, of children who have defective teeth or mouth conditions, and who shall be found by such Board of Education, or persons deputized for that purpose, to be unable otherwise to procure such treatment. Any expense incurred in connection therewith shall be paid out of the maintenance building fund of said district.

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§18-5-24. Purchase and display of United States flag; penalty for failure to display.

Boards of education shall purchase United States flags, four by six feet, of regulation bunting, for schools in its district, and require the flags to be displayed from the schools during the time the school is in session, except in inclement weather. The teacher, custodian or other person in charge of the building during the session is responsible for this flag being displayed at the school.

Any United States flag or flag of the State of West Virginia purchased out of the county board building fund must be manufactured in the United States.

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§18-5-25. Duties of superintendent as secretary of board.

The county superintendent as secretary of the board shall:

(1) Take the oath prescribed in the Constitution before performing any of the duties of his office;

(2) Attend all board meetings and record its official proceedings in a book kept for that purpose;

(3) Record the number of each order issued, the name of the payee, the purpose for which the order was issued, and the amount thereof. Every order shall be signed by the secretary and the president of the board;

(4) Care for and keep all papers belonging to the board, including evidences of title, contracts and obligations. They shall be kept in the secretary's office, accessibly arranged for reference;

(5) Record and keep on file all papers and documents pertaining to the business of the board;

(6) Keep the accounts and certify the reports required by law or requested by the board;

(7) Administer oaths to school officers, teachers and others making reports;

(8) Deliver in proper condition to his successor all records and property pertaining to his office; and

(9) Exercise such other duties as are prescribed by law.

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§18-5-26. School buildings as child care facilities.

The Legislature finds that school facilities are suitable for the provision of child day care and that such day care centers are needed by school personnel and other parents in the school and the community. Therefore, on or before April 1 of each year, each county board of education shall compile a list of facilities under the jurisdiction of the county board of education which would have space available for child day care for the benefit of school employees and others during the next ensuing school year. Such space shall be made available thereafter for use as a child day care facility upon the decision of the county board or upon written request therefor by a duly authorized representative of the local membership of a statewide association of school personnel, a parent-teacher association or any other entity recognized by the county board as suitably responsible for the implementation of such program in the county until such time as the space is deleted from the list for good cause shown.

The child care facility shall be operated in accordance with guidelines to be adopted by a committee appointed by the state superintendent which shall include representatives of the Legislature, the department of human services, at least two individuals active in statewide associations of school personnel, at least two individuals active in parent-teacher associations, and at least two county school administrators. Such guidelines may provide that the child day care facility be funded by the parents, the school personnel or parent-teacher associations, the county board of education or any combination of funding, including independent or federal funding sources. Within such guidelines and dependent upon adequate facilities and personnel, any county board of education may extend use of the child day care facility to other than school personnel.

Upon decision by the county board and in accordance with state law, any child care facility operated pursuant to the provisions of this section may be deemed operated by the county for purposes of liability and insurance. Personnel hired therefor may be deemed county school personnel or may be independent contractors pursuant to a management contract entered into between the county board and the child care providers. Any parent-teacher association, school personnel association or other entity involved in implementation of the program may also be party to such contract.

Schools need not be open for any other purpose for such day care centers to operate.

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§18-5-27. Requirement to publish curriculum online; parental right to inspect instructional materials; listing books on syllabus; right to file complaint.

(a) Each public school shall ensure that the adopted, up-to-date, county-adopted class curriculum is posted on the school's internet website at the beginning of each school year or no later than 30 business days after new or revised curriculum is adopted: *Provided*, That only students, parents, or guardians of the students shall be provided the login information to gain access to the online curriculum.

(1) For purposes of this section, class curriculum shall include curriculum created pursuant to §18-5A-6 of this code.

(2) The county board of education may provide access, or authorize access, to the county-adopted class curriculum.

(3) If the public school has no accessible website, the information shall be posted on the website of the appropriate county board of education, or website authorized by the state board of education.

(b) Each classroom teacher shall comply with the request of any parent, custodian, or guardian to inspect additional instructional materials adopted by the county board pursuant to §18-2A-10 of this code, supplementary instructional materials that were not adopted by the county board pursuant to §18-2A-10 of this code, and books in the classroom that are available for students to read, subject to the following:

(1) Only the parent, custodian, or guardian of a child enrolled in the class may make a request pursuant to this subsection;

(2) The classroom teacher may require that the parent, custodian, or guardian schedule an appointment in order to inspect the instructional materials. If the classroom teacher requires an appointment pursuant to this subdivision, the teacher shall schedule the appointment within 10 business days of the request of the parent, custodian, or guardian; and

(3) As part of the inspection and upon request of the parent, custodian, or guardian, the classroom teacher shall demonstrate how the instructional material relates to the content standards adopted by the state board.

(c) For any class in which reading a book or books will be required, the classroom teacher shall include the book or books on a class syllabus. The classroom teacher shall make the syllabus available to any parent, custodian, or guardian of a child enrolled in the class upon request.

(d) Any parent, custodian, or guardian may file a complaint with the county superintendent, on a form developed and provided by the county superintendent, if the classroom teacher fails to comply with any provision of this section. If the complaint is not resolved by the county superintendent within seven business days, the parent, custodian, or guardian may

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file a complaint with the State Superintendent or his or her designee. The State Superintendent shall make a form available for parents to file a complaint pursuant to this subsection.

(e) By September 1 of each year, each county superintendent shall report to the State Superintendent the number of complaints filed with him or her the previous school year. The State Superintendent, annually by October 1, shall report to the Legislative Oversight Commission on Education Accountability the number of complaints filed during the previous school year. The report shall include the number of complaints filed statewide and by county.

(f) For purposes of this section, "parent" means a parent who has some allocation of physical custody of the child or who has some share of joint decision-making authority for the child. For purposes of this section, "custodian" means a person who has some allocation of physical custody of the child or who has provided to the school written permission of a parent to have access to the information contemplated by this section. For purposes of this section, "guardian" means a person other than a parent or custodian who, pursuant to a court order, acts in loco parentis for the child.

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§18-5-28. Meetings among county boards of education to explore and discuss the feasibility of consolidating school districts or sharing certain services.

(a) When two or more county boards of education, in order to provide efficiencies and direct cost savings, elect, by majority vote, to explore and discuss with each other: (1) The idea of possibly consolidating their school districts into a new school district by act of the Legislature as provided by section six, article XII of the Constitution of West Virginia; or (2) possibly sharing administrative, coordinating or other county-level services and functions between or among them, the boards shall agree upon the call of a joint special meeting to be conducted wholly in public and in accordance with guidelines and topics of discussion specified in the call and in all public notices of the meeting. The topics shall include, but not be limited to, the extent to which existing laws appear to enable or complicate the consolidation of the school districts or the sharing of services and functions, as the case may be.

(b) The joint special meeting shall be facilitated by a party upon whom the participating boards agree. Within 21 days following the joint meeting, the facilitator shall prepare and deliver to the participating boards a detailed written report of the meeting's discussions and identifying any areas for further discussion or consideration by the boards. After reviewing the facilitator's report, each participating board shall determine by majority vote whether to accept it and whether the participating boards should meet again to discuss or consider the areas identified by the facilitator. Whether or not a board accepts the report, each participating board shall make the report available to the public.

(c) Upon majority vote by any participating board to accept the facilitator's report and to hold another joint special meeting of the participating boards to discuss or consider areas for further discussion or consideration identified in the facilitator's report, the participating boards shall attend another joint special meeting called for that purpose. The meeting shall be called, noticed, conducted, and facilitated as in the case of the initial joint special meeting. Topics of discussion shall include, but not be limited to, the extent to which existing laws appear to enable or complicate the consolidation of the school districts or the sharing of services and functions, as the case may be. Within 21 days following the joint meeting, the facilitator shall prepare and deliver to the participating boards a detailed written report of the meeting's discussions and identifying any areas for further discussion or consideration by the boards. After reviewing the facilitator's report, each participating board shall determine by majority vote whether to accept it and whether the participating boards should meet again to discuss or consider the areas identified by the facilitator. Whether or not a board accepts the report, each participating board shall make the report available to the public.

(d) The process set forth in subsection (c) of this section shall be repeated until 120 days have passed since the initial joint meeting or until the participating boards no longer wish to meet in joint session for those purposes, whichever first occurs. At that point the facilitator or other individual or committee designated by the participating boards shall promptly prepare and submit to the participating boards a full report of all meetings held under this

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section. The report shall identify the extent to which the participating boards think existing laws may enable or complicate the consolidation of the school districts or the sharing of services and functions, together with any suggestions of legislation to be considered by the Legislature. Upon approval by any of the participating boards by majority vote, the report shall be forwarded to the President of the Senate and the Speaker of the House of Delegates. If the Legislature elects to consolidate the participating county boards, it may consolidate the county boards as a pilot.

(e) Nothing in this section requires the consolidation of any school districts or that any of the participating boards share administrative, coordinating, or other county-level services and functions between or among them. Nor may this section be construed to rescind, without action by participating county boards, any existing agreements or arrangements for the sharing of such services and functions.

(f) The Legislature may incentivize county boards to explore and discuss the feasibility of consolidating school districts or sharing of services pursuant to this section.

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§18-5-29. Prohibiting instruction related to sexual orientation and gender identity and providing false information regarding student's gender identity or intention to transition; requiring certain student requests to be reported to parent.

(a) For the purposes of this section:

(1) "Biological sex" means the sex listed on a student's official birth certificate or certificate issued upon adoption if the certificate was issued at or near the time of the student's birth;

(2) "Custodian" means a person who has some allocation of physical custody of the child or who has provided to the school written permission of a parent to have access to the notices and information contemplated by this section;

(3) "Gender identity" means a category of social identity and refers to an individual's identification as male, female, or occasionally, some category other than male or female;

(4) "Guardian" means a person other than a parent or custodian who, pursuant to a court order, acts in loco parentis for the child;

(5) "Parent" means a parent who has some allocation of physical custody of the child or who has some share of joint decision-making authority for the child;

(6) "Sexual orientation" means an individual's actual or perceived orientation as heterosexual, homosexual, or bisexual; and

(7) "Transition to a gender" means the process in which a person goes from identifying with and living as a gender that corresponds to the person's biological sex to identifying with and living as a gender different from the person's biological sex and may involve social, legal, or physical changes.

(b) A public school may not provide instruction related to sexual orientation or gender identity: *Provided*, That the provisions of this subsection do not prohibit:

(1) A teacher responding to student questions during class regarding sexual orientation or gender identity as it relates to any topic of instruction;

(2) Referring to the sexual orientation or gender identity of any historic person, group, or public figure when such information provides necessary context in relation to any topic of instruction;

(3) Referring to sexual orientation and gender identity if necessary to address a disciplinary matter, such as an instance of bullying; or

(4) Referring to sexual orientation and gender identity as part of curriculum established in a dual enrollment or advanced placement course.

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(c) A public school and the county board employees assigned to the school may not knowingly give false or misleading information to the parent, custodian, or guardian of a student regarding the student's gender identity or intention to transition to a gender that is different than the student's biological sex.

(d) If a student enrolled in a public school requests from a person employed by the public school an accommodation that is intended to affirm a change in the student's gender identity that is different from a student's biological sex, including a request that the student be addressed using a name or pronoun that is different than the name or pronoun assigned to the student in the public school's registration forms or records for the purpose of affirming a change in the student's gender identity that is different than the student's biological sex, the public school employee shall report the student's request to an administrator employed by the county board and assigned to the school, and the administrator shall report the student's request to the student's parent, custodian, or guardian.

(e) A parent, custodian, or guardian who is impacted, or whose child is impacted, by a violation of this section may file a complaint pursuant to West Virginia Board of Education Policy 7211 (§126-188-1).

(f) School personnel found in violation of this section may be subject to discipline or dismissal pursuant to §18A-2-8 of this code.

(g) The West Virginia Board of Education, in consultation with the Higher Education Policy Commission, shall promulgate rules pursuant to §29A-3B-1 *et seq.* of this code to implement this section.

(h) The Attorney General may bring an action to enforce compliance with this section.

(i) If a provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

WV Legislature

§18-5-30. Preferred gender pronouns.

(a) For the purposes of this section: "Sex", when this term is used to classify or describe a natural person, means the state of being either male or female as observed or clinically verified at birth. There are only two sexes, and every individual is either male or female: *Provided*, That individuals with congenital and medically verifiable "DSD conditions" (sometimes referred to as "differences in sex development", "disorders in sex development", or "intersex conditions") are not members of a third sex and must be accommodated consistent with state and federal law.

(b) County board and public charter school employees shall not be:

(1) Required to use a student's preferred pronoun when referring to the student if the preferred pronoun is not consistent with the student's sex;

(2) Civilly liable for using a pronoun that is consistent with the sex of the student to whom the teacher or employee is referring, even if the pronoun is not the student's preferred pronoun; and

(3) Subject to an adverse employment action for not using a student's preferred pronoun if the student's preferred pronoun is inconsistent with the student's sex.

(c) A county board or public charter school is not civilly liable if a county board or public charter school employee refers to a student using a pronoun that is consistent with the sex of the student to whom the employee is referring, even if the pronoun is not the student's preferred pronoun.

(d) No county board or public charter school may establish a policy or take any action that is contrary to this section.

(e) Nothing in this article may be construed to abrogate individuals' rights and causes of action under the West Virginia Human Rights Act.

WV Legislature

§18-5-31.

Repealed.

Acts, 1983 Reg. Sess., Ch. 70.

WV Legislature

§18-5-32. Assistant superintendents; directors and supervisors of instruction and other educational activities.

(a) The county board, upon the recommendation of the county superintendent, may employ an assistant whose term of employment may be not less than one nor more than four years: Provided, That his or her term may not extend beyond that of the incumbent county superintendent.

(b) The board may not employ more than one assistant for each two hundred teachers or major fraction thereof.

(c) The county board, upon the recommendation of the county superintendent, is authorized to employ general and special supervisors or directors of instruction and of other educational activities as may be considered necessary.

(d) The employment of the assistant superintendent shall be on a twelve-month basis. The period of employment for all others named herein shall be at the discretion of the county board.

(e) Rules for qualifications of assistant superintendents, and directors and supervisors of instruction and of other educational activities shall be fixed by the state board: Provided, That the qualifications required for any assistant superintendent may not be higher than those required for the county superintendent: Provided, however, That the rules do not affect the status of any incumbent nor his or her right to succeed himself or herself in his or her assigned position.

(f) The county board is authorized to reimburse the employees for their necessary traveling expenses upon presentation of a monthly, itemized, sworn statement approved by the county superintendent.

(g) Any person employed under the foregoing provision of this section, provided he or she holds a valid teacher's certificate, shall be given continuing contract status as a teacher and shall hold that status unless dismissed for statutory reasons.

(h) The job duties of a professional educator employed under the provisions of this section, including a professional educator employed as a "supervisor" or "central office administrator" as defined in section one, article one, chapter eighteen-a of this code, shall include substitute teaching on at least three instructional days each school year: Provided, That the substitute teaching requirement of this subsection does not apply to the superintendent and those who have never held a teaching certificate or an administrative certificate.

(i) All acts or parts of acts inconsistent with this section are hereby repealed.

WV Legislature

§18-5-33. Board may fix special salary schedules.

The board may fix special salary schedules for the superintendent, assistant superintendents, teachers and other employees so long as the salary schedule does not conflict with the general provisions of this chapter.

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§18-5-34. Other authority and duties of district boards.

The district Board of Education shall exercise such other authority and perform such other duties as may be prescribed by law or by the regulations of the state Board of Education.

WV Legislature

§18-5-35. Group insurance.

Whenever a majority of the full-time instructional and administrative employees of a county board of education, or a majority of the full-time nonteaching employees of said board shall indicate in writing to the board of Education that it has subscribed to an automobile, a life, health and accident, hospitalization or surgery insurance, or death benefit plan on a group basis, and such majority has selected a licensed insurance agent or a company duly licensed to do business in this state to write or provide for any one or more of such group insurance, or death benefit coverages, the board may make proper periodical premium deductions from the regular salary of any such employee as specified in a written assignment furnished it by each such employee subscribing thereto, and pay the aggregate of such salary deductions over to the insurance company or companies or voluntary association so selected.

For the purpose of this section when an employee shall have attained the age of eighteen years, the said employee may be eligible to participate in the defined group plans.

WV Legislature

§18-5-36. Payment for fire services on public school property.

Where a fire company or fire department necessarily renders service in preventing or extinguishing fires upon public school property situated beyond their legal sphere of operation, the county board of education may pay, as a consideration for said services, a reasonable compensation to such fire company or fire department and such expenditures therefor shall be made from the general current expense fund as an incidental expense.

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§18-5-36a. Authority to offer rewards.

A county board of education shall have the authority to offer a reward for information leading to the arrest and/or conviction of any person or persons who damage or destroy school property, or who threaten, offer or attempt to do so.

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§18-5-37.

Repealed.

Acts, 2013 Reg. Sess., Ch. 83.

WV Legislature

§18-5-38.

Repealed.

Acts, 2014 Reg. Sess., Ch. 47.

WV Legislature

§18-5-39. Establishment of summer school programs; tuition.

(a) Inasmuch as the present county school facilities for the most part lie dormant and unused during the summer months, and inasmuch as there are many students who are in need of remedial instruction and others who desire accelerated instruction, it is the purpose of this section to provide for the establishment of a summer school program, which is to be separate and apart from the full school term as established by each county.

(b) The board of any county has the authority to establish a summer school program utilizing the public school facilities and to charge tuition for students who attend the summer school. The tuition may not exceed in any case the actual cost of operation of the summer school program: Provided, That any deserving pupil whose parents, in the judgment of the board, are unable to pay the tuition, may attend the summer school program at a reduced charge or without charge. The county board may determine the term and curriculum of the summer schools based upon the particular needs of the individual county. The curriculum may include, but is not limited to, remedial instruction, accelerated instruction and the teaching of manual arts. The term of the summer school program may not be established in such a manner as to interfere with the regular school term.

(c) The county boards may employ any certified teacher as teachers for this summer school program. Certified teachers employed by the county board to teach in the summer school program shall be paid an amount to be determined by the county board and shall enter into a contract of employment in such form as is prescribed by the county board: Provided, That teachers who teach summer courses of instruction which are offered for credit and which are taught during the regular school year shall be paid at the same daily rate they would receive if paid in accordance with the then current minimum monthly salary in effect for teachers in that county.

(d) Any funds accruing from the tuitions shall be credited to and expended within the existing framework of the general current expense fund of the county board.

(e) Notwithstanding any other provision of this code to the contrary, the board shall fill professional positions established pursuant to the provisions of this section on the basis of certification and length of time the professional has been employed in the county's summer school program. In the event that no employee who has been previously employed in the summer school program holds a valid certification or licensure, a board shall fill the position as a classroom teaching position in accordance with section seven-a, article four, chapter eighteen-a of this code.

(f) Notwithstanding any other provision of the code to the contrary, the county board may employ school service personnel to perform any related duties outside the regular school term as defined in section eight, article four, chapter eighteen-a of this code. An employee who was employed in any service personnel job or position during the previous summer shall have the option of retaining the job or position if the job or position exists during any succeeding summer. If the employee is unavailable or if the position is newly created, the

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position shall be filled pursuant to section eight-b, article four, chapter eighteen-a of this code. When any summer employee is absent, qualified regular employees within the same classification category who are not working because their employment term for the school year has ended or has not yet begun the succeeding school employment term, shall be given first opportunity to substitute for the absent summer employee on a rotating and seniority basis. When any summer employee who is employed in a summer position is granted a leave of absence for the summer months, the board shall give regular employment status to the employee for that summer position which shall be filled under the procedure set forth in section eight-b, article four, chapter eighteen-a of this code. The summer employee on leave of absence has the option of returning to that summer position if the position exists the succeeding summer or whenever the position is reestablished if it were abolished. The salary of a summer employee shall be in accordance with the salary schedule of persons regularly employed in the same position in the county where employed and persons employed in those positions are entitled to all rights, privileges and benefits provided in sections five-b, eight, eight-a, ten and fourteen, article four, chapter eighteen-a of this code: Provided, That those persons are not entitled to a minimum employment term of two hundred days for their summer position.

(g) If a county board reduces in force the number of employees to be employed in a particular summer program or classification from the number employed in that position in previous summers, the reductions in force and priority in reemployment to that summer position shall be based upon the length of service time in the particular summer program or classification.

(h) For the purpose of this section, summer employment for service personnel includes, but is not limited to, filling jobs and positions as defined in section eight, article four, chapter eighteen-a of this code and especially established for and which are to be predominantly performed during the summer months to meet the needs of a county board.

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§18-5-40.

Repealed.

Acts, 2013 Reg. Sess., Ch. 56.

WV Legislature

§18-5-41. Content based censorship of American history prohibited.

(a) No county board of education shall prohibit the use as an educational resource or teaching device any historical document related to the founding of the United States of America or any government publication solely because the document contains a religious reference or references: Provided, That the use of such materials must serve a bona fide secular educational purpose which does not advance or inhibit a religion or particular religious belief.

(b) (1) As used in subsection (a) of this section, the term "historical document related to the founding of the United States of America" shall include, but not be limited to, such documents as the declaration of independence and the United States Constitution.

(2) As used in subsection (a) of this section, the term "government publication" shall include, but not be limited to, such documents as decisions of the United States supreme court and acts of Congress.

(c) In determining the purpose of the use of a document containing a reference to a deity or a religion, consideration shall be given to the overall context of the document's use.

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§18-5-41a. Allowing discussion of certain scientific theories.

No public school board, school superintendent, or school principal may prohibit a public school classroom teacher from responding to student inquiries or answering questions from students about scientific theories of how the universe and/or life came to exist.

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§18-5-42. County-wide council on productive and safe schools.

(a) Each county shall develop a county-wide council on productive and safe schools, which shall be comprised of the following members:

(1) The county superintendent, who shall serve as the chair of the county-wide council on productive and safe schools;

(2) One representative from each local school improvement council, to be elected by a majority vote of each local school improvement council;

(3) The prosecuting attorney or his or her designee;

(4) A representative of the Department of Human Services, to be appointed by the secretary of the department;

(5) A representative of the law-enforcement agencies situated in the county in which the school is situated to be recommended by the county sheriff;

(6) A representative of the county board of education for the county in which the school is situated to be appointed by the president of the county board of education;

(7) The county board of education's supervisor of transportation; and

(8) A representative of the regional comprehensive behavioral health center as designated by the office of behavioral health services in which the county school system is situated, to be appointed by the executive director of the center.

(9) When the members listed in subdivisions (1) through (8) do not include at least two classroom teachers, then the county superintendent shall appoint additional members so that at least two classroom teachers are members of the county-wide council.

(10) When the members listed in subdivisions (1) through (8) do not include at least two school principals, then the county superintendent shall appoint additional members so that at least two school principals are members of the county-wide council.

(b) The county superintendent shall call an organizational meeting of the council as soon as practicable after the effective date of this section.

(c) The council shall compile the local school improvement council's guidelines developed pursuant to §18-5A-2(f) and shall report and deliver such guidelines to the county board of education, along with the council's assessment and recommendations regarding the guidelines. The council also shall provide a report of the estimated cost for any proposed alternative settings or programs.

(d) No meetings of the county-wide council shall be held during instructional time.

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§18-5-43. Duty of the county board of education to report the county-wide productive and safe school plans to the West Virginia Board of Education.

[Repealed.]

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§18-5-44. Early childhood education programs.

(a) For the purposes of this section, an "early childhood education program" means a program created under this section for children who have attained the age of four prior to September 1 of the school year in which the children enter the program.

(b) For the purposes of this section beginning in the school year 2018-2019, an "early childhood education program" means a program created under this section for children who have attained the age of four prior to July 1 of the school year in which the children enter the program.

(c) Findings. –

(1) Among other positive outcomes, early childhood education programs have been determined to:

(A) Improve overall readiness when children enter school;

(B) Decrease behavioral problems;

(C) Improve student attendance;

(D) Increase scores on achievement tests;

(E) Decrease the percentage of students repeating a grade; and

(F) Decrease the number of students placed in special education programs;

(2) Quality early childhood education programs improve school performance and low-quality early childhood education programs may have negative effects, especially for at-risk children;

(3) West Virginia has the lowest percentage of its adult population twenty-five years of age or older with a bachelor’s degree and the education level of parents is a strong indicator of how their children will perform in school;

(4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty states in the percentage of school children eligible for free and reduced lunches and this percentage is a strong indicator of how the children will perform in school;

(5) For the school year 2008-2009, 13,135 students were enrolled in prekindergarten, a number equal to approximately sixty-three percent of the number of students enrolled in kindergarten;

(6) Excluding projected increases due to increases in enrollment in the early childhood education program, projections indicate that total student enrollment in West Virginia will

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decline by one percent, or by approximately 2,704 students, by the school year 2012-2013;

(7) In part, because of the dynamics of the state aid formula, county boards will continue to enroll four-year-old students to offset the declining enrollments;

(8) West Virginia has a comprehensive kindergarten program for five-year-olds, but the program was established in a manner that resulted in unequal implementation among the counties, which helped create deficit financial situations for several county boards;

(9) Expansion of current efforts to implement a comprehensive early childhood education program should avoid the problems encountered in kindergarten implementation;

(10) Because of the dynamics of the state aid formula, counties experiencing growth are at a disadvantage in implementing comprehensive early childhood education programs; and

(11) West Virginia citizens will benefit from the establishment of quality comprehensive early childhood education programs.

(d) County boards shall provide early childhood education programs for all children who have attained the age of four prior to September 1 of the school year in which the children enter the early childhood education program. These early childhood education programs shall provide at least forty-eight thousand minutes annually and no less than fifteen hundred minutes of instruction per week.

(e) Beginning in the school year 2018-2019, county boards shall provide early childhood education programs for all children who have attained the age of four prior to July 1 of the school year in which the children enter the early childhood education program.

(f) The program shall meet the following criteria:

(1) It shall be voluntary, except that, upon enrollment, the provisions of section one-a, article eight of this chapter apply to an enrolled student, subject to subdivision (4) of this subsection;

(2) It shall be open to all children meeting the age requirement set forth in this section;

(3) It shall provide no less than fifteen hundred minutes of instruction per week, in a full-day program with at least forty-eight thousand minutes of instruction annually; and

(4) It shall permit a parent of an enrolled child to withdraw the child from that program by notifying the district in writing. A child withdrawn under this section is not subject to the attendance provisions of this chapter until that child again enrolls in a public school in this state.

(g) Enrollment of students in Head Start, or in any other program approved by the state superintendent as provided in this section, may be counted toward satisfying the

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requirement of subsection (c) of this section.

(h) For the purposes of implementation financing, all counties are encouraged to make use of funds from existing sources, including:

(1) Federal funds provided under the Elementary and Secondary Education Act pursuant to 20 U. S. C. §6301, *et seq.*;

(2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, *et seq.*;

(3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601, *et seq.*;

(4) Funds provided by the School Building Authority pursuant to article nine-d of this chapter;

(5) In the case of counties with declining enrollments, funds from the state aid formula above the amount indicated for the number of students actually enrolled in any school year; and

(6) Any other public or private funds.

(i) Each county board shall develop a plan for implementing the program required by this section. The plan shall include the following elements:

(1) An analysis of the demographics of the county related to early childhood education program implementation;

(2) An analysis of facility and personnel needs;

(3) Financial requirements for implementation and potential sources of funding to assist implementation;

(4) Details of how the county board will cooperate and collaborate with other early childhood education programs including, but not limited to, Head Start, to maximize federal and other sources of revenue;

(5) Specific time lines for implementation; and

(6) Any other items the state board may require by policy.

(j) A county board shall submit its plan to the Secretary of the Department of Human Services. The secretary shall approve the plan if the following conditions are met:

(1) The county board has maximized the use of federal and other available funds for early childhood programs; and

(2) The county board has provided for the maximum implementation of Head Start programs

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and other public and private programs approved by the state superintendent pursuant to the terms of this section; or

(3) The secretary finds that, if the county board has not met one or more of the requirements of this subsection, the county board has acted in good faith and the failure to comply was not the primary fault of the county board. Any denial by the secretary may be appealed to the circuit court of the county in which the county board is located.

(k) The county board shall submit its plan for approval to the state board. The state board shall approve the plan if the county board has complied substantially with the requirements of subsection (g) of this section and has obtained the approval required in subsection (h) of this section.

(l) Every county board shall submit its plan for reapproval by the Secretary of the Department of Human Services and by the state board at least every two years after the initial approval of the plan and until full implementation of the early childhood education program in the county. As part of the submission, the county board shall provide a detailed statement of the progress made in implementing its plan. The standards and procedures provided for the original approval of the plan apply to any reapproval.

(m) A county board may not increase the total number of students enrolled in the county in an early childhood program until its program is approved by the Secretary of the Department of Human Services and the state board.

(n) The state board annually may grant a county board a waiver for total or partial implementation if the state board finds that all of the following conditions exist:

(1) The county board is unable to comply either because:

(A) It does not have sufficient facilities available; or

(B) It does not and has not had available funds sufficient to implement the program;

(2) The county has not experienced a decline in enrollment at least equal to the total number of students to be enrolled; and

(3) Other agencies of government have not made sufficient funds or facilities available to assist in implementation.

Any county board seeking a waiver shall apply with the supporting data to meet the criteria for which they are eligible on or before March 25 for the following school year. The state superintendent shall grant or deny the requested waiver on or before April 15 of that same year.

(o) The provisions of subsections (b), (c) and (d), section eighteen of this article relating to kindergarten apply to early childhood education programs in the same manner in which they

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apply to kindergarten programs.

(p) Except as required by federal law or regulation, no county board may enroll students who will be less than four years of age prior to September 1 for the year they enter school.

(q) Except as required by federal law or regulation, beginning in the school year 2018-2019, no county board may enroll students who will be less than four years of age prior to July 1 for the year they enter school.

(r) Neither the state board nor the state department may provide any funds to any county board for the purpose of implementing this section unless the county board has a plan approved pursuant to subsections (h), (i) and (j) of this section.

(s) 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 purposes of implementing the provisions of this section. The state board shall consult with the Secretary of the Department of Human Services in the preparation of the rule. The rule shall contain the following:

(1) Standards for curriculum;

(2) Standards for preparing students;

(3) Attendance requirements;

(4) Standards for personnel; and

(5) Any other terms necessary to implement the provisions of this section.

(t) The rule shall include the following elements relating to curriculum standards:

(1) A requirement that the curriculum be designed to address the developmental needs of four-year-old children consistent with prevailing research on how children learn;

(2) A requirement that the curriculum be designed to achieve long-range goals for the social, emotional, physical and academic development of young children;

(3) A method for including a broad range of content that is relevant, engaging and meaningful to young children;

(4) A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and instructional strategies to respond to differences in prior experience, maturation rates and learning styles that young children bring to the classroom;

(5) A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;

(6) A requirement that the curriculum meet the recognized standards of the relevant subject

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matter disciplines;

(7) A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;

(8) A requirement that the curriculum emphasize the development of thinking, reasoning, decision making and problem-solving skills;

(9) A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and

(10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.

(u) After the school year 2012-2013, on or before July 1 of each year, each county board shall report the following information to the Secretary of the Department of Human Services and the state superintendent:

(1) Documentation indicating the extent to which county boards are maximizing resources by using the existing capacity of community-based programs, including, but not limited to, Head Start and child care; and

(2) For those county boards that are including eligible children attending approved, contracted community-based programs in their net enrollment for the purposes of calculating state aid pursuant to article nine-a of this chapter, documentation that the county board is equitably distributing funding for all children regardless of setting.

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§18-5-45. School calendar.

(a) As used in this section:

(1) "Instructional hour" means

an hour used for instruction and cocurricular activities as set forth in subsection (2) below, and that meets any 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 or hours when schools are closed due to inclement weather or other unforeseen circumstances.

(4) "Employment term" means at least a 200-day contract.

(5) "Instructional term" consists of at least 900 instructional hours.

(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 900 hours 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.

(2) Within the employment term, an instructional term for students of no less than 900 hours, which includes an inclement weather and emergencies plan designed to guarantee an instructional term for students of no less than 900 hours, subject to the following: (A) A county board shall establish a length for the days of instruction, which may vary, that will ensure that it achieves at least 900 instructional hours within its school calendar;

(B) Subject to approval of its plan by the state board, a county board may deliver instruction through alternative methods that count toward up to 25 hours of instructional time when schools are closed due to inclement weather or other unforeseen circumstances and these

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hours of instruction count toward meeting the 900-hour instructional time requirement notwithstanding the closure of schools. The number of hours of instruction that count toward the 900-hour instructional time requirement is subject to the approval of the state board. The plan shall include the number of hours of instruction the instruction through alternative methods counts toward meeting the 900-hour instructional time requirement and state board approval of the plan shall be considered to be the state board's approval of the number of hours included in the plan; and

(C) The use of the delivery of instruction through alternative methods, as defined in this section, shall be considered instructional hours for the purpose of meeting the 900-hour instructional time requirement and as employment days for the purpose of meeting the 200-day employment term;

(3) A county board may plan within its school calendar and not subject to cancellation and rescheduling as instructional hours up to an additional 25 hours or equivalent portions of hours, 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. Any time planned and used pursuant to this subdivision shall not be considered instructional hours;

(4) 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 §18A-5-2 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, subject to the following:

(i) The school preparation days may be used for the purposes set forth in paragraph (F) of this subdivision at the teacher's discretion; and

(ii) No teacher may be required to use the school preparation days for any other purpose besides preparation for the opening of school or for school closing;(E) Three "Educator Focus Days" to be used as determined by classroom teachers for activities that will improve instruction, subject to the following:

(i) One "Educator Focus Day" shall occur before the beginning of the instructional term, one "Educator Focus Day" shall occur in December, one "Educator Focus Day" shall occur in April, and the remaining day as set forth in paragraph (F) of this subdivision may occur at any point during the school year;

(ii) The principal may use "Educator Focus Days" as a teacher does; and

(iii) A two-hour block of time on "Educator Focus Days" shall be used for faculty senate meetings; and

(F) The remaining day 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 hours when instruction was scheduled but not conducted; and

(vi) Faculty senate meetings; and

(5) Scheduled out-of-calendar days that are to be used to schedule instructional and employment hours in the event school is canceled for any reason.

(d) A county board of education shall develop a policy that requires additional minutes or hours of instruction to recover time lost due to late arrivals and early dismissals.

(e) If it is not possible to complete 900 hours with the current school calendar, the county board shall increase the amount of instruction on a day when instruction was previously scheduled or schedule instruction on any available day for which instruction was not originally scheduled, 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 25 hours or equivalent portions of hours planned within the school calendar exclusively for activities by educators at the school level to improve instruction.

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

(g) The state board shall, no earlier than 150 instructional hours prior to the end of the instructional year, schedule the primary statewide assessment program unless the state board determines that the nature of the test mandates earlier testing.

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(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 scheduled instruction 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 hours 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 chapters 18, 18A, 18B, and 18C of this code to maintain compliance in reaching the mandatory 900 annual hours of instruction established in this section.

(p) The state board shall promulgate a rule in accordance with the provisions of §29A-3B-1 *et seq.* of this code for the purpose of implementing the provisions of this section. If necessary, the rule may clarify the requirements of this section and address any unforeseen issues that might arise from the amendments to this section made during the 2026 regular session of the Legislature: *Provided,* That nothing in this rule may conflict with this code: *Provided further*, That nothing in this section as amended during the 2026 regular session of the Legislature is intended to adversely modify any existing employment contracts or retirement

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benefits for county personnel.

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§18-5-45a. Legislative findings; time lost due to work stoppage or strike; effect on pay and extracurricular activities; closure of schools due to work stoppage or strike prohibited.

(a) *Legislative findings*. —

(1) The West Virginia Supreme Court of Appeals held, in Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass'n, 183 W.Va. 15 (1990), that "[p]ublic employees have no right to strike in the absence of express legislation or, at the very least, appropriate statutory provisions for collective bargaining, mediation, and arbitration".

(2) Public employees in West Virginia have no right, statutory or otherwise, to engage in collective bargaining, mediation, or arbitration, and any work stoppage or strike by public employees is hereby declared to be unlawful. Furthermore, any work stoppage or strike by employees of a county board of education poses a serious disruption to the thorough and efficient system of free schools, guaranteed to the children of West Virginia by section one, article XII of the Constitution of West Virginia.

(3) Section 18-5-45 of this code is designed to define the school term both for employment of school personnel and for instruction of students. The employment term consists of at least 200 days and, within the employment term, an instructional term for students must consist of at least 180 separate instructional days. Section 18-5-45 of this code also defines the minimum length of an instructional day, requires county boards to develop a policy for additional minutes of instruction to recover time lost due to late arrivals and early dismissals, and allows schools with an instructional day in excess of certain minimums to apply this equivalent instructional time to cancel time lost due to necessary closures and other purposes designed to improve instruction. Furthermore, §18-5-45 of this code allows a county board, subject to approval of its plan by the state board, to deliver instruction through alternative methods for a maximum of five days, when schools are closed and provides that these days are considered to be instructional days, notwithstanding the closure of schools.

(4) The Legislature intended, by providing for equivalent instructional time and the use of alternative methods to deliver instruction on days when schools are closed, as defined in §18-5-45 of this code, to: (1) Provide flexibility for collaborative time and other methods of improving instruction; and (2) lessen the disruption of the planned school calendar if rescheduling and adding instructional days became necessary to make up lost days due to closures pursuant to §18-4-10(5) of this code, when conditions are detrimental to the health, safety, or welfare of pupils. The Legislature did not intend with the enactment of these provisions to permit a reduction in the instructional term for students or in the employment term for personnel when the conditions causing the closure of the school are a concerted work stoppage or strike by the employees.

(b) For the purposes of this section, an employee of a county board of education is considered to be participating in a concerted work stoppage or strike if, on any day during a

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concerted stoppage of work or interruption of operations by the employees of the county board of education:

(1) The employee does not report to work as required by his or her contract of employment;

(2) The employee is not on leave, as specifically permitted by any provision of this code: *Provided*, That nothing in this section permits an employee to use personal leave in connection with a work stoppage or strike in violation of §18A-4-10 of this code; and

(3) The employee is not otherwise prevented from reporting to work based on circumstances beyond the employee's control, that are unrelated to the employee's participation in the ongoing concerted work stoppage or strike, as determined by the county superintendent.

(c) The provisions of §18-5-45 of this code, permitting accrued and equivalent instructional time to cancel days lost, and the delivery of instruction through alternative methods, do not apply to and may not be used to cancel days lost due to a concerted work stoppage or strike. Notwithstanding any provision of this code to the contrary, the state board may not grant a waiver to a county board of education for its noncompliance with the 200-day minimum employment term or the 180-day minimum instructional term requirements if such noncompliance is the result of a concerted work stoppage or strike.

(d) Notwithstanding §18A-5-2 of this code or any other provision of this code to the contrary, if an employee remains employed by the county board of education, notwithstanding his or her participation in a concerted work stoppage or strike, which the Legislature hereby determines to be a ground for termination, the county board of education shall withhold the prorated salary or hourly pay of each employee participating in the concerted work stoppage or strike for each day that such employee participates in a concerted work stoppage or strike, and such sums shall be forfeited to the county board of education.

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§18-5-46. Requiring teacher to change grade prohibited; teacher recommendation relating to promotion.

(a) No teacher may be required by a principal or any other person to change a student's grade on either an individual assignment or a report card unless there is clear and convincing evidence that there was a mathematical error in calculating the student's grade.

(b) The teacher's recommendation relating to whether a student should be promoted to the next grade level shall be a primary consideration when making such a determination.

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§18-5-47. County board flood insurance requirements.

(a) Each county board shall maintain flood insurance on each insurable building that it owns and that meets one or both of the following requirements:

(1) The building is within the identified special flood hazard area which is the area on a flood hazard boundary map or a flood insurance rate map that is identified as an "A zone", a numbered "A zone" or an "AE zone" or regulatory one hundred year floodplain and the building has a replacement value that is greater than $300,000; or

(2) The building has been damaged in a previous flood and flood insurance is required by the Federal Emergency Management Agency.

(b) Each county board also shall maintain flood insurance on the contents of each insurable building that it owns and that meets one or both of the requirements set forth in subsection (a) of this section.

(c) The buildings and the contents of those buildings required to be insured by this section shall be insured at the maximum amounts available through the National Flood Insurance Program or the estimated replacement value of the structure and contents, whichever is less.

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§18-5-48. Safety and security measures for school facilities; Safe Schools Fund created.

(a) Each county board of education, public charter school, and multicounty vocational center shall annually assess the safety and security of each of the school facilities for which they are responsible. Safety and security measures of each facility shall be upgraded when necessary to ensure, to the best of the county board's, public charter school governing board's or multicounty vocational center administrative council's ability, the safety of the students within each facility. Each county board of education, public charter school governing board, and multicounty vocational center administrative council shall report annually the safety and security measures it has put in place, including upgrades thereto, to the State Department of Education. Annually, the State Department of Education shall compile the information received and report it to the Legislative Oversight Commission on Education Accountability.

(b) As used in this section, "safety and security measures" means action taken by a county board of education, a public charter school, or multicounty vocational center that improves the security of a school facility and the safety of the students within such facility, including, but not limited to, hiring a school resource officer, installing weapon detection systems, upgrading facility doors or windows.

(c) There is hereby created in the State Treasury a special revenue fund to be known as the Safe Schools Fund. The fund shall consist of all moneys received from legislative appropriations and other sources to further the purpose of this section: *Provided*, That annually, the West Virginia Department of Education shall request an appropriation based on the requests of the county boards of education, public charter school governing boards and multicounty vocational center administrative councils. Subject to legislative appropriation, the funds appropriated annually to the School Safety Fund shall be distributed to the county boards of education, public charter schools, and multicounty vocational centers, on the basis of need. Moneys distributed from this fund shall not be used to make permanently affixed improvements, alterations or additions to a physical facility that a county board of education, public charter school or multicounty vocational center does not own. If the West Virginia Department of Education distributes any moneys from this fund for the purpose of making safety improvements on or in a facility that is not owned, it shall require that the improvements be accomplished in such a manner that they may be removed with minimal effort. All moneys distributed from this fund shall be used to support the purpose and intent of this section and all moneys must be spent to support the school for which the funding was derived: *Provided, however*, That moneys distributed from this fund also may be used for the purposes of § 18-20-11 of this code, relating to video cameras in certain special education classrooms. Until such time as all school facilities are in full compliance with the special education video requirements, the West Virginia Department of Education shall first allocate the funding appropriated for the Safe Schools Fund based on the remaining need for video cameras in public school facilities. After all public school facilities have been provided sufficient funds to meet the special education video camera

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requirements, the funds shall be distributed by the West Virginia Department of Education to meet the needs of school facilities to have safe school entry ways. After safe school entry way needs have been met, the West Virginia Department of Education shall distribute funds based upon a determination of need. Any moneys remaining in the fund at the close of the fiscal year shall be carried forward for use in the next fiscal year. Fund balances shall be invested with the state's Consolidated Investment Fund and any and all interest shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to this article.

(d) The West Virginia Board of Education shall promulgate rules pursuant to § 29A-3B-1 *et seq*. of this code to establish a process by which county boards of education, public charter school governing boards and multicounty vocational center administrative councils may submit requests to obtain needs-based funding from the Safe Schools Fund. Such rules shall address:

(1) The manner, time line and process for the submission of a request;

(2) The criteria by which requests shall be evaluated and prioritized; and

(3) Any other matters deemed necessary to further the goals of this article.

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§18-5-49. County board exceptional needs expenditures from surplus funds.

Each county board may by policy establish an exceptional needs fund from surpluses for students who are likely to perform better outside of the public school setting. The policy may include:

(1) Allowing the county board to use excess funds or donated funds for expenditures related to services and materials necessary for that student's educational success that are not met within the public education school district;

(2) The amount of funds that is to be deposited into the fund each year which may vary based on availability of surpluses;

(3) The qualifying expenses that funds in the fund may be used for;

(4) Measures for protecting against improper use of the funds which may include auditing all expenditures related to an individual student for services outside of the public education district;

(5) The conditions under which payments from the Exceptional Needs Success Fund are to cease;

(6) Eligibility requirements for education service providers that can accept payments from the fund;

(7) A requirement that any overpayments recaptured from refunded expenditures revert to the Exceptional Student Success Fund; and

(8) Any other provision the county board determines appropriate.

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§18-5-50. West Virginia Tutoring Program.

(a) *Purpose.* — County boards of education may contract with an independent contractor who is a retired teacher to provide tutoring services as that term is defined in this section. The purpose of the contract is to provide additional support to students who necessitate additional one-on-one instruction in the core subjects of reading and math. Any county board of education may contract with as many independent contractors as the county school board considers necessary.

(b) *Definitions*. — For purposes of this section the following words have the following meanings:

"Contract" means an agreement between a county board of education and an independent contractor relating to the procurement of tutoring services;

"County school board" means the same as that term is used in §18-5-1 *et seq*. of this code;

"Independent contractor" means the same as that term is used in §21-5I-4 of this code;

"Tutoring services" means academic support provided by an expert teacher who has a deep knowledge or defined expertise in a particular subject or set of subjects;

"Tutor" means an independent contractor who is a retired teacher that provides tutoring services in the area of reading or math; and

"Retired teacher" means the same as that term is used in §18A-2-3 of this code.

(c) *Requirements for participation*. — Prior to entering into a contract with a tutor, the county school board shall require an applicant to provide proof that he or she:

(1) Is a citizen of the United States;

(2) Has retired from his or her employment as a teacher;

(3) Meets any other requirements imposed by the county school board that apply to current teachers, which may include, but are not limited to, a background check or training; and

(4) Carries appropriate liability insurance at his or her expense: *Provided,* That the imposition of this requirement is at the discretion of the county school board.

(d) *Exclusions from participation*. — Any of the following disqualifying criminal offenses shall preclude a county board from engaging the services of a tutor:

(1) Any sex offense;

(2) Crimes against persons, which include, but are not limited to, manslaughter, murder, child abuse, domestic violence, stalking, kidnapping, or aggravated assault or battery;

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(3) Unlawful manufacture, delivery, or possession with intent to deliver any controlled substance; and

(4) Any other misdemeanor or felony conviction deemed exclusionary for contracting with the independent contractor by the county school board.

(e) *Liability.* — A county school board may not be held civilly liable or be criminally prosecuted for any action of an independent contractor tutor acting within the scope of the duties for which their services were contracted unless the county school board can be shown to be grossly negligent or committed willful misconduct.

(f) *Miscellaneous.* —

(1) In contracting for the services set forth in this section, county school boards may not be subject to purchasing requirements set forth in in §5A-3-1 *et seq*. of this code.

(2) Nothing in this section requires a county board of education to contract with a tutor pursuant to this section. Participation by a county board of education is voluntary and subject to the availability of county funds. Any county board of education that opts to participate shall do so at its own expense. The provisions of this section place no obligation for the state to appropriate moneys for the purposes set forth in this section.

(3) An independent contractor tutor is not eligible for participation in the public employee insurance plan, workers' compensation, additional state retirement credited to employment as a West Virginia tutor, or any other state-sponsored or offered state benefit plan.

(4) Participation in the West Virginia Tutoring Program shall not affect the retired teacher's retirement benefits in any manner.

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§18-5-51. Cardiopulmonary Resuscitation Instruction Fund.

There is hereby created in the State Treasury a special revenue fund designated and known as the Cardiopulmonary Resuscitation Instruction Fund which is an interest- and earnings-accumulating account. The fund is established to support cardiopulmonary instruction for public high schools and all moneys must be spent to support the school for which the funding was derived. The fund consists of moneys appropriated by the Legislature, grants, gifts, devises, and donations from any public or private source. Funds shall be distributed to the county boards of education and multicounty vocational centers, with the funding amount per school determined by multiplying the number of projected regular public school graduates by $5. All interest and other returns derived from the deposit and investment of moneys in the Cardiopulmonary Resuscitation Instruction Fund shall be credited to the fund. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided in this section. The West Virginia Department of Education shall administer the fund.

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§18-5-52. School safety officers.

(a) Local school boards, public charter schools, and private or religious schools may employ school safety officers, as defined in §15-2D-3, or contract with private security services as set forth in §18-5-53 for the purposes set forth therein.

(b) School safety officers may carry a firearm in the performance of their duties if:

(1) Within 10 years immediately prior to being hired by the local school board or private or religious school he or she:

(A) Was a law-enforcement officer as defined in §30-29-1 in the state with ten years of aggregate years as a law enforcement officer; or

(B) Was employed by a law-enforcement agency of the United States or any state or political subdivision thereof and his or her duties were substantially similar to those of a law-enforcement officer as defined in §30-29-1.

(2) He or she retired or resigned from their position as a law-enforcement officer in good standing;

(3) He or she maintains the requirements of and status as an honorably separated or qualified retired law-enforcement officer within the meaning of the Law Enforcement Officers Safety Act of 2004, as amended, pursuant to 18 U.S.C. § 926C;

(4) He or she obtains and maintains any certification and training required by the Division of Protective Services School Safety Unit pursuant to subdivision §15-2D-3;

(5) Undergoes a background check at his or her expense as required by the Division of Protective Services to verify that the prospective school safety officer is not prohibited by state or federal law from possessing, purchasing, or transporting a firearm, has been determined by the Director of the Division of Protective Services to be appropriate and capable of discharging the duties as a school safety officer as set forth in a written certification, and has provided the written certification of the Director of the Division of Protective Services to the local school board, public charter school, or private or religious school; and

(6) The local school board, public charter school, or private or religious school grants him or her the authority to carry a firearm in the performance of his duties.

(c) School safety officers may not arrest another person but may notify the appropriate law-enforcement agency and detain another person committing an act which constitutes a breach of the peace in a reasonable manner and for a reasonable period. The detention shall not constitute an arrest nor shall it render the local school board, public charter school, private or religious school, or school safety officer liable to the person detained: *Provided*, That the detention may be no longer than the time required for the earliest of either (1) The

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determination that no offense constituting a breach of the peace has been committed; or (2) the surrender of the person detained to a certified law-enforcement officer. School safety officers may not interrogate or question a detained minor without the knowledge and consent of the minor's parent, except in the instance of a perceived immediate danger to the health, safety, and welfare of others within the facility, when the parents are not present and/or when the minor attempts self-harm, the questioning is limited to the immediate danger, and the questioning will likely lead to the alleviation or elimination of the immediate danger, and if the person detained is a student and is under the age of 21, their parent or guardian is notified of the detention.

(d) The local school board, public charter school, or private or religious school shall be responsible for the costs of providing the necessary equipment for school safety officers to adequately perform their duties.

(e) For purposes of this section:

(1) "Breach of the peace" means:

(A) A felony;

(B) Any action or potential crime involving physical injury or a threat of physical injury to another person;

(C) Any action or potential crime involving destruction of school property or property located on the school premises; or

(D) Any act committed where the school safety officer has reason to believe that a person is likely to cause serious harm to himself, herself, or to others.

(2) "School safety officer" has the same meaning as that term is defined in §15-2D-3.

(f) A local school board and public charter school shall, and a private or religious school may, cooperate with the School Safety Unit established in §15-2D-3 to the fullest extent practicable to assist the unit in fulfilling its duties, including, but not limited to, providing data on all safety and security measures for school facilities.

(g) Nothing in this section shall be construed as limiting or superseding the provisions of §61-7-11a authorizing a private school to allow possession of a firearm or other deadly weapon in or on the grounds of any private primary or secondary school, if such institution has adopted a written policy allowing for possession of firearms or other deadly weapons in the facility or on the grounds of the facility.

(h) A local school board, public charter school, or a private or religious school employing a school safety officer shall maintain insurance coverage which:

(1) Shall include adequate insurance for liability, property loss, and the personal injury of

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students and other personnel; and

(2) May include coverage from the Board of Risk and Insurance Management pursuant to §29-12-5a, if applicable.

(i) Eight hours of the mandatory 16 hours of in-service training for law enforcement officers may be credited when an individual is employed as a school safety officer pursuant to this section.

(j) All school safety officers hired are subject to the Law Enforcement Officers Safety Act ("LEOSA") based on §61-7-11a of this code, subdivision (b)(3) of this section, and subject to the provisions of §18 USC 926C(c).

(k) The liability and responsibility of a school safety officer shall be that of the respective county board of education where that officer is working, regardless of whether that officer is contracted by a third party.

(l) All school safety officers shall train annually with the local county sheriffs' department in the county in which the safety officer is working.

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§18-5-53. Contracting with private security as a school safety officer.

(a) Purpose. — County boards of education, public charter schools, and private or religious schools may contract with a private security guard firm licensed pursuant to the provisions of §30-18-1 *et seq*. of this code to provide the services of a school safety officer as set forth in §18-5-52 of this code.

(b) Definitions. — For purposes of this section, the following words have the following meanings:

"Contract" means an agreement between a county board and a private security provider.

"County board" means the same as that term is defined in §18-1-1 and used in §18-5-1 *et seq*. of this code.

"School safety officer" has the same meaning as that term is defined in §15-2D-3 of this code.

“Security guard firm” has the same meaning as that term is defined in §30-18-1 of this code.

(c) Authority. — Notwithstanding the provisions of §61-7-11a or any applicable rule, an employee of a private security guard firm who has contracted with a county school board, public charter schools, or private or religious school may carry weapons upon meeting all the requirements of this section. An employee of a private security guard firm contracting with a county board, public charter school, or private or religious school is not law enforcement and has no authority to arrest. They are to provide services as a school safety officer as set forth in §18-5-52 of this code.

(d) Requirements for participation. — Prior to entering into a contract with a county board, public charter school, or private or religious school, a private security guard firm shall be licensed pursuant to the provisions of §30-18-1 *et seq*. of this code and is current in any obligation, including taxes, to the State of West Virginia. The county board, public charter school, or private or religious school shall require an applicant to provide proof that any employee of the private security guard firm intended to be used as a school safety officer:

(1) Is a citizen of the United States and the State of West Virginia;

(2) Has received a high school diploma or a high school equivalency diploma;

(3) Has met and passed all the requirements for a concealed carry permit as set forth in §61-7-4;

(4) Has completed and passed all the following training courses and/or examinations:

(A) The Law Enforcement Professional Standards program. The cost of this program is to be paid by the independent contractor;

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(B) A fitness for duty examination which shall include a physical examination, vision examination, psychiatric examination, and a pre-employment drug screen within one year of beginning a contract with a county board, public charter school, or a private or religious school and upon initiating a new contract following the expiration of all contract extension options. The cost of these each shall be paid by the private security guard firm;

(C) A firearm and less than lethal use of force course. To maintain firearm proficiency, the independent contractor shall complete yearly training in firearm and less than lethal use of force course; and

(D) Training on crisis de-escalation techniques, disaster and emergency response, bomb threats, performing their duties in the presence of students with disabilities including, but not limited to, students with autism spectrum disorders, and cardiopulmonary resuscitation; and

(6) Any other requirements imposed by the county board, public charter school, or private or religious school which may include, but are not limited to, a pre-employment written examination and a pre-employment polygraph exam. A county board, public charter school, or private or religious school may also require a private security guard firm to carry appropriate liability insurance at his or her expense.

(e) Exclusions from participation. — Any of the following shall preclude an employee of private security guard firm from participation as a school safety officer:

(1) There is credible evidence of illegal drug use by the employee of the private security guard firm in the preceding five-year period; or

(3) A disqualifying criminal offense. These shall include, but are not limited to:

(A) Domestic violence as set forth in §61-2-28;

(B) Driving under the influence as set forth in §17C-5-2;

(C) Child abuse as set forth in §61-8D-1 *et seq.*;

(D) Unlawful manufacture, delivery, or possession with intent to deliver any controlled substance as set forth in §60A-4-1 *et seq.*; and

(E) Any other misdemeanor or felony conviction deemed exclusionary for contracting with the independent contractor by the county board.

(f) Insurance coverage. —

A county board, public school, or private or religious school contracting for the services of a private security guard firm shall maintain adequate insurance for liability, property loss, and the personal injury of students and other personnel to the extent permitted by the Board of

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Risk and Insurance Management pursuant to §29-12-5a in addition to any appropriate liability insurance coverage required by subdivision (d)(6) of this section.

(g) Miscellaneous. —

(1) In contracting for the services set forth in this section, county boards or public charter school is may not be subject to purchasing requirements set forth in §5A-3-1 *et seq*.

(2) Nothing in this section entitles any employee of a private security guard firm for participation in the public employee insurance plan, workers' compensation, additional state retirement credited to employment as a West Virginia Guardian, or any other state-sponsored or -offered state benefit plan.

(4) Notwithstanding any other provision of this code or federal law to the contrary, nothing in this section shall be construed to create an employer-and-employee relationship between a county school board, public charter school, or a private or public school.

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§18-5-54. Public school West Virginia Guardian Program.

(a) Purpose. — County boards of education may contract with an independent contractor who is a former state trooper, former deputy sheriff, former state fire marshal, former Department of Natural Resources police officer, former municipal police officer, or former federal law-enforcement officer to provide West Virginia Guardian services as that term is defined in this section. The purpose of the contract is to provide public safety and/or security on public school grounds and buildings. Any county board may contract with as many independent contractors as the board considers necessary.

(b) Definitions. — For purposes of this section, the following words have the following meanings:

"Contract" means an agreement between a county board and an independent contractor who has been certified by the county sheriff relating to the procurement of public safety or security services.

"County board" means the same as that term is defined in §18-1-1 and used in §18-5-1 *et seq*.

"Independent contractor" means the same as that term is used in §21-5I-4.

"Public safety or security" means the protection of students, faculty, and staff of a public school from violence, exposure to weapons, and threats on school grounds.

"Former deputy sheriff" means the same as that term is used in §7-14C-1, but who has retired from service.

"Former municipal police officer" means the same as that term is used in §8-22A-2 and includes officers who were members pursuant to the provisions of §8-22A-16, but who are retired from service.

"Former natural resources police officer" means the same as that term is used in §20-18-2, but who is retired from service.

"Former state fire marshal" means the same as that term is used in §15A-10-1 *et seq*., but who is retired from service.

"Former state trooper" means a state police officer employed pursuant to the provisions of §15-2-1 *et seq*., or §15-2A-1 *et seq*. and who has retired pursuant to the provisions of §15-2-27 or §15-2A-6 of this code.

"Former federal law-enforcement officer" means a federal law-enforcement officer employed pursuant to the provisions of §15-10-5(b), who was classified as a Criminal Investigation Series 1811 investigator, and who has retired from service.

"West Virginia Guardian" means an independent contractor certified by the county sheriff as

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meeting the qualifications set forth in this section and who is under contract to a county board for the purposes of providing public safety and/or security on school grounds. Persons contracted to provide these services shall include a retired state trooper, a retired state fire marshal, a retired Department of Natural Resources police officer, a former municipal police officer, a retired federal law-enforcement officer, or a retired deputy sheriff. A West Virginia Guardian is considered an authorized individual for purposes of the Gun-Free School Zones Act of 1990, 18 U.S.C. §921 and §922.

(c) Authority. — Notwithstanding the provisions of §61-7-11a or any applicable rule, an independent contractor acting as a West Virginia Guardian may carry weapons upon meeting all the requirements of this section. A West Virginia Guardian is not law enforcement and has no authority to arrest. They are to provide public safety and/or security to protect life and property as set forth in this section. Guardians shall wear apparel that makes them readily identifiable as a Guardian while performing the duties as set forth in in this section.

(d) Requirements for participation. — Prior to entering into a contract with a West Virginia Guardian, the Guardian shall apply for a permit from the county sheriff of the county in which the Guardian will provide services to the county board and, at that time, pay a fee of $50. The county sheriff shall require an applicant to provide proof that he or she:

(1) Is a citizen of the United States and the State of West Virginia;

(2) Has received a high school diploma or a high school equivalency diploma;

(3) Has met and passed all the requirements for a concealed carry permit as set forth in §61-7-4;

(4) Has completed and passed all the following training courses and/or examinations:

(A) The Law Enforcement Professional Standards program. The cost of this program is to be paid by the independent contractor;

(B) A fitness for duty examination which shall include a physical examination, vision examination, psychiatric examination, and a pre-employment drug screen within one year of beginning a contract with a county board and upon initiating a new contract following the expiration of all contract extension options. The cost of these each shall be paid by the independent contractor;

(C) A firearm and less than lethal use of force course. To maintain firearm proficiency, the independent contractor shall complete yearly training in firearm and less than lethal use of force course; and

(D) Training on crisis de-escalation techniques, disaster and emergency response, bomb threats, performing their duties in the presence of students with disabilities including, but not limited to, students with autism spectrum disorders, and cardiopulmonary resuscitation.

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(5) Is retired from his or her employment as a state trooper, a deputy sheriff, a municipal officer, a Division of Natural Resources police officer, a State Fire Marshal, or federal law enforcement;

(6) Is current in any obligation, including taxes, to the State of West Virginia; and

(7) Any other requirements imposed by the county board which may include, but are not limited to, a pre-employment written examination and a pre-employment polygraph exam. A county board may also require an independent contractor to carry appropriate liability insurance at his or her expense.

The permit application fee received by the sheriff shall be deposited by the sheriff into a guardian program fund. The fund shall be administered by the sheriff and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in this fund are to be expended by the sheriff to pay the costs associated with issuing Guardian permits. Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff's office, as the sheriff considers appropriate.

Meeting all of the requirements as set forth in this subsection does not guarantee a contract will be extended to the applicant. The county sheriff may, in his or her reasonable judgment, decline to certify to a county board a person as eligible for participation as a guardian.

(e) Exclusions from participation. — Any of the following shall preclude an independent contractor from participation as a West Virginia Guardian:

(1) Having not retired from either service to the State of West Virginia as a state trooper, a municipal police officer, a Department of Natural Resources police officer, a former State Fire Marshal, or a deputy sheriff or service as a federal law-enforcement officer;

(2) There is credible evidence of illegal drug use by the independent contractor in the preceding five-year period; or

(3) A disqualifying criminal offense. These shall include, but are not limited to:

(A) Domestic violence as set forth in §61-2-28;

(B) Driving under the influence as set forth in §17C-5-2;

(C) Child abuse as set forth in §61-8D-1 *et seq.*;

(D) Unlawful manufacture, delivery, or possession with intent to deliver any controlled substance as set forth in §60A-4-1 *et seq.*; and

(E) Any other misdemeanor or felony conviction deemed exclusionary for contracting with the independent contractor by the county board.

WV Legislature

(f) Insurance coverage. —

A county board contracting for the services of a West Virginia Guardian shall maintain adequate insurance for liability, property loss, and the personal injury of students and other personnel to the extent permitted by the Board of Risk and Insurance Management pursuant to §29-12-5a in addition to any appropriate liability insurance coverage required by subdivision (d)(7) of this section.

(g) Miscellaneous. —

(1) In contracting for the services set forth in this section, county boards may not be subject to purchasing requirements set forth in §5A-3-1 *et seq*.

(2) Nothing in this section requires a county board to enter into a contract for guardian services. Participation by a county board is voluntary and subject to the availability of county funds. Any county board that opts to participate shall do so at its own expense and any additional funds provided by county entities or private donations. The provisions of this section place no obligation for the state to appropriate money for the purposes set forth in this section.

(3) As an independent contractor, a West Virginia Guardian is not eligible for participation in the public employee insurance plan, workers' compensation, additional state retirement credited to employment as a West Virginia Guardian, or any other state-sponsored or -offered state benefit plan.

(4) Notwithstanding any other provision of this code or federal law to the contrary, nothing in this section shall be construed to create an employer-and-employee relationship.

WV Legislature

§18-5-55. Legal compliance offices.

Nothing in this article shall preclude a county school board from operating an office or position operating with the sole and exclusive mission of ensuring legal compliance under Title IX of the federal Education Amendments Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Age Discrimination in Employment Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, as amended, the federal Civil Rights Act of 1964, Pub. L. No. 88-352, as amended, the West Virginia Human Rights Act, West Virginia Code §5-11-1 *et seq.*, or any other applicable federal or state law or court order.

WV Legislature