

# WEST VIRGINIA CODE: §18A-4-8G

## **§18A-4-8g. Determination of seniority for service personnel.**

(a) Seniority accumulation for a regular school service person:

(1) Begins on the date the employee enters upon regular employment duties pursuant to a contract as provided in section five, article two of this chapter;

(2) Continues until the service person's employment as a regular employee is severed with the county board; and

(3) Does not cease to accumulate when the county board has authorized an absence whether without pay or due to illness or other reason over which the employee has no control.

(b) Seniority accumulation for a substitute service person:

(1) Begins on the date the employee enters upon the duties of a substitute as provided in section fifteen of this article, after executing with the county board a contract of employment as provided in section five, article two of this chapter; and

(2) Continues until the employee enters into the duties of a regular employment contract as provided in section five, article two of this chapter; or employment as a substitute service person with the county board is severed.

(c) Seniority of a regular or substitute service person does not continue to accumulate under the following conditions:

(1) When a service person is willfully absent from employment duties because of a concerted work stoppage or strike; or

(2) When a service person is suspended without pay.

(d) For all purposes including the filling of vacancies and reduction in force, seniority shall be accumulated within particular classification categories of employment as those classification categories are referred to in section eight-e of this article.

(e) When implementing a reduction in force, the service person with the least seniority within a particular classification category shall be properly released and placed on the preferred recall list. The particular classification title held by a service person within the classification category may not be considered when implementing a reduction in force.

(f) On or before September 1, and January 15, of each school year, county boards shall post at each county school or working station the current seniority list or lists of each service personnel classification. Each list shall contain the name of each regularly employed school

service person employed in each classification and the date that each employee began performing his or her assigned duties in each classification. Current seniority lists of substitute school service personnel shall be available to employees upon request at the county board office.

(g) The seniority of a service person who transfers out of a class title or classification category of employment and subsequently returns to that class title or classification category of employment is calculated as follows:

(1) The county board shall establish the number of calendar days between the date the service person left the class title or category of employment in question and the date of return to the class title or classification category of employment.

(2) This number of days shall be added to the service person's initial seniority date to establish a new beginning seniority date within the class title or classification category.

(3) The service person then shall be considered as having held uninterrupted service within the class title or classification category from the newly established seniority date.

The seniority of an employee who has had a break in the accumulation of seniority as a result of being willfully absent from employment duties because of a concerted work stoppage or strike shall be calculated in the same manner.

(h) Beginning on July 1, 2007, a substitute school service person shall acquire regular employment status, but not regular employee job bidding rights or regular seniority, if the employee receives a position pursuant to the leave of absence or suspension provisions of subdivisions (2) and (5), subsection (a), section fifteen of this article.

(1) A substitute service person shall accumulate substitute employee seniority while holding a position acquired pursuant to subsections (2) and (5).

(2) Upon termination of the regular service person's leave of absence or suspension, the substitute service person shall return to the status previously held.

(3) County boards are not prohibited from providing any benefits of regular employment for substitute service personnel, but the benefits may not include regular service personnel employee status or seniority.

(i) If two or more service personnel accumulate identical seniority, the priority shall be determined by a random selection system established by the service personnel and approved by the county board.

(1) A board shall conduct the random selection within thirty days of the time the service personnel establish an identical seniority date. All service personnel with an identical seniority date within the same class title or classification category shall participate in the random selection.

(2) As long as the affected employees hold identical seniority within the same classification category, the initial random selection conducted by the board shall be permanent for the duration of the employment within the same classification category of the employees by the board. This random selection priority applies to the filling of vacancies and to the reduction in force of school service personnel.

(3) If any other service person subsequently acquires seniority identical to the employees involved in the original random selection, a second random selection shall be held within thirty days to determine the seniority ranking of the new employee within the group.

(A) The priority between the employees who participated in the original random selection remains the same.

(B) The second random selection is performed by placing numbered pieces of paper equal to the number of employees with identical seniority in a container. Any service person who was not involved in the original random selection shall draw a number from the container which will determine his or her seniority within the group as a whole.

(C) This process will be repeated if any additional service person subsequently acquires identical seniority.

(D) The same process shall be used if any additional service person is subsequently discovered to have the same seniority as the original group of employees but who did not participate in the original random selection due to oversight or mistake.

(j) Service personnel who are employed in a classification category of employment at the time when a vacancy is posted in the same classification category of employment shall be given first opportunity to fill the vacancy.

(k) Seniority acquired as a substitute service person and as a regular service person shall be calculated separately and may not be combined for any purpose. Seniority acquired within different classification categories shall be calculated separately. If a school service employee applies for a position outside of the classification category he or she currently holds, and if the vacancy is not filled by an applicant within the classification category of the vacancy, the applicant shall combine all regular employment seniority acquired for the purpose of bidding on the position.

(l) A school service person who holds a multiclassification title accrues seniority in each classification category of employment that the employee holds and is considered an employee of each classification category contained within his or her multiclassification title. A multiclassified service person is subject to reduction in force in any category of employment contained within his or her multiclassification title, based upon the seniority accumulated within that category of employment. If a multiclassified service person is subject to a reduction in force in one classification category, the service person retains employment in any of the other classification categories that he or she holds within his or

her multiclassification title. In that case, the county board shall delete the appropriate classification title or classification category from the contract of the multiclassified employee.

(m) When applying to fill a vacancy outside the classification categories held by a multiclassified service person, seniority acquired simultaneously in different classification categories is calculated as if accrued in one classification category only.

(n) The seniority conferred in this section applies retroactively to all affected school service personnel, but the rights incidental to the seniority commence as of the effective date of this section.