WEST VIRGINIA CODE CHAPTER 18A ARTICLE 5

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§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.

(a) The teacher shall stand in the place of the parent(s), guardian(s), or custodian(s) in exercising authority over the school and has control of all students enrolled in the school from the time they reach the school until they have returned to their respective homes, except where transportation of students is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the students while they are in transit to and from the school.

(b) Subject to the rules of the state board, the teacher shall exclude from the school any student known to have, or who is suspected of having, any infectious disease, or any student who has been exposed to any infectious disease and shall immediately notify the proper health officer or medical inspector of the exclusion. Any student so excluded may not be readmitted to the school until he or she has complied with all the requirements of the rules governing those cases or has presented a certificate of health signed by the medical inspector or other proper health officer.

(c) This subsection is subject to the requirements of subsections (j) through (p) of this section. The teacher may exclude from his or her classroom or school bus any student who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who behaves in a manner that obstructs the teaching or learning process of others in the classroom; who threatens, abuses, or otherwise intimidates or attempts to intimidate a school employee or a student; who willfully disobeys a school employee; or who uses abusive or profane language directed at a school employee. Any student excluded shall be placed under the control of the principal of the school or a designee. The excluded student may be admitted to the classroom or school bus only after a school counselor, school social worker, school psychologist, or behavior interventionist develops a behavioral plan for re-entry to the classroom for the student and when the principal, or a designee, provides written certification to the teacher that the student may be readmitted and specifies the specific type of disciplinary action, if any, that was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of the action to the parent(s), guardian(s), or custodian(s). When a student is excluded from a classroom or a school bus two times in one semester, and after exhausting all reasonable methods of classroom discipline provided in the school discipline plan, the student may be readmitted to the classroom or the school bus only after the principal, teacher, school counselor, or school social worker, and, if possible, the parent(s), guardian(s), or custodian(s) of the student have held a conference to discuss the student's disruptive behavior patterns, a school social worker, behavior specialist, board certified behavior analyst, school psychologist, or other qualified employee with expertise in the behavioral area establishes and implements a behavioral plan, and the teacher and the principal agree on a course of discipline for the student and inform the parent(s), guardian(s), or custodian(s) of the course of action. Thereafter, if the student's disruptive behavior persists,

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upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting. The Legislature finds that isolating students or placing them in alternative learning centers or licensed behavioral health agencies may be the best setting for chronically disruptive students. The county board shall create more alternative learning centers, expand its capacity for alternative placements, or partner with a licensed behavioral health agency, subject to funding, to correct these students' behaviors so they can return to a regular classroom without engaging in further disruptive behavior. Students in alternative learning centers, in alternative placements, or with a licensed behavioral health agency shall meet regularly with a school social worker, behavior specialist, board certified behavior analyst, school psychologist, or other qualified employee with expertise in the behavioral area to address the behavioral and mental health concerns associated with the referral to the alternative learning center and to assist in developing a transition plan back to the classroom and assist with that transition.

(d) Notwithstanding anything in this section to the contrary, nothing herein may be construed to conflict with or be applied to conflict with the provisions of the Individuals with Disabilities Education Act, 20 U.S.C. §1400, *et seq*. or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794.

(e) The Legislature finds that suspension from school is not appropriate solely for a student's failure to attend class. Therefore, a student may not be suspended from school solely for not attending class. Other methods of discipline may be used for the student which may include, but are not limited to, detention, extra class time, or alternative class settings.

(f) Corporal punishment of any student by a school employee is prohibited.

(g) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions. These policies shall encourage the use of alternatives to discipline practices, provide for the training of school personnel by school social workers, behavior specialists, board certified behavior analysts, school psychologists, and other qualified employees with expertise in the behavioral area in alternatives to discipline practices, and provide for encouraging the involvement of parent(s), guardian(s), or custodian(s) in the maintenance of school discipline. To promote a teaching and learning environment free from substantial classroom disturbances, each county board shall ensure that each school implements a tier system policy, with teacher input, to provide a framework for student behaviors and punishments. The policy shall be clear and concise with specific guidelines and examples. The principal shall support the teacher in the discipline of the students if proper cause and documentation is provided following the schoolwide discipline policy. The teacher may not be reprimanded if their actions are legal and within the structure of the county board's policy for student behavior and punishment. The county board policies shall also include an appeal procedure whereby a teacher may appeal to the county superintendent if a school principal refuses to allow the exclusion of a student from the classroom or if a teacher believes the school principal has prematurely ended the exclusion of a student from the classroom. The county boards shall provide for the

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immediate incorporation and implementation in schools of a preventive discipline program which may include the responsible student program and a student involvement program, which may include the peer mediation program, devised by the state board. Each county board may modify those programs to meet the particular needs of the county. The county boards shall provide in-service training for teachers and principals relating to assertive discipline procedures and conflict resolution. The county boards also may establish cooperatives with private entities to provide middle educational programs or behavior intervention programs, which may include programs focusing on developing individual coping skills, conflict resolution, anger control, self-esteem issues, stress management and decision making for students, and any other program related to preventive discipline.

(h) For the purpose of this section:

"Principal" means the principal, assistant principal, vice principal, or the administrative head of the school, or a professional personnel designee of the principal or the administrative head of the school.

“School counselor” has the same meaning as provided for in §18-5-18b.

“School social worker” has the same meaning as “social worker” as provided for in §18-1-1.

“School psychologist” has the same meaning as “licensed school psychologist” as provided for in §30-21-2.

"Student" includes any child, youth, or adult who is enrolled in any instructional program or activity conducted under board authorization and within the facilities of, or in connection with, any program under public school direction: *Provided*, That, in the case of adults, the student–teacher relationship shall terminate when the student leaves the school or other place of instruction or activity;

"Teacher" means all professional educators as defined in §18A-1-1 of this code and includes the driver of a school bus or other mode of transportation.

(i) Teachers shall exercise other authority and perform other duties prescribed for them by law or by the rules of the state board not inconsistent with the provisions of this chapter and Chapter 18 of this code.

(j) When a grade kindergarten through six teacher in an elementary setting, or pre-K teacher at a publicly funded pre-K facility, determines that the behavior of the student is violent, threatening, or intimidating toward staff or peers, or creates an unsafe learning environment or impedes on other students' ability to learn in a safe environment, the student shall be referred to the school counselor, school social worker, school psychologist, or behavior interventionist who shall conduct a functional behavioral assessment to assess underlying causes of the student’s behavior. The school counselor, school social worker, school psychologist, or behavior interventionist shall prioritize and use evidence-based

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interventions and supports to establish a behavioral plan for the student. The behavioral plan shall be followed for a period of two weeks. After that, a re-evaluation of the student's behavior shall be conducted and if adequate progress is being made, the behavioral plan shall continue. If the evaluation does not show adequate progress, the principal, teacher, and school counselor, school social worker, school psychologist, or behavior interventionist shall determine whether the plan needs to be changed. If the plan is amended and, after another period of two weeks, the student still has not shown adequate progress then the student shall be placed in a behavioral intervention program or with a licensed behavioral health agency the county has established, has partnered with another county board to establish, or has gained access to for its students through an agreement with another county board for the purpose of addressing such behaviors.

(k) "Violent, threatening, or intimidating" behavior by the student is defined as a behavior that seriously and materially interferes with a teacher's ability to communicate effectively with the students in a class, with the ability of the student's classmates to learn, or with the operation of school or a school-sponsored activity. Violent, threatening, or intimidating behaviors are further defined as those actions causing or intending to cause physical harm to the teacher, principal, school service personnel, or the students in the classroom setting.

(l) If the county board has not established, partnered with another county board to establish, or gained access through an agreement with another county board to a behavioral intervention program:

(1) The student shall be removed from the classroom immediately after the incident and removed from the presence of other students for the remainder of the school day;

(2) The parents shall be notified and shall pick the student up from school preferably immediately, but by the end of the day at the latest, upon which the student shall be considered suspended from school;

(3) If a student has to ride the bus home, that student shall ride the bus under the supervision of a principal, vice principal, or an individual designated by the principal to ensure the safety of the student, the bus driver, and other students on the bus;

(4) The student shall continue to be suspended for the next one to three school days while alternative learning accommodations are made;

(5) The student may be evaluated under Child Find and may be referred for a functional behavior analysis pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §1400, *et seq*.: *Provided*, That the student shall be referred to the student assistance team (SAT), 504 team, or IEP team at that school – whichever is most appropriate for that student – for an immediate intervention, or manifestation if the student has an IEP;

(6) The student shall receive his or her education through the alternative learning accommodations and may not return to school until a risk assessment is done;

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(7) After the risk assessment, the student's return to school shall be on a provisional basis for a period of five to 10 days. If another incident as described in this subsection occurs within that time frame, or repeated instances occur following the time frame, the student shall be subject to the provisions of §18A-5-1a for purposes of expulsion: *Provided*, That the expulsion shall not continue through two continuous semesters: *Provided further*, That the teacher may come to the expulsion hearing in instances where a student shows violent, threatening, or intimidating behavior;

(8) If the virtual school option is the agreed upon method of alternative education, then the student can begin the program at such time the decision is made; and

(9) Whether a student's behavior falls under the requirements of this subsection and whether the student is to be placed in an alternative learning environment for the remainder of the semester or school year pursuant to subdivision (6) of this subsection shall be at the discretion of the student's classroom teacher and principal or vice principal. If the principal or vice principal disagree with the actions of the teacher, the principal or vice principal may provide written documentation on their disagreement, the teacher may provide written documentation on their disagreement, and both the principal/vice principal or the teacher may appeal to the county superintendent.

(m) When a grade six through 12 teacher, excluding an elementary school teacher, determines that the behavior of the student is disorderly conduct, is interfering with an orderly educational process, or obstructs the teaching or learning process of others in the classroom:

(1) The student may be excluded from that teacher's classroom and, if excluded, may not re-enter that teacher's classroom for at least the remainder of the instructional day; and

(2) If the student is excluded pursuant to subdivision (1) of this subsection:

(A) The principal shall communicate with the teacher within 24 hours of the student being excluded from the teacher's classroom about the exclusion;

(B) The teacher has 24 hours to create an electronic record and place the report of this action into the West Virginia Education Information System without any repercussion to the teacher; and

(C) If the student is removed from a classroom a total of three times in one month for one or more of the behaviors set forth in this subsection, the student shall receive, as determined by the principal, an in-school suspension, an out-of-school suspension, or may be considered for placement in an alternative learning center or with a licensed behavioral health agency if one is available within the school district.

(n) For purposes of subsection (m) of this section, "disorderly or obstructive" behavior by the student is defined as a behavior that seriously and materially interferes with a teacher's

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ability to communicate effectively with the students in a class, with the ability of the student's classmates to learn, or with the operation of school or a school-sponsored activity.

(o) The State Board of Education shall promulgate a rule pursuant to §29A-3B-1 *et seq*. which adopts a statewide disciplinary policy: *Provided*, That if a county or school in this state has a behavioral interventionist, they may apply for a waiver from the statewide disciplinary policy upon a showing of continued positive educational progress from the existing county or school disciplinary policy currently in effect. "Positive educational progress" is defined as data that demonstrates a decrease in violent, threatening, intimidating, disorderly, and obstructive behavior. Such positive educational progress shall also demonstrate that students are maintaining the necessary educational benchmarks otherwise provided for in this code.

(p) For purposes of this section, school counselors, school social workers, school psychologists, or behavior interventionists may provide behavioral support to ensure the effectiveness of this section.

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§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.

(a) A principal shall suspend a student from school or from transportation to or from the school on any school bus if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of subsection (b), section fifteen, article two, chapter sixty-one of this code; (ii) violated the provisions of subsection (b), section eleven-a, article seven of said chapter; or (iii) sold a narcotic drug, as defined in section one hundred one, article one, chapter sixty-a of this code, on the premises of an educational facility, at a school-sponsored function or on a school bus. If a student has been suspended pursuant to this subsection, the principal shall, within twenty-four hours, request that the county superintendent recommend to the county board that the student be expelled. Upon such a request by a principal, the county superintendent shall recommend to the county board that the student be expelled. Upon such recommendation, the county board shall conduct a hearing in accordance with subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board shall expel the student.

(b) A principal shall suspend a student from school, or from transportation to or from the school on any school bus, if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Committed an act or engaged in conduct that would constitute a felony under the laws of this state if committed by an adult; or (ii) unlawfully possessed on the premises of an educational facility or at a school-sponsored function a controlled substance governed by the Uniform Controlled Substances Act as described in chapter sixty-a of this code. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(c) A principal may suspend a student from school, or transportation to or from the school on any school bus, if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section: (i) Threatened to injure, or in any manner injured, a student, teacher, administrator or other school personnel; (ii) willfully disobeyed a teacher; (iii) possessed alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function; (iv) used profane language directed at a school employee or student; (v) intentionally defaced any school property; (vi) participated in any physical altercation with another person while under the authority of school personnel; or (vii)

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habitually violated school rules or policies. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(d) The actions of any student which may be grounds for his or her suspension or expulsion under the provisions of this section shall be reported immediately to the principal of the school in which the student is enrolled. If the principal determines that the alleged actions of the student would be grounds for suspension, he or she shall conduct an informal hearing for the student immediately after the alleged actions have occurred. The hearing shall be held before the student is suspended unless the principal believes that the continued presence of the student in the school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, in which case the student shall be suspended immediately and a hearing held as soon as practicable after the suspension.

The student and his or her parent(s), guardian(s) or custodian(s), as the case may be, shall be given telephonic notice, if possible, of this informal hearing, which notice shall briefly state the grounds for suspension.

At the commencement of the informal hearing, the principal shall inquire of the student as to whether he or she admits or denies the charges. If the student does not admit the charges, he or she shall be given an explanation of the evidence possessed by the principal and an opportunity to present his or her version of the occurrence. At the conclusion of the hearing or upon the failure of the noticed student to appear, the principal may suspend the student for a maximum of ten school days, including the time prior to the hearing, if any, for which the student has been excluded from school.

The principal shall report any suspension the same day it has been decided upon, in writing, to the parent(s), guardian(s) or custodian(s) of the student by regular United States mail. The suspension also shall be reported to the county superintendent and to the faculty senate of the school at the next meeting after the suspension.

(e) Prior to a hearing before the county board, the county board shall cause a written notice which states the charges and the recommended disposition to be served upon the student and his or her parent(s), guardian(s) or custodian(s), as the case may be. The notice shall state clearly whether the board will attempt at hearing to establish the student as a dangerous student, as defined by section one, article one of this chapter. The notice also shall include any evidence upon which the board will rely in asserting its claim that the student is a dangerous student. The notice shall set forth a date and time at which the hearing shall be held, which date shall be within the ten-day period of suspension imposed by the principal.

(f) The county board shall hold the scheduled hearing to determine if the student should be reinstated or should, under the provisions of this section, must be expelled from school. If the county board determines that the student should or must be expelled from school, it also may determine whether the student is a dangerous student pursuant to subsection (g) of this section. At this, or any hearing before a county board conducted pursuant to this section, the student may be represented by counsel, may call his or her own witnesses to verify his or her version of the incident and may confront and cross examine witnesses supporting the charge against him or her. The hearing shall be recorded by mechanical means unless recorded by a certified court reporter. The hearing may be postponed for good cause shown by the student but he or she shall remain under suspension until after the hearing. The state board may adopt other supplementary rules of procedure to be followed in these hearings. At the conclusion of the hearing the county board shall either: (1) Order the student reinstated immediately at the end of his or her initial suspension; (2) suspend the student for a further designated number of days; or (3) expel the student from the public schools of the county.

(g) A county board that did not intend prior to a hearing to assert a dangerous student claim, that did not notify the student prior to the hearing that a dangerous student determination would be considered and that determines through the course of the hearing that the student may be a dangerous student shall schedule a second hearing within ten days to decide the issue. The hearing may be postponed for good cause shown by the student, but he or she remains under suspension until after the hearing.

A county board that expels a student, and finds that the student is a dangerous student, may refuse to provide alternative education. However, after a hearing conducted pursuant to this section for determining whether a student is a dangerous student, when the student is found to be a dangerous student, is expelled and is denied alternative education, a hearing shall be conducted within three months after the refusal by the board to provide alternative education to reexamine whether or not the student remains a dangerous student and whether the student shall be provided alternative education. Thereafter, a hearing for the purpose of reexamining whether or not the student remains a dangerous student and whether the student shall be provided alternative education shall be conducted every three months for so long as the student remains a dangerous student and is denied alternative education. During the initial hearing, or in any subsequent hearing, the board may consider the history of the student's conduct as well as any improvements made subsequent to the expulsion. If it is determined during any of the hearings that the student is no longer a dangerous student or should be provided alternative education, the student shall be provided alternative education during the remainder of the expulsion period.

(h) The superintendent may apply to a circuit judge or magistrate for authority to subpoena witnesses and documents, upon his or her own initiative, in a proceeding related to a recommended student expulsion or dangerous student determination, before a county board conducted pursuant to the provisions of this section. Upon the written request of any other party, the superintendent shall apply to a circuit judge or magistrate for the authority to subpoena witnesses, documents or both on behalf of the other party in a proceeding related

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to a recommended student expulsion or dangerous student determination before a county board. If the authority to subpoena is granted, the superintendent shall subpoena the witnesses, documents or both requested by the other party. Furthermore, if the authority to subpoena is granted, it shall be exercised in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code.

Any hearing conducted pursuant to this subsection may be postponed: (1) For good cause shown by the student; (2) when proceedings to compel a subpoenaed witness to appear must be instituted; or (3) when a delay in service of a subpoena hinders either party's ability to provide sufficient notice to appear to a witness. A student remains under suspension until after the hearing in any case where a postponement occurs.

(i) Students may be expelled pursuant to this section for a period not to exceed one school year, except that if a student is determined to have violated the provisions of subsection (a) of this section the student shall be expelled for a period of not less than twelve consecutive months, subject to the following:

(1) The county superintendent may lessen the mandatory period of twelve consecutive months for the expulsion of the student if the circumstances of the student's case demonstrably warrant;

(2) Upon the reduction of the period of expulsion, the county superintendent shall prepare a written statement setting forth the circumstances of the student's case which warrant the reduction of the period of expulsion. The county superintendent shall submit the statement to the county board, the principal, the faculty senate and the local school improvement council for the school from which the student was expelled. The county superintendent may use the following factors as guidelines in determining whether or not to reduce a mandatory twelve-month expulsion:

(A) The extent of the student's malicious intent;

(B) The outcome of the student's misconduct;

(C) The student's past behavior history;

(D) The likelihood of the student's repeated misconduct; and

(E) If applicable, successful completion or making satisfactory progress toward successful completion of Juvenile Drug Court pursuant to section one-d of this section.

(j) In all hearings under this section, facts shall be found by a preponderance of the evidence.

(k) For purposes of this section, nothing herein may be construed to be in conflict with the federal provisions of the Individuals with Disabilities Education Act, 20 U. S. C. §1400, et seq.

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(l) Each suspension or expulsion imposed upon a student under the authority of this section shall be recorded in 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.

(1) The principal of the school at which the student is enrolled shall create an electronic record within twenty-four hours of the imposition of the suspension or expulsion.

(2) Each record of a suspension or expulsion shall include the student's name and identification number, the reason for the suspension or expulsion and the beginning and ending dates of the suspension or expulsion.

(3) The state board shall collect and disseminate data so that any principal of a public school in West Virginia can review the complete history of disciplinary actions taken by West Virginia public schools against any student enrolled or seeking to enroll at that principal's school. The purposes of this provision are to allow every principal to fulfill his or her duty under subsection (b), section fifteen-f, article five, chapter eighteen of this code to determine whether a student requesting to enroll at a public school in West Virginia is currently serving a suspension or expulsion from another public school in West Virginia and to allow principals to obtain general information about students' disciplinary histories.

(m) Principals may exercise any other authority and perform any other duties to discipline students consistent with state and federal law, including policies of the state board.

(n) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions.

(o) For the purpose of this section, "principal" means the principal, assistant principal, vice principal or the administrative head of the school or a professional personnel designee of the principal or the administrative head of the school.

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§18A-5-1b. Alternative procedures for expulsion hearings by county boards.

The county boards may employ a hearing examiner to conduct the expulsion hearings required by this article. The hearing examiner shall be an attorney, duly licensed to practice law in the State of West Virginia and shall not be employed by the state or county boards for any other reason.

The hearing examiner shall conduct hearings in compliance with the guidelines of section one-a of this article. All hearings shall be recorded by mechanical means, unless recorded by a certified court reporter. The hearing examiner shall issue a decision and written findings of fact and conclusions of law within five days of the conclusion of the hearing. Hearings by a hearing examiner shall have the same force and effect as a decision made by a county board. Upon the written request of a parent, guardian, or custodian of the student, or the county superintendent, the county board shall review the decision of the hearing examiner. Within ten calendar days from the date of the request of the review, the county board shall enter an order affirming, reversing, or modifying the decision of the hearing examiner. A county board may, in its own discretion, hold a hearing to determine any issues in question.

The authority of the county superintendent shall be the same as contained in section one-a of this article.

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§18A-5-1c. Bill of Rights and Responsibilities for Students and School Personnel.

(a) The Legislature finds that:

(1) The mission of public schools is to prepare students for equal and responsible citizenship and productive adulthood;

(2) Democratic citizenship and productive adulthood begin with standards of conduct in schools;

(3) Schools should be safe havens for learning with high standards of conduct for students; and

(4) Rights necessarily carry responsibilities.

(b) In recognition of the findings in this section, the following Bill of Rights and Responsibilities for Students and School Personnel is established:

(1) The right to attend a school and ride a bus that is safe, orderly and drug free;

(2) The right to learn and work in a school that has clear discipline codes with fair and consistently enforced consequences for misbehavior;

(3) The right to learn and work in a school that has alternative educational placements for violent or chronically disruptive students;

(4) The right to be treated with courtesy and respect;

(5) The right to a attend a school and ride on a bus that is free from bullying;

(6) The right to support from school administrators when enforcing discipline policies;

(7) The right to support from parents, the community, public officials and businesses in their efforts to uphold high standards of conduct; and

(8) The responsibility to adhere to the principles in this Bill of Rights and Responsibilities for Students and School Personnel, and to behave in a manner that guarantees that other students and school personnel enjoy the same rights.

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§18A-5-1d. Return to school through Juvenile Drug Court for certain students.

(a) When a student is expelled from school pursuant to §18A-5-1a of this code, the county board, county superintendent, or principal for the school from which the student was expelled or the parent, guardian, or custodian may refer the student to a Juvenile Drug Court, operated pursuant to §49-4-703 of this code. Upon referral, the judge assigned to Juvenile Drug Court shall determine whether the student is an appropriate candidate for Juvenile Drug Court.

(b) If the judge determines the student is an appropriate candidate for Juvenile Drug Court, then the court has jurisdiction over the student in the same manner as it has jurisdiction over all other persons in Juvenile Drug Court. Jurisdiction over students includes the ability to issue any of the various sanctions available to the Juvenile Drug Court, including temporary detention.

(c)(1) Successful completion of Juvenile Drug Court or certification by the Juvenile Drug Court judge that the student is making satisfactory progress toward successful completion of Juvenile Drug Court warrants consideration for reduction of the expulsion period, pursuant to §18A-5-1a of this code.

(2) The Juvenile Drug Court shall notify the county superintendent of the completion or certification. The county superintendent shall arrange a meeting with the Juvenile Drug Court treatment team, the court, and the student assistance team of the school from which the student was expelled to discuss the student's history, progress, and potential for improvement.

(3) The student assistance team shall evaluate and recommend whether the student's expulsion period should be reduced, and the student reinstated in school.

(4) The student assistance team's recommendation shall be presented to the superintendent, who shall make the final determination. The superintendent shall prepare a statement detailing reasons for or against school reinstatement and submit the statement to the county board. If the superintendent determines to reduce the expulsion period, he or she shall submit the statement required by §18A-5-1a(i) of this code and place the student in an appropriate school within the district.

(5) A student to be reinstated shall be permitted to return to school no later than the 10th regular school day following notice by the court to the superintendent regarding the student's successful completion or satisfactory progress toward successful completion of Juvenile Drug Court.

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§18A-5-2. Holidays; closing of schools; time lost because of such; special Saturday classes.

(a) Schools shall be closed on Saturdays and on the following days which are designated as legal school holidays: Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King's birthday, Memorial Day and West Virginia Day. Schools also shall be closed on any day on which a primary election, general election or special election is held throughout the state or school district and on any day appointed and set apart by the president or the Governor as a holiday of special observance by the people of the state.

(b) When any of the above designated holidays, except a special election, falls on Saturday, the schools shall be closed on the preceding Friday. When any designated holiday falls on Sunday, the schools shall be closed on the following Monday.

(c) Special classes may be conducted on Saturdays for pupils and by teachers and service personnel. Saturday classes shall be conducted on a voluntary basis and teachers and service personnel shall be remunerated in ratio to the regularly contracted pay.

(d) Any school or schools may be closed by proper authorities on account of the prevalence of contagious disease, conditions of weather or any other calamitous cause over which the board has no control.

(1) Under any or all of the above provisions, the time lost by the school closings may not be counted as days of employment and may not be counted as meeting a part of the requirements of the minimum term of one hundred eighty days of instruction. A school employee's pay per pay period may not change as a result of a school closing not being counted as a day of employment, and the employee shall be paid the same amount during any pay period in which a school closing occurs that the employee would have been paid during the pay period if a school closing had not occurred.

(2) On the day or days when a school or schools are closed, county boards may provide appropriate alternate work schedules for professional and service personnel affected by the closing of any school or schools under any or all of the provisions of this subsection. Professional and service personnel shall receive pay the same as if school were in session.

(3) Insofar as funds are available or can be made available during the school year, the board may extend the employment term for the purpose of making up time that might affect the instructional term.

(e) In addition to any other provisions of this chapter, the board further is authorized to provide in its annual budget for meetings, workshops, vacation time or other holidays through extended employment of personnel at the same rate of pay.

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§18A-5-3. Exemption from jury service.

Notwithstanding any other provision of law, professional personnel and other persons actively engaged in school work in this state shall be required to serve on any jury during the period of his contract with a Board of Education unless excused therefrom by judge of the court. In the case of service on a jury the board shall pay the difference between that allowed for such jury service and the amount of salary due the person for such period of time.

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§18A-5-3a. Answering witness subpoenas.

Any teacher, principal, supervisor, service personnel or other person employed by a Board of Education who is subpoenaed to appear as a witness but not as a defendant in any criminal proceeding in any court of law may make such appearance without any loss of pay. The board shall pay to such employee the difference between the witness fee, exclusive of travel allowances, payable for such appearance by the court and the amount of salary due to the person for the time such employee is absent from his employment by reason of answering such subpoena.

WV Legislature

§18A-5-4. Educational meetings.

A county board of education may approve the attendance of any or all teachers at educational conventions, conferences, or other professional meetings of teachers on school days when in the judgment of the superintendent it is necessary or desirable. Attendance at such meetings may be substituted for an equal amount of teaching or employment and teachers attending shall not suffer loss of pay. Further, the board is authorized to pay all or any part of expenses of any personnel whom it may designate to represent the board at any such professional or educational meetings or in visitation to another school system.

Every county board of education shall adopt a policy under which professional educators serving as mentor teachers, serving on state and county professional staff development councils, serving on school curriculum teams, and serving on professional support teams will be granted professional time if required for performance of their duties during the instructional day or extra duty compensation if required at other times and for reimbursement for necessary expenses actually incurred in attending meetings of the bodies upon which they serve upon. Such policy shall provide for the coverage of the professional personnel's regular duties during such release times through the use of paraprofessional aides, substitutes and other methods if necessary to avoid the interruption of instruction.

WV Legislature

§18A-5-4a. Educational or service meetings.

A county board of education may approve the attendance of any or all service personnel at educational conventions, conferences, or school service meetings of service personnel on school days when in the judgment of the superintendent it is necessary or desirable. Attendance at such meetings may be substituted for an equal amount of employment and service personnel so attending shall not suffer loss of pay. Further, the board is authorized to pay all or any part of expenses of any personnel whom it may designate to represent the board at any such educational conventions, conferences or school service meetings or in visitation to another school system.

WV Legislature

§18A-5-5. Records; reports by professional and other personnel.

Every teacher, principal, supervisor, or other person employed by a Board of Education shall keep such records and shall make such reports as may be required by the state Superintendent of Schools, and such records shall be kept and such reports shall be made according to the forms and blanks prescribed and furnished by the state superintendent. Teachers shall also keep such other records and make such other reports as may be required by the board of Education employing them.

WV Legislature

§18A-5-6. School census.

A school census of youths from birth through twenty years of age as of September first of the year in which taken, or of such ages as otherwise may locally be determined and of mentally and physically handicapped persons of all ages, may be made as directed by a county board of education. The school census may be taken by the teachers or as otherwise directed by the county board of education. Teachers taking the school census shall be entitled to use school hours not to exceed a total of one school day, and shall be compensated for such time as for time taught.

The State Superintendent of Schools shall have authority to require a statewide enumeration by the counties at such times as he may direct and may establish the procedures therefor.

In order that the census record may be as currently accurate as possible, and a reliable source of reference through the school year, it shall be the duty of each county superintendent of schools to establish and administer through the office of the county director of school attendance a system of cumulative census records which may be prescribed by the state Superintendent of Schools.

WV Legislature

§18A-5-7. Oath required of teachers.

Every teacher shall, at the time of signing his contract to teach, take an oath to support the Constitution of the United States and the Constitution of the State of West Virginia, and to honestly demean himself in the teaching profession and to the best of his ability execute his position of teacher. Such oath shall be printed on the contract form prescribed by the state superintendent.

WV Legislature

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

(a) Within the limitations provided in this section, any aide who agrees to do so shall stand in the place of the parent or guardian and shall exercise such authority and control over students as is required of a teacher as provided in section one of this article. The principal shall designate aides in the school who agree to exercise that authority on the basis of seniority as an aide and shall enumerate the instances in which the authority shall be exercised by an aide when requested by the principal, assistant principal or professional employee to whom the aide is assigned.

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

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

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

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

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

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

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

WV Legislature

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

WV Legislature