

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-28-79

Time 1:25 p.m.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979



ENROLLED

Committee Substitute for
HOUSE BILL No. 929

(By Mr. Allbright)



Passed March 10, 1979

In Effect Ninety Days From Passage



No. 929

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 929

(By MR. ALBRIGHT)

[Passed March 10, 1979; in effect ninety days from passage.]

AN ACT to amend article five, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a; and to amend article two, chapter sixty-one of said code by adding thereto a new section, designated section fifteen, relating to assaults by pupils upon teachers or other school personnel; temporary suspension and hearing; procedures, including notice and a formal hearing for longer suspension or expulsion; special consideration given to exceptional children; unlawful assault on a school employee and the penalty therefor; unlawful battery on a school employee and the penalty therefor; and definition of school employee.

Be it enacted by the Legislature of West Virginia:

That article five, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-a; and that article two, chapter sixty-one of said code, be amended by adding thereto a new section, designated section fifteen, all to read as follows:

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1a. Assaults by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; expulsion; exception.

1 (a) Any pupil who threatens to cause, attempts to cause,
2 or causes a bodily injury to a school employee may be
3 suspended or expelled from school in accordance with the
4 provisions of this section.

5 (b) The actions of any pupil which may be grounds for his
6 suspension or expulsion under the provisions of this section
7 shall be reported immediately to the principal of the school
8 in which such pupil is enrolled. If the principal determines
9 that the alleged actions of the pupil would be grounds for
10 suspension, he shall conduct an informal hearing for the pupil
11 as soon as practicable after the alleged actions have occurred.
12 The hearing shall be held before the pupil is suspended unless
13 the principal believes that the continued presence of the pupil
14 in the school poses a continuing danger to persons or property
15 or an ongoing threat of disrupting the academic process, in
16 which case the pupil may be suspended immediately and a
17 hearing held as soon as practicable after the suspension.

18 The pupil and his parent or parents or custodial guardian,
19 as the case may be, shall be given written notice by certified
20 mail, return receipt requested, of this informal hearing,
21 which notice shall briefly state the grounds for suspen-
22 sion.

23 At the commencement of the informal hearing, the prin-
24 cipal shall inquire of the pupil as to whether he admits
25 or denies the charges. If the pupil does not admit the
26 charges, he shall be given an explanation of the evidence
27 possessed by the principal and an opportunity to present
28 his version of the occurrence. At the conclusion of the
29 hearing or upon the failure of the noticed persons to ap-
30 pear, the principal may suspend the pupil for a maximum
31 of ten calendar days, including the time prior to such

32 hearing, if any, for which the pupil has been excluded from
33 school. If the principal believes a longer suspension or
34 expulsion of the pupil is warranted in addition to a ten-
35 day suspension, he shall so advise the parents and pupil,
36 if present, and recommend such action to the superintendent
37 of schools of the county in which the school where the pupil
38 is enrolled is located.

39 (c) Any suspension shall be reported by the prin-
40 cipal the same day it has been decided upon, in writ-
41 ing, to the county superintendent of schools of the county
42 in which the school where the pupil is enrolled is lo-
43 cated.

44 (d) If the principal recommends and the superin-
45 tendent agrees that the suspension should be extended
46 for beyond ten calendar days or that the pupil should
47 be expelled from school, the superintendent shall im-
48 mediately notify the county board of education of this
49 recommendation. Upon receipt of such recommendation,
50 the county board of education shall cause a written
51 notice, which states the charges and the recommended
52 disposition, to be served upon the pupil and his parent
53 or parents or custodial guardian, as the case may be,
54 advising such persons that unless a timely request is made
55 for hearing, the recommended disposition shall become
56 final. Such notice shall set forth a date and time at
57 which such hearing, if requested, shall be held, which date
58 shall be within the ten-day period of suspension imposed
59 by the principal. The notice shall further advise the per-
60 sons to be noticed thereby that a request for hearing will
61 not be granted unless received by the board more than
62 twenty-four hours before the time proposed for hearing in the
63 notice.

64 Upon timely receipt of a hearing request, the board of
65 education shall hold the scheduled hearing to determine if
66 the pupil should be reinstated or should have his suspension
67 extended or should be expelled from school. At this hearing,
68 the pupil may be represented by counsel, may call his own
69 witnesses to verify his version of the incident and may confront
70 and cross-examine witnesses supporting the charge against him.

71 The hearing may be postponed for good cause shown by the
72 pupil but he shall remain under suspension until after the
73 hearing. The state board of education may adopt other
74 supplementary rules of procedure to be followed in these
75 hearings. At the conclusion of the hearing the county board
76 of education either shall order the pupil reinstated immedi-
77 ately or at the end of his initial suspension or shall suspend
78 the pupil for a further designated number of days or shall
79 expel the pupil from the public schools of such county for a
80 period of time not to exceed one school year.

81 (e) Notwithstanding the preceding provisions of this sec-
82 tion, if a pupil has prior to the actions complained of been
83 classified as or is eligible to be classified as an excep-
84 tional child, other than gifted, under the provisions of
85 section one, article twenty, chapter eighteen of this code,
86 special consideration shall be given to such pupil as here-
87 inafter provided.

88 In any hearing held pursuant to this section, a pupil, his
89 parent or custodial guardian may show in explanation of the
90 actions complained of that such actions were the proximate
91 result of a condition which has qualified or would qualify
92 the pupil for a special educational program other than gifted.
93 If the principal or board finds that such actions were the
94 proximate result of such a condition, the pupil shall not be
95 suspended or expelled pursuant to this section but the pupil
96 shall be forthwith referred to the appropriate personnel within
97 the county school system for development of an individual
98 learning program: *Provided*, That such pupil may be tem-
99 porarily removed from school according to procedures em-
100 ployed by the school system for special education pupils if,
101 in the opinion of the principal, such removal is necessary for
102 his or her own protection or the protection of other pupils,
103 teachers, school personnel or school property during all or
104 some part of the time required to prepare such individual
105 learning program.

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

108 (g) For the purpose of this section, "school employee"

109 means a person employed by a county board of education
 110 whether employed on a regular full-time basis, an hourly
 111 basis or otherwise if, at the time of the commission of an
 112 act which would be grounds for suspension or expulsion
 113 under this section, such person is engaged in the performance
 114 of his duties or is commuting to or from his place of employ-
 115 ment. For the purposes of this section, a "school employee"
 116 shall be deemed to include a student teacher.

117 (h) The remedies provided for in this section are cumula-
 118 tive.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-15. Assault, battery on school employees; penalties.

1 (a) If any person commits an assault by unlawfully attempt-
 2 ing to commit a violent injury to the person of a school
 3 employee or by unlawfully committing an act which places a
 4 school employee in reasonable apprehension of immediately
 5 receiving a violent injury, he shall be guilty of a misdemeanor,
 6 and, upon conviction, shall be confined in jail not less than
 7 five days nor more than six months and fined not less than
 8 fifty dollars nor more than one hundred dollars.

9 (b) If any person commits a battery by unlawfully and
 10 intentionally making physical contact of an insulting or pro-
 11 voking nature with the person of a school employee or by
 12 unlawfully and intentionally causing physical harm to a school
 13 employee, he shall be guilty of a misdemeanor, and, upon
 14 conviction, shall be confined in jail not less than ten days
 15 nor more than twelve months and fined not less than one
 16 hundred dollars nor more than five hundred dollars.

17 (c) For the purposes of this section, "school employee"
 18 means a person employed by a county board of education
 19 whether employed on a regular full-time basis, an hourly
 20 basis or otherwise if, at the time of the commission of any
 21 offense provided for in this section, such person is engaged
 22 in the performance of his duties or is commuting to or from
 23 his place of employment. For the purposes of this section,

24 a "school employee" shall be deemed to include a student
25 teacher.

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

James L. Davis
Chairman Senate Committee

Clarence C. Chestnut Jr.
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. O. Dillon, Jr.
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

H. C. Holman Jr.
President of the Senate

Clayton M. Lee, Jr.
Speaker House of Delegates

The within is approved this the 28
day of March, 1979.

Richard R. Royster
Governor

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