WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979

ENROLLED
Committee Substitute for
HOUSE BILL No. 929

(By Mr. Allwright)

Passed March 10, 1979

In Effect Ninety Days From Passage
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.

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

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

The pupil and his parent or parents or custodial guardian, as the case may be, shall be given written notice by certified mail, return receipt requested, 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 pupil as to whether he admits or denies the charges. If the pupil does not admit the charges, he shall be given an explanation of the evidence possessed by the principal and an opportunity to present his version of the occurrence. At the conclusion of the hearing or upon the failure of the noticed persons to appear, the principal may suspend the pupil for a maximum of ten calendar days, including the time prior to such
hearing, if any, for which the pupil has been excluded from school. If the principal believes a longer suspension or expulsion of the pupil is warranted in addition to a ten-day suspension, he shall so advise the parents and pupil, if present, and recommend such action to the superintendent of schools of the county in which the school where the pupil is enrolled is located.

(c) Any suspension shall be reported by the principal the same day it has been decided upon, in writing, to the county superintendent of schools of the county in which the school where the pupil is enrolled is located.

(d) If the principal recommends and the superintendent agrees that the suspension should be extended for beyond ten calendar days or that the pupil should be expelled from school, the superintendent shall immediately notify the county board of education of this recommendation. Upon receipt of such recommendation, the county board of education shall cause a written notice, which states the charges and the recommended disposition, to be served upon the pupil and his parent or parents or custodial guardian, as the case may be, advising such persons that unless a timely request is made for hearing, the recommended disposition shall become final. Such notice shall set forth a date and time at which such hearing, if requested, shall be held, which date shall be within the ten-day period of suspension imposed by the principal. The notice shall further advise the persons to be noticed thereby that a request for hearing will not be granted unless received by the board more than twenty-four hours before the time proposed for hearing in the notice.

Upon timely receipt of a hearing request, the board of education shall hold the scheduled hearing to determine if the pupil should be reinstated or should have his suspension extended or should be expelled from school. At this hearing, the pupil may be represented by counsel, may call his own witnesses to verify his version of the incident and may confront and cross-examine witnesses supporting the charge against him.
The hearing may be postponed for good cause shown by the pupil but he shall remain under suspension until after the hearing. The state board of education may adopt other supplementary rules of procedure to be followed in these hearings. At the conclusion of the hearing the county board of education either shall order the pupil reinstated immediately or at the end of his initial suspension or shall suspend the pupil for a further designated number of days or shall expel the pupil from the public schools of such county for a period of time not to exceed one school year.

(e) Notwithstanding the preceding provisions of this section, if a pupil has prior to the actions complained of been classified as or is eligible to be classified as an exceptional child, other than gifted, under the provisions of section one, article twenty, chapter eighteen of this code, special consideration shall be given to such pupil as hereinafter provided.

In any hearing held pursuant to this section, a pupil, his parent or custodial guardian may show in explanation of the actions complained of that such actions were the proximate result of a condition which has qualified or would qualify the pupil for a special educational program other than gifted. If the principal or board finds that such actions were the proximate result of such a condition, the pupil shall not be suspended or expelled pursuant to this section but the pupil shall be forthwith referred to the appropriate personnel within the county school system for development of an individual learning program: Provided, That such pupil may be temporarily removed from school according to procedures employed by the school system for special education pupils if, in the opinion of the principal, such removal is necessary for his or her own protection or the protection of other pupils, teachers, school personnel or school property during all or some part of the time required to prepare such individual learning program.

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

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

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

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

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

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

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

(c) For the purposes of this section, “school employee”
means a person employed by a county board of education
whether employed on a regular full-time basis, an hourly
basis or otherwise if, at the time of the commission of any
offense provided for in this section, such person is engaged
in the performance of his duties or is commuting to or from
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 L. Chisholm, Jr.  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. Dillon Jr.  
Clerk of the Senate

D. Blankenship  
Clerk of the House of Delegates

J. P. Brochin  
President of the Senate

C. A. Lee  
Speaker House of Delegates

The within bill was passed this the 25th day of March, 1979.

Governor