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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL No. 1970

(By ~~Mr.~~ Del. Murphy & Del. Rogers)

— ● —

Passed April 12, 1985

In Effect July 1, 1985 Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1970
(By DELEGATE MURPHY and DELEGATE ROGERS)

[Passed April 12, 1985; in effect July 1, 1985.]

AN ACT to amend and reenact sections eight and eleven, article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter eighteen of said code by adding thereto a new article, designated article twenty-nine, all relating to providing a grievance procedure for employees of the board of regents, state institutions of higher education, state board of education, county boards of education, regional educational service agencies and multi-county vocation centers; declaring legislative purpose and intent; defining certain terms; providing for grievance procedures, hearings and appeals generally; designating procedural levels and providing for procedures at each such level; creating and providing for an education employees grievance board; delineating certain powers and duties of said board; providing for hearing examiners; providing for certain powers and duties of such hearing examiners; providing for enforcement and reviewability of decisions of the hearing examiners; providing for the allocation of costs in certain instances; authorizing mandamus proceedings upon failure to comply with the provisions of article twenty-nine of chapter eighteen; providing that employee suspended or dismissed for certain reasons have opportunity to request a hearing pursuant to said article twenty-nine; providing for recovery of attorney's fees and court costs by

an employee prevailing in either circuit court or supreme court of appeals; and setting limitations upon such attorney's fees.

Be it enacted by the Legislature of West Virginia:

That sections eight and eleven, article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that chapter eighteen of said code be amended by adding thereto a new article, designated article twenty-nine, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 29. GRIEVANCE PROCEDURE.

§18-29-1. Legislative purpose and intent.

1 The purpose of this article is to provide a procedure for
2 employees of the board of regents, state board of education,
3 county boards of education, regional educational service
4 agencies and multi-county vocational centers and their
5 employer or agents of the employer to reach solutions to
6 problems which arise between them within the scope of their
7 respective employment relationships to the end that good
8 morale may be maintained, effective job performance may be
9 enhanced and the citizens of the community may be better
10 served. This procedure is intended to provide a simple,
11 expeditious and fair process for resolving problems at the
12 lowest possible administrative level and shall be construed to
13 effectuate this purpose. Nothing herein shall prohibit the
14 informal disposition of grievances by stipulation or settlement
15 agreed to in writing by the parties, nor the exercise of any
16 hearing right provided in article two, chapter eighteen-a of this
17 code or any other section of chapter eighteen or eighteen-a of
18 this code: *Provided*, That, employees of the board of regents
19 or of state institutions of higher education shall have the
20 option of filing grievances in accordance with the provisions
21 of this article or in accordance with the provisions of policy,
22 rules and regulations of the board of regents regarding such
23 employees. Any board decision pursuant to such sections may
24 be appealed in accordance with the provisions of this article
25 unless otherwise provided in such section.

§18-29-2. Definitions.

1 For the purpose of this article:

2 (a) "Grievance" means any claim by one or more affected
 3 employees of the board of regents, state board of education,
 4 county boards of education, regional educational service
 5 agencies and multi-county vocational centers alleging a
 6 violation, a misapplication or a misinterpretation of the
 7 statutes, policies, rules, regulations or written agreements
 8 under which such employees work, including any violation,
 9 misapplication or misinterpretation regarding compensation,
 10 hours, terms and conditions of employment, employment
 11 status or discrimination; any discriminatory or otherwise
 12 aggrieved application of unwritten policies or practices of the
 13 board; any specifically identified incident of harassment or
 14 favoritism; or any action, policy or practice constituting a
 15 substantial detriment to or interference with effective
 16 classroom instruction, job performance or the health and
 17 safety of students or employees.

18 Any pension matter or other issue relating to the state
 19 teachers retirement system in accordance with article seven-a
 20 of this chapter or other retirement system administered outside
 21 the jurisdiction of the applicable governing board, any matter
 22 relating to public employees insurance in accordance with
 23 article sixteen, chapter five of this code, or any other matter
 24 in which authority to act is not vested with the employer shall
 25 not be the subject of any grievance filed in accordance with
 26 the provisions of this article.

27 (b) "Days" means days of the employee's employment term
 28 or prior to or subsequent to such employment term exclusive
 29 of Saturday, Sunday, official holidays or school closings in
 30 accordance with section two, article five, chapter eighteen-a of
 31 this code.

32 (c) "Employee" means any person hired by an institution
 33 either full or part time. A substitute is considered an employee
 34 only on matters related to days worked for an institution or
 35 when there is a violation, misapplication or misinterpretation
 36 of a statute, policy, rule, regulation or written agreement
 37 relating to such substitute.

38 (d) "Grievant" means any named employee or group of
 39 named employees filing a grievance as defined in subsection
 40 (a) of this section.

41 (e) "Institution" means any state institution of higher

42 education, the board of regents, any institution whose
43 employees are hired by the state board of education including
44 the department of education, and any public school, regional
45 educational service agency or multi-county vocational center.

46 (f) "Employer" means that institution contracting the
47 services of the employee.

48 (g) "Immediate supervisor" means that person next in rank
49 above the grievant possessing a degree of administrative
50 authority and designated as such in the employee's contract,
51 if any.

52 (h) "Chief administrator" means the president of a state
53 institution of higher education, the chancellor of the board of
54 regents only as to those employees not assigned to a state
55 institution of higher education, the state superintendent of
56 schools as to employees hired by the state board of education,
57 the county superintendent, the executive director of a regional
58 educational service agency or the director of a multi-county
59 vocational center.

60 (i) "Governing board" means the administrative board of
61 any state or county educational institution, including
62 institutions whose employees are hired by the state board of
63 education, and refers, as is applicable, to the board of regents,
64 state board of education, county boards of education, the
65 school board members of any board of directors of a regional
66 educational service agency or the school board members of any
67 administrative council of a multi-county vocational center.

68 (j) "Grievance evaluator" means that individual or govern-
69 ing board authorized to render a decision on a grievance.

70 (k) "Board" means the education employees grievance
71 board.

72 (l) "Hearing examiner" means the individual or individuals
73 employed by the board in accordance with section five of this
74 article.

75 (m) "Discrimination" means any differences in the treatment
76 of employees unless such differences are related to the actual
77 job responsibilities of the employees or agreed to in writing
78 by the employees.

79 (n) "Harassment" means repeated or continual disturbance,

80 irritation or annoyance of an employee which would be
81 contrary to the demeanor expected by law, policy and
82 profession.

83 (o) "Favoritism" means unfair treatment of an employee as
84 demonstrated by preferential, exceptional or advantageous
85 treatment of another or other employees.

86 (p) "Reprisal" means the retaliation of an employer or agent
87 toward a grievant or any other participant in the grievance
88 procedure either for an alleged injury itself or any lawful
89 attempt to redress it.

90 (q) "Employee organization" means any employee advocacy
91 organization whose membership includes employees as defined
92 in this section which has filed with the board the name,
93 address, chief officer and membership criteria of the
94 organization.

95 (r) "Representative" means any employee organization,
96 fellow employee, legal counsel or other person or persons
97 designated by the grievant as the grievant's representative.

§18-29-3. Grievance procedure generally.

1 (a) A grievance must be filed within the times specified in
2 section four of this article and shall be processed as rapidly
3 as possible. The number of days indicated at each level
4 specified in section four of this article shall be considered as
5 the maximum number of days allowed and, if a decision is
6 not rendered at any level within the prescribed time limits, the
7 grievant may appeal to the next level: *Provided*, That the
8 specified time limits may be extended by mutual written
9 agreement and shall be extended whenever a grievant is not
10 working because of such circumstances as provided for in
11 section ten, article four, chapter eighteen-a of this code.

12 (b) If the employer or agent intends to assert the applica-
13 bility of any statute, policy, rule, regulation or written
14 agreement or submits any written response to the filed
15 grievance at any level, a copy thereof shall be forwarded to
16 the grievant and any representative of the grievant so named
17 in the filed grievance. Anything so submitted and the grievant's
18 response thereto, if any, shall become part of the record.
19 Failure to assert such statute, policy, rule, regulation or written
20 agreement at any level shall not prevent the subsequent

21 submission thereof in accordance with the provisions of this
22 subsection.

23 (c) The grievant may file the grievance at the level vested
24 with authority to grant the requested relief if each lower
25 administrative level agrees in writing thereto. In the event a
26 grievance is filed at a higher level, the employer shall provide
27 copies to each lower administrative level.

28 (d) An employee may withdraw a grievance at any time by
29 notice, in writing, to the level wherein the grievance is then
30 current. Such grievance may not be reinstated by the grievant
31 unless such reinstatement is granted by the grievance evaluator
32 at the level where the grievance was withdrawn. If more than
33 one employee is named as grievant in a particular grievance,
34 the withdrawal of one employee shall not prejudice the rights
35 of any other employee named in the grievance. In the event
36 a grievance is withdrawn or an employee withdraws from a
37 grievance, such employer shall notify in writing each lower
38 administrative level.

39 (e) Grievances may be consolidated at any level by
40 agreement of all parties.

41 (f) An employee may have the assistance of one or more
42 fellow employees, an employee organization representative or
43 representatives, legal counsel or any other person in the
44 preparation and presentation of the grievance. At the request
45 of the grievant, such person or persons may be present at any
46 step of the procedure.

47 (g) If a grievance is filed which cannot be resolved within
48 the time limits set forth in section four of this article prior
49 to the end of the employment term, the time limit set forth
50 in said section shall be reduced as agreed to in writing by both
51 parties so that the grievance procedure may be concluded
52 within ten days following the end of the employment term or
53 an otherwise reasonable time.

54 (h) No reprisals of any kind shall be taken by any employer
55 or agent of the employer against any interested party, or any
56 other participant in the grievance procedure by reason of such
57 participation. A reprisal constitutes a grievance, and any
58 person held to be responsible for reprisal action shall be
59 subject to disciplinary action for insubordination.

60 (i) Except for the informal attempt to resolve the grievance
61 as provided for in subsection (a), section four of this article,
62 decisions rendered at all levels of the grievance procedure shall
63 be dated, shall be in writing setting forth the decision or
64 decisions and the reasons therefor, and shall be transmitted
65 within the time prescribed to the grievant and any represen-
66 tative named in the grievance. If the grievant is denied the
67 relief sought, the decision shall include the name of the
68 individual at the next level to whom appeal may be made.

69 (j) Once a grievance has been filed, supportive or corrobor-
70 ative evidence may be presented at any conference or hearing
71 conducted pursuant to the provisions of this article. Whether
72 evidence substantially alters the original grievance and renders
73 it a different grievance is within the discretion of the grievance
74 evaluator at the level wherein the new evidence is presented.
75 If the grievance evaluator rules that the evidence renders it a
76 different grievance, the party offering the evidence may
77 withdraw same, the parties may consent to such evidence, or
78 the grievance evaluator may decide to hear the evidence or rule
79 that the grievant must file a new grievance. The time
80 limitations for filing the new grievance shall be measured from
81 the date of such ruling.

82 (k) Any change in the relief sought by the grievant shall be
83 consented to by all parties or may be granted at level four
84 within the discretion of the hearing examiner.

85 (l) Forms for filing grievances, giving notice, taking appeals,
86 making reports and recommendations, and all other necessary
87 documents shall be made available by the immediate
88 supervisor to any employee upon request. Such forms shall
89 include information as prescribed by the board. The grievant
90 shall have access to the institution's equipment for purposes
91 of preparing grievance documents subject to the reasonable
92 rules of the employer governing the use of such equipment.

93 (m) Notwithstanding the provisions of section three, article
94 nine-a, chapter six of this code, or any other provision relating
95 to open proceedings, all conferences and hearings pursuant to
96 this article shall be conducted in private except that, upon the
97 grievant's request, conferences and hearings at levels two and
98 three shall be public. Within the discretion of the hearing
99 examiner, conferences and hearings may be public at level

100 four.

101 (n) No person or governing board to which appeal has been
102 made shall confer or correspond with a grievance evaluator
103 at a previous level regarding the merits of the grievance unless
104 all parties to the grievance are present.

105 (o) Grievances may be processed at any reasonable time, but
106 attempts shall be made to process the grievance in a manner
107 which does not interfere with the normal operation of the
108 institution or with employees' normal working hours.
109 Grievances processed on work time shall not result in any
110 reduction in salary, wages, rate of pay or other benefits of the
111 employee and shall be counted as time worked.

112 Should any employer or the employer's agent cause a
113 conference or hearing to be postponed without adequate notice
114 to employees who are scheduled to appear during their normal
115 work day, such employees will not suffer any loss in pay for
116 work time lost.

117 (p) Any grievance evaluator may be excused from partic-
118 ipation in the grievance process for reasonable cause,
119 including, but not limited to, conflict of interest or incapac-
120 itation, and in such case the grievance evaluator at the next
121 higher level shall designate an alternate grievance evaluator if
122 such is deemed reasonable and necessary.

123 (q) No less than one year following resolution of a grievance
124 at any level, the grievant may by request in writing have
125 removed any record of the grievance from any file kept by the
126 employer.

127 (r) All grievance forms and reports shall be kept in a file
128 separate from the personnel file of the employee and shall not
129 become a part of such personnel file, but shall remain
130 confidential except by mutual written agreement of the parties.

131 (s) The number of grievances filed against an employer or
132 agent or by an employee shall not, per se, be an indication
133 of such employer's or agent's or such employee's job
134 performance.

135 (t) Any chief administrator or governing board of an
136 institution in which a grievance was filed may appeal such
137 decision on the grounds that the decision (1) was contrary to

138 law or lawfully adopted rule, regulation or written policy of
 139 the chief administrator or governing board, (2) exceeded the
 140 hearing examiner's statutory authority, (3) was the result of
 141 fraud or deceit, (4) was clearly wrong in view of the reliable,
 142 probative and substantial evidence on the whole record, or (5)
 143 was arbitrary or capricious or characterized by abuse of
 144 discretion. Such appeal shall follow the procedure regarding
 145 appeal provided the grievant in section four of this article and
 146 provided both parties in section seven of this article.

§18-29-4. Procedural levels and procedure at each level.

1 (a) Level one.

2 (1) Before a grievance is filed and within fifteen days
 3 following the occurrence of the event upon which the grievance
 4 is based, or within fifteen days of the date on which the event
 5 became known to the grievant or within fifteen days of the
 6 most recent occurrence of a continuing practice giving rise to
 7 a grievance, the grievant or the designated representative shall
 8 schedule a conference with the immediate supervisor to discuss
 9 the nature of the grievance and the action, redress or other
 10 remedy sought.

11 The conference with the immediate supervisor concerning
 12 the grievance shall be conducted within three days of the
 13 request therefor, and any discussion shall be by the grievant
 14 in the grievant's own behalf or by both the grievant and the
 15 designated representative.

16 (2) The immediate supervisor shall respond to the grievance
 17 within two days of the conference.

18 (3) Within ten days of receipt of the response from the
 19 immediate supervisor following the informal conference, a
 20 written grievance may be filed with said supervisor by the
 21 grievant or the designated representative on a form furnished
 22 by the employer or agent.

23 (4) The immediate supervisor shall state the decision to such
 24 filed grievance within five days after the grievance is filed.

25 (b) Level two.

26 Within five days of receiving the decision of the immediate
 27 supervisor, the grievant may appeal the decision to the chief
 28 administrator, and such administrator or his or her designee

29 shall conduct a hearing in accordance with section six of this
30 article within five days of receiving the appeal and shall issue
31 a written decision within five days of such hearing. Such
32 decision may affirm, modify or reverse the decision appealed
33 from.

34 (c) Level three.

35 Except as to faculty and classified employees of the board
36 of regents or any state institution of higher education who
37 shall have the option to proceed directly to level four, within
38 five days of receiving the decision of the chief administrator,
39 the grievant may appeal the decision to the governing board
40 of the institution. Within five days of receiving the appeal,
41 such governing board may conduct a hearing in accordance
42 with section six of this article, may review the record submitted
43 by the chief administrator and render a decision based on such
44 record, or may waive the right granted herein and shall notify
45 the grievant of such waiver. Any decision by the governing
46 board, including a decision to waive participation in the
47 grievance, must be in writing, and, if a hearing be held under
48 the provisions of this subsection, the governing board shall
49 issue a decision affirming, modifying or reversing the decision
50 of the chief administrator within five days of such hearing.

51 (d) Level four.

52 (1) If the grievant is not satisfied with the action taken by
53 the governing board, within five days of the written decision
54 the grievant may request, in writing, on a form furnished by
55 the employer, that the grievance be submitted to a hearing
56 examiner as provided for in section five of this article, such
57 hearing to be conducted in accordance with section six of this
58 article within ten days following the request therefor:
59 *Provided, however,* That such hearing may be held within
60 thirty days following the request, or within such time as is
61 mutually agreed upon by the parties, if the hearing examiner
62 gives reasonable cause, in writing, as to the necessity for such
63 delay.

64 (2) Within thirty days following the hearing, the hearing
65 examiner shall render a decision in writing to all parties setting
66 forth findings and conclusions on the issues submitted. Subject
67 to the provisions of section seven of this article, the decision
68 of the hearing examiner shall be final upon the parties and

69 shall be enforceable in circuit court.

§18-29-5. Education employees grievance board; hearing examiners.

1 (a) There is hereby created and shall be an education
2 employees grievance board which shall consist of three
3 members who shall be citizens of the state appointed by the
4 governor by and with the advice and consent of the Senate
5 for overlapping terms of three years, except that the original
6 appointments shall be for a period of one, two and three years,
7 respectively, commencing on the first day of July, one
8 thousand nine hundred eighty-five. No two members shall be
9 from the same congressional district, and no more than two
10 of the appointed members shall be from the same political
11 party. No person shall be appointed to membership on the
12 board who is a member of any political party executive
13 committee or holds any other public office or public
14 employment under the federal government or under the
15 government of this state. Members shall be eligible for
16 reappointment, and any vacancy on the board shall be filled
17 within thirty days of the vacancy by the governor by
18 appointment for the unexpired term.

19 A member of the board may not be removed from office
20 except for official misconduct, incompetence, neglect of duty,
21 gross immorality or malfeasance, and then only in the manner
22 prescribed in article six, chapter six of this code for the
23 removal by the Governor of state elected officers.

24 The board shall hold at least two meetings yearly at such
25 times and places as it may prescribe and may meet at such
26 other times as may be necessary, such meetings to be agreed
27 to in writing by at least two of the members. Members of the
28 board shall each be paid seventy-five dollars for each calendar
29 day devoted to the work of the board, but not more than seven
30 hundred and fifty dollars during any one fiscal year. Each
31 member shall be reimbursed for all reasonable and necessary
32 expenses actually incurred in the performance of board duties,
33 but shall submit a request therefor upon sworn itemized
34 statement.

35 The board is hereby authorized and required to administer
36 the grievance procedure at level four as provided for in section
37 four of this article and shall employ at least two full-time
38 hearing examiners on an annual basis and such clerical help

39 as is necessary to implement the legislative intent expressed in
40 section one of this article.

41 The board shall hire hearing examiners who reside in
42 different regional educational service agency areas unless and
43 until the number of hearing examiners exceeds the number of
44 such areas, at which time two hearing examiners may be from
45 the same such area. These hearing examiners shall serve at the
46 will and pleasure of the board.

47 The board shall submit a yearly budget and shall report
48 annually to the governor and Legislature regarding receipts
49 and expenditures, number of level four hearings conducted,
50 synopses of hearing outcomes and such other information as
51 the board may deem appropriate. The board shall further
52 evaluate on an annual basis the level four grievance process
53 and the performance of all hearing examiners and include such
54 evaluation in the annual report to the governor and
55 Legislature. In making such evaluation, the board shall notify
56 all institutions, employee organizations and all grievants
57 participating in level four grievances in the year for which
58 evaluation is being made and shall provide for the submission
59 of written comment and/or the hearing of testimony regarding
60 the grievance process. The board shall provide suitable office
61 space for all hearing examiners in space other than that
62 utilized by any institution as defined in section two of this
63 article and shall ensure that reference materials are generally
64 available.

65 The board is authorized to promulgate rules and regulations
66 consistent with the provisions of this article, such rules and
67 regulations to be adopted in accordance with chapter twenty-
68 nine-a of this code.

69 (b) Hearing examiners are hereby authorized and shall have
70 the power to consolidate grievances, allocate costs among the
71 parties in accordance with section eight of this article,
72 subpoena witnesses and documents in accordance with the
73 provisions of section one, article five, chapter twenty-nine-a of
74 this code, provide such relief as is deemed fair and equitable
75 in accordance with the provisions of this article, and such
76 other powers as will provide for the effective resolution of
77 grievances not inconsistent with any rules or regulations of the
78 board or the provisions of this article.

§18-29-6. Hearings generally.

1 The chief administrator or his or her designee, the governing
2 board or the hearing examiner shall conduct all hearings in
3 an impartial manner and shall ensure that all parties are
4 accorded procedural and substantive due process. All parties
5 shall have an opportunity to present evidence and argument
6 with respect to the matters and issues involved, to cross
7 examine and to rebut evidence. Notice of a hearing shall be
8 sent to all parties and their named representative and shall
9 include the date, time and place of the hearing.

10 The institution that is party to the grievance shall produce
11 prior to such hearing any documents, not privileged, and
12 which are relevant to the subject matter involved in the
13 pending grievance, that has been requested by the grievant, in
14 writing.

15 The superintendent, the president of the state or county
16 board of education or the state or county board member
17 designated by such president, the executive director of the
18 regional educational service agency, the director of the multi-
19 county vocational center, the chancellor of the board of
20 regents, the president of any state institution of higher
21 education, the chief administrator or his or her designee, each
22 member of the governing board or the hearing examiner shall
23 have the power to (1) administer oaths and affirmations, (2)
24 regulate the course of the hearing, (3) hold conferences for the
25 settlement or simplification of the issues by consent of the
26 parties, (4) exclude immaterial, irrelevant or repetitious
27 evidence, (5) sequester witnesses, (6) restrict the number of
28 advocates, and take any other action not inconsistent with the
29 rules and regulations of the board or the provisions of this
30 article.

31 All the testimony and evidence at any hearing shall be
32 recorded by mechanical means, and all recorded testimony and
33 evidence at such hearing shall be transcribed and certified at
34 the request of any party to the institution or board. The
35 institution shall be responsible for promptly transcribing the
36 testimony and evidence and for providing a copy of the
37 certified transcription to the party requesting same. The
38 hearing examiner may also request and be provided a
39 transcript upon appeal to level four and allocate the costs

40 therefor as prescribed in section eight of this article.

41 Formal rules of evidence shall not be applied, but parties
42 shall be bound by the rules of privilege recognized by law.

43 All materials submitted in accordance with section three of
44 this article; the mechanical recording of all testimony and
45 evidence or the transcription thereof, if any; the decision; and
46 any other materials considered in reaching the decision shall
47 be made a part and shall constitute the record of a grievance.
48 Such record shall be submitted to any level at which appeal
49 has been made, and such record shall be considered, but the
50 development of such record shall not be limited thereby.

51 Every decision pursuant to a hearing shall be in writing and
52 shall be accompanied by findings of fact and conclusions of
53 law.

54 Prior to such decision any party may propose findings of
55 fact and conclusions of law.

§18-29-7. Enforcement and reviewability.

1 The decision of the hearing examiner shall be final upon the
2 parties and shall be enforceable in circuit court: *Provided,*
3 That either party may appeal to the circuit court of the county
4 in which the grievance occurred on the grounds that the
5 hearing examiner's decision (1) was contrary to law or lawfully
6 adopted rule, regulation or written policy of the chief
7 administrator or governing board, (2) exceeded the hearing
8 examiner's statutory authority, (3) was the result of fraud or
9 deceit, (4) was clearly wrong in view of the reliable, probative
10 and substantial evidence on the whole record, or (5) was
11 arbitrary or capricious or characterized by abuse of discretion
12 or clearly unwarranted exercise of discretion. Such appeal shall
13 be filed in the circuit court of Kanawha County or in the
14 circuit court of the county in which the grievance occurred
15 within thirty days of receipt of the hearing examiner's decision.
16 The decision of the hearing examiner shall not be stayed,
17 automatically, upon the filing of an appeal, but a stay may
18 be granted by the circuit court upon separate motion therefor.

19 The court's ruling shall be upon the entire record made
20 before the hearing examiner, and the court may hear oral
21 arguments and require written briefs. The court may reverse,
22 vacate or modify the decision of the hearing examiner or may

23 remand the grievance to the chief administrator of the
24 institution for further proceedings.

§18-29-8. Allocation of costs.

1 Any expenses incurred relative to the grievance procedure
2 at levels one through three shall be borne by the party
3 incurring such expenses.

§18-29-9. Mandamus proceeding.

1 Any institution failing to comply with the provisions of this
2 article may be compelled to do so by mandamus proceeding
3 and shall be liable to any party prevailing against the
4 institution for court costs and attorney fees, as determined and
5 established by the court.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

**§18A-2-8. Suspension and dismissal of school personnel by board;
appeal.**

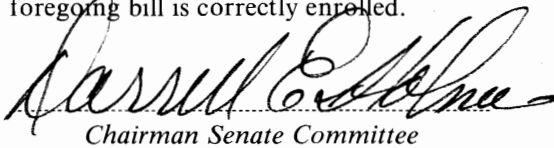
1 Notwithstanding any other provisions of law, a board may
2 suspend or dismiss any person in its employment at any time
3 for: Immorality, incompetency, cruelty, insubordination,
4 intemperance or willful neglect of duty, but the charges shall
5 be stated in writing served upon the employee within two days
6 of presentation of said charges to the board. The employee
7 so affected shall be given an opportunity, within five days of
8 receiving such written notice, to request, in writing, a level four
9 hearing and appeals pursuant to provisions of article twenty-
10 nine, chapter eighteen of the code of West Virginia, one
11 thousand nine hundred thirty-one, as amended.

§18A-2-11. Employee's right to attorney's fees and costs.

1 If an employee shall appeal to a circuit court an adverse
2 decision of either a county board of education or of a hearing
3 examiner rendered in a grievance or other proceeding pursuant
4 to provisions of chapters eighteen and eighteen-a of this code
5 and such person shall substantially prevail, the adverse party
6 or parties shall be liable to such employee, upon final
7 judgment or order, for court costs, and for reasonable
8 attorney's fees, to be set by the court, for representing such
9 employee in all administrative hearings and before the circuit

10 court and the supreme court of appeals, and shall be further
11 liable to such employee for any court reporter's costs incurred
12 during any such administrative hearings or court proceedings:
13 *Provided*, That in no event shall such attorney's fees be
14 awarded in excess of a total of one thousand dollars for the
15 administrative hearings and circuit court proceedings nor an
16 additional one thousand dollars for supreme court proceed-
17 ings: *Provided, however*, That the requirements of this section
18 shall not be construed to limit the school employee's right to
19 recover reasonable attorney's fees in a mandamus proceeding
20 brought under section eight, article four, chapter eighteen-a of
21 this code.

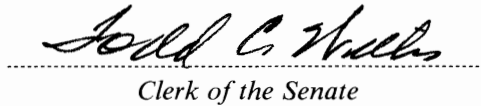
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

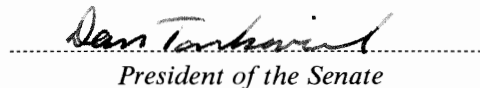

Chairman House Committee

Originating in the House.


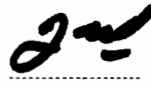

Takes effect July 1, 1985.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within  this the 
day of _____ 1985.

Governor

PRESENTED TO THE

GOVERNOR

Date 4/19/85

Time 7:43 p.m.