WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1994

ENROLLED

SENATE BILL NO. 1000

(By Senators Burdette, Mr. President, and Boyle, By Request of the Executive)

PASSED March 29, 1994
In Effect from Passage
ENROLLED

Senate Bill No. 1000

(BY SENATORS BURDETTRE, MR. PRESIDENT, AND BOLEY,
BY REQUEST OF THE EXECUTIVE)

[Passed March 20, 1994; in effect from passage.]

AN ACT to amend and reenact section eighteen, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article two-d, chapter five-b of said code by adding thereto a new section, designated section eight; to amend and reenact sections seven and twenty-six, article two, chapter eighteen of said code; to further amend said article by adding thereto three new sections, designated sections seven-b, eight-a and seventeen; to further amend said chapter by adding thereto a new article, designated article two-h; to amend and reenact sections fifteen and eighteen, article five of said chapter; to further amend said article by adding thereto a new section, designated section twenty-two-a; to amend article seven-a of said chapter by adding thereto a new section, designated section twenty-six-m; to amend and reenact section ten, article seven-b of said chapter; to amend and reenact sections two, four and eleven, article eight of said chapter; to amend and reenact sections three-a, six, six-a, seven, eight-a, nine, ten and twenty-four, article nine-a of said chapter; to further amend said article by adding thereto
a new section, designated section six-b; to amend and reenact sections three and five, article twenty of said chapter; to further amend said article by adding thereto a new section, designated section one-c; to amend chapter eighteen-a of said code by adding thereto a new article, designated article three-b; to amend and reenact section five, article four of said chapter; to further amend said article by adding thereto a new section, designated section nineteen; and to amend and reenact section one-a, article five of said chapter, all relating to education, school aid formula; changes in public employees insurance agency payments by county boards of education; governor’s workforce development council created; makeup of council; reports to Legislature; termination date; accepting American sign language as a credited course of study in foreign language; requiring the state board of education to prescribe programs in drug prevention, violence reduction and firearm safety; requiring the state board of education to conduct a study of staff fluctuations in schools with a high percentage of at-risk students; allowing a county board of education a waiver in implementation of uniform integrated regional computer information system under certain terms and conditions; requiring public notice and hearings prior to state-mandated educational reform; extending the instructional term limit; changing requirement for criterion referenced test for the current school year; deleting certain language relating to excess levy inequities; deleting full-day kindergarten programs for the school year one thousand nine hundred ninety-five; requiring county boards of education to develop a policy for administering medications; requiring certain employees to administer medications and exempting others; requiring faculty senates to develop a strategic plan to manage integration of special needs students; outlining basic elements of the strategic plan; providing supplemental retirement benefits for certain teachers; recalculating employer contributions for the teachers’ defined contribution retirement system; compulsory school attendance for children under eighteen; establishing misdemeanor offense for person causing a minor to miss
school without just cause; penalties; establishing misde-
meanor offense for person eighteen years of age or
older who fails to attend school without just cause;
penalties; requiring attendance director to serve notice
for school absences; allowing the attendance director to
make home visits; requiring attendance director to
notify the division of motor vehicles of a school with-
drawal within five days; changing total state basic
foundation program for the year one thousand nine
hundred ninety-four—one thousand nine hundred
ninety-five only; changing formula for deriving
workers' compensation contribution for certain person-
nel by county boards; providing for unfunded liability
allowance for the teachers' retirement fund allowance;
allocation of growth of local share; transportation
allowance for the use of alternative fuel; promulgation
of rules; foundation allowance for regional education
service agencies; change in distribution of foundation
allowance share for faculty senates; changes in founda-
tion allowance to improve instructional programs;
providing foundation allowance for public employees
insurance for state-funded employees; providing for
insurance payments for other education employees;
providing guidelines for the integration of special needs
students into regular classroom; training for regular
classroom teachers; individualized education program
for special needs students; providing that special
education aides cannot be reassigned without their
consent; county reports on integrated classrooms;
requiring state superintendent to submit a state plan on
integrated classrooms; establishing an educators' profes-
sional standards board; composition of the board;
powers and duties of the board; salary equity funding
calculations for nonfiscal agency counties in counties
which jointly support a multicounty vocational school;
alteration of contract for certain professional and school
service personnel under certain circumstances not new
positions requiring posting; and extending suspension
time to ten school days.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article sixteen, chapter five of the
code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article two-d, chapter five-b of said code be amended by adding thereto a new section, designated section eight; that sections seven and twenty-six, article two, chapter eighteen of said code be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections seven-b, eight-a and seventeen; that said chapter be further amended by adding thereto a new article, designated article two-h; that sections fifteen and eighteen, article five of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-two-a; that section five, article five-a of said chapter be amended and reenacted; that article seven-a of said chapter be amended by adding thereto a new section, designated section twenty-six-m; that section ten, article seven-b of said chapter be amended and reenacted; that sections two, four and eleven, article eight of said chapter be amended and reenacted; that sections three-a, six, six-a, seven, eight-a, nine, ten and twenty-four, article nine-a of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section sixty-six-a; that section five, article twenty of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section sixty-six-b; that sections three and five, article twenty of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section sixty-six-c; that chapter eighteen-a of said code be amended by adding thereto a new section, designated section twenty-three; that section five, article four of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section nineteen; and that section one-a, article five of said chapter be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND
AUTHORITY OF THE GOVERNOR,
SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF
PUBLIC WORKS; MISCELLANEOUS AGENCIES,
COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE
ACT.
§5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of treasurer with respect thereto.

All employers operating from state general revenue or special revenue funds or federal funds or any combination thereof shall budget the cost of insurance coverage provided by the public employees insurance agency to current and retired employees of the employer as a separate line item, titled “PEIA”, in its respective annual budget and are responsible for the transfer of funds to the director for the cost of insurance for employees covered by the plan. Each spending unit shall pay to the director its proportionate share from each source of funds. Any agency wishing to charge general revenue funds for insurance benefits for retirees under section thirteen of this article must provide documentation to the director that the benefits cannot be paid for by any special revenue account or that the retiring employee has been paid solely with general revenue funds for twelve months prior to retirement.

If the general revenue appropriation for any employer, excluding county boards of education beginning the first day of July, one thousand nine hundred ninety-five, and thereafter, is insufficient to cover the cost of insurance coverage for the employer’s participating employees, retired employees and surviving dependents, the employer shall pay the remainder of the cost from its “personal services” or “unclassified” line items. Beginning the first day of July, one thousand nine hundred ninety-five, and thereafter, the amount of such payments for county boards of education shall be determined by the method set forth in section twenty-four, article nine-a, chapter eighteen of this code: Provided, That local excess levy funds shall be used only for the purposes for which they were raised: Provided, however, That after approval of its annual financial plan, but in no event later than the thirty-first day of December of each year, the finance board shall notify the Legislature and county boards of education of the maximum amount of
employer premiums that the county boards of educa-
tion will be required to pay for covered employees
during the following fiscal year: Provided further,
That the amount shall not exceed five million, five
hundred thousand dollars during fiscal year one
thousand nine hundred ninety-four: And provided
further, That the amount shall not exceed four million
dollars during fiscal year one thousand nine hundred
ninety-five.

All other employers not operating from the state
general revenue fund shall pay to the director their
share of premium costs from their respective budgets.
The finance board shall establish the employers' share
of premium costs to reflect and pay the actual costs of
the coverage including incurred but not reported
claims.

The contribution of the other employers (namely: A
county, city or town in the state; any separate corpo-
rated or instrumentality established by one or more
counties, cities or towns, as permitted by law; any
corporation or instrumentality supported in most part
by counties, cities or towns; any public corporation
charged by law with the performance of a governmen-
tal function and whose jurisdiction is coextensive with
one or more counties, cities or towns; any comprehen-
sive community mental health center or comprehen-
sive mental retardation facility established, operated
or licensed by the secretary of health and human
resources pursuant to section one, article two-a,
chapter twenty-seven of this code, and which is
supported in part by state, county or municipal funds;
and a combined city-county health department created
pursuant to article two, chapter sixteen of this code for
their employees shall be such percentage of the cost of
the employees' insurance package as the employers
deem reasonable and proper under their own particu-
lar circumstances.

The employee's proportionate share of the premium
or cost shall be withheld or deducted by the employer
from the employee's salary or wages as and when paid
and the sums shall be forwarded to the director with
such supporting data as the director may require.

All moneys received by the public employees insurance agency shall be deposited in a special fund or funds as are necessary in the state treasury and the treasurer of the state shall be custodian of the fund or funds and shall administer the fund or funds in accordance with the provisions of this article or as the director may from time to time direct. The treasurer shall pay all warrants issued by the state auditor against the fund or funds as the director may direct in accordance with the provisions of this article.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2D. WEST VIRGINIA GUARANTEED WORK FORCE PROGRAM.

§5B-2D-8. Governor's work force development council created; quarterly reports; conclusion of work and termination date.

The governor’s work force development council is hereby created to develop and implement a plan of action to coordinate existing and new jobs training programs in various agencies of state government, including the statewide school-to-work opportunity system, consistent with the needs of local communities, school systems and businesses.

The governor’s work force development council shall be composed of the governor, who shall be the chair of the council, or the governor’s chief of staff serving as the governor’s designee; the commissioner of the bureau of employment programs; the director of the West Virginia development office; the secretary of education and the arts, or the assistant director for community colleges in the higher education central office serving as the secretary’s designee; the secretary of health and human resources, or the director of the office of work and training serving as the secretary’s designee; the state superintendent of schools, or the assistant superintendent for technical and adult education serving as the superintendent’s designee; the
chair of the council for community and economic development, or another private sector member of the council serving as the chair’s designee; a labor representative who shall be a member of the joint apprenticeship and training council appointed by the governor; a small business representative who shall be from a firm with twenty-five or less employees appointed by the governor; a representative of a private proprietary school; an industry representative appointed by the governor; and the chair of the joint commission for vocational-technical-occupational education, or the executive director of the joint commission serving as the chair’s designee. Staff of the joint commission on vocational-technical-occupational education shall serve as staff of the council: Provided, That the joint commission on vocational-technical-occupational education may not hire additional staff unless the Legislature expressly appropriates funds therefor: Provided, however, That the joint commission on vocational-technical-occupational education shall coordinate staff activities performed for the council with the office of the governor in order to draw upon resources presently existing in the various state agencies and programs represented on the council. Any vocational or jobs training program receiving state or federal funds for education shall provide data to the council upon request. Beginning in the first quarter of the fiscal year, one thousand nine hundred ninety-five, the governor’s work force development council shall make written quarterly reports to the legislative oversight commission on education accountability at such time and in such form as the commission shall direct. Such quarterly reports shall include preliminary data, conclusions and recommendations relating to the plan of action and may include specific recommendations for administrative and statutory change. On or before the thirtieth day of November, one thousand nine hundred ninety-five, the governor’s work force development council as created and composed under the provisions of this article shall con-
clude its work with the issuance of a final report summarizing its plan of action and specific recommendations for reallocation of resources, modification of programs, geographic distribution of services, proposals for administrative change, and any proposals for legislation, in the form of specific bills recommended to the Legislature.

The governor’s work force development council shall terminate on the first day of July, one thousand nine hundred ninety-six.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7. Courses of study; language of instruction.

1 The state board of education shall prescribe minimum standards in the courses of study to be offered in elementary schools, high schools, vocational schools and in all other kinds, grades and classes of schools or departments thereof, which may now or hereafter be maintained in the state, in whole or in part, from any state fund or funds: Provided, That the courses of study in the public schools in the state shall be prepared by the faculties, teachers or other constituted authority thereof, and shall, before going into effect, be submitted to the state board of education for its approval. The basic language of instruction in all schools, public, private and parochial, shall be the English language only. The state board shall not adopt any policies or rules which set out time requirements within the instructional day for instruction in kindergarten through fourth grade.

The state board of education shall accept American sign language as a credited course of study in a foreign language in elementary schools, high schools, vocational schools and in all other kinds, grades and classes of schools or departments thereof: Provided, That nothing in this section shall be construed to require the provision of instruction in American sign language that is not otherwise required by state or federal statute or regulation: Provided, however, That on or
before the sixth day of January, one thousand nine
hundred ninety-five, the state board shall provide to
the governor and to the president of the Senate and
the speaker of the House of Delegates a plan for
teaching American sign language in public schools,
which plan shall include the form and manner pro-
posed by the state board for implementation of the
teaching of American sign language in the schools, the
time frame for implementation and the projected cost
of the implementation.

§18-2-7b. Programs in drug prevention and violence
reduction.

1 In order for the schools to become healthy learning
environments and to provide a strong defense against
drug use and violence, the state board of education
shall prescribe programs within the existing health
and physical education program which teach resis-
tance and life skills to counteract societal and peer
pressure to use drugs, alcohol and tobacco, and shall
include counselors, teachers and staff in full imple-
mentation of the program. The board shall also
prescribe programs to coordinate violence reduction
efforts in schools and between schools and their
communities and to train students, teachers, counsel-
ors and staff in conflict resolution skills. The program
shall be comprehensive, interdisciplinary and shall
begin in elementary school. The state board shall
report to the legislative oversight commission on
education accountability on the status of the programs
no later than the first day of July, one thousand nine
hundred ninety-five.

§18-2-8a. Course of study in firearms and firearm safety.

1 The state board of education may, with the advice of
the state superintendent of schools and the director of
the division of natural resources, prescribe an orienta-
tion program for use in the public schools of this state
in the safety of firearms. The orientation program
shall deal with the protection of lives and property
against loss or damage as a result of improper use of
firearms. The orientation program shall also include
instruction about the proper use of firearms in hunting, sport competition and care and safety of firearms in the home and may utilize materials prepared by any national nonprofit membership organization which has as one of its purposes the training of people in marksmanship and the safe handling and use of firearms. The county superintendent may arrange for such orientation program in the safety of firearms and its use in each school in the county.

§18-2-17. Study on fluctuating staff in schools with a high percentage of at-risk students.

The West Virginia board of education shall conduct a comprehensive study of staff fluctuations in schools with a high percentage of at-risk students. At-risk students are defined as students with the potential for academic failure, including, but not limited to, the risk of dropping out of school, involvement in delinquent activities and those students with free and reduced lunch status. The state superintendent shall prepare a written report detailing the findings, conclusions and recommendations generated by the study to be presented to the legislative oversight commission on education accountability by the first day of January, one thousand nine hundred ninety-five.

§18-2-26. Establishment of multicounty regional educational service agencies; purposes; authority to implement regional services.

(a) In order to consolidate and administer more effectively existing educational programs and services so individual districts will have more discretionary moneys for educational improvement and in order to equalize and extend educational opportunities, the state board of education shall establish multicounty regional educational service agencies for the purpose of providing high quality, cost effective educational programs and services to the county school systems, and shall make such rules as may be necessary for the effective administration and operation of such agencies: Provided, That the legislative oversight commission on education accountability shall commission a
comprehensive feasibility study of the regional educational service agencies which shall be completed and reported to the legislative oversight commission on education accountability no later than the tenth day of January, one thousand nine hundred ninety-five.

(b) In furtherance of these purposes, it is the duty of the board of directors of each regional educational service agency to continually explore possibilities for the delivery of services on a regional basis which will facilitate equality in the educational offerings among counties in its service area, permit the delivery of high quality educational programs at a lower per student cost, strengthen the cost effectiveness of education funding resources, reduce administrative and/or operational costs, including the consolidation of administrative, coordinating and other county level functions into region level functions, and promote the efficient administration and operation of the public school systems generally.

(c) In addition to performing the services and functions required by the provisions of this or any other section of this code, a regional educational service agency may implement regional programs and services by a majority vote of its board of directors. When said vote is not unanimous, the board of directors shall file a plan for the service or program delivery with the state board describing the program or service, the manner of delivery and the projected savings and/or the improved quality of the program or service. The state board shall promulgate rules requiring a county board that declines to participate in such programs or services to show just cause for not participating and the estimated savings accruing to the county therefrom. If a county board fails to show that savings will accrue to the county or that the quality of the program will be significantly and positively affected as a result of its decision not to participate, the state board shall withhold from the county’s
foundation allowance for administrative cost the lesser
of the amount of the estimated savings or the allocation for the county's foundation allowance for administrative cost.

(d) The state board, in conjunction with the various regional educational service agencies, shall develop an effective model for the regional delivery of instruction in subjects where there exists low student enrollment or a shortage of certified teachers or where such delivery method substantially improves the quality of an instructional program. Such model shall incorporate an interactive electronic classroom approach to instruction. To the extent funds are appropriated or otherwise available, county boards or regional educational service agencies may adopt and utilize the model for the delivery of such instruction.

(e) Each regional educational service agency shall conduct a study setting forth how the following services and functions may be performed by the agency for public schools and school districts within the region without terminating the employment of personnel employed by school districts prior to the effective date of this subsection: Accounting, purchasing, food service, transportation, delivery of high cost services to low incidence student populations, audiovisual material distribution, facilities planning, federal program coordination, personnel recruiting and an integrated regional computer information system. On or before the tenth day of January, one thousand nine hundred ninety, each regional educational service agency shall submit the study to the state board, to the standing committees on education and finance of the West Virginia Senate and House of Delegates and to the secretary of education and the arts: Provided, That in the event such study is implemented those individuals employed prior to the effective date thereof shall not have their employment terminated as a result of the study.

(f) Each regional educational service agency shall commence implementation of a uniform integrated regional computer information system as recom-
mended by the state board of education on or before
the first day of January, one thousand nine hundred
ninety-one. Each county board of education shall use
the computer information system for data collection
and reporting to the state department of education
beginning no later than the first day of July, one
thousand nine hundred ninety-four. County boards of
education shall bear the cost of and fully participate in
the implementation of the system by: (1) Acquiring
necessary, compatible equipment to participate in the
regional computer information system; or (2) following
receipt of a waiver from the state superintendent,
operating a comparable management information
system at a lower cost which provides at least all
uniform integrated regional computer information
system software modules and allows on-line, interac-
tive access for schools and the county board of educa-
tion office onto the statewide communications net-
work. All data formats shall be the same as for the
uniform integrated regional information system and
will reside at the regional computer. Any county
granted a waiver shall receive periodic notification of
any incompatibility or deficiency in its system. Con-
tinued inability of any county to meet the above
criteria shall, upon notification to the county no later
than the first day of April, one thousand nine hundred
ninety-five, require the county to use the uniform
integrated regional computer information system no
later than the first day of July, one thousand nine
hundred ninety-five. No county shall expand any
system either through the purchase of additional
software or hardware that does not advance the goals
and implementation of the uniform integrated region-
al computer information system as recommended by
the state board: Provided, That nothing contained
herein shall prevent the state superintendent from
granting a one-year extension to those counties pro-
jected to have budget deficits for the school year
beginning on the first day of July, one thousand nine
hundred ninety-four.

(g) Each regional educational service agency shall
submit a report and evaluation of the services provid-
ed and utilized by the schools within each respective region. Furthermore, each school shall submit an evaluation of the services provided by the regional educational service agency, which shall include an evaluation of the regional educational service agency program, suggestions as to how to improve utilization and the individual school’s plan as to development of new programs and enhancement of existing programs. The reports shall be due by the first day of January of each year commencing with the year one thousand nine hundred ninety-one and shall be made available to the state board of education, standing committees on education of the West Virginia Senate and House of Delegates and to the secretary of education and the arts.

(h) A regional board shall be empowered to receive and disburse funds from the state and federal governments, member counties, gifts and grants.

(i) Notwithstanding any other provision of the code to the contrary, employees of regional educational service agencies shall be reimbursed for travel, meals and lodging at the same rate as state employees under the travel management office of the department of administration.

(j) Regional educational service agencies shall hold at least one half of their regular meetings during hours other than those of a regular school day.

ARTICLE 2H. PUBLIC NOTICE AND PARTICIPATION IN STATE-MANDATED EDUCATIONAL REFORM.

§18-2H-1. Legislative findings.

1 The Legislature hereby finds and declares that, while an educated and informed citizenry is essential to a democratic society, so also is the right, opportunity and guarantee that the citizenry have the right to notice and participation in any state-mandated educational reform which changes, or is intended to change, statewide data systems, statewide curriculum, or any state-mandated education reform which constitutes a significant change in the philosophy or goals of
10 education in the public schools of West Virginia as that
11 is defined by state board rule.
12
13 In order to ensure the right and opportunity of the
14 citizenry to notice and participation in any proposed
15 state-mandated educational reform, a procedure for
16 notice to the citizenry and public hearings shall be
17 developed.

1 Prior to the adoption or implementation of any
2 state-mandated education reform which constitutes a
3 significant change in the philosophy or goals of
4 education in the public schools of West Virginia, the
5 state board of education shall give notice and hold
6 public hearings on the proposed education reform.
7
8 At least sixty days prior to the date set for hearings,
9 the state board shall provide notification of the
10 proposed education reform in the manner specified in
11 section three of this article: Provided, That the
12 provisions of this section do not apply to emergency
13 rules promulgated by the state board of education
14 pursuant to section ten, article three-b, chapter
15 twenty-nine-a of this code.
16
17 From the date of the public notice through the date
18 of the last scheduled public hearing, the state board
19 shall receive written comments to the intended state-
20 mandated education reform constituting a significant
21 change in the philosophy or goals of education in the
22 public schools of West Virginia. After the minimum
23 period of sixty days following the public notice of
24 hearings, the state board, or the state department of
25 education if so delegated by the state board, shall hold
26 not less than four public hearings at various locations
27 in the state, during which hearings the general public
28 and affected citizenry shall have the opportunity to
29 have questions and objections to the proposed educa-
30 tion reform answered and to have their views made
31 part of the public record.
32 If, after receipt of written comments and the public
33 hearings, the state board makes any change in the
proposed education reform, it shall make a public announcement of that change not less than thirty days prior to its vote on the reform. The affected citizenry may submit written comments on any such changes.


(a) Prior to the implementation of any state-mandated educational reform which constitutes a significant change in the philosophy or goals in the public schools of this state and the hearings required thereon, the state board shall provide notice by submitting a copy of the proposed reform and a press release to public and private television and radio stations, disseminating press releases to newspapers of general circulation, and notifying the parents of students in all schools which might be affected by sending notices home with the students, or by distribution to the parents in any other reasonable manner. The notice and plans shall be in such form and contain such information as the state board may require to fully inform the citizenry of the nature and scope of the educational reform, including the proposed educational reform and the date, time and place of the public hearings.

(b) The state board shall provide timely written notice to any person who has asked the state board to place the person’s name on a mailing list maintained by the state board.

(c) The state board shall maintain a verbatim record of all hearings.

(d) The state board may not impose fees or other charges for such a public hearing.


The extent of additional information received by the state board from the general public and the affected citizenry, with respect to the impact of the proposed educational reform, may be cause for the state board to change, alter, amend, implement or rescind the proposed educational reform.

ARTICLE 5. COUNTY BOARD OF EDUCATION.
§18-5-15. School term; exception; levies; ages of persons to whom schools are open.

(a) The board shall provide a school term for its schools which shall be comprised of: (1) An employment term for teachers; and (2) an instructional term for pupils. Nothing in this section shall prohibit the establishment of year-round schools in accordance with rules to be established by the state board.

The employment term for teachers shall be no less than ten months, a month to be defined as twenty employment days exclusive of Saturdays and Sundays: Provided, That the board may contract with all or part of the personnel for a longer term. The employment term shall be fixed within such beginning and closing dates as established by the state board: Provided, however, That the time between the beginning and closing dates does not exceed forty-three weeks.

Within the employment term there shall be an instructional term for pupils of not less than one hundred eighty nor more than one hundred eighty-five instructional days: Provided, That the minimum instructional term may be decreased, by order of the state superintendent of schools, in any West Virginia county declared to be a federal disaster area by the federal emergency management agency. Instructional and noninstructional activities may be scheduled during the same employment day. Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach. The instructional term shall commence no earlier than the twenty-sixth day of August and shall terminate no later than the eighth day of June: Provided, however, that the state board of education shall evaluate data which shall be submitted by each county by the first of June, one thousand nine hundred ninety-four, regarding the climate control conditions, such as air conditioning and related information at each school in the county, and how these conditions impact on the instructional term.

The criterion referenced test mandated in section
two, article two-e of this chapter shall not be required
to be given during school year one thousand nine
hundred ninety-three—ninety-four.

Noninstructional days in the employment term may
be used for making up canceled instructional days, 
curriculum development, preparation for opening and 
closing of the instructional term, in-service and 
professional training of teachers, teacher-pupil-parent 
conferences, professional meetings and other related 
activities. In addition, each board shall designate and 
schedule for teachers and service personnel six days to 
be used by the employee outside the school environ-
ment. However, no more than eight noninstructional 
days, except holidays, may be scheduled prior to the 
first day of January in a school term.

Notwithstanding any other provisions of the law to 
the contrary, if the board has canceled instructional 
days equal to the difference between the total instruc-
tional days scheduled and one hundred seventy-eight, 
each succeeding instructional day canceled shall be 
rescheduled, utilizing only the remaining noninstruc-
tional days, except holidays, following such cancella-
tion, which are available prior to the second day 
before the end of the employment term established by 
such county board.

Where the employment term overlaps a teacher’s or 
service personnel’s participation in a summer institute 
or institution of higher education for the purpose of 
advancement or professional growth, the teacher or 
service personnel may substitute, with the approval of 
the county superintendent, such participation for not 
more than five of the noninstructional days of the 
employment term.

The board may extend the instructional term 
beyond one hundred eighty-five instructional days 
provided the employment term is extended an equal 
number of days. If the state revenues and regular 
levies, as provided by law, are insufficient to enable 
the board of education to provide for the school term, 
the board may at any general or special election, if
petitioned by at least five percent of the qualified voters in the district, submit the question of additional levies to the voters. If at the election a majority of the qualified voters cast their ballots in favor of the additional levy, the board shall fix the term and lay a levy necessary to pay the cost of the additional term. The additional levy fixed by the election shall not continue longer than five years without submission to the voters. The additional rate shall not exceed by more than one hundred percent the maximum school rate prescribed by article eight, chapter eleven of the code, as amended.

(b) The public schools shall be open for the full instructional term to all persons who have attained the entrance age as stated in section five, article two and section eighteen, article five, chapter eighteen of this code: Provided, That any student suspended or expelled from public or private school shall only be permitted to enroll in public school upon the approval of the superintendent of the county where the student seeks enrollment: Provided, however, That in making such decision, the principal of the school in which the student may enroll shall be consulted by the superintendent and the principal may make a recommendation to the superintendent concerning the student's enrollment in his or her new school; Provided further, That if enrollment to public school is denied by the superintendent, the student may petition the board of education where the student seeks enrollment.

Persons over the age of twenty-one may enter only those programs or classes authorized by the state board of education and deemed appropriate by the county board of education conducting any such program or class: Provided, That authorization for such programs or classes shall in no way serve to affect or eliminate programs or classes offered by county boards of education at the adult level for which fees are charged to support such programs or classes.

§18-5-18. Kindergarten programs.

County boards of education shall provide by the
school year one thousand nine hundred eighty-three—
eighty-four, and continue thereafter, kindergarten
programs for all children who shall have attained the
age of five prior to the first day of September of the
school year in which the pupil enters such kinder-
ten program and may establish kindergarten programs
designed for children below the age of five: Provided,
That beginning with the school year one thousand
nine hundred ninety-six—ninety-seven, such programs
shall be full-day everyday. Before the first day of
November, one thousand nine hundred ninety-four,
the state board shall review cost estimates and report
to the legislative oversight commission on education
accountability on the feasibility of implementing a
full-time kindergarten program.

Persons employed as kindergarten teachers, as
distinguished from paraprofessional personnel, shall be
required to hold a certificate valid for teaching at the
assigned level as prescribed by regulations established
by the state board of education. The state board of
do not exist.

The state board of education with the advice of the
state superintendent of free schools shall establish and
Preserve guidelines and criteria relating to the
establishment, operation and successful completion of
kindergarten programs in accordance with the other
provisions of this section. Guidelines and criteria so
established and prescribed are also intended to serve
for the establishment and operation of nonpublic
kindergarten programs and shall be used for the
evaluation and approval of such programs, provided
application for such evaluation and approval is made
in writing to the state board by proper authorities in
control of such programs. The state superintendent of
free schools at intervals not to exceed two years shall
publish a list of nonpublic kindergarten programs that have been approved in accordance with the provisions of this section and a list of Montessori kindergartens established and operated in accordance with usual and customary practices for the use of the Montessori method. Teachers who have training or experience in the use of the Montessori method of instruction for kindergartens shall be deemed to be approved to teach in such kindergartens using the Montessori method without additional certification.

Pursuant to such guidelines and criteria, and only pursuant to such guidelines and criteria, the county boards may establish programs taking kindergarten to the homes of the children involved, using educational television, paraprofessional personnel in addition to and to supplement regularly certified teachers, mobile or permanent classrooms and other means developed to best carry kindergarten to the child in its home and enlist the aid and involvement of its parent or parents in presenting the program to the child; or may develop programs of a more formal kindergarten type, in existing school buildings, or both, as such county board may determine, taking into consideration the cost, the terrain, the existing available facilities, the distances each child may be required to travel, the time each child may be required to be away from home, the child’s health, the involvement of parents and such other factors as each county board may find pertinent. Such determinations by any county board shall be final and conclusive.

Funds for implementing the kindergarten programs during the fiscal year one thousand nine hundred seventy-two, and thereafter, shall be allocated to counties from a special appropriation to the state department of education from the general revenue fund: Provided, That except for expenditures from the general revenue funds for regional kindergarten demonstration centers, in no event shall any state money from the general fund be expended under the provisions of this section unless federal funds are available for the purposes of this section.
Allocations to counties will be made on the basis of approved kindergarten programs. The West Virginia board of education shall establish criteria and standards necessary to guide counties in developing approvable kindergarten programs and shall determine funding levels of said programs on local operating costs.

An additional appropriation shall be made to the state department of education from the general revenue fund to establish and operate during the fiscal year one thousand nine hundred seventy-two, regional kindergarten demonstration centers in educational regions three, four, five, six and seven, and thereafter in regions one through seven. Said funds shall be allocated to said regions for establishing and operating regional demonstration centers in accordance with criteria and standards established by the West Virginia board of education. Said regional centers shall be established to provide exemplary and innovative kindergarten programs, to provide laboratory experiences for preservice and in-service education for professional personnel and staff development programs for training paraprofessional personnel, to establish organizational and administrative machinery designed to promote cooperation between and among all agencies involved in the education and development of young children and to promote cooperation between counties in providing high cost supervisory, developmental, research and evaluative services not currently available to individual counties.

§18-5-22a. Policy for the administration of medications.

All county boards of education shall develop a specific medication administration policy which establishes the procedure to be followed for the administration of medication at each school.

No school employee shall be required to administer medications: Provided, That nothing herein shall prevent any school employee to elect to administer medication after receiving training as provided herein: Provided, however, That any school employee in the
field of special education whose employment com- 
enced on or after the first day of July, one thousand 
nine hundred eighty-nine, may be required to admin- 
ister medications after receiving training as provided 
herein.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

(a) There is established at every public school in this 
state a faculty senate which shall be comprised of all 
permanent, full-time professional educators employed 
at the school who shall all be voting members. Profes- 
sional educators as used in this section means profes-
sional educators as defined in chapter eighteen-a of 
this code. A quorum of more than one half of the 
voting members of the faculty shall be present at any 
meeting of the faculty senate at which official business 
is conducted. Prior to the beginning of the instruc-
tional term each year, but within the employment term, 
the principal shall convene a meeting of the faculty 
 senate to elect a chair, vice chair and secretary and 
discuss matters relevant to the beginning of the school 
year. The vice chair shall preside at meetings when 
the chair is absent. Meetings of the faculty senate shall 
be held on a regular basis as determined by a schedule 
approved by the faculty senate and amended from 
time to time if needed. Emergency meetings may be 
held at the call of the chair or a majority of the voting 
members by petition submitted to the chair and vice 
chair. An agenda of matters to be considered at a 
scheduled meeting of the faculty senate shall be 
available to the members at least two employment 
days prior to the meeting, and in the case of emergen-
cy meetings, as soon as possible prior to the meeting. 
The chair of the faculty senate may appoint such 
committees as may be desirable to study and submit 
recommendations to the full faculty senate, but the 
acts of the faculty senate shall be voted upon by the 
full body.

(b) In addition to any other powers and duties
conferred by law, or authorized by policies adopted by the state or county board of education or bylaws which may be adopted by the faculty senate not inconsistent with law, the powers and duties listed in this subsection are specifically reserved for the faculty senate. The intent of these provisions is neither to restrict nor to require the activities of every faculty senate to the enumerated items except as otherwise stated. Each faculty senate shall organize its activities as it deems most effective and efficient based on school size, departmental structure and other relevant factors.

(1) Each faculty senate shall control funds allocated to the school from legislative appropriations pursuant to section nine, article nine-a of this chapter. From such funds, each classroom teacher and librarian shall be allotted fifty dollars for expenditure during the instructional year for academic materials, supplies or equipment which in the judgment of the teacher or librarian will assist him or her in providing instruction in his or her assigned academic subjects, or shall be returned to the faculty senate: Provided, That nothing contained herein shall prohibit such funds from being used for programs and materials that, in the opinion of the teacher, enhance student behavior, increase academic achievement, improve self-esteem and address the problems of students at-risk. The remainder of funds shall be expended for academic materials, supplies or equipment in accordance with a budget approved by the faculty senate. Notwithstanding any other provisions of the law to the contrary, funds not expended in one school year shall be available for expenditure in the next school year: Provided, however, That the amount of county funds budgeted in a fiscal year, shall not be reduced throughout the year as a result of the faculty appropriations in the same fiscal year for such materials, supplies and equipment. Accounts shall be maintained of the allocations and expenditures of such funds for the purpose of financial audit. Academic materials, supplies or equipment shall be interpreted broadly, but shall not include materials, supplies or equipment which will be used in or connected with interscholastic athletic events.
(2) A faculty senate may establish a process for faculty members to interview new prospective professional educators and paraprofessional employees at the school and submit recommendations regarding employment to the principal, who may also make independent recommendations, for submission to the county superintendent: Provided, That such process must permit the timely employment of persons to perform necessary duties.

(3) A faculty senate may nominate teachers for recognition as outstanding teachers under state and local teacher recognition programs and other personnel at the school, including parents, for recognition under other appropriate recognition programs and may establish such programs for operation at the school.

(4) A faculty senate may submit recommendations to the principal regarding the assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

(5) A faculty senate may submit recommendations to the principal regarding establishment of the master curriculum schedule for the next ensuing school year.

(6) A faculty senate may establish a process for the review and comment on sabbatical leave requests submitted by employees at the school pursuant to section eleven, article two of this chapter.

(7) Each faculty senate shall elect three faculty representatives to the local school improvement council established pursuant to section two of this article.

(8) Each faculty senate may nominate a member for election to the county staff development council pursuant to section eight, article three, chapter eighteen-a of this code.

(9) Each faculty senate shall have an opportunity to make recommendations on the selection of faculty to serve as mentors for beginning teachers under beginning teacher internship programs at the school.
(10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations and any other funds made available to the faculty senate: Provided, that the faculty senate shall select a member who shall have the duty of maintaining a record of all funds received and expended by the faculty senate, which record shall be kept in the school office and shall be subject to normal auditing procedures.

(11) On or after the first day of January, one thousand nine hundred ninety-two, any faculty senate may review the evaluation procedure as conducted in their school to ascertain whether such evaluations were conducted in accordance with the written system required pursuant to section twelve, article two, chapter eighteen-a of this code and the general intent of this Legislature regarding meaningful performance evaluations of school personnel. If a majority of members of the faculty senate determine that such evaluations were not so conducted, they shall submit a report in writing to the state board of education: Provided, That nothing herein shall create any new right of access to or review of any individual’s evaluations.

(12) Each faculty senate shall be provided by its local board of education at least a two-hour per month block of noninstructional time within the school day: Provided, That any such designated day shall constitute a full instructional day. This time may be utilized and determined at the local school level and shall include, but not be limited to, faculty senate meetings.

(13) Each faculty senate shall develop a strategic plan to manage the integration of special needs students into the regular classroom at their respective schools and submit said strategic plan to the superintendent of the county board of education by the first day of March, one thousand nine hundred ninety-five, and periodically thereafter pursuant to guidelines developed by the state department of education. Each faculty senate shall encourage the participation of local school improvement councils, parents and the community at large in the development of the strategic plan.
Each strategic plan developed by the faculty senate shall include at least: (A) A mission statement; (B) goals; (C) needs; (D) objectives and activities to implement plans relating to each goal; (E) progress to implement the strategic plan; (F) guidelines for the placement of additional staff into integrated classrooms to meet the needs of exceptional needs students without diminishing the services rendered to the other students in integrated classrooms; (G) guidelines for implementation of collaborative planning and instruction; and (H) training for all regular classroom teachers who serve students with exceptional needs in integrated classrooms.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26m. Supplemental benefits for certain teachers.

(a) As an additional supplement to other retirement allowances provided, each annuitant whose annuity was approved by the retirement board prior to the first day of January, one thousand nine hundred seventy-one, and who is receiving a monthly pension of three hundred dollars or less, shall receive a monthly amount equal to one dollar multiplied by his or her total service credit.

(b) As an additional supplement to other retirement allowances provided, each annuitant whose annuity was approved on or after the first day of July, one thousand nine hundred eighty-two, and before the first day of July, one thousand nine hundred eighty-four, shall receive a monthly amount equal to two dollars multiplied by his or her total service credit.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-10. Employer contributions.

Each participating employer shall annually make a contribution equal to seven and one-half percent of each member's gross compensation. The pro rata share of this amount shall be paid upon each date that a
member contribution is made and shall be remitted as
provided for in section nine of this article for credit to
the member’s annuity account. Each participating
employer has a fiduciary duty to its employees to
ensure that the employer contributions are timely
made. In the case of an officer or employee of the
state, any unpaid contribution shall be a state debt,
contracted as a result of a casual deficit in state
revenues, to be accorded preferred status over other
expenditures.

In the event that any payment is not timely made,
the participating employer shall immediately give to
the employee and the state auditor notice in writing of
the nonpayment, in such form and accompanied by
such documentation as may be required by the audi-
tor. Notice to the auditor shall operate in the manner
of a requisition, and the auditor shall transmit a
warrant to the treasurer. At such time as funds are
available in the appropriate account, the treasurer
shall pay the employer contribution, together with
appropriate daily interest.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-2. Offenses; penalties; cost of prosecution.

Any person who, after receiving due notice, shall fail
to cause a child or children under eighteen years of
age in that person’s legal or actual charge to attend
school in violation of the provisions of this article or
without just cause, shall be guilty of a misdemeanor,
and shall, upon conviction of a first offense, be fined
not less than fifty nor more than one hundred dollars
together with the costs of prosecution, or required to
accompany the child to school and remain through the
school day for so long as the magistrate or judge may
determine is appropriate. The magistrate or judge,
upon conviction and pronouncing sentence, may delay
the sentence for a period of sixty school days provided
the child is in attendance everyday during said sixty-
day period. Following the sixty-day period, if said child
was present at school for every school day, the delayed
sentence may be suspended and not enacted. Upon
conviction of a second offense, a fine may be imposed of not less than fifty dollars nor more than one hundred dollars together with the costs of prosecution and the person may be required to accompany the child to school and remain throughout the school day until such time as the magistrate or judge may determine is appropriate or confined in jail not less than five or more than twenty days. Every day a child is out of school contrary to the provisions of this article shall constitute a separate offense. Magistrates shall have concurrent jurisdiction with circuit courts for the trial of offenses arising under this section.

Any person eighteen years of age or older who is enrolled in school who, after receiving due notice, fails to attend school in violation of the provisions of this article or without just cause, shall be guilty of a misdemeanor and shall, upon conviction of a first offense, be fined not less than fifty dollars nor more than one hundred dollars together with the costs of prosecution and required to attend school and remain throughout the school day. The magistrate or judge, upon conviction and pronouncing sentence, may delay the imposition of a fine for a period of sixty school days provided the person is in attendance every day during said sixty-day period. Following the sixty-day period, if said student was present at school everyday, the delayed sentence may be suspended and not enacted. Upon conviction of a second offense, a fine may be imposed of not less than fifty dollars nor more than one hundred dollars together with the costs of prosecution and the person may be required to go to school and remain throughout the school day until such time as the person graduates or withdraws from school or confined in jail not less than five or more than twenty days. Every day a student is out of school contrary to the provisions of this article shall constitute a separate offense. Magistrates shall have concurrent jurisdiction with circuit courts for the trial of offenses arising under this section.

Upon conviction of a third offense, any person eighteen years of age or older who is enrolled in school
shall be withdrawn from school during the remainder of that school year. Enrollment of that person in school during the next school year or years thereafter shall be conditional upon all absences being excused as defined in law, state board policy and county board of education policy. More than one unexcused absence of such a student shall be grounds for the director of attendance to authorize the school to withdraw the person for the remainder of the school year. Magistrates shall have concurrent jurisdiction with circuit courts for the trial of offenses arising under this section.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

1 The county attendance director and the assistants shall diligently promote regular school attendance. They shall ascertain reasons for inexcusable absences from school of pupils of compulsory school age as defined under this article and shall take such steps as are, in their discretion, best calculated to correct attitudes of parents and pupils which results in absences from school even though not clearly in violation of law.

10 In the case of five consecutive or ten total unexcused absences of a child during a single semester, the attendance director or assistant shall serve written notice to the parent, guardian or custodian of such child that the attendance of such child at school is required and that within ten days of receipt of such notice the parent, guardian or custodian, accompanied by the child, shall report in person to the school the child attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the inexcusable absences of the child; and if the parent, guardian or custodian does not comply with the provisions of this article, then the attendance director or assistant shall make complaint against such parent, guardian or custodian before a magistrate of the county. The attendance director or assistant shall serve such notice for other absences from school found
to be in violation of law. For any similar subsequent offense in any school year no notice shall be required. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a warrant for the arrest of the accused shall issue to any officer authorized by law to arrest persons charged with offenses against the state. More than one warrant may be issued on the same complaint. The warrant shall be executed within ten days of its issuance.

The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in section eight, article one, chapter fifty of this code, shall assign the case to a magistrate within ten days of execution of the warrant. The hearing shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least ten days' advance notice of the date, time and place of the hearing.

When any doubt exists as to the age of a child absent from school, the attendance director shall have authority to require a properly attested birth certificate or an affidavit from the parent, guardian or custodian of such child, stating age of such child. The county attendance director or assistant shall, in the performance of his duties, have authority to take without warrant any child absent from school in violation of the provisions of this article and to place such child in the school in which such child is or should be enrolled.

The county attendance director shall devote such time as is required by section three of this article to the duties of attendance director in accordance with this section during the instructional term and at such other times as the duties of an attendance director are required. All attendance directors hired for more than two hundred days may be assigned other duties determined by the superintendent during the period in excess of two hundred days. The county attendance director shall be responsible under direction of the county superintendent for the efficient administration
of school attendance in the county.

In addition to those duties directly relating to the administration of attendance, the county attendance director and assistant directors shall also perform the following duties:

(a) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

(b) Confer with principals and teachers on the comparison of school census and enrollment for the detection of possible nonenrollees;

(c) Cooperate with existing state and federal agencies charged with enforcement of child labor laws;

(d) Prepare a report for submission by the county superintendent to the state superintendent of schools on school attendance, at such times and in such detail as may be required; also, file with the county superintendent and county board of education at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;

(e) Promote attendance in the county by the compilation of data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;

(f) Participate in school teachers' conferences with parents and students;

(g) Assist in such other ways as the county superintendent may direct for improving school attendance;

(h) Make home visits of students who have excessive unexcused absences, as provided above, or if requested by the chief administrator, principal or assistant principal.

§18-8-11. School attendance as condition of licensing for privilege of operation of motor vehicle.

(a) In accordance with the provisions of sections
three and five, article two, chapter seventeen-b of this code, the department of motor vehicles shall deny a license or instruction permit for the operation of a motor vehicle to any person under the age of eighteen who does not at the time of application present a diploma or other certificate of graduation issued to the person from a secondary high school of this state or any other state or documentation that the person: (1) is enrolled and making satisfactory progress in a course leading to a general educational development certificate (GED) from a state approved institution or organization, or has obtained such certificate; (2) is enrolled in a secondary school of this state or any other state; or (3) is excused from such requirement due to circumstances beyond his or her control.

(b) The attendance director or chief administrator shall provide documentation of enrollment status on a form approved by the department of education to any student sixteen years of age or older upon request who is properly enrolled in a school under the jurisdiction of said official for presentation to the department of motor vehicles on application for or reinstatement of an instruction permit or license to operate a motor vehicle. Whenever a student sixteen years of age or older withdraws from school, except as provided in subsection (d) of this section, the attendance director or chief administrator shall notify the department of motor vehicles of such withdrawal not later than five days from the withdrawal date. Within five days of receipt of such notice, the department of motor vehicles shall send notice to the licensee that the license will be suspended under the provisions of section three, article two, chapter seventeen-b of this code on the thirtieth day following the date the notice was sent unless documentation of compliance with the provisions of this section is received by the department of motor vehicles before such time.

(c) For the purposes of this section, withdrawal shall be defined as more than ten consecutive or fifteen days total unexcused absences during a single semester. For the purposes of this section, suspension or
expulsion from school or imprisonment in a jail or a penitentiary is not a circumstance beyond the control of such person.

(d) Whenever the withdrawal from school of such student, or such student's failure to enroll in a course leading to or to obtain a GED or high school diploma, is beyond the control of such student, or is for the purpose of transfer to another school as confirmed in writing by the student's parent or guardian, no such notice shall be sent to the department of motor vehicles to suspend the student's motor vehicle operator's license, and if the student is applying for a license, the attendance director or chief administrator shall provide the student with documentation to present to the department of motor vehicles to excuse such student from the provisions of this section. The school district superintendent (or the appropriate school official of any private secondary school) with the assistance of the county attendance director and any other staff or school personnel, shall be the sole judge of whether such withdrawal is due to circumstances beyond the control of such person.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-3a. Total state basic foundation program for fiscal year one thousand nine hundred ninety-four—ninety-five only.

1 Notwithstanding any other provisions of this article to the contrary, the total basic foundation program for the state for the fiscal year one thousand nine hundred ninety-four—ninety-five shall be the sum of the amounts computed in accordance with this section, less the county's local share:

(1) Allowance for professional educators as determined in accordance with sections four and five-a of this article;

(2) Allowance for service personnel as determined in accordance with sections five and five-a of this article;

(3) Allowance for fixed charges as determined in accordance with the provisions of sections six and six-
14 a of this article;
15 (4) Allowance for transportation cost in an amount
16 at least equal to the appropriation for such allowance
17 in the fiscal year one thousand nine hundred ninety-
18 three—ninety-four;
19 (5) Allowance for administrative cost in accordance
20 with the provisions of sections eight and eight-a of this
21 article;
22 (6) Allowance for other current expense and substi-
23 tute employees in an amount at least equal to the
24 appropriation for such allowance in the fiscal year one
25 thousand nine hundred ninety-three—ninety-four:
26 Provided, That the allocation of such funds for expen-
27 diture by faculty senates shall be in accordance with
28 the provisions of section nine of this article;
29 (7) Allowance to improve instructional programs in:
30 an amount at least equal to the appropriation for such
31 allowance in the fiscal year one thousand nine hun-
32 dred ninety-three—ninety-four.

§18-9A-6. Foundation allowance for fixed charges.
1 The total allowance for fixed charges shall be the
2 sum of the following:
3 (1) The sum of the foundation allowance for profes-
4 sional educators and the foundation allowance for
5 other personnel, as determined in sections four and
6 five above, multiplied by the current social security
7 rate of contribution; plus
8 (2) The sum of the foundation allowance for profes-
9 sional educators and the foundation allowance for
10 other personnel, as determined in sections four and
11 five above, multiplied by four hundredths of one
12 percent as an allowance for unemployment compensa-
13 tion contribution; plus
14 (3) The sum of the foundation allowance for profes-
15 sional educators and the foundation allowance for
16 other personnel, as determined in sections four and
17 five above, multiplied by the rate which is derived by
18 dividing the total estimated contributions for workers’
compensation for all county boards by the sum of the
foundation allowance for professional educators and
other personnel, as determined in sections four and
five above. The total estimated contribution for
workers compensation is determined by multiplying
each county board's allowance for professional educa-
tors and other personnel, as determined by sections
four and five above, by the county's actual contribu-
tion rate by using data of the most recent year for
which it is available; plus

(4) The teachers retirement fund allowance as
determined in section six-a of this article.

§18-9A-6a. Teachers retirement fund allowance; unfunded
liability allowance.

(a) The total teachers retirement fund allowance
shall be the sum of the basic foundation allowance for
professional educators and the basic foundation allow-
ance for service personnel, as provided in sections four
and five of this article; all salary equity appropriations
authorized in section five, article four of chapter
eighteen-a; and such amounts as are to be paid by the
counties pursuant to sections five-a and five-b of said
article to the extent such county salary supplements
are equal to the amount distributed for salary equity
among the counties, multiplied by fifteen percent.

(b) The teachers retirement fund allowance amounts
provided for in subsection (a) of this section shall be
accumulated in the employers accumulation fund of
the state teachers retirement system pursuant to
section eighteen, article seven-a of this chapter, and
shall be in lieu of the contribution required of employ-
ers pursuant to subsection (b) of said section as to all
personnel included in the allowance for state aid in
accordance with sections four and five of this article.

(c) In addition to the teachers retirement fund
allowance provided for in subsection (a) of this section,
there shall be an allowance for the reduction of any
unfunded liability of the teachers retirement fund in
accordance with the following provisions of this
subsection. On or before the thirty-first day of Decem-
ber of each year, the actuary or actuarial firm employed in accordance with the provisions of section four, article ten-d, chapter five of this code shall submit a report to the president of the Senate and the speaker of the House of Delegates which sets forth an actuarial valuation of the teachers retirement fund as of the preceding thirtieth day of June. Each annual report shall recommend the actuary's best estimate, at that time, of the funding necessary to both eliminate the unfunded liability over a forty-year period beginning on the first day of July, one thousand nine hundred ninety-four, and to meet the cash flow requirements of the fund in fulfilling its future anticipated obligations to its members. In determining the amount of funding required, the actuary shall take into consideration all funding otherwise available to the fund for that year from any source. Provided, That the appropriation and allocation to the teachers' retirement fund made pursuant to the provisions of sections six-b of this article shall not be included in the determination of the requisite funding amount. In any year in which the actuary determines that the teachers retirement fund is not being funded in such a manner, the allowance made for the unfunded liability for the next fiscal year shall be not less than the amount of the actuary's best estimate of the amount necessary to conform to the funding requirements set forth in this subsection.

§18-9A-6b. Allocation of growth of local share.

1 Beginning with the first day of July, one thousand nine hundred ninety-five, and thereafter, an appropriation and allocation due to the increase in local share not to exceed seven million dollars above that computed for the previous year, which increase may be attributable to any increase in the tax rate as enacted by the Legislature in accordance with the provisions of subsection (b) of section six-f, article eight, chapter eleven of this code, shall be allocated to the state teachers' retirement system, which appropriation and allocation shall be in addition to the amounts required by section six-a of this article or any other retirement
13 contributions as may be required to the state teachers
14 retirement system set forth in article seven-a of this
15 chapter and which shall be accumulated in the
16 employers accumulation fund created in section
17 eighteen of said article seven-a.


1 The allowance in the foundation school program for
2 each county for transportation shall be the sum of the
3 following computations:

4 (1) Eighty percent of the transportation cost within
5 each county for maintenance, operation and related
6 costs, exclusive of all salaries: Provided, That for the
7 school year beginning the first day of July, one
8 thousand nine hundred ninety-four, and thereafter, in
9 the event a county uses an alternative fuel such as
10 compressed natural gas or other acceptable alternative
11 fuel for the operation of all or any portion of its school
12 bus system, then the allowance in the foundation
13 school program for each such county for that portion
14 of its school bus system shall be ninety percent of the
15 transportation cost for maintenance, operation and
16 related costs, exclusive of all salaries, incurred by the
17 use of the alternatively fueled school buses: Provided,
18 however, That any county using an alternative fuel
19 and qualifying for the additional allowance shall
20 submit a plan regarding the intended future use of
21 alternatively fueled school buses: Provided further,
22 That the state board shall distribute the additional
23 allowance to qualifying counties only until such time
24 as the state board has distributed in the then current
25 fiscal year one hundred thousand dollars of transpor-
26 tation allowance, in the statewide aggregate, above the
27 eighty percent to qualifying counties, after which the
28 additional ten percent shall no longer be available to
29 any county;

30 (2) The total cost, within each county, of insurance
31 premiums on buses, buildings and equipment used in
32 transportation: Provided, That such premiums were
33 procured through competitive bidding;

34 (3) For the school year beginning the first day of
July, one thousand nine hundred eighty-nine, and thereafter, an amount equal to ten percent of the current replacement value of the bus fleet within each county as determined by the state board, such amount to be used only for the replacement of buses. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the state superintendent for funding for an additional bus. Furthermore, large, sparsely populated counties may also apply to the state superintendent for funding for additional mini-buses. The state superintendent shall make a decision regarding each application based upon an analysis of the individual school district's net enrollment history and transportation needs or, in the case of a large, sparsely populated county, the population of the county: Provided, That the superintendent shall not consider any application which fails to document that the county has applied for federal funding for additional buses. If the state superintendent finds that a need exists, a request for funding shall be included in the budget request submitted by the state board for the upcoming fiscal year;

(4) Eighty percent of the cost of contracted transportation services and public utility transportation with each county;

(5) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving such aid within each county; and

(6) Ninety percent of the total cost of transportation operations and related expenses, excluding salaries and maintenance for transporting students to and from classes at a multicounty vocational center.

The total state share for this purpose shall be the sum of the county shares and shall be distributed in accordance with rules to be promulgated by the state board: Provided, That no county shall receive an allowance which is greater than one third above the computed state average allowance per mile multiplied
§18-9A-8a. Foundation allowance for regional educational service agencies.

1 For the fiscal year beginning on the first day of July, one thousand nine hundred ninety-one, and for each fiscal year thereafter, the foundation allowance for regional educational service agencies shall be equal to sixty-three one-hundredths percent of the allocation for professional educators as determined in section four of this article: Provided, That for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-four only, the foundation allowance for regional educational service agencies shall be at least equal to fifty-five one-hundredths percent of the allocation for professional educators as determined in section four of this article. The allowance shall be distributed to the regional educational service agencies in accordance with rules adopted by the state board. The allowance for regional educational service agencies shall be excluded from the computation of total basic state aid as provided for in section twelve of this article.

§18-9A-9. Foundation allowance for other current expense and substitute employees.

1 The total allowance for other current expense and substitute employees shall be the sum of the following: Provided, That each of the three amounts set forth in subdivisions (1), (2) and (3) of this section shall not exceed the preceding year’s allowance by more than four percent:

7 (1) For current expense, for the year one thousand nine hundred ninety-nine—ninety-one and thereafter, ten percent of the sum of the computed state allocation for professional educators and service personnel as determined in sections four and five of this article. Distribution to the counties shall be made proportional to the average of each county’s average daily attendance for the preceding year and the county’s second month net enrollment; plus
(2) For professional educator substitutes or current expense, two and five-tenths percent of the computed state allocation for professional educators as determined in section four of this article. Distribution to the counties shall be made proportional to the number of professional educators authorized for the county in compliance with sections four and five-a of this article; plus

(3) For service personnel substitutes or current expense, two and five-tenths percent of the computed state allocation for service personnel as determined in section five of this article. Distribution to the counties shall be made proportional to the number of service personnel authorized for the county in compliance with sections five and five-a of this article; plus

(4) For academic materials, supplies and equipment for use in instructional programs, two hundred dollars multiplied by the number of professional instructional personnel employed in the schools of the county. Distribution shall be made to each county for allocation to the faculty senate of each school in the county on the basis of two hundred dollars per professional instructional personnel employed at the school. Faculty senate means a faculty senate created pursuant to section five, article five-a of this chapter. Decisions for the expenditure of such funds shall be made at the school level by the faculty senate in accordance with the provisions of said section five, article five-a and shall not be used to supplant the current expense expenditures of the county. Beginning on the first day of September, one thousand nine hundred ninety-four, and every September thereafter, county boards shall forward to each school for the use by faculty senates the appropriation specified in this section. Each school shall be responsible for keeping accurate records of expenditures.

§18-9A-10. Foundation allowance to improve instructional programs.

(a) For the school year beginning on the first day of July, one thousand nine hundred ninety-four, and
thereafter, the sum of the allocations shall be in an amount at least equal to the amount appropriated by the Legislature, in addition to funds which accrue from balances in the general school fund, or from appropriations for such purposes:

(1) One hundred fifty thousand dollars shall be allocated to each county;

(2) Distribution to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment. Moneys allocated by provision of this section shall be used to improve instructional programs according to a plan for instructional improvement which the affected county board shall file with the state board by the first day of August of each year, to be approved by the state board by the first day of September of that year if such plan substantially complies with standards to be adopted by the state board: Provided, That notwithstanding any other provision of the code to the contrary, moneys allocated by provision of this section may also be used in the implementation and maintenance of the uniform integrated regional computer information system; and

(3) Up to twenty-five percent of this allocation may be used to employ professional educators and/or service personnel in counties after all applicable provisions of sections four and five of this article have been fully utilized.

Prior to the use of any funds from this section for personnel costs, the county board must receive authorization from the state superintendent of schools. The state superintendent shall require the district board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; and (3) sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget. District boards shall make application for available funds for the next fiscal year by the first day of May of each
year. On or before the first day of June, the state superintendent shall review all applications and notify applying district boards of the distribution of the allocation; Provided, That for the school year beginning on the first day of July, one thousand nine hundred ninety-three, only, the state superintendent shall review all applications and notify applying district boards of the distribution of the allocation on or before the first day of July, one thousand nine hundred ninety-three. Such funds shall be distributed during the fiscal year as appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county's inability to meet the requirements of state law or state board policy; Provided, however, That the funds available for personnel under this section may not be used to increase the total number of professional noninstructional personnel in the central office beyond four. Such instructional improvement plan shall be made available for distribution to the public at the office of each affected county board.

(b) Commencing with the school year beginning on the first day of July, one thousand nine hundred ninety-three, an amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, shall be paid into the school building capital improvements fund created by section six, article nine-d of this chapter, and shall be used solely for the purposes of said article. The school building capital improvements fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the school building debt service fund have been pledged for repayment pursuant to said section.

(a) Beginning the first day of July, one thousand nine hundred ninety-five, and every year thereafter, the allowance to the public employees insurance agency for school employees shall be made in accordance with the following: The number of individuals employed by county boards of education as professional educators pursuant to section four or five-a of this article, whichever is less, plus the number of individuals employed by county boards of education as service personnel pursuant to section five or five-a of this article, whichever is less, multiplied by the average premium rate for all county board of education employees established by the public employees insurance agency finance board. The average premium rate for all county board of education employees shall be incorporated into each financial plan developed by the finance board in accordance with section five, article sixteen, chapter five of this code. Such premiums shall include any proportionate share of retirees subsidy established by the finance board and the difference, if any, between the previous year's actual premium costs and the previous year's appropriation, if the actual cost was greater than the appropriation.

(b) County boards of education shall be responsible for payments to the public employees insurance agency for individuals who are employed as professional employees above and beyond those authorized by section four or five-a, whichever is less, and individuals who are employed as service personnel above and beyond those authorized by section five and five-a whichever is less. For each such employee, the county board of education shall forward to the public employees insurance agency an amount equal to the average premium rate established by the finance board in accordance with subsection (a) of this section: Provided, That the county board shall pay the actual employer premium costs for any county board employee paid from special revenues, federal or state.
grants, or sources other than state general revenue or county funds.

(c) Prior to the first day of July, one thousand nine hundred ninety-five, nothing in this article shall be construed to limit the ability of county boards of education to use funds appropriated to county boards of education pursuant to this article to pay employer premiums to the public employees insurance agency for employees whose positions are funded pursuant to this article. Funds appropriated to county boards of education pursuant to this article shall not be used to pay employer premiums for employees of such boards whose positions are not, or will not be within twenty months, funded by funds appropriated pursuant to this article.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1c. Integrated classrooms serving students with exceptional needs; and requirements as to the assistance, training and information to be provided to the affected classroom teacher.

1 The regular classroom teacher shall be entitled to the following when placing a student with exceptional needs into an integrated classroom when the student’s individualized education program requires an adjustment in either the curriculum, instruction or service to be provided by the regular classroom teacher:

(1) Training provided pursuant to the integrated classroom program and additional individualized training, pursuant to the rules developed by the state board of education, if requested by the regular classroom teacher to prepare the teacher to meet the exceptional needs of individual students. Whenever possible, such training shall be provided prior to such placement. Where prior training is not possible, such training shall be commenced no later than ten days following the placement of said student into the regular classroom. Unavoidable delays in the provision of training shall not result in the exclusion of a special needs student from any class in the event said training cannot be provided in said ten days;
(2) A signed copy of the individualized education program for the special needs student prior to or at the time of the placement of the student into the regular classroom. The receiving and referring teachers shall participate in the development of that student’s individualized education plan and shall also sign the individualized education plan as developed. In all cases the teacher shall receive a copy of the individualized education plan for the special needs student prior to or at the time of the placement of the student into the regular classroom. Any teacher disagreeing with the individualized education plan committee's recommendation shall file a written explanation outlining his or her disagreement or recommendation;

(3) Participation by both receiving and referring teachers, upon the receiving teacher being identified, in all eligibility committees and individualized education program committees which involve possible placement of an exceptional student in an integrated classroom;

(4) Opportunity to reconvene the committee responsible for the individualized education program of the student with special needs assigned to the regular classroom teacher. The meeting shall include all persons involved in a student’s individualized education program and shall be held within twenty-one days of the time the request is made;

(5) Assistance from persons trained or certified to deal with a student’s exceptional needs whenever such assistance is part of the student’s individualized education program as necessary to ensure the student’s exceptional needs can be met: Provided, That aides in the area of special education cannot be reassigned to more than one school without the employee’s consent.

§18-20-3. County reports.

Counties maintaining special schools, classes, regular class programs, integrated classroom strategic plans and training related to integrated education, basic and
specialized health care procedures including the administration of medications, home-teaching or visiting services and receiving or requesting reimbursement from state appropriated funds shall file with the state superintendent of schools on forms supplied by his office, applications, annual reports and such other reports as he may require.

§18-20-5. Powers and duties of state superintendent.

The state superintendent of schools shall organize, promote, administer and be responsible for:

1. Stimulating and assisting county boards of education in establishing, organizing and maintaining special schools, classes, regular class programs, home-teaching and visiting-teacher services.

2. Cooperating with all other public and private agencies engaged in relieving, caring for, curing, educating and rehabilitating exceptional children, and in helping coordinate the services of such agencies.

3. Preparing the necessary rules, regulations, formula for distribution of available appropriated funds, reporting forms and procedures necessary to define minimum standards in providing suitable facilities for education of exceptional children and ensuring the employment, certification and approval of qualified teachers and therapists subject to approval by the state board of education.

4. Receiving from county boards of education their applications, annual reports and claims for reimbursement from such moneys as are appropriated by the Legislature, auditing such claims and preparing vouchers to reimburse said counties the amounts reimbursable to them.

5. Assuring that all exceptional children in the state, including children in mental health facilities, residential institutions, private schools, and correctional facilities as provided in section thirteen-f, article two, chapter eighteen of this code, receive an education in accordance with state and federal laws: Provided, That the state superintendent shall also assure that
adults in correctional facilities shall receive an education to the extent funds are provided therefor.

(6) Performing such other duties and assuming such other responsibilities in connection with this program as may be needed.

(7) Receive the county plan for integrated classroom submitted by the county boards of education, and submit a state plan, approved by the state board of education, to the legislative oversight commission on education accountability no later than the thirtieth day of November, one thousand nine hundred ninety-four.

Nothing herein contained shall be construed to prevent any county board of education from establishing and maintaining special schools, classes, regular class programs, home-teaching or visiting-teacher services out of funds available from local revenue.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 3B. EDUCATORS' PROFESSIONAL STANDARDS BOARD.

§18A-3B-1. Establishment of educators' professional standards board.

1 The Legislature hereby finds and declares that in order to more fully provide for a thorough and efficient system of free schools within the state it is necessary to establish an educators' professional standards board. The board will be responsible for governing the education profession, including the establishment of standards for entering the education profession, and remaining a member of the education profession. The board shall also establish standards for institutions of higher education engaged in teacher preparation programs.

§18A-3B-2. Educators' professional standards board; composition; appointment; terms of members.

1 (a) There is created an educators' professional standards board consisting of nine members appointed by the governor, with the advice and consent of the Senate.
(b) The term of office for each member is three years except that the original term of three members, including not more than one teacher, shall be for one year, and the original term of three members, including not more than two teachers, shall be for two years.

(c) Any member who, through change of employment standing or other circumstances, no longer meets the criteria for the position to which the member was appointed shall no longer be eligible to serve in that position, and the position on the commission shall become vacant sixty days following the member’s change in circumstances.

(d) The membership of the educators’ professional standards board shall consist of: One classroom teacher currently employed by a county board of education teaching vocational education; one classroom teacher currently employed by a county board of education teaching in an elementary school; one classroom teacher currently employed by a county board of education teaching in a middle school; one classroom teacher currently employed by a county board of education teaching in a secondary school; one classroom teacher currently employed by a county board of education teaching special education; the state superintendent of schools or his or her designee; one elementary school or secondary school principal currently employed by a county board of education; one county superintendent of schools currently employed by a county board of education; and one administrator or faculty member representing a public college or university in West Virginia.

No more than five members of the board may belong to the same political party nor reside in the same congressional district. Members of the board must have been actively engaged in teaching, supervising or administering in the public schools or in approved teacher education institutions in West Virginia for the period of five years immediately preceding appointment. In addition, members appointed to represent classroom teachers under this section must hold valid West Virginia teaching certificates other
A member of the board shall receive no compensation for his or her services as a member, but subject to any other applicable law regulating travel and other expenses for state officer, he or she shall receive his or her actual and necessary travel and other expenses incurred in the performance of his or her official duties: Provided, That any member who is an employee of a county board of education shall be released by his or her employer to attend board meetings without loss of salary or personal leave.


Prior to the first day of January, one thousand nine hundred ninety-five, the professional standards board shall develop a plan and propose legislation which will expand the powers and duties of the professional standards board to include the following: (1) Establish and maintain standards and requirements for obtaining and maintaining a license for teaching; (2) issue, renew, suspend, and revoke teaching licenses; (3) hear appeals regarding application, renewal, suspension or revocation of licenses; (4) enter into reciprocity agreements to provide for licensing of applicants from other states or nations; (5) set standards, approve, and evaluate teacher preparation programs; (6) adopt standards for examinations and assessments to assure eligibility for licenses to enter the profession of teaching; (7) create other actions that relate to the improvement of instruction through teacher education and professional development and to attract qualified candidates for teacher training from among the citizens of West Virginia; and (8) perform other actions that relate to the improvement of instruction through teacher education and professional development and to attract qualified candidates for teacher training from among the citizens of West Virginia.

On or before the first day of January, one thousand nine hundred ninety-five, the board shall submit copies of the proposed legislation to the governor, president of the Senate, speaker of the House of
Delegates and the legislative oversight commission on education accountability.

**ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

**§18A-4-5. Salary equity among the counties; state salary supplement.**

(a) For the purposes of this section, salary equity among the counties means that the salary potential of school employees employed by the various districts throughout the state does not differ by greater than ten percent between those offering the highest salaries and those offering the lowest salaries. In the case of professional educators, the difference shall be calculated utilizing the average of the professional educator salary schedules, degree classifications B.A. through doctorate and years of experience zero through twenty, in effect in the five counties offering the highest salary schedules compared to the lowest salary schedule in effect among the fifty-five counties. In the case of school service personnel, the difference shall be calculated utilizing the average of the school service personnel salary schedules, pay grades "A" through "H" and years of experience zero through thirty, in effect in the five counties offering the highest salary schedules compared to the lowest salary schedule in effect among the fifty-five counties.

For the school year beginning the first day of July, one thousand nine hundred ninety-four, and thereafter, in the counties that jointly support a multicounty vocational school, salary equity funding shall be distributed to nonfiscal agent counties based on: (1) Calculating the amount of salary equity funding each nonfiscal agent county would receive for the employees for which it is charged in the public school support program, as provided in section four, article nine-a, chapter eighteen of this code, if this salary equity funding were distributed to nonfiscal agent counties; and (2) deducting the salary equity funding to be received by the fiscal agent county in the public school support program for those employees for which the nonfiscal agent county is charged in the public
school support program.

(b) To assist the state in meeting its objective of salary equity among the counties, as defined in subsection (a) of this section, on and after the first day of July, one thousand nine hundred eighty-four, subject to available state appropriations and the conditions set forth herein, each teacher and school service personnel shall receive a supplemental amount in addition to the amount from the state minimum salary schedules provided for in this article.

State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code. The amount allocated for salary equity shall be apportioned between teachers and school service personnel in direct proportion to that amount necessary to support the professional salaries and service personnel salaries statewide under sections four and five, article nine-a, chapter eighteen of this code: Provided, That in making this division an adequate amount of state equity funds shall be reserved to finance the appropriate foundation allowances and staffing incentives provided for in article nine-a, chapter eighteen of this code.

Pursuant to this section, each teacher and school service personnel shall receive the amount that is the difference between their authorized state minimum salary and ninety-five percent of the maximum salary schedules prescribed in sections five-a and five-b of this article, reduced by any amount provided by the county as a salary supplement for teachers and school service personnel on the first day of January of the fiscal year immediately preceding that in which the salary equity appropriation is distributed: Provided, That the amount received pursuant to this section shall not be decreased as a result of any county supplement increase instituted after the first day of January, one thousand nine hundred eighty-four, until the objective of salary equity is reached: Provided, however, That any amount received pursuant to this section may be reduced proportionately based upon
The amount of funds appropriated for this purpose.

No county may reduce any salary supplement that was in effect on the first day of January, one thousand nine hundred eighty-four, except as permitted by sections five-a and five-b of this article.

§18A-4-19. Alteration of contract.

(a) Notwithstanding the provisions of section seven-a of this article relating to professional personnel or any other section of this code to contrary, any alteration of an employment contract of a professional educator who is employed for more than two hundred days, which alteration changes the number of days in the employment term, shall not be deemed a creation of a new position, nor shall such alteration require the posting of the position.

Notwithstanding the provisions of section seven-a of this article relating to professional personnel or any other section of this code to contrary, any alteration of an employment contract of a professional educator which reduces or eliminates the local salary supplement or the benefits provided to such employee due to a defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction or elimination in accordance with section five-a of this article, shall not be deemed a creation of a new position, nor shall such alteration require the posting of the position.

(b) Notwithstanding the provisions of section eight-b of this article relating to school service personnel or any other section of this code to contrary, any alteration of an employment contract of a service personnel employee who is employed for more than two hundred days, which alteration changes the number of days in the employment term, shall not be deemed a creation of a new position, nor shall such alteration require the posting of the position.

Notwithstanding the provisions of section eight-b of this article relating to school service personnel or any
other section of this code to contrary, any alteration of an employment contract of a service personnel employee which reduces or eliminates the local salary supplement or the benefits provided to such employee due to a defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction or elimination in accordance with section five-b of this article, shall not be deemed a creation of a new position, nor shall such alteration require the posting of the position.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-la. 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 school 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 school 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 repres-
ented 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 suspen-
sion 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 educa-
tion either shall order the pupil reinstated immedi-
ately 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 being classified as or is eligible to be classified as an
exceptional child, other than gifted, under the provi-
sions 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 an expla-
nation 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 devel-
opment 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 employment. 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 cumulative.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Ernest C. Moore

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the day of April, 1994.

Governor