

HB 2072

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



# ENROLLED

Com. Sub. for  
HOUSE BILL No. 2072

(By Delegate *Mr. Speaku, Mr. Chambers,  
and Delegate Ashley*)  
*[By Request of The Executive]*

Passed *March 11,* 1995

In Effect *From* Passage



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**H. B. 2073**

(BY MR. SPEAKER, MR. CHAMBERS, AND DELEGATE ASHLEY)  
[By Request of the Executive]

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[Passed March 11, 1995; in effect from passage.]

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AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-d; to amend and reenact section twenty-six of said article; to amend article five of said chapter, by adding thereto three new sections, designated sections fifteen-f, forty-two and forty-three; to amend and reenact section two, article five-a of said chapter; to amend and reenact sections one and one-a, article five, chapter eighteen-a of said code; to amend article two, chapter sixty-one of said code by adding thereto two new sections, designated sections nine-b and fourteen-f; and to amend and reenact section eleven-a, article seven, of said chapter, all relating to education generally; the duty of the state board to report guidelines for productive and safe schools to the governor and the Legislature; requiring regional educational service agencies to submit a monthly report on turnaround time and be responsible for computer installation, maintenance and repair; the duty of the parent to affirm, upon registration, that their child is not currently under suspension or expulsion; the creation of a county-wide

council on productive and safe schools; the duty of the county board of education to report the county-wide plans to the state board of education; the involvement of the local school improvement councils in the productive and safe school plans; the authority of teachers and other school personnel to exclude students from the classroom or school bus; the implementation of the responsible students program and the peer mediation program by the county board of education; the suspension and expulsion, discretionary and mandatory, of pupils from the school or school bus; the due process requirements for suspension and expulsion; the authority of the county board of education to lessen mandatory periods of expulsion; the temporary removal of a disabled child from the school; the re-enrollment of students who have been expelled from school, whether such expulsion was in state or out of state; the penalties for malicious assault of a child near a school; the penalties for abduction of a child near a school; the possession of firearms or deadly weapons on premises of educational facilities.

*Be it enacted by the Legislature of West Virginia:*

That article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five-d; that section twenty-six of said article be amended and reenacted; that article five of said chapter be amended by adding thereto three new sections, designated sections fifteen-f, forty-two and forty-three; that section two, article five-a of said chapter be amended and reenacted; that sections one and one-a, article five, chapter eighteen-a of said code be amended and reenacted; that article two, chapter sixty-one of said code be amended by adding thereto two new sections, designated sections nine-b and fourteen-f; and that section eleven-a, article seven, of said chapter be amended and reenacted, all to read as follows:

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 2. STATE BOARD OF EDUCATION.**

**§18-2-5d. Duty of board to report guidelines for productive and safe schools.**

1 On or before the first day of December, one thousand  
2 nine hundred ninety-five, the board shall assess and report  
3 to the Governor and to the legislative oversight commis-  
4 sion on education accountability, the guidelines adopted  
5 by the county boards of education, as described in section  
6 forty-three, article five, chapter eighteen of this code. The  
7 board shall report the estimated costs associated for alter-  
8 native instructional proposals stated in such guidelines.  
9 The board shall further incorporate its recommendations  
10 for the use of the peer mediation program in cases involv-  
11 ing school violence.

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

1 (a) In order to consolidate and administer more effec-  
2 tively existing educational programs and services so indi-  
3 vidual districts will have more discretionary moneys for  
4 educational improvement and in order to equalize and  
5 extend educational opportunities, the state board of educa-  
6 tion shall establish multicounty regional educational ser-  
7 vice agencies for the purpose of providing high quality,  
8 cost effective educational programs and services to the  
9 county school systems, and shall make such rules as may  
10 be necessary for the effective administration and operation  
11 of such agencies: *Provided*, That the legislative oversight  
12 commission on education accountability shall commission  
13 a comprehensive feasibility study of the regional educa-  
14 tional service agencies which shall be completed and re-  
15 ported to the legislative oversight commission on educa-  
16 tion accountability no later than the tenth day of January,  
17 one thousand nine hundred ninety-five.

18 (b) In furtherance of these purposes, it is the duty of  
19 the board of directors of each regional educational ser-  
20 vice agency to continually explore possibilities for the  
21 delivery of services on a regional basis which will facilitate  
22 equality in the educational offerings among counties in its  
23 service area, permit the delivery of high quality education-  
24 al programs at a lower per student cost, strengthen the cost

25 effectiveness of education funding resources, reduce ad-  
26 ministrative and/or operational costs, including the consol-  
27 idation of administrative, coordinating and other county  
28 level functions into region level functions, and promote  
29 the efficient administration and operation of the public  
30 school systems generally.

31 Technical, operational, programmatic or professional  
32 services would be among the types of services appropriate  
33 for delivery on a regional basis.

34 (c) In addition to performing the services and func-  
35 tions required by the provisions of this or any other sec-  
36 tion of this code, a regional educational service agency  
37 may implement regional programs and services by a  
38 majority vote of its board of directors. When said vote is  
39 not unanimous, the board of directors shall file a plan for  
40 the service or program delivery with the state board de-  
41 scribing the program or service, the manner of delivery  
42 and the projected savings and/or the improved quality of  
43 the program or service. The state board shall promulgate  
44 rules requiring a county board that declines to participate  
45 in such programs or services to show just cause for not  
46 participating and the estimated savings accruing to the  
47 county therefrom. If a county board fails to show that  
48 savings will accrue to the county or that the quality of the  
49 program will be significantly and positively affected as a  
50 result of its decision not to participate, the state board shall  
51 withhold from the county's foundation allowance for ad-  
52 ministrative cost the lesser of the amount of the estimated  
53 savings or the allocation for the county's foundation al-  
54 lowance for administrative cost.

55 (d) The state board, in conjunction with the various  
56 regional educational service agencies, shall develop an  
57 effective model for the regional delivery of instruction in  
58 subjects where there exists low student enrollment or a  
59 shortage of certified teachers or where such delivery meth-  
60 od substantially improves the quality of an instructional  
61 program. Such model shall incorporate an interactive  
62 electronic classroom approach to instruction. To the ex-

63 tent funds are appropriated or otherwise available, county  
64 boards or regional educational service agencies may adopt  
65 and utilize the model for the delivery of such instruction.

66 (e) Each regional educational service agency shall  
67 conduct a study setting forth how the following services  
68 and functions may be performed by the agency for public  
69 schools and school districts within the region without  
70 terminating the employment of personnel employed by  
71 school districts prior to the effective date of this subsec-  
72 tion: Accounting, purchasing, food service, transportation,  
73 delivery of high cost services to low incidence student  
74 populations, audiovisual material distribution, facilities  
75 planning, federal program coordination, personnel recruit-  
76 ing and an integrated regional computer information  
77 system. On or before the tenth day of January, one thou-  
78 sand nine hundred ninety, each regional educational ser-  
79 vice agency shall submit the study to the state board, to the  
80 standing committees on education and finance of the  
81 West Virginia Senate and House of Delegates and to the  
82 secretary of education and the arts: *Provided*, That in the  
83 event such study is implemented those individuals em-  
84 ployed prior to the effective date thereof shall not have  
85 their employment terminated as a result of the study.

86 (f) Each regional educational service agency shall  
87 commence implementation of a uniform integrated re-  
88 gional computer information system as recommended by  
89 the state board of education on or before the first day of  
90 January, one thousand nine hundred ninety-one. Each  
91 county board of education shall use the computer infor-  
92 mation system for data collection and reporting to the  
93 state department of education beginning no later than the  
94 first day of July, one thousand nine hundred ninety-four.  
95 County boards of education shall bear the cost of and  
96 fully participate in the implementation of the system by:  
97 (1) Acquiring necessary, compatible equipment to partici-  
98 pate in the regional computer information system; or (2)  
99 following receipt of a waiver from the state superintendent,  
100 operating a comparable management information system

101 at a lower cost which provides at least all uniform integrat-  
102 ed regional computer information system software mod-  
103 ules and allows on-line, interactive access for schools and  
104 the county board of education office onto the statewide  
105 communications network. All data formats shall be the  
106 same as for the uniform integrated regional information  
107 system and will reside at the regional computer. Any  
108 county granted a waiver shall receive periodic notification  
109 of any incompatibility or deficiency in its system. Contin-  
110 ued inability of any county to meet the above criteria  
111 shall, upon notification to the county no later than the first  
112 day of April, one thousand nine hundred ninety-five,  
113 require the county to use the uniform integrated regional  
114 computer information system no later than the first day of  
115 July, one thousand nine hundred ninety-five. No county  
116 shall expand any system either through the purchase of  
117 additional software or hardware that does not advance the  
118 goals and implementation of the uniform integrated re-  
119 gional computer information system as recommended by  
120 the state board: *Provided*, That nothing contained herein  
121 shall prevent the state superintendent from granting a  
122 one-year extension to those counties projected to have  
123 budget deficits for the school year beginning on the first  
124 day of July, one thousand nine hundred ninety-four.

125 (g) Each regional educational service agency shall  
126 submit a report and evaluation of the services provided  
127 and utilized by the schools within each respective region.  
128 Furthermore, each school shall submit an evaluation of the  
129 services provided by the regional educational service  
130 agency, which shall include an evaluation of the regional  
131 educational service agency program, suggestions as to how  
132 to improve utilization and the individual school's plan as  
133 to development of new programs and enhancement of  
134 existing programs. The reports shall be due by the first  
135 day of January of each year commencing with the year  
136 one thousand nine hundred ninety-one and shall be made  
137 available to the state board of education, standing commit-  
138 tees on education of the West Virginia Senate and House  
139 of Delegates and to the secretary of education and the arts.

140 (h) A regional board shall be empowered to receive  
141 and disburse funds from the state and federal govern-  
142 ments, member counties, gifts and grants.

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

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

151 (k) Regional educational service agencies shall serve  
152 as the lead agency for computer installation, maintenance  
153 and repair for the Basic Skills Computer Program. By the  
154 first day of October, one thousand nine hundred  
155 ninety-five, and quarterly thereafter, each regional educa-  
156 tional service agency shall submit a status report on turn  
157 around time for computer installation, maintenance and  
158 repair to the state superintendent of schools who shall then  
159 submit a report to the legislative oversight commission on  
160 education accountability. The above mentioned status  
161 report for turn around time for computer installation,  
162 maintenance, and repair shall be based on the following  
163 suggested time schedules:

- 164 Network File Servers. . . . . forty-eight hours
- 165 Local Area Networks . . . . . forty-eight hours
- 166 West Virginia Education
- 167 Information System . . . . . twenty-four hours
- 168 Computer workstations . . . . . three to five days
- 169 Printers . . . . . three to five days
- 170 Other peripherals . . . . . three to five days

171 Regional educational service agencies shall also submit an  
172 audit report to the legislative oversight commission on  
173 education accountability each year.



**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-15f. Affirmation regarding the suspension or expulsion of a pupil from school.**

1 (a) Prior to the admission of a pupil to any public  
2 school in West Virginia, the county superintendent shall  
3 require the pupil's parent(s), guardian(s) or custodian(s) to  
4 provide, upon registration, a sworn statement or affirma-  
5 tion indicating whether the student is, at the time, under  
6 suspension or expulsion from attendance at a private or  
7 public school in West Virginia or another state. Any per-  
8 son willfully making a materially false statement or affir-  
9 mation shall be guilty of a misdemeanor, and upon con-  
10 viction the penalty shall be the same as provided for "false  
11 swearing" pursuant to section three, article five, chapter  
12 sixty-one of this code.

13 (b) Notwithstanding any other provision of this code  
14 to the contrary, any pupil who has been suspended or  
15 expelled from school pursuant to section one-a, article  
16 five, chapter eighteen-a of this code, or who has been  
17 suspended or expelled from a public or private school in  
18 another state, due to actions described in section one-a,  
19 article five, chapter eighteen-a of this code, may not be  
20 admitted to any public school within the state of West  
21 Virginia until the period of suspension or expulsion has  
22 expired.

**§18-5-42. County-wide council on productive and safe schools.**

1 (a) On or before the thirtieth day of April, one thou-  
2 sand nine hundred ninety-five, each county shall develop  
3 a county-wide council on productive and safe schools,  
4 which shall be comprised of the following members:

5 (1) The county superintendent, who shall serve as the  
6 chair of the county-wide council on productive and safe  
7 schools;

8 (2) One representative from each local school im-  
9 provement council, to be elected by a majority vote of  
10 each local school improvement council;

11 (3) The prosecuting attorney or his or her designee;

12 (4) A representative of the department of health and  
13 human resources created pursuant to the provisions of  
14 section two, article one, chapter five-f of this code, to be  
15 appointed in a manner determined by the secretary of the  
16 department;

17 (5) A representative of the law enforcement agencies  
18 situated in the county in which the school is situated to be  
19 recommended by the county sheriff;

20 (6) A representative of the county board of education  
21 for the county in which the school is situated to be ap-  
22 pointed by the president of the county board of educa-  
23 tion;

24 (7) The county board of education's supervisor of  
25 transportation; and

26 (8) A representative of the regional comprehensive  
27 behavioral health center as designated by the office of  
28 behavioral health services in which the county school  
29 system is situated, to be appointed by the executive direc-  
30 tor of the center.

31 (9) When the members listed in subdivisions (1)  
32 through (8) do not include at least two classroom teachers,  
33 then the county superintendent shall appoint additional  
34 members so that at least two classroom teachers are mem-  
35 bers of the county-wide council.

36 (10) When the members listed in subdivisions (1)  
37 through (8) do not include at least two school principals,  
38 then the county superintendent shall appoint additional  
39 members so that at least two school principals are mem-  
40 bers of the county-wide council.

41 (b) The county superintendent shall call an organiza-  
42 tional meeting of the council as soon as practicable after  
43 the effective date of this section.

44 (c) On or before the first day of October, one thou-

45 sand nine hundred ninety-five, the council shall compile  
46 the local school improvement council's guidelines devel-  
47 oped pursuant to subsection (f), section two, article five-a  
48 of this chapter and shall report and deliver such guidelines  
49 to the county board of education, along with the council's  
50 assessment and recommendations regarding the guide-  
51 lines. The council also shall provide a report of the esti-  
52 mated cost for any proposed alternative settings or pro-  
53 grams.

54 (d) No meetings of the county-wide council shall be  
55 held during instructional time.

**§18-5-43. Duty of the county board of education to report the  
county-wide productive and safe school plans to  
the West Virginia board of education.**

1 On or before the first day of November, one thousand  
2 nine hundred ninety-five, each county board of education  
3 shall deliver, together with its assessment, the recommen-  
4 dations and guidelines developed by the county-wide  
5 council on productive and safe schools to the West Virgin-  
6 ia board of education.

**ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.**

**§18-5A-2. Local school improvement councils; election.**

1 (a) A local school improvement council shall be estab-  
2 lished at every school consisting of the following:

3 (1) The principal, who shall serve as an ex officio  
4 member of the council and be entitled to vote;

5 (2) Three teachers elected by the faculty senate of the  
6 school;

7 (3) Two school service personnel elected by the school  
8 service personnel employed at the school;

9 (4) Three parent(s), guardian(s) or custodian(s) of  
10 students enrolled at the school elected by the parent(s),  
11 guardian(s) or custodian(s) members of the school's par-  
12 ent teacher organization: *Provided*, That if there is no

13 parent teacher organization, the parent(s), guardian(s) or  
14 custodian(s) members shall be elected by the parent(s),  
15 guardian(s) or custodian(s) of students enrolled at the  
16 school in such manner as may be determined by the prin-  
17 cipal;

18 (5) Two at-large members appointed by the principal,  
19 one of whom resides in the school's attendance area and  
20 one of whom represents business or industry, neither of  
21 whom is eligible for membership under any of the other  
22 elected classes of members;

23 (6) In the case of vocational-technical schools, the  
24 vocational director: *Provided*, That if there is no voca-  
25 tional director, then the principal may appoint no more  
26 than two additional representatives, one of whom repre-  
27 sents business and one of whom represents industry;

28 (7) In the case of a school with students in grade seven  
29 or higher, the student body president or other student in  
30 grade seven or higher elected by the student body in those  
31 grades;

32 (b) The principal shall arrange for such elections to be  
33 held prior to the fifteenth day of September of each  
34 school year to elect a council and shall give notice of the  
35 elections at least one week prior to the elections being  
36 held. To the extent practicable, all elections to select  
37 council members shall be held within the same week.  
38 Parent(s), guardian(s) or custodian(s), teachers and service  
39 personnel elected to the council shall serve a two-year  
40 term, and elections shall be arranged in such a manner that  
41 no more than two teachers, no more than two parent(s),  
42 guardian(s) or custodian(s), and no more than one service  
43 person are elected in a given year. All other non-  
44 ex-officio members shall serve one-year terms. Council  
45 members may only be replaced upon death, resignation,  
46 failure to appear at three consecutive meetings of the  
47 council for which notice was given, or a change in person-  
48 al circumstances so that the person is no longer represen-  
49 tative of the class of members from which appointed. In

50 the case of replacement, an election shall be held to elect  
51 another qualified person to serve the unexpired term of  
52 the person being replaced.

53 (c) As soon as practicable after the election of council  
54 members, and no later than the first day of October of  
55 each school year, the principal shall convene an organiza-  
56 tional meeting of the school improvement council. The  
57 principal shall notify each member in writing at least two  
58 employment days in advance of the organizational meet-  
59 ing. At this meeting, the principal shall provide each  
60 member with a copy of the current applicable section of  
61 this code and any state board rule or regulation promul-  
62 gated pursuant to the operation of these councils. The  
63 council shall elect from its membership a chair and two  
64 members to assist the chair in setting the agenda for each  
65 council meeting. The chair shall serve a term of one year  
66 and no person may serve as chair for more than two con-  
67 secutive terms. If the chair's position becomes vacant for  
68 any reason, the principal shall call a meeting of the coun-  
69 cil to elect another qualified person to serve the unexpired  
70 term.

71 (d) Once elected, the chair is responsible for notifying  
72 each member of the school improvement council in writ-  
73 ing two employment days in advance of any council meet-  
74 ing.

75 School improvement councils shall meet at least once  
76 every nine weeks or equivalent grading period at the call  
77 of the chair or by three fourths of its members.

78 (e) School improvement councils shall be considered  
79 for the receipt of school of excellence awards under sec-  
80 tion three of this article and competitive grant awards  
81 under section twenty-nine, article two of this chapter, and  
82 may receive and expend such grants for the purposes  
83 provided in such section.

84 In any and all matters which may fall within the scope  
85 of both the school improvement councils and the school  
86 curriculum teams authorized in section five of this article,

87 the school curriculum teams shall be deemed to have juris-  
88 diction.

89 In order to promote innovations and improvements in  
90 the environment for teaching and learning at the school, a  
91 school improvement council shall receive cooperation  
92 from the school in implementing policies and programs it  
93 may adopt to:

94 (1) Encourage the involvement of parent(s), guard-  
95 ian(s) or custodian(s) in their child's educational process  
96 and in the school;

97 (2) Encourage businesses to provide time for their  
98 employees who are parent(s), guardian(s) or custodian(s)  
99 to meet with teachers concerning their child's education;

100 (3) Encourage advice and suggestions from the busi-  
101 ness community;

102 (4) Encourage school volunteer programs and  
103 mentorship programs; and

104 (5) Foster utilization of the school facilities and  
105 grounds for public community activities.

106 (f) On or before the eighth day of June, one thousand  
107 nine hundred ninety-five, each local school improvement  
108 council shall develop and deliver a report to the  
109 county-wide council on productive and safe schools. The  
110 report shall include guidelines for the instruction and  
111 rehabilitation of pupils who have been excluded from the  
112 classroom, suspended from the school, or expelled from  
113 the school, the description and recommendation of  
114 in-school suspension programs, a description of possible  
115 alternative settings, schedules for instruction, and alterna-  
116 tive education programs and an implementation schedule  
117 for such guidelines. The guidelines shall include the fol-  
118 lowing:

119 (1) A system to provide for effective communication  
120 and coordination between school and local emergency  
121 services agencies;

122 (2) A preventive discipline program which may in-  
123 clude the responsible students program devised by the  
124 West Virginia board of education as adopted by the coun-  
125 ty board of education, pursuant to the provisions of sub-  
126 section (e), section one, article five, chapter eighteen-a of  
127 this code; and

128 (3) A student involvement program, which may in-  
129 clude the peer mediation program or programs devised by  
130 the West Virginia board of education as adopted by the  
131 county board of education, pursuant to the provisions of  
132 subsection (e), section one, article five, chapter eighteen-a  
133 of this code.

134 (g) The council may include in its report to the  
135 county-wide council on productive and safe schools provi-  
136 sions of the state board of education policy 4373, Student  
137 Code of Conduct, or any expansion of such policy which  
138 increases the safety of students in schools in this state and  
139 is consistent with the policies and other laws of this state.

140 (h) Councils may adopt their own guidelines estab-  
141 lished under this section. In addition, the councils may  
142 adopt all or any part of the guidelines proposed by other  
143 local school improvement councils, as developed under  
144 this section, which are not inconsistent with the laws of this  
145 state, the policies of West Virginia board of education or  
146 the policies of the county board of education.

147 (i) The state board of education shall provide assis-  
148 tance to a local school improvement council upon receipt  
149 of a reasonable request for that assistance.

#### **CHAPTER 18A. SCHOOL PERSONNEL.**

##### **ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

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

1 (a) The teacher shall stand in the place of the par-

2 ent(s), guardian(s) or custodian(s) in exercising authority  
3 over the school, and shall have control of all pupils en-  
4 rolled in the school from the time they reach the school  
5 until they have returned to their respective homes, except  
6 that where transportation of pupils is provided, the driver  
7 in charge of the school bus or other mode of transporta-  
8 tion shall exercise such authority and control over the  
9 children while they are in transit to and from the school.

10 (b) Subject to the rules of the state board of education,  
11 the teacher shall exclude from the school any pupil or  
12 pupils known to have or suspected of having any infec-  
13 tious disease, or any pupil or pupils who have been ex-  
14 posed to such disease, and shall immediately notify the  
15 proper health officer, or medical inspector, of such exclu-  
16 sion. Any pupil so excluded shall not be readmitted to the  
17 school until such pupil has complied with all the require-  
18 ments of the rules governing such cases, or has presented a  
19 certificate of health signed by the medical inspector or  
20 other proper health officer.

21 (c) The teacher shall have authority to exclude from  
22 his or her classroom or school bus, any pupil who is guilty  
23 of disorderly conduct; who in any manner interferes with  
24 an orderly educational process; who threatens, abuses, or  
25 otherwise intimidates or attempts to intimidate a school  
26 employee or a pupil; or who willfully disobeys a school  
27 employee; or who uses abusive or profane language di-  
28 rected at a school employee. Any pupil excluded shall be  
29 placed under the control of the principal of the school or  
30 a designee. The excluded pupil may be admitted to the  
31 classroom or school bus only when the principal, or a  
32 designee, provides written certification to the teacher that  
33 the pupil may be readmitted and specifies the specific type  
34 of disciplinary action, if any, which was taken. If the prin-  
35 cipal finds that disciplinary action is warranted, he shall  
36 provide written and, if possible, telephonic notice of such  
37 action to the parent(s), guardian(s) or custodian(s). When  
38 a teacher excludes the same pupil from his or her class-  
39 room or from a school bus three times in one school year,



40 and after exhausting all reasonable methods of classroom  
41 discipline provided in the school discipline plan, the pupil  
42 may be readmitted to the teacher's classroom only after  
43 the principal, teacher and, if possible, the parent(s), guard-  
44 ian(s) or custodian(s) of the pupil have held a conference  
45 to discuss the pupil's disruptive behavior patterns, and the  
46 teacher and the principal agree on a course of discipline  
47 for the pupil and inform the parent(s), guardian(s) or  
48 custodian(s) of the course of action. Thereafter, if the  
49 pupil's disruptive behavior persists, upon the teacher's  
50 request, the principal may, to the extent feasible, transfer  
51 the pupil to another setting.

52 (d) Corporal punishment of any pupil by a school  
53 employee is prohibited.

54 (e) The West Virginia board of education and county  
55 boards of education shall adopt policies consistent with the  
56 provisions of this section encouraging the use of alterna-  
57 tives to corporal punishment, providing for the training of  
58 school personnel in alternatives to corporal punishment  
59 and for the involvement of parent(s), and guardian(s) or  
60 custodian(s) in the maintenance of school discipline. The  
61 county boards of education shall provide for the immedi-  
62 ate incorporation and implementation in the schools of a  
63 preventive discipline program, which may include the  
64 responsible student program, and a student involvement  
65 program, which may include the peer mediation program,  
66 devised by the West Virginia board of education. Each  
67 board may modify such programs to meet the particular  
68 needs of the county. The county boards shall provide  
69 in-service training for teachers and principals relating to  
70 assertive discipline procedures and conflict resolution. The  
71 county boards of education may also establish coopera-  
72 tives with private entities to provide middle educational  
73 programs, which may include programs focusing on devel-  
74 oping individual coping skills, conflict resolution, anger  
75 control, self-esteem issues, stress management, and deci-  
76 sion making for students and any other program related to  
77 preventative discipline.

78 (f) For the purpose of this section: (1) "Pupil or stu-  
 79 dent" shall include any child, youth or adult who is en-  
 80 rolled in any instructional program or activity conducted  
 81 under board authorization and within the facilities of or in  
 82 connection with any program under public school direc-  
 83 tion: *Provided*, That in the case of adults the pupil-teacher  
 84 relationship shall terminate when the pupil leaves the  
 85 school or other place of instruction or activity; (2) "teach-  
 86 er" shall mean all professional educators as defined in  
 87 section one, article one of this chapter and shall include  
 88 the driver of a school bus or other mode of transportation.

89 (g) Teachers shall exercise such other authority and  
 90 perform such other duties as may be prescribed for them  
 91 by law or by the rules of the state board of education not  
 92 inconsistent with the provisions of this chapter and chapter  
 93 eighteen of this code.

**§18A-5-1a. Possessing deadly weapons on premises of educa-  
 tional facilities; possessing a controlled sub-  
 stance on premises of educational facilities;  
 assaults and batteries committed by pupils  
 upon teachers or other school personnel; tem-  
 porary suspension, hearing; procedure, notice  
 and formal hearing; extended suspension; sale  
 of narcotic; expulsion; exception.**

1 (a) A principal shall suspend a pupil from school or  
 2 from transportation to or from the school on any school  
 3 bus if the pupil, in the determination of the principal, after  
 4 an informal hearing pursuant to subsection (d) of this  
 5 section, has: (i) Violated the provisions of subsection (b),  
 6 section fifteen, article two, chapter sixty-one of this code;  
 7 (ii) violated the provisions of subsection (b), section  
 8 eleven-a, article seven, chapter sixty-one of this code; or  
 9 (iii) sold a narcotic drug, as defined in section one hun-  
 10 dred one, article one, chapter sixty-a of this code, on the  
 11 premises of an educational facility, at a school-sponsored  
 12 function or on a school bus. If a student has been sus-  
 13 pended pursuant to this subsection, the principal shall,  
 14 within twenty-four hours, request that the county superin-

15    tendent recommend to the county board of education that  
16    the student be expelled. Upon such a request by a princi-  
17    pal, the county superintendent shall recommend to the  
18    county board of education that the student be expelled.  
19    Upon such recommendation, the county board of educa-  
20    tion shall conduct a hearing in accordance with subsec-  
21    tions (e) and (f) of this section to determine if the student  
22    committed the alleged violation. If the county board of  
23    education finds that the student did commit the alleged  
24    violation, the county board of education shall expel the  
25    student.

26           (b) A principal shall suspend a pupil from school, or  
27    from transportation to or from the school on any school  
28    bus, if the pupil, in the determination of the principal after  
29    an informal hearing pursuant to subsection (d) of this  
30    section, has: (i) Committed an act or engaged in conduct  
31    that would constitute a felony under the laws of this state if  
32    committed by an adult; or (ii) unlawfully possessed on the  
33    premises of an educational facility or at a school-spon-  
34    sored function a controlled substance governed by the  
35    Uniform Controlled Substance Act as described in chapter  
36    sixty-a of this code. If a student has been suspended pur-  
37    suant to this subsection, the principal may request that the  
38    superintendent recommend to the county board of educa-  
39    tion that the student be expelled. Upon such recommen-  
40    dation by the county superintendent, the county school  
41    board may hold a hearing in accordance with the provi-  
42    sions of subsections (e) and (f) of this section to determine  
43    if the student committed the alleged violation. If the coun-  
44    ty board of education finds that the student did commit  
45    the alleged violation, the county board of education may  
46    expel the student.

47           (c) A principal may suspend a pupil from school, or  
48    transportation to or from the school on any school bus, if  
49    the pupil, in the determination of the principal after an  
50    informal hearing pursuant to subsection (d) of this sec-  
51    tion: (i) Threatened to injure, or in any manner injured, a  
52    pupil, teacher, administrator or other school personnel; (ii)

53 willfully disobeyed a teacher; (iii) possessed alcohol in an  
54 educational facility, on school grounds, a school bus, or at  
55 any school-sponsored function; (iv) used profane lan-  
56 guage directed at a school employee or pupil; (v) inten-  
57 tionally defaced any school property; (vi) participated in  
58 any physical altercation with another person while under  
59 the authority of school personnel; or (vii) habitually vio-  
60 lated school rules or policies. If a student has been sus-  
61 pended pursuant to this subsection, the principal may  
62 request that the superintendent recommend to the county  
63 board of education that the student be expelled. Upon  
64 such recommendation by the county superintendent, the  
65 county school board may hold a hearing in accordance  
66 with the provisions of subsections (e) and (f) of this sec-  
67 tion to determine if the student committed the alleged  
68 violation. If the county board of education finds that the  
69 student did commit the alleged violation, the county board  
70 of education may expel the student.

71 (d) The actions of any pupil which may be grounds  
72 for his or her suspension or expulsion under the provi-  
73 sions of this section shall be reported immediately to the  
74 principal of the school in which the pupil is enrolled. If  
75 the principal determines that the alleged actions of the  
76 pupil would be grounds for suspension, he or she shall  
77 conduct an informal hearing for the pupil immediately  
78 after the alleged actions have occurred. The hearing shall  
79 be held before the pupil is suspended unless the principal  
80 believes that the continued presence of the pupil in the  
81 school poses a continuing danger to persons or property  
82 or an ongoing threat of disrupting the academic process,  
83 in which case the pupil shall be suspended immediately  
84 and a hearing held as soon as practicable after the suspen-  
85 sion.

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

90 At the commencement of the informal hearing, the

91 principal shall inquire of the pupil as to whether he or she  
92 admits or denies the charges. If the pupil does not admit  
93 the charges, he or she shall be given an explanation of the  
94 evidence possessed by the principal and an opportunity to  
95 present his or her version of the occurrence. At the con-  
96 clusion of the hearing or upon the failure of the noticed  
97 student to appear, the principal may suspend the pupil for  
98 a maximum of ten school days, including the time prior to  
99 the hearing, if any, for which the pupil has been excluded  
100 from school.

101 The principal shall report any suspension the same  
102 day it has been decided upon, in writing, to the parent(s),  
103 guardian(s) or custodian(s) of the pupil by certified mail,  
104 return receipt requested, to the county superintendent and  
105 to the faculty senate of the school at the next meeting after  
106 the suspension.

107 (e) Prior to a hearing before the county board of  
108 education, the county board of education shall cause a  
109 written notice, which states the charges and the recom-  
110 mended disposition, to be served upon the pupil and his or  
111 her parent(s), guardian(s) or custodian(s), as the case may  
112 be. Such notice shall set forth a date and time at which  
113 such hearing shall be held, which date shall be within the  
114 ten-day period of suspension imposed by the principal.

115 (f) The board of education shall hold the scheduled  
116 hearing to determine if the pupil should be reinstated or  
117 should, or under the provisions of this section, must be  
118 expelled from school. At this hearing the pupil may be  
119 represented by counsel, may call his or her own witnesses  
120 to verify his or her version of the incident and may con-  
121 front and cross-examine witnesses supporting the charge  
122 against him or her. The hearing shall be recorded by  
123 mechanical means, unless recorded by a certified court  
124 reporter. The hearing may be postponed for good cause  
125 shown by the pupil but he or she shall remain under sus-  
126 pension until after the hearing. The state board of educa-  
127 tion may adopt other supplementary rules of procedure to  
128 be followed in these hearings. At the conclusion of the

129 hearing the county board of education either shall order  
130 the pupil reinstated immediately or at the end of his or her  
131 initial suspension or shall suspend the pupil for a further  
132 designated number of days or shall expel the pupil from  
133 the public schools of such county.

134 (g) Pupils may be expelled pursuant to the provisions  
135 of this section for a period not to exceed one school year,  
136 except that if a pupil is determined to have violated the  
137 provisions of subsection (a) of this section the pupil shall  
138 be expelled for a period of not less than twelve consecu-  
139 tive months: *Provided*, That the county superintendent  
140 may lessen the mandatory period of twelve consecutive  
141 months for the expulsion of the pupil if the circumstances  
142 of the pupil's case demonstrably warrant. Upon the reduc-  
143 tion of the period of expulsion, the county superintendent  
144 shall prepare a written statement setting forth the circum-  
145 stances of the pupil's case which warrant the reduction of  
146 the period of expulsion. The county superintendent shall  
147 submit the statement to the county board of education, the  
148 principal, the faculty senate and the local school improve-  
149 ment council for the school from which the pupil was  
150 expelled.

151 (h) Notwithstanding the preceding provisions of this  
152 section, if a pupil has prior to the actions complained of  
153 being classified as or is eligible to be classified as an ex-  
154 ceptional child, other than gifted, under the provisions of  
155 section one, article twenty, chapter eighteen of this code,  
156 special consideration shall be given to such pupil as here-  
157 inafter provided.

158 An exceptional child may not be suspended or ex-  
159 pelled for conduct that is the proximate result of the  
160 child's disability: *Provided*, That an exceptional child may  
161 be temporarily removed from school for his own protec-  
162 tion, the protection of school personnel, or the protection  
163 of other pupils.

164 An exceptional child may be temporarily removed,  
165 suspended or expelled for a period in excess of three

166 consecutive school days or ten cumulative school days  
167 only when such student has committed an act involving  
168 the possession of a firearm, as defined in section two, arti-  
169 cle seven, chapter sixty-one of this code. Such child may  
170 be placed in an alternative educational setting by the indi-  
171 vidualized education program committee, as described in  
172 section one, article twenty, chapter eighteen of this code,  
173 for a period of not more than forty-five days. During this  
174 time, the parent(s), guardian(s) or custodian(s) may re-  
175 quest a hearing to contest such placement of the child.  
176 Said child shall remain in the alternative placement until  
177 the hearing is held notwithstanding any provisions of the  
178 code to the contrary.

179 For purposes of this section, exceptional child does  
180 not include gifted children.

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

183 (j) For purposes of this section, nothing herein shall  
184 be construed to be in conflict with the federal provisions  
185 of the Individuals with Disabilities Education Act of 1990  
186 (PL 101-476).

187 (k) Principals may exercise any other authority and  
188 perform any other duties to discipline pupils consistent  
189 with state and federal law, including policies of the state  
190 board of education.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 2. CRIMES AGAINST THE PERSON.**

#### **§61-2-9b. Penalties for malicious or unlawful assault or assault of a child near a school.**

1 Any person who, under the provisions of section nine  
2 of this article, maliciously assaults a child sixteen years of  
3 age or under within one thousand feet of a school is guilty  
4 of a felony, and, upon conviction, shall be punished by  
5 confinement in the penitentiary not less than five nor  
6 more than fifteen years.

**§61-2-14f. Penalties for abduction of a child near a school.**

1 Any person who, under the provisions of section four-  
2 teen of this article, abducts a child sixteen years of age or  
3 under within one thousand feet of a school is guilty of a  
4 felony, and, upon conviction, shall be punished by con-  
5 finement in the penitentiary not less than five nor more  
6 than fifteen years.

**ARTICLE 7. DANGEROUS WEAPONS.**

**§61-7-11a. Possessing deadly weapons on premises of educa-  
tional facilities; reports by school principals;  
suspension of driver license; possessing deadly  
weapons on premises housing courts of law and  
in offices of family law master.**

1 (a) The Legislature hereby finds that the safety and  
2 welfare of the citizens of this state are inextricably depen-  
3 dent upon assurances of safety for children attending, and  
4 the persons employed by, schools in this state and for  
5 those persons employed with the judicial department of  
6 this state. It is for the purpose of providing such assuranc-  
7 es of safety, therefore, that subsections (b), (g) and (h) of  
8 this section are enacted as a reasonable regulation of the  
9 manner in which citizens may exercise those rights ac-  
10 corded to them pursuant to section twenty-two, article  
11 three of the Constitution of the state of West Virginia.

12 (b)(1) It shall be unlawful for any person to possess  
13 any firearm or any other deadly weapon on any school  
14 bus as defined in section one, article one, chapter  
15 seventeen-a of this code, or in or on any public or private  
16 primary or secondary education building, structure, facili-  
17 ty or grounds thereof, including any vocational education  
18 building, structure, facility or grounds thereof where sec-  
19 ondary vocational education programs are conducted or at  
20 any school-sponsored function.

21 (2) This subsection shall not apply to:

22 (A) A law-enforcement officer acting in his or her  
23 official capacity;



24 (B) A person specifically authorized by the board of  
25 education of the county or principal of the school where  
26 the property is located to conduct programs with valid  
27 educational purposes;

28 (C) A person who, as otherwise permitted by the provi-  
29 sions of this article, possesses an unloaded firearm or  
30 deadly weapon in a motor vehicle, or leaves an unloaded  
31 firearm or deadly weapon in a locked motor vehicle;

32 (D) Programs or raffles conducted with the approval  
33 of the county board of education or school which include  
34 the display of unloaded firearms; or

35 (E) The official mascot of West Virginia University,  
36 commonly known as "The Mountaineer", acting in his or  
37 her official capacity.

38 (3) Any person violating this subsection shall be guilty  
39 of a felony, and, upon conviction thereof, shall be impris-  
40 oned in the penitentiary of this state for a definite term of  
41 years of not less than two years nor more than ten years,  
42 or fined not more than five thousand dollars, or both.

43 (c) It shall be the duty of the principal of each school  
44 subject to the authority of the state board of education to  
45 report any violation of subsection (b) of this section dis-  
46 covered by such principal to the state superintendent of  
47 schools within seventy-two hours after such violation oc-  
48 curs. The state board of education shall keep and main-  
49 tain such reports and may prescribe rules establishing  
50 policy and procedures for the making and delivery of the  
51 same as required by this subsection. In addition, it shall  
52 be the duty of the principal of each school subject to the  
53 authority of the state board of education to report any  
54 violation of subsection (b) of this section discovered by  
55 such principal to the appropriate local office of the divi-  
56 sion of public safety within seventy-two hours after such  
57 violation occurs.

58 (d) In addition to the methods of disposition provided  
59 by article five, chapter forty-nine of this code, any court

60 which adjudicates a person who is fourteen years of age or  
61 older as delinquent for a violation of subsection (b) of this  
62 section may, in its discretion, order the division of motor  
63 vehicles to suspend any driver's license or instruction per-  
64 mit issued to such person for such period of time as the  
65 court may deem appropriate, such suspension, however,  
66 not to extend beyond such person's nineteenth birthday;  
67 or, where such person has not been issued a driver's license  
68 or instruction permit by this state, order the division of  
69 motor vehicles to deny such person's application for the  
70 same for such period of time as the court may deem ap-  
71 propriate, such denial, however, not to extend beyond such  
72 person's nineteenth birthday. Any suspension ordered by  
73 the court pursuant to this subsection shall be effective  
74 upon the date of entry of such order. Where the court  
75 orders the suspension of a driver's license or instruction  
76 permit pursuant to this subsection, the court shall confis-  
77 cate any driver's license or instruction permit in the adju-  
78 dicated person's possession and forward the same to the  
79 division of motor vehicles.

80 (e)(1) If a person eighteen years of age or older is  
81 convicted of violating subsection (b) of this section, and if  
82 such person does not act to appeal such conviction within  
83 the time periods described in subdivision (2) of this sub-  
84 section, such person's license or privilege to operate a  
85 motor vehicle in this state shall be revoked in accordance  
86 with the provisions of this section.

87 (2) The clerk of the court in which the person is con-  
88 victed as described in subdivision (1) of this subsection  
89 shall forward to the commissioner a transcript of the judg-  
90 ment of conviction. If the conviction is the judgment of a  
91 magistrate court, the magistrate court clerk shall forward  
92 such transcript when the person convicted has not request-  
93 ed an appeal within twenty days of the sentencing for such  
94 conviction. If the conviction is the judgment of a circuit  
95 court, the circuit clerk shall forward such transcript when  
96 the person convicted has not filed a notice of intent to file  
97 a petition for appeal or writ of error within thirty days

98 after the judgment was entered.

99 (3) If, upon examination of the transcript of the judg-  
100 ment of conviction, the commissioner shall determine that  
101 the person was convicted as described in subdivision (1) of  
102 this subsection, the commissioner shall make and enter an  
103 order revoking such person's license or privilege to oper-  
104 ate a motor vehicle in this state for a period of one year,  
105 or, in the event the person is a student enrolled in a sec-  
106 ondary school, for a period of one year or until the  
107 person's twentieth birthday, whichever is the greater peri-  
108 od. The order shall contain the reasons for the revocation  
109 and the revocation period. The order of suspension shall  
110 advise the person that because of the receipt of the court's  
111 transcript, a presumption exists that the person named in  
112 the order of suspension is the same person named in the  
113 transcript. The commissioner may grant an administrative  
114 hearing which substantially complies with the require-  
115 ments of the provisions of section two, article five-a, chap-  
116 ter seventeen-c of this code upon a preliminary showing  
117 that a possibility exists that the person named in the notice  
118 of conviction is not the same person whose license is being  
119 suspended. Such request for hearing shall be made within  
120 ten days after receipt of a copy of the order of suspension.  
121 The sole purpose of this hearing shall be for the person  
122 requesting the hearing to present evidence that he or she is  
123 not the person named in the notice. In the event the com-  
124 missioner grants an administrative hearing, the commis-  
125 sioner shall stay the license suspension pending the  
126 commissioner's order resulting from the hearing.

127 (4) For the purposes of this subsection, a person is  
128 convicted when such person enters a plea of guilty or is  
129 found guilty by a court or jury.

130 (f)(1) It shall be unlawful for any parent(s), guard-  
131 ian(s) or custodian(s) of a person less than eighteen years  
132 of age who knows that said person is in violation of sub-  
133 section (b) of this section, or who has reasonable cause to  
134 believe that said person's violation of said subsection is  
135 imminent, to fail to immediately report such knowledge or

136 belief to the appropriate school or law-enforcement offi-  
137 cials.

138 (2) Any person violating this subsection shall be guilty  
139 of a misdemeanor, and, upon conviction thereof, shall be  
140 fined not more than one thousand dollars, or shall be  
141 confined in jail not more than one year, or both.

142 (g) (1) It shall be unlawful for any person to possess  
143 any firearm or any other deadly weapon on any premises  
144 which houses a court of law or in the offices of a family  
145 law master.

146 (2) This subsection shall not apply to:

147 (A) A law-enforcement officer acting in his or her  
148 official capacity; and

149 (B) A person exempted from the provisions of this  
150 subsection by order of record entered by a court with  
151 jurisdiction over such premises or offices.

152 (3) Any person violating this subsection shall be guilty  
153 of a misdemeanor, and, upon conviction thereof, shall be  
154 fined not more than one thousand dollars, or shall be  
155 confined in jail not more than one year, or both.

156 (h) (1) It shall be unlawful for any person to possess  
157 any firearm or any other deadly weapon on any premises  
158 which houses a court of law or in the offices of a family  
159 law master with the intent to commit a crime.

160 (2) Any person violating this subsection shall be guilty  
161 of a felony, and, upon conviction thereof, shall be impris-  
162 oned in the penitentiary of this state for a definite term of  
163 years of not less than two years nor more than ten years,  
164 or fined not more than five thousand dollars, or both.

165 (i) Nothing in this section may be construed to be in  
166 conflict with the provisions of federal law.

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

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*Chairman Senate Committee*

*Ernest C. Moore*

*Chairman House Committee*

Originating in the House.

Takes effect from passage.

*Darrell K. Rhodes*  
-----  
*Clerk of the Senate*

*Donald L. Vapp*  
-----  
*Clerk of the House of Delegates*

*Carl Ray Tomblin*  
-----  
*President of the Senate*

*Robert C. Bell*  
-----  
*Speaker of the House of Delegates*

-----  
The within *is approved* this the *24<sup>th</sup>*  
day of *March*, 1995.

*Walter D. Jones*  
-----  
*Governor*



PRESENTED TO THE

GOVERNOR

Date 3/24/95

Time 1:45 pm