WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1995

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ENROLLED
Comm. S. No. 2023
HOUSE BILL No. 2023

(By Delegate Mr. Speaker, Mr. Chamberlain, and Delegate Ashley)

Passed March 11, 1995
In Effect From Passage
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.
On or before the first day of December, one thousand nine hundred ninety-five, the board shall assess and report to the Governor and to the legislative oversight commission on education accountability, the guidelines adopted by the county boards of education, as described in section forty-three, article five, chapter eighteen of this code. The board shall report the estimated costs associated for alternative instructional proposals stated in such guidelines. The board shall further incorporate its recommendations for the use of the peer mediation program in cases involving school violence.

§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.

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

(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 ex-
tent 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 subsec-
tion: Accounting, purchasing, food service, transportation,
delivery of high cost services to low incidence student
populations, audiovisual material distribution, facilities
planning, federal program coordination, personnel recruit-
ing and an integrated regional computer information
system. On or before the tenth day of January, one thou-
sand nine hundred ninety, each regional educational ser-
vice 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 em-
ployed 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 re-
gional computer information system as recommended 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 infor-
mation 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 partici-
pate 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, interactive access for schools and the county board of education office onto the statewide communications network. 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. Continued 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 regional 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 projected 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 provided 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.

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

<table>
<thead>
<tr>
<th>Component</th>
<th>Time Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Network File Servers</td>
<td>forty-eight hours</td>
</tr>
<tr>
<td>Local Area Networks</td>
<td>forty-eight hours</td>
</tr>
<tr>
<td>West Virginia Education</td>
<td></td>
</tr>
<tr>
<td>Information System</td>
<td>twenty-four hours</td>
</tr>
<tr>
<td>Computer workstations</td>
<td>three to five days</td>
</tr>
<tr>
<td>Printers</td>
<td>three to five days</td>
</tr>
<tr>
<td>Other peripherals</td>
<td>three to five days</td>
</tr>
</tbody>
</table>

Regional educational service agencies shall also submit an audit report to the legislative oversight commission on education accountability each year.
ARTICLE 5. COUNTY BOARD OF EDUCATION.

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

1. (a) Prior to the admission of a pupil to any public school in West Virginia, the county superintendent shall require the pupil's parent(s), guardian(s) or custodian(s) to provide, upon registration, a sworn statement or affirmation indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in West Virginia or another state. Any person willfully making a materially false statement or affirmation shall be guilty of a misdemeanor, and upon conviction the penalty shall be the same as provided for "false swearing" pursuant to section three, article five, chapter sixty-one of this code.

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

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

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

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

(2) One representative from each local school improvement council, to be elected by a majority vote of each local school improvement council;
(3) The prosecuting attorney or his or her designee;

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

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

(6) A representative of the county board of education for the county in which the school is situated to be appointed by the president of the county board of education;

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

(8) A representative of the regional comprehensive behavioral health center as designated by the office of behavioral health services in which the county school system is situated, to be appointed by the executive director of the center.

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

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

(b) The county superintendent shall call an organizational meeting of the council as soon as practicable after the effective date of this section.

(c) On or before the first day of October, one thou-
sand nine hundred ninety-five, the council shall compile
the local school improvement council's guidelines devel-
oped pursuant to subsection (f), section two, article five-a
of this chapter and shall report and deliver such guidelines
to the county board of education, along with the council's
assessment and recommendations regarding the guide-
lines. The council also shall provide a report of the esti-
mated cost for any proposed alternative settings or pro-
grams.

(d) No meetings of the county-wide council shall be
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.

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

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

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

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

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

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

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

(4) Three parent(s), guardian(s) or custodian(s) of
students enrolled at the school elected by the parent(s),
guardian(s) or custodian(s) members of the school's par-
ent teacher organization: Provided, That if there is no
parent teacher organization, the parent(s), guardian(s) or
custodian(s) members shall be elected by the parent(s),
guardian(s) or custodian(s) of students enrolled at the
school in such manner as may be determined by the prin-
cipal;

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

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

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

(b) The principal shall arrange for such elections to be
held prior to the fifteenth day of September of each
school year to elect a council and shall give notice of the
elections at least one week prior to the elections being
held. To the extent practicable, all elections to select
council members shall be held within the same week.
Parent(s), guardian(s) or custodian(s), teachers and service
personnel elected to the council shall serve a two-year
term, and elections shall be arranged in such a manner that
no more than two teachers, no more than two parent(s),
guardian(s) or custodian(s), and no more than one service
person are elected in a given year. All other non-
ex-officio members shall serve one-year terms. Council
members may only be replaced upon death, resignation,
failure to appear at three consecutive meetings of the
council for which notice was given, or a change in person-
al circumstances so that the person is no longer represen-
tative of the class of members from which appointed. In
the case of replacement, an election shall be held to elect
another qualified person to serve the unexpired term of
the person being replaced.

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

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

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

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

In any and all matters which may fall within the scope
of both the school improvement councils and the school
curriculum teams authorized in section five of this article,
the school curriculum teams shall be deemed to have juris-
diction.

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

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

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

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

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

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

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

(1) A system to provide for effective communication
and coordination between school and local emergency
services agencies;
(2) A preventive discipline program which may include the responsible students program devised by the West Virginia board of education as adopted by the county board of education, pursuant to the provisions of subsection (e), section one, article five, chapter eighteen-a of this code; and

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

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

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

(i) The state board of education shall provide assistance to a local school improvement council upon receipt 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.

(a) The teacher shall stand in the place of the par-
ent(s), guardian(s) or custodian(s) in exercising authority
over the school, and shall have control of all pupils en-
rolled in the school from the time they reach the school
until they have returned to their respective homes, except
that where transportation of pupils is provided, the driver
in charge of the school bus or other mode of transporta-
tion shall exercise such authority and control over the
children while they are in transit to and from the school.

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

(c) The teacher shall have authority to exclude from
his or her classroom or school bus, any pupil who is guilty
of disorderly conduct; who in any manner interferes with
an orderly educational process; who threatens, abuses, or
otherwise intimidates or attempts to intimidate a school
employee or a pupil; or who willfully disobeys a school
employee; or who uses abusive or profane language di-
rected at a school employee. Any pupil excluded shall be
placed under the control of the principal of the school or
a designee. The excluded pupil may be admitted to the
classroom or school bus only when the principal, or a
designee, provides written certification to the teacher that
the pupil may be readmitted and specifies the specific type
of disciplinary action, if any, which was taken. If the prin-
cipal finds that disciplinary action is warranted, he shall
provide written and, if possible, telephonic notice of such
action to the parent(s), guardian(s) or custodian(s). When
a teacher excludes the same pupil from his or her class-
room or from a school bus three times in one school year,
and after exhausting all reasonable methods of classroom
discipline provided in the school discipline plan, the pupil
may be readmitted to the teacher's classroom only after
the principal, teacher and, if possible, the parent(s), guard-
ian(s) or custodian(s) of the pupil have held a conference
to discuss the pupil's disruptive behavior patterns, and the
teacher and the principal agree on a course of discipline
for the pupil and inform the parent(s), guardian(s) or
custodian(s) of the course of action. Thereafter, if the
pupil's disruptive behavior persists, upon the teacher's
request, the principal may, to the extent feasible, transfer
the pupil to another setting.

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

(e) The West Virginia board of education and county
boards of education shall adopt policies consistent with the
provisions of this section encouraging the use of alterna-
tives to corporal punishment, providing for the training of
school personnel in alternatives to corporal punishment
and for the involvement of parent(s), and guardian(s) or
custodian(s) in the maintenance of school discipline. The
county boards of education shall provide for the immedi-
ate incorporation and implementation in the schools of a
preventive discipline program, which may include the
responsible student program, and a student involvement
program, which may include the peer mediation program,
devised by the West Virginia board of education. Each
board may modify such programs to meet the particular
needs of the county. The county boards shall provide
in-service training for teachers and principals relating to
assertive discipline procedures and conflict resolution. The
county boards of education may also establish coopera-
tives with private entities to provide middle educational
programs, which may include programs focusing on devel-
oping individual coping skills, conflict resolution, anger
control, self-esteem issues, stress management, and deci-
sion making for students and any other program related to
preventative discipline.
(f) For the purpose of this section: (1) "Pupil or student" shall include any child, youth or adult who is enrolled in any instructional program or activity conducted under board authorization and within the facilities of or in connection with any program under public school direction: Provided, That in the case of adults the pupil-teacher relationship shall terminate when the pupil leaves the school or other place of instruction or activity; (2) "teacher" shall mean all professional educators as defined in section one, article one of this chapter and shall include the driver of a school bus or other mode of transportation.

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

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

(a) A principal shall suspend a pupil from school or from transportation to or from the school on any school bus if the pupil, in the determination of the principal, after an informal hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of subsection (b), section fifteen, article two, chapter sixty-one of this code; (ii) violated the provisions of subsection (b), section eleven-a, article seven, chapter sixty-one of this code; or (iii) sold a narcotic drug, as defined in section one hundred one, article one, chapter sixty-a of this code, on the premises of an educational facility, at a school-sponsored function or on a school bus. If a student has been suspended pursuant to this subsection, the principal shall, within twenty-four hours, request that the county superin-
tendent recommend to the county board of education that
the student be expelled. Upon such a request by a principal, the county superintendent shall recommend to the
county board of education that the student be expelled.
Upon such recommendation, the county board of educa-
tion shall conduct a hearing in accordance with subsec-
tions (e) and (f) of this section to determine if the student
committed the alleged violation. If the county board of
education finds that the student did commit the alleged
violation, the county board of education shall expel the
student.

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

(c) A principal may suspend a pupil from school, or
transportation to or from the school on any school bus, if
the pupil, in the determination of the principal after an
informal hearing pursuant to subsection (d) of this sec-
tion: (i) Threatened to injure, or in any manner injured, a
pupil, teacher, administrator or other school personnel; (ii)
willfully disobeyed a teacher; (iii) possessed alcohol in an educational facility, on school grounds, a school bus, or at any school-sponsored function; (iv) used profane language directed at a school employee or pupil; (v) intentionally defaced any school property; (vi) participated in any physical altercation with another person while under the authority of school personnel; or (vii) habitually violated school rules or policies. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board of education that the student be expelled. Upon such recommendation by the county superintendent, the county school board may hold a hearing in accordance with the provisions of subsections (e) and (f) of this section to determine if the student committed the alleged violation. If the county board of education finds that the student did commit the alleged violation, the county board of education may expel the student.

(d) The actions of any pupil which may be grounds for his or her suspension or expulsion under the provisions of this section shall be reported immediately to the principal of the school in which the pupil is enrolled. If the principal determines that the alleged actions of the pupil would be grounds for suspension, he or she shall conduct an informal hearing for the pupil immediately 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 shall be suspended immediately and a hearing held as soon as practicable after the suspension.

The pupil and his or her parent(s), guardian(s), or custodian(s), as the case may be, shall be given telephonic notice, if possible, 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 or she admits or denies the charges. If the pupil does not admit the charges, he or she shall be given an explanation of the evidence possessed by the principal and an opportunity to present his or her version of the occurrence. At the conclusion of the hearing or upon the failure of the noticed student to appear, the principal may suspend the pupil for a maximum of ten school days, including the time prior to the hearing, if any, for which the pupil has been excluded from school.

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

(e) Prior to a hearing before the county board of education, 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 or her parent(s), guardian(s) or custodian(s), as the case may be. Such notice shall set forth a date and time at which such hearing shall be held, which date shall be within the ten-day period of suspension imposed by the principal.

(f) The board of education shall hold the scheduled hearing to determine if the pupil should be reinstated or should, or under the provisions of this section, must be expelled from school. At this hearing the pupil may be represented by counsel, may call his or her own witnesses to verify his or her version of the incident and may confront and cross-examine witnesses supporting the charge against him or her. The hearing shall be recorded by mechanical means, unless recorded by a certified court reporter. The hearing may be postponed for good cause shown by the pupil but he or she shall remain under suspension until after the hearing. The state board of education may adopt other supplementary rules of procedure to be followed in these hearings. At the conclusion of the
hearing the county board of education either shall order
the pupil reinstated immediately or at the end of his or her
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.

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

(h) 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 ex-
ceptional child, other than gifted, under the provisions of
section one, article twenty, chapter eighteen of this code,
special consideration shall be given to such pupil as here-
inafter provided.

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

An exceptional child may be temporarily removed,
suspended or expelled for a period in excess of three
consecutive school days or ten cumulative school days only when such student has committed an act involving the possession of a firearm, as defined in section two, article seven, chapter sixty-one of this code. Such child may be placed in an alternative educational setting by the individualized education program committee, as described in section one, article twenty, chapter eighteen of this code, for a period of not more than forty-five days. During this time, the parent(s), guardian(s) or custodian(s) may request a hearing to contest such placement of the child. Said child shall remain in the alternative placement until the hearing is held notwithstanding any provisions of the code to the contrary.

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

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

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

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

Any person who, under the provisions of section nine of this article, maliciously assaults a child sixteen years of age or under within one thousand feet of a school is guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than five nor more than fifteen years.
§61-2-14f. Penalties for abduction of a child near a school.

Any person who, under the provisions of section fourteen of this article, abducts a child sixteen years of age or under within one thousand feet of a school is guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than five nor more than fifteen years.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-11a. Possessing deadly weapons on premises of educational 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.

(a) The Legislature hereby finds that the safety and welfare of the citizens of this state are inextricably dependent upon assurances of safety for children attending, and the persons employed by, schools in this state and for those persons employed with the judicial department of this state. It is for the purpose of providing such assurances of safety, therefore, that subsections (b), (g) and (h) of this section are enacted as a reasonable regulation of the manner in which citizens may exercise those rights accorded to them pursuant to section twenty-two, article three of the Constitution of the state of West Virginia.

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

(2) This subsection shall not apply to:

(A) A law-enforcement officer acting in his or her official capacity;
(B) A person specifically authorized by the board of education of the county or principal of the school where the property is located to conduct programs with valid educational purposes;

(C) A person who, as otherwise permitted by the provisions of this article, possesses an unloaded firearm or deadly weapon in a motor vehicle, or leaves an unloaded firearm or deadly weapon in a locked motor vehicle;

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

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

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

(c) It shall be the duty of the principal of each school subject to the authority of the state board of education to report any violation of subsection (b) of this section discovered by such principal to the state superintendent of schools within seventy-two hours after such violation occurs. The state board of education shall keep and maintain such reports and may prescribe rules establishing policy and procedures for the making and delivery of the same as required by this subsection. In addition, it shall be the duty of the principal of each school subject to the authority of the state board of education to report any violation of subsection (b) of this section discovered by such principal to the appropriate local office of the division of public safety within seventy-two hours after such violation occurs.

(d) In addition to the methods of disposition provided by article five, chapter forty-nine of this code, any court
which adjudicates a person who is fourteen years of age or older as delinquent for a violation of subsection (b) of this section may, in its discretion, order the division of motor vehicles to suspend any driver's license or instruction permit issued to such person for such period of time as the court may deem appropriate, such suspension, however, not to extend beyond such person's nineteenth birthday; or, where such person has not been issued a driver's license or instruction permit by this state, order the division of motor vehicles to deny such person's application for the same for such period of time as the court may deem appropriate, such denial, however, not to extend beyond such person's nineteenth birthday. Any suspension ordered by the court pursuant to this subsection shall be effective upon the date of entry of such order. Where the court orders the suspension of a driver's license or instruction permit pursuant to this subsection, the court shall confiscate any driver's license or instruction permit in the adjudicated person's possession and forward the same to the division of motor vehicles.

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

(2) The clerk of the court in which the person is convicted as described in subdivision (1) of this subsection shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward such transcript when the person convicted has not requested an appeal within twenty days of the sentencing for such conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward such transcript when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within thirty days
(3) If, upon examination of the transcript of the judgment of conviction, the commissioner shall determine that the person was convicted as described in subdivision (1) of this subsection, the commissioner shall make and enter an order revoking such person's license or privilege to operate a motor vehicle in this state for a period of one year, or, in the event the person is a student enrolled in a secondary school, for a period of one year or until the person's twentieth birthday, whichever is the greater period. The order shall contain the reasons for the revocation and the revocation period. The order of suspension shall advise the person that because of the receipt of the court's transcript, a presumption exists that the person named in the order of suspension is the same person named in the transcript. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of section two, article five-a, chapter seventeen-c of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. Such request for hearing shall be made within ten days after receipt of a copy of the order of suspension. The sole purpose of this hearing shall be for the person requesting the hearing to present evidence that he or she is not the person named in the notice. In the event the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner's order resulting from the hearing.

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

(f)(1) It shall be unlawful for any parent(s), guardian(s) or custodian(s) of a person less than eighteen years of age who knows that said person is in violation of subsection (b) of this section, or who has reasonable cause to believe that said person's violation of said subsection is imminent, to fail to immediately report such knowledge or
belief to the appropriate school or law-enforcement officials.

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

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

(2) This subsection shall not apply to:

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

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

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

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

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

(i) Nothing in this section may be construed to be in conflict with the provisions of federal law.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee
Ernest E. Moore
Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate
Donald L. Kopp

Clerk of the House of Delegates
Earl Ray Tomblin

President of the Senate
Earl Ray Tomblin

Speaker of the House of Delegates

The within is approved this the 24th day of March, 1995.

Governor
Morton J. Laporta
PRESENTED TO THE
GOVERNOR
Date 3/21/85
Time