WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

Com. Sub. No.

HOUSE BILL No. 4065

(By Delegate Mr. Snyder, Mr. Chambers,
and Delegate Ashley)

Passed March 9, 1996

In Effect From Passage
AN ACT to amend and reenact section one, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article two of said chapter; to further amend said article by adding thereto two new sections, designated sections six-a and thirteen-h; to amend and reenact section nineteen, article five of said chapter; to amend article nine-a of said chapter by adding thereto a new section, designated section twenty-one; to amend and reenact section one-a, article five, chapter eighteen-a of said code; and to further amend said article by adding thereto a new section, designated section one-b, all relating to definitions of "career clusters", "work-based learning", "school-age juveniles", and "student with a disability"; the state board of education's rule-making authority for the accreditation, classification and standardization of the state's schools; the establishment of an electronic portfolio system; the sale of soft drinks in high schools, and allocation of profits; the state board of education's policy-making authority for the approval of alternative education programs for disruptive students; the state board of education's and the department of health and human resources' responsibility for the provision of educational services for school-age juveniles who have been placed in residential facilities; the county boards of education's authority
to expand school activities or to use school property for public meetings or other purposes; the state board of education's authority to distribute money to county boards of education to provide for alternative education programs; and students' expulsion or suspension from the school or school bus, the notification procedures for certain pupil transfers; and alternative procedures for expulsion hearings by county boards, and authority to employ hearing examiners.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section six, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections six-a and thirteen-h; that section nineteen, article five of said chapter be amended and reenacted; that article nine-a of said chapter be amended by adding thereto a new section, designated section twenty-one; that section one-a, article five, chapter eighteen-a of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section one-b, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.

§18-1-1. Definitions.

The following words used in this chapter and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) "School" means the pupils and teacher or teachers assembled in one or more buildings, organized as a unit;

(b) "District" means county school district;

(c) "State board" means the West Virginia board of education;

(d) "Board" means the county board of education;

(e) "State superintendent" means the state superintendent of free schools;
(f) "Superintendent" means the county superintendent of schools;

(g) "Teacher" means teacher, supervisor, principal, superintendent, public school librarian; registered professional nurse, licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, who has a baccalaureate degree; or any other person regularly employed for instructional purposes in a public school in this state;

(h) "Service personnel" means all nonteaching school employees not included in the above definition of "teacher";

(i) "Regular full-time employee" means any person employed by a county board of education who has a regular position or job throughout his employment term, without regard to hours or method of pay;

(j) "Career clusters" means broad groupings of related occupations;

(k) "Work-based learning" means a structured activity that correlates with and is mutually supportive of the school-based learning of the student and includes specific objectives to be learned by the student as a result of the activity;

(l) "School-age juveniles" means any individual who is entitled to attend or who, if not placed in a residential facility, would be entitled to attend public schools, in accordance with: (1) section five, article two of this chapter; (2) sections fifteen and eighteen, article five of this chapter; or (3) section one, article twenty of this chapter; and

(m) "Student with a disability" means an exceptional child, other than gifted, pursuant to section one, article twenty of this chapter.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Classification and standardization of schools; standards for degrees and diploma; establishment of alternative education programs.

The state board shall make rules for the accreditation,
classification and standardization of all schools in the state, 
except institutions of higher education, and shall deter-
mine the minimum standards for the granting of diplomas 
and certificates of proficiency by those schools. Not later 
than the school year one thousand nine hundred ninety—
ninety-one, certificates of proficiency including specific 
information regarding the graduate's skills, competence 
and readiness for employment or honors and advanced 
education shall be granted, along with the diploma, to 
every eligible high school graduate.

No institution of less than collegiate or university 
status may grant any diploma or certificate of proficiency 
on any basis of work or merit below the minimum stan-
dards prescribed by the state board.

No charter or other instrument containing the right to 
issue diplomas or certificates of proficiency shall be grant-
ed by the state of West Virginia to any institution or other 
associations or organizations of less than collegiate or 
university status within the state until the condition of 
granting or issuing such diplomas or other certificates of 
proficiency has first been approved in writing by the state 
board.

Notwithstanding any other provisions of this section 
to the contrary, the requirement for granting certificates of 
proficiency shall be replaced by the requirement that 
information be provided on an electronic portfolio system 
established by the state board pursuant to section eight, 
article two-e of this chapter and issued to every high 
school graduate by the appropriate county board: Provided, That the requirements for granting certificates of prof-
iciency shall be continued until such time as the electron-
ic portfolio system has been made available to the county 
boards.

The state board also may establish policies and proce-
dures for the approval of alternative education programs 
for disruptive students who are at risk of not succeeding in 
the traditional school structure. These policies and proce-
dures may provide for the waiver of other policies of the 
state board, the establishment and delivery of a nontradi-
tional curriculum, establishment of licensure requirements
for alternative education program teachers, and the establish-
ment of performance measures for school accredita-

§18-2-6a. Sale of soft drinks.

In order to generate funding for necessary programs and supplies, county boards may permit the sale of soft drinks in county high schools except during breakfast and lunch periods. The sale of such soft drinks shall be in compliance with the rules of the national school lunch program and the school breakfast program of the state board and the nutrition service of the United States department of agriculture, which became effective on the seventeenth day of June, one thousand nine hundred eighty-five: Provided, That, if under such rules, the sale of soft drinks shall become prohibited, such rules shall not prohibit the sale of soft drinks in high schools in the state of West Virginia. Seventy-five percent of the profits from the sale of soft drinks shall be allocated by a majority vote of the faculty senate of each school and twenty-five percent of the profits from the sale of soft drinks shall be allocated to the purchase of necessary supplies by the principal of the school.

§18-2-13h. Provision of educational services for school-age juveniles placed in residential facilities for custody and treatment.

(a) The state board of education and the department of health and human resources are authorized to provide for adequate and appropriate education opportunities for school-age juveniles placed in the following residential facilities as a result of proceedings commenced under the provisions of chapters twenty-seven and forty-nine of this code: Davis-Stuart, Inc., located in Lewisburg, West Virginia; the Elkins Mountain School, located in Elkins, West Virginia; the Abraxas Foundation of West Virginia, located in Waverly, West Virginia; and the Barboursville School, located in Barboursville, West Virginia.

(b) Subject to appropriations by the Legislature, the state board shall have the following authority: (1) To provide education programs and services for school-age juve-
niles on the grounds of residential facilities, pursuant to agreements with the department of health and human resources and the licensed child-care agencies of such department; (2) To hire classroom teachers and other school personnel necessary to provide adequate and appropriate education opportunities to these juveniles; and (3) To provide education services for school-age juveniles in residential facilities on a twelve-month basis.

(c) The department of health and human resources shall cooperate with the state board and the state superintendent in the establishment and maintenance of education programs authorized under this section. Subject to appropriations by the Legislature, the department of health and human resources shall provide, or cause to be provided, adequate space and facilities for such education programs. The state board shall not be required to construct, improve or maintain any building, other improvement to real estate or fixtures attached thereto at any residential facility for the purpose of establishing and maintaining an education program.

(d) The state board of education and the department of health and human resources are authorized to enter into agreements to provide adequate and appropriate education opportunities for school-age juveniles who are placed in residential facilities other than the facilities identified in this section.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-19. Night schools and other school extension activities; use of school property for public meetings, etc.

County boards shall have authority to establish and maintain evening classes or night schools, continuation or part-time day schools, alternative schools, and vocational schools, wherever practicable to do so, and shall admit thereto adult persons and all other persons, including persons of foreign birth. County boards may admit school-age children and youth to these classes or schools under the circumstances prescribed by a state board of education policy governing alternative education programs. County boards shall have authority to use school
funds for the financial support of such schools and to use
the schoolhouses and their equipment for such purposes.
Any such classes of schools shall be conducted in accon-
dance with the rules of the state board.

County boards shall have authority to provide for the
free, comfortable and convenient use of any school prop-
erty to promote and facilitate frequent meetings and asso-
ciations of the people for discussion, study, recreation and
other community activities, and may secure, assemble and
house material for use in the study of farm, home and
community problems, and may provide facilities for the
dissemination of information useful on the farm, in the
home or in the community.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


For the fiscal year beginning the first day of July, one
thousand nine hundred ninety-six, an appropriation may
be made to the state department to be distributed to coun-
ty boards for the operation of alternative education pro-
grams established in accordance with policies and proce-
dures adopted by the state board under section six, article
two of this chapter: Provided, That nothing in this section
shall be construed to require any specific level of funding
by the Legislature: Provided, however, That ninety percent
of any appropriation which may be made for the purposes
set forth in this section shall be distributed to county
boards on the basis of net enrollment and ten percent of
this appropriation shall be distributed on a competitive
basis to county boards for the operation of pilot or inno-

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1a. Possessing deadly weapons on premises of educa-
(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 superintendent recommend to the county board that the student be expelled. Upon such a request by a principal, the county superintendent shall recommend to the county board that the student be expelled. Upon such recommendation, the county board shall conduct a hearing in accordance with 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 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-sponsored function a controlled substance governed by the Uniform Controlled Substances Act as described in chap-
If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county 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 finds that the student did commit the alleged violation, the county board 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 section: (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 that the student be expelled. Upon such recommendation by the county superintendent, the county 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 finds that the student did commit the alleged violation, the county board 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: Provided, That certified mail is not required if one or both of the parents, guardians, or custodians of the pupil are present at the time the suspension is decided upon, or if any one of them acknowledges receipt of the report by signing and dating a copy of the report. The suspension also shall be reported 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, the county board 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 suspen-
(f) The county board shall hold the scheduled hearing to determine if the pupil should be reinstated or 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 may adopt other supplementary rules of procedure to be followed in these hearings. At the conclusion of the hearing the county board 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 consecutive 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 reduction of the period of expulsion, the county superintendent shall prepare a written statement setting forth the circumstances 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, the principal, the faculty senate and the local school improvement council for the school from which the pupil was expelled.

(h) Notwithstanding the preceding provisions of this section, if a pupil has been classified as a student with a disability, prior to performing the actions giving rise to this section, special consideration shall be given to such

(1) Regardless of whether or not the misconduct is the proximate result of the disability of a student, a student with a disability may be suspended immediately for up to ten consecutive days for each occurrence of misconduct or when it is necessary for the protection of the student, the protection of school personnel, or the protection of other students;

(2) If the misconduct is found to be the proximate result of the disability of the student, then, subject to the provisions of subsection (3) of this section, the student may not be suspended or expelled for more than ten consecutive days for each occurrence of misconduct or for each occurrence when it is necessary for the protection of the student, the protection of school personnel, or the protection of other students;

(3) A student with a disability who has committed a violation involving the possession of a firearm, as defined in section two, article seven, chapter sixty-one of this code, on the school premises or at a school-sponsored function 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 calendar days. During this time, if a parent, guardian, or custodian requests a due process hearing to contest placement of the student, the student shall remain in the alternative educational setting during the pendency of any proceeding, unless the parents and the county board agree otherwise. At the conclusion of the proceeding, if it is determined that the student with a disability committed a violation involving the possession of a firearm and the violation is not the proximate result of the disability of the student, the student with a disability shall be expelled from school for the period set forth in the applicable provisions of this section: Provided, That special education and related services must be provided during this additional period of expulsion;

(4) If the behavior giving rise to the violation or activity is not the proximate result of the disability of the student, a student with a disability who has committed a viola-
tion involving the possession of a deadly weapon, as de-
defined in section two, article seven, chapter sixty-one of this
code, other than a firearm, or who has committed a viola-
tion or has engaged in any other activity for which sus-
pension or expulsion is a punishment under the provisions
of this article, shall be suspended or expelled from school
in the manner described in this section. In addition, special
education and related services must be provided during
the period of a suspension or expulsion exceeding ten
days; and

(5) If the student with a disability has been suspended,
and it is determined that the misconduct is the proximate
result of the disability of the student, it is recommended
that school officials determine whether the student is re-
ceiving appropriate instructional and related services in the
current placement. In addition, the violations may be ad-
dressed through strategies, including, but not limited to,
the following: (i) Conflict management and behavior man-
agement strategies which are not inconsistent with the
individualized education program of the student; (ii) Stu-
dent and teacher training initiatives which are not inconsis-
tent with the individualized education program of the
student; (iii) An initiation by professional educators, at
any time, of a change in the placement of the student
through an individualized education program meeting to
be held within twenty-one days, subject to the applicable
procedural safeguards; and (iv) An initiation of a court
order to remove the student from school, if there is belief
that maintaining the student in the current educational
placement is substantially likely to cause injury to the
student or others.

(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) If a pupil transfers to another school in West Vir-
ginia, the principal of the school from which the pupil
transfers shall provide a written record of any disciplinary
236 action taken against the pupil to the principal of the
237 school to which the pupil transfers.
238
239 (I) Principals may exercise any other authority and
240 perform any other duties to discipline pupils consistent
241 with state and federal law, including policies of the state
242 board of education.

§18A-5-1b. Alternative procedures for expulsion hearings by
county boards.

1 The county boards may employ a hearing examiner
2 to conduct the expulsion hearings required by this article.
3 The hearing examiner shall be an attorney, duly licensed
4 to practice law in the state of West Virginia and shall not
5 be employed by the state or county boards for any other
6 reason.
7
8 The hearing examiner shall conduct hearings in com-
9 pliance with the guidelines of section one-a of this article.
10 All hearings shall be recorded by mechanical means, un-
11 less recorded by a certified court reporter. The hearing
12 examiner shall issue a decision and written findings of fact
13 and conclusions of law within five days of the conclusion
14 of the hearing. Hearings by a hearing examiner shall have
15 the same force and effect as a decision made by a county
16 board. Upon the written request of a parent, guardian, or
17 custodian of the student, or the county superintendent, the
18 county board shall review the decision of the hearing
19 examiner. Within ten calendar days from the date of the
20 request of the review, the county board shall enter an or-
21 der affirming, reversing, or modifying the decision of the
22 hearing examiner. A county board may, in its own discre-
23 tion, hold a hearing to determine any issues in question.

23 The authority of the county superintendent shall be
24 the same as contained in section one-a of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 20th day of March, 1996.

Governor
PRESENTED TO THE
GOVERNOR

Date 3/19/96

Time 3:53 PM