WEST VIRGINIA LEGISLATURE
Regular Session, 2002

ENROLLED
Committee Substitute for
SENATE BILL NO. 4

(By Senator Jackson, et al.)

PASSED March 9, 2002

In Effect ninety days from Passage
AN ACT to amend and reenact section one, article one, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one-a, article five of said chapter; and to amend and reenact section two, article seven, chapter sixty-one of said code, all relating to education; defining terms; expanding defined terms to include definitions for alternative education and dangerous student; sale of narcotics and possession of deadly weapons and controlled substances on educational facility premises, vehicles and at school-sponsored functions; assault and battery committed by pupil; suspension and
expulsion, and exceptions; hearing; notice and procedure of hearing; notification by regular mail; postponement of hearing; allowing county boards to determine whether a student is a dangerous student; allowing county boards to refuse to provide alternative education to dangerous students who have been expelled; reexamination of dangerous student status; reporting requirements; authority to request subpoena in certain circumstances; establishing guidelines for permitting a reduction in mandatory twelve-month suspension; removing provisions applying to students with disabilities and maintaining that application to students with disabilities must be consistent with federal law; and expanding and redefining deadly weapon as the phrase applies to schools.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one-a, article five of said chapter be amended and reenacted; and that section two, article seven, chapter sixty-one of said code be amended and reenacted, all to read as follows:

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

1 The definitions contained in section one, article one, chapter eighteen of this code apply to this chapter. In addition, 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:

7 (a) "School personnel" means all personnel employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. School personnel shall be comprised of two categories: professional personnel and service personnel.
(b) "Professional personnel" means persons who meet the certification and/or licensing requirements of the state and includes the professional educator and other professional employees.

(c) "Professional educator" is synonymous with and has the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code. Professional educators shall be classified as:

1. "Classroom teacher". – The professional educator who has direct instructional or counseling relationship with pupils, spending the majority of his or her time in this capacity.

2. "Principal". – The professional educator who, as agent of the board, has responsibility for the supervision, management and control of a school or schools within the guidelines established by said board. The major area of such responsibility shall be the general supervision of all the schools and all school activities involving pupils, teachers and other school personnel.

3. "Supervisor". – The professional educator who, whether by this or other appropriate title, is responsible for working primarily in the field with professional and other personnel in instructional and other school improvement.

4. "Central office administrator". – The superintendent, associate superintendent, assistant superintendent and other professional educators, whether by these or other appropriate titles, who are charged with the administering and supervising of the whole or some assigned part of the total program of the countywide school system.

(d) "Other professional employee" means that person from another profession who is properly licensed and is employed to serve the public schools and includes a 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 completed either a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program.

(e) "Service personnel" means those who serve the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and as aides.

(f) "Principals academy" or "academy" means the academy created pursuant to section two-b, article three-a of this chapter.

(g) "Center for professional development" means the center created pursuant to section one, article three-a of this chapter.

(h) "Job-sharing arrangement" means a formal, written agreement voluntarily entered into by a county board with two or more of its professional employees who wish to divide between them the duties and responsibilities of one authorized full-time position.

(i) "Prospective employable professional personnel" means certified professional educators who:

(1) Have been recruited on a reserve list of a county board;

(2) Have been recruited at a job fair or as a result of contact made at a job fair;

(3) Have not obtained regular employee status through the job posting process provided for in section seven-a, article four of this chapter; and

(4) Have obtained a baccalaureate degree from an accredited institution of higher education within the past year.

(j) "Dangerous student" means a pupil who is substantially likely to cause serious bodily injury to himself,
herself or another individual within that pupil's educational environment, which may include any alternative education environment, as evidenced by a pattern or series of violent behavior exhibited by the pupil, and documented in writing by the school, with the documentation provided to the student and parent or guardian at the time of any offense.

(k) "Alternative education" means an authorized departure from the regular school program designed to provide educational and social development for students whose disruptive behavior places them at risk of not succeeding in the traditional school structures and in adult life without positive interventions.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§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; alternative education.

(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 of said chapter; 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), (f) and (g) 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
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 substances act as described in chapter
sixty-a of this code. 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), (f) and (g) 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
(d) 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), (f) and (g) 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 regular United
States mail. 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. The notice shall state clearly whether
the board will attempt at hearing to establish the student
as a dangerous student, as defined by section one, article
one of this chapter. The notice also shall include any
evidence upon which the board will rely in asserting its
claim that the student is a dangerous student. The notice
shall set forth a date and time at which the hearing shall
be held, which date shall be within the ten-day period of
suspension imposed by the principal.

(f) The county board 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. If the county board determines that the student
should or must be expelled from school, it may also
determine whether the student is a dangerous student
pursuant to subsection (g) of this section. At this or any
hearing before a county board conducted pursuant to this
section, 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. Such a hearing shall be recorded by mechanical means unless recorded by a certified court reporter. Any such 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 shall either: (1) Order the pupil reinstated immediately or at the end of his or her initial suspension; (2) suspend the pupil for a further designated number of days; or (3) expel the pupil from the public schools of the county.

(g) A county board that did not intend prior to a hearing to assert a dangerous student claim, that did not notify the student prior to the hearing that such a determination would be considered and that determines through the course of the hearing that the student may be a dangerous student shall schedule a second hearing within ten days to decide the issue. The hearing may be postponed for good cause shown by the pupil, but he or she remains under suspension until after the hearing.

A county board that expels a student, and finds that the student is a dangerous student, may refuse to provide alternative education. However, after a hearing conducted pursuant to this section for determining whether a student is a dangerous student, when the student is found to be a dangerous student, is expelled and is denied alternative education, a hearing shall be conducted within three months after the refusal by the board to provide alternative education to reexamine whether or not the student remains a dangerous student and whether the student shall be provided alternative education. Thereafter, a hearing for the purpose of reexamining whether or not the student remains a dangerous student and whether the student shall be provided alternative education shall be conducted every three months for so long as the student remains a danger-
ous student and is denied alternative education. During the initial hearing, or in any subsequent hearing, the board may consider the history of the pupil's conduct as well as any improvements made subsequent to the expulsion. If it is determined during any of the hearings that the student is no longer a dangerous student or should be provided alternative education, the student shall be provided alternative education during the remainder of the expulsion period.

(h) The superintendent may apply to a circuit judge or magistrate for authority to subpoena witnesses and documents, upon his or her own initiative, in a proceeding related to a recommended student expulsion or dangerous student determination, before a county board conducted pursuant to the provisions of this section. Upon the written request of any other party, the superintendent shall apply to a circuit judge or magistrate for the authority to subpoena witnesses, documents or both on behalf of the other party in a proceeding related to a recommended student expulsion or dangerous student determination before a county board. If the authority to subpoena is granted, the superintendent shall subpoena the witnesses, documents or both requested by the other party. Furthermore, if the authority to subpoena is granted, it shall be exercised in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code.

Any hearing conducted pursuant to this subsection may be postponed: (1) For good cause shown by the pupil; (2) when proceedings to compel a subpoenaed witness to appear must be instituted; or (3) when a delay in service of a subpoena hinders either party's ability to provide sufficient notice to appear to a witness. A pupil remains under suspension until after the hearing in any case where a postponement occurs.

The county boards are directed to report the number of pupils determined to be dangerous students to the state board of education. The state board will compile the
county boards' statistics and shall report its findings to the legislative oversight commission on educational accountability.

(i) 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. The county superintendent may use the following factors as guidelines in determining whether or not to reduce a mandatory twelve-month expulsion:

(1) The extent of the pupil's malicious intent;

(2) The outcome of the pupil's misconduct;

(3) The pupil's past behavior history; and

(4) The likelihood of the pupil's repeated misconduct.

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

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

(l) If a pupil transfers to another school in West Virginia, the principal of the school from which the pupil transfers...
shall provide a written record of any disciplinary action taken against the pupil to the principal of the school to which the pupil transfers.

(m) 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 7. DANGEROUS WEAPONS.

§61-7-2. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Blackjack" means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. The term "blackjack" shall include, but not be limited to, a billy, billy club, sand club, sandbag or slapjack.

(2) "Gravity knife" means any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force and when so released is locked in place by means of a button, spring, lever or other locking or catching device.

(3) "Knife" means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle which is capable of inflicting cutting, stabbing or tearing wounds. The term "knife" shall include, but not be limited to, any dagger, dirk, poniard or stiletto, with a blade over three and one-half inches in length, any switchblade knife or gravity knife and any other instrument capable of inflicting cutting, stabbing or tearing wounds. A pocket knife with a blade three and
one-half inches or less in length, a hunting or fishing knife
carried for hunting, fishing, sports or other recreational
uses, or a knife designed for use as a tool or household
implement shall not be included within the term “knife”
as defined herein unless such knife is knowingly used or
intended to be used to produce serious bodily injury or
death.

(4) “Switchblade knife” means any knife having a
spring-operated blade which opens automatically upon
pressure being applied to a button, catch or other releasing
device in its handle.

(5) “Nunchuka” means a flailing instrument consisting
of two or more rigid parts, connected by a chain, cable,
rope or other nonrigid, flexible or springy material,
constructed in such a manner as to allow the rigid parts to
swing freely so that one rigid part may be used as a handle
and the other rigid part may be used as the striking end.

(6) “Metallic or false knuckles” means a set of finger
rings attached to a transverse piece to be worn over the
front of the hand for use as a weapon and constructed in
such a manner that, when striking another person with the
fist or closed hand, considerable physical damage may be
inflicted upon the person struck. The terms “metallic or
false knuckles” shall include any such instrument without
reference to the metal or other substance or substances
from which the metallic or false knuckles are made.

(7) “Pistol” means a short firearm having a chamber
which is integral with the barrel, designed to be aimed and
fired by the use of a single hand.

(8) “Revolver” means a short firearm having a cylinder
of several chambers that are brought successively into line
with the barrel to be discharged, designed to be aimed and
fired by the use of a single hand.

(9) “Deadly weapon” means an instrument which is
designed to be used to produce serious bodily injury or
death or is readily adaptable to such use. The term “deadly weapon” shall include, but not be limited to, the instruments defined in subdivisions (1) through (8), inclusive, of this section or other deadly weapons of like kind or character which may be easily concealed on or about the person. For the purposes of section one-a, article five, chapter eighteen-a of this code and section eleven-a, article seven of this chapter, in addition to the definition of “knife” set forth in subdivision (3) of this section, the term “deadly weapon” also includes any instrument included within the definition of “knife” with a blade of three and one-half inches or less in length. Additionally, for the purposes of section one-a, article five, chapter eighteen-a of this code and section eleven-a, article seven of this chapter, the term “deadly weapon” includes explosive, chemical, biological and radiological materials. Notwithstanding any other provision of this section, the term “deadly weapon” does not include any item or material owned by the school or county board, intended for curricular use, and used by the student at the time of the alleged curricular offense solely for curricular purposes.

(10) “Concealed” means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried.

(11) “Firearm” means any weapon which will expel a projectile by action of an explosion.

(12) “Controlled substance” has the same meaning as is ascribed to that term in subsection (d), section one hundred one, article one, chapter sixty-a of this code.

(13) “Drug” has the same meaning as is ascribed to that term in subsection (l), section one hundred one, article one, chapter sixty-a of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 2nd Day of April, 2002.

Governor
PRESENTED TO THE
GOVERNOR
Date: 3/20/02
Time: 3:00 PM