WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED
Committee Substitute for
SENATE BILL NO. 523

(By Senator Oliverio, et al.)

PASSED March 14, 2003

In Effect July 1, 2003
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 522

(SENATORS OLIVERIO, PREZIOSO, PLYMALE, EDGELL, HUNTER, GUILLS, BOWMAN, ROWE AND LOVE, original sponsors)

[Passed March 16, 2003; to take effect July 1, 2003.]

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 four, article two of said chapter; to further amend said article by adding thereto a new section, designated section five-g; to amend and reenact section seven, article two-e of said chapter; to amend and reenact section one, article three of said chapter; to amend and reenact sections one and two, article four of said chapter; to further amend said article by adding thereto a new section, designated section six; to amend and reenact sections ten and eleven of said article; to amend and reenact sections one-a, one-c, four, seven, thirteen, fourteen, twenty-five and forty-five, article
five of said chapter; to amend and reenact sections two and five, article five-a of said chapter; and to amend and reenact section four, article eight of said chapter, all relating to public education generally; definitions; allowing state board president to serve an unlimited number of terms, but no more than two consecutive terms; requiring county boards to provide certain policies, summaries of any modifications to those policies and copies of annual reports to state board; requiring state board to submit copies of summaries and annual reports to the legislative oversight commission on education accountability; allowing, with state board approval, certain appropriations to be expended directly or through contractual agreements with county boards and regional education service agencies for materials and other costs associated with installation, set-up, internet hook-up and wiring of the computer hardware and software; clarifying that state superintendent serves at the will and pleasure of the state board; requiring the state board to annually evaluate the performance of the state superintendent and publicly announce the results of the evaluation; clarifying appointment of county superintendents; modifying authorization for county superintendent to transfer to a teaching position at the end of his or her term; extending the date before which the county superintendent is required to be appointed; requiring county superintendent to be a resident of the county, or of a contiguous county in this state, in which he or she serves; modifying requirements for permanent administrative certificate and county superintendent license; requiring state board to define three years of experience in management or supervision in rule; modifying health-related conditions of employment for county superintendents; providing for discontinuing or suspending employment of county superintendent under certain circumstances; requiring that county superintendents be evaluated at least annually; providing criteria for evaluation; providing for evaluation to take place in executive session; directing county board to release general statement to the public and provide additional information only by mutual consent of
county board and county superintendent; delineating authorized uses of evaluation results; allowing contract or written agreement to delineate a county superintendent acting as chief executive officer; removing county superintendent duty to organize and attend district institutes and organize and direct reading circles and boys' and girls' clubs; requiring county superintendent to report promptly to the county board whenever any school in the district appears to be failing to meet the standards for improving education; requiring county superintendent to keep county board apprised of certain issues in the district; removing requirement for county superintendent to direct the taking of school census; allowing county board members to serve on certain boards; allowing request of ethics commission for an advisory opinion; requiring ethics commission to issue advisory opinion within thirty days; entitling county board member who relies on opinion to reimbursement for attorney's fees and court costs incurred in certain proceedings; prohibiting vote cast from being invalidated due to subsequent finding that holding particular office or committee is a bar to membership on the board; providing that good faith reliance on a written advisory opinion is an absolute defense to certain civil suits or criminal prosecutions; requiring county board member training to include school performance issues; allowing feasible and practicable extension of training time; requiring annual county board self-assessment; specifying focus of evaluation instrument; requiring summary of evaluation to be made public; allowing county boards to meet in facilities within the county other than the county board office; authorizing lease of school property subject to certain requirements; clarifying county board authority to employ, contract with or otherwise engage legal counsel; including service personnel in job sharing arrangements; adding requirements for job sharing; limiting cost to retirement system; requiring filing of policies and summaries of policies that promote school board effectiveness; requiring annual meeting with a quorum of members from each local school improvement council; providing for meeting with less
than a quorum under certain circumstances; allowing county board to schedule additional meeting for any low performing school in the district; requiring county board to develop agenda for required annual meeting with local school improvement council; requiring certain items to be addressed; requiring county boards to make written requests for information from local school improvement councils throughout the year or hold community forums to receive input from the affected community as the county board considers necessary; modifying time requirements for reporting to state board on meetings with local school improvement councils; authorizing county board to request assistance from local school improvement council members to facilitate development of report; requiring county boards to review the policies to promote school board effectiveness each year; eliminating duty of county superintendent to make a tabular report to the county board annually; eliminating requirement that certain percentage of students be in attendance for a day to be considered instructional; including five instructional support and enhancement days within the instructional term that include instructional activities, professional activities and time for faculty senate meetings; requiring instructional activities for students to be scheduled by appointment; requiring school policy relating to use of time designated for instructional activities; providing that the presence of any certain number of students and the transportation of students is not required on instructional support and enhancement days; declaring instructional support and enhancement days a regular work day for all service personnel; providing that for one school year only, statewide assessment may not be prior to the fifteenth day of April; requiring professional development days to be used last when making up instructional days; allowing use of additional minutes of instruction each day for making up lost instructional days under certain circumstances; prohibiting more than one parent member of a local school improvement council from being employed at the school; requiring chair to appoint replacement of elected member of local school
improvement council if position becomes vacant; requiring principal to appoint replacement if appointed position becomes vacant; requiring principal to provide certain information at the organizational meeting of the local school improvement council; requiring local school improvement council chair, or designee, to be prepared to address certain matters at annual meeting and in writing; allowing state board to enter into contracts to provide orientation training for local school improvement council members; requiring that any training meet guidelines established by the state board; requiring emergency meetings of faculty senates to be held during noninstructional time; requiring a two-hour block of time be scheduled for a faculty senate meeting on a day scheduled for the opening of school prior to the beginning of the instructional term; requiring that a two-hour block of time be scheduled for a faculty senate meeting on each instructional support and enhancement day; and requiring state board rule excluding certain absences for accountability purposes.

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 four, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section five-g; that section seven, article two-e of said chapter be amended and reenacted; that section one, article three of said chapter be amended and reenacted; that sections one and two, article four of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section six; that sections ten and eleven of said article be amended and reenacted; that sections one-a, one-c, four, seven, thirteen, fourteen, twenty-five and forty-five, article five of said chapter be amended and reenacted; that sections two and five, article five-a of said chapter be amended and reenacted; and that section four, article eight of said chapter be amended and reenacted all to read as follows:
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) "County board" or "board" means the county board of education;

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

(f) "County superintendent" or "superintendent" means the county superintendent of schools;

(g) "Teacher" means teacher, supervisor, principal, superintendent or 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) "Social worker" means a nonteaching school employee who, at a minimum, possesses an undergraduate degree in social work from an accredited institution of higher learning and who provides various professional
social work services, activities or methods as defined by
the state board for the benefit of students;

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

(k) “Career clusters” means broad groupings of related
occupations;

(l) “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;

(m) “School-age juvenile” 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;

(n) “Student with a disability” means an exceptional
child, other than gifted, pursuant to section one, article
twenty of this chapter;

(o) “Low-density county” means a county whose ratio of
student population to square miles is less than or equal to
the state average ratio as computed by the state depart-
ment of education;

(p) “High-density county” means a county whose ratio of
student population to square miles is greater than the state
average ratio as computed by the state department of
education; and

(q) “Casual deficit” means a deficit of not more than
three percent of the approved levy estimate or a deficit
that is nonrecurring from year to year.
ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-4. Organization; appointment, compensation and duties of secretary.

1 At its first regular meeting in every year the state board shall elect one of its members as president, who may serve an unlimited number of terms, but no more than two consecutive terms, and one as vice president of the board. The state superintendent shall be the chief executive officer of the state board and, subject to its direction, shall execute its policies.

The state board shall appoint a secretary and fix the secretary's salary to be paid out of the general school fund upon warrants drawn by the state superintendent. The secretary shall keep a record of the proceedings of the state board and shall perform such other duties as it may prescribe.

§18-2-5g. Duty to receive and submit summary of policy modifications and annual reports.

1 In addition to filing each policy as required by section fourteen, article five of this chapter, the state board shall require each county board to provide a summary of any modifications to the policies and copies of annual reports developed pursuant to section fourteen, article five of this chapter. The state board shall submit copies of these summaries of modifications to the policies and annual reports, together with any comments and recommendations, to the legislative oversight commission on education accountability, no later than the thirty-first day of December of each year.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-7. Providing for high quality basic skills development and remediation in all public schools.

1 (a) The Legislature finds that teachers must be provided the support, assistance and teaching tools necessary to
meet individual student instructional needs on a daily basis in a classroom of students who differ in learning styles, learning rates and in motivation to learn. The Legislature further finds that attaining a solid foundation in the basic skills of reading, composition and arithmetic is essential for advancement in higher education, occupational and avocational pursuits and that computers are an effective tool for the teacher in corrective, remedial and enrichment activities. Therefore, the state board shall develop a plan which specifies the resources to be used to provide services to students in the earliest grade level and moving upward as resources become available based on a plan developed by each individual school team.

This plan must provide for standardization of computer hardware and software and for technology upgrade and replacement for the purposes of achieving economies of scale, facilitating teacher training, permitting the comparison of achievement of students in schools and counties utilizing the hardware and software and facilitating the repair of equipment and ensuring appropriate utilization of the hardware and software purchased for remediation and basic skills development.

The state board shall determine the computer hardware and software specifications after input from practicing teachers at the appropriate grade levels and with the assistance of education computer experts and the curriculum technology resource center.

Computer hardware and software shall be purchased either directly or through a lease-purchase arrangement pursuant to the provisions of article three, chapter five-a of this code in the amount equal to anticipated revenues being appropriated: Provided, That, with the approval of the state board, the revenues appropriated may be expended directly or through contractual agreements with county boards and regional education service agencies for materials and other costs associated with installation, set-up, internet hook-up and wiring of the computer hardware.
and software: Provided, however, That nothing in this section shall be construed to require any specific level of funding by the Legislature.

The state board shall develop and provide through the state curriculum technology resource center a program to ensure adequate teacher training, continuous teacher support and updates.

To the extent practicable, such technology shall be utilized to enhance student access to learning tools and resources outside of the normal school day, such as: Before and after school; in the evenings, on weekends and during vacations; and for student use for homework, remedial work, independent learning, career planning and adult basic education.

(b) The Legislature finds that the continued implementation of computer utilization under this section for high quality basic skills development and remediation in the middle schools, junior high schools and high schools is necessary to meet the goal that high school graduates will be prepared fully for college, other post-secondary education or gainful employment. Further, such implementation should provide a technology infrastructure at the middle schools, junior high schools and high schools that has multiple applications in enabling students to achieve at higher academic levels. The technology infrastructure should facilitate student development in the following areas:

(1) Attaining basic computer skills such as word processing, spreadsheets, data bases, internet usage, telecommunications and graphic presentations;

(2) Learning critical thinking and decision-making skills;

(3) Applying academic knowledge in real life situations through simulated workplace programs;
(4) Understanding the modern workplace environment, particularly in remote areas of the state, by bringing the workplace to the school;

(5) Making informed career decisions based upon information on labor markets and the skills required for success in various occupations;

(6) Gaining access to labor markets and job placement;

(7) Obtaining information and assistance about college and other post-secondary education opportunities and financial aid; and

(8) Other uses for acquiring the necessary skills and information to make a smooth transition from high school to college, other post-secondary education or gainful employment.

Therefore, the state board shall extend the plan as set forth in subsection (a) of this section, and consistent with the terms and conditions in said subsection, to address the findings of this subsection regarding the continued implementation of computer hardware and software and technical planning support in the middle schools, junior high schools and high schools of the state.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-1. Appointment; qualifications; compensation; traveling expenses; office and residence; evaluation.

There shall be appointed by the state board a state superintendent of schools who shall serve at the will and pleasure of the state board. He or she shall be a person of good moral character, of recognized ability as a school administrator, holding at least a master's degree in educational administration, and shall have had not less than five years of experience in public school work. He or she shall receive an annual salary set by the state board, to be paid monthly: Provided, That the annual salary may not exceed one hundred forty-six thousand one hundred
dollars. The state superintendent also shall receive necessary traveling expenses incident to the performance of his or her duties to be paid out of the general school fund upon warrants of the state auditor. The state superintendent shall have his or her office at the state capitol. The state board shall report to the legislative oversight commission on education accountability upon request concerning its progress during any hiring process for a state superintendent.

The state board annually shall evaluate the performance of the state superintendent and publicly announce the results of the evaluation.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-1. Election and term; interim superintendent.

(a) The county superintendent shall be appointed by the board upon a majority vote of the members thereof to serve for a term of not less than one, nor more than four years. At the expiration of the term or terms for which he or she shall have been appointed, each county superintendent shall be eligible for reappointment for additional terms of not less than one, nor more than four years: Provided, That at the expiration of his or her term or terms of service the county superintendent may transfer to any teaching position in the county for which he or she is qualified and has seniority, unless dismissed for statutory reasons. The appointment of the county superintendent shall be made on or before the first day of June for a term beginning on the first day of July following the appointment.

(b) A county superintendent who fills a vacancy caused by an incomplete term shall be appointed to serve until the following first day of July: Provided, however, That the board may appoint an interim county superintendent to serve for a period not to exceed one hundred twenty days from the occurrence of the vacancy.
(c) The president of the county board, immediately upon
the appointment of the county superintendent, or the
appointment of an interim county superintendent, shall
certify the appointment to the state superintendent.

(d) During his or her term of appointment, the county
superintendent shall be a resident of the county or of a
contiguous county in this state, which he or she serves.
The county superintendent in office on the effective date
of this section shall continue in office until the expiration
of his or her term.

§18-4-2. Qualifications; health certificate; disability; acting
superintendent.

(a) Each county superintendent shall hold a professional
administrative certificate endorsed for superintendent, or
a first class permit endorsed for superintendent, subject to
the following:

(1) A superintendent who holds a first-class permit may
be appointed for one year only, and may be reappointed
two times for an additional year each upon an annual
evaluation by the county board and a determination of
satisfactory performance and reasonable progress toward
completion of the requirements for a professional adminis-
trative certificate endorsed for superintendent;

(2) Any candidate for superintendent who possesses an
earned doctorate from an accredited institution of higher
education and either has completed three successful years
of teaching in public education or has the equivalent of
three years of experience in management or supervision as
defined by state board rule, after employment by the
county board shall be granted a permanent administrative
certificate and shall be a licensed county superintendent;

(3) The state board shall promulgate a legislative rule in
accordance with article three-b, chapter twenty-nine-a of
this code to address those cases where a county board
finds that course work needed by the county superinten-
dent who holds a first-class permit is not available or is not scheduled at state institutions of higher education in a manner which will enable the county superintendent to complete normal requirements for a professional administrative certificate within the three-year period allowed under the permit; and

(4) Any person employed as assistant superintendent or educational administrator prior to the twenty-seventh day of June, one thousand nine hundred eighty-eight, and who was previously employed as superintendent is not required to hold the professional administrative certificate endorsed for superintendent.

(b) In addition to other requirements set forth in this section, a county superintendent shall meet the following health-related conditions of employment:

(1) Before entering upon the discharge of his or her duties, file with the president of the county board a certificate from a licensed physician certifying the following:

(A) A tuberculin skin test, of the type Mantoux test (PPD skin test), approved by the director of the department of health, has been made within four months prior to the beginning of the term of the county superintendent; and

(B) The county superintendent does not have tuberculosis in a communicable state based upon the test results and any further study;

(2) After completion of the initial test, the county superintendent shall have an approved tuberculin skin test once every two years or more frequently if medically indicated. Positive reactors to the skin test are to be referred immediately to a physician for evaluation and indicated treatment or further studies;

(3) A county superintendent who is certified by a licensed physician to have tuberculosis in a communicable
stage shall have his or her employment discontinued or
suspended until the disease has been arrested and is no
longer communicable; and

(4) A county superintendent who fails to complete
required follow-up examinations as set forth in this
subsection shall be suspended from employment until a
report of examination is confirmed.

§18-4-6. Evaluation of county superintendent.

(a) At least annually, the county board shall evaluate the
performance of the county superintendent. The evaluation
process to be used shall be one authorized by the state
board. The West Virginia school board association shall
maintain a catalog of evaluation instruments which
comply with this section and shall make them available to
county boards.

(b) At a minimum, the evaluation process shall require
the county superintendent and county board to establish
written goals or objectives for the county superintendent
to accomplish within a given period of time. Additionally,
the county board shall evaluate the county superintendent
on his or her success in improving student achievement
generally across the county and specifically as it relates to
the management and administration of low performing
schools.

(c) The evaluation also may cover the performance of a
county superintendent in the areas of community relations,
school finance, personnel relations, curricular standards
and programs and overall leadership of the school district
as indicated primarily by improvements in student
achievement, testing and assessment.

(d) The evaluation of a county superintendent shall occur
in executive session. At the conclusion of the evaluation,
the county board shall make available to the public a
general statement about the evaluation process and the
overall result. Additional information about the evalua-
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(28) tion may be released only by mutual consent of the county superintendent and the county board. The county board may use the evaluation results to determine:

(31) (1) Whether to extend the contract of the county superintendent;

(33) (2) Whether to offer the county superintendent a new contract; and

(35) (3) The level of compensation or benefits to offer the county superintendent in any new or extended contract.

§18-4-10. Duties of county superintendent.

1 The county superintendent shall:

2 (1) Act as the chief executive officer of the county board as may be delineated in his or her contract or other written agreement with the county board, and, under the direction of the state board, execute all its education policies;

6 (2) Nominate all personnel to be employed; in case the county board refuses to employ any or all of the persons nominated, the county superintendent shall nominate others and submit the same to the county board at a time the county board may direct. No person or persons shall be employed except on the nomination of the county superintendent;

13 (3) Assign, transfer, suspend or promote teachers and all other school employees of the district, subject only to the approval of the county board, and to recommend to the county board their dismissal pursuant to the provisions of this chapter;

18 (4) Report promptly to the county board in such manner as it directs whenever any school in the district appears to be failing to meet the standards for improving education established pursuant to section five, article two-e of this chapter;
(5) Close a school temporarily when conditions are detrimental to the health, safety or welfare of the pupils;

(6) Certify all expenditures and monthly payrolls of teachers and employees;

(7) Serve as the secretary of the county board and attend all meetings of the county board or its committees, except when the tenure, salary or administration of the county superintendent is under consideration;

(8) Administer oaths and examine witnesses under oath in any proceedings pertaining to the schools of the district and have the testimony reduced to writing;

(9) Keep the county board apprised continuously of any issues that affect the county board or its schools, programs and initiatives. The county superintendent shall report to the county board on these issues using any appropriate means agreeable to both parties. When practicable, the reports shall be fashioned to include a broad array of data and information that the county board may consult to aid in making decisions;

(10) Exercise all other authority granted by this chapter or required by the county board or state board; and

(11) In case of emergency, act as the best interests of the school demand. An emergency, as contemplated in this section, is limited to an unforeseeable, catastrophic event including natural disaster or act of war and nothing in this section may be construed as granting the county superintendent authority to override any statutory or constitutional provision in the exercise of his or her emergency power except where such authority is specifically granted in the particular code section.

§18-4-11. Other powers and duties.

The county superintendent shall:

(1) Visit the schools as often as practicable; observe and make suggestions concerning the instruction and class-
(2) Report to the county board cases of incompetence, neglect of duty, immorality or misconduct in office of any teacher or employee;

(3) Recommend for condemnation buildings unfit for school use;

(4) Call, at his or her discretion, conferences of principals and teachers to discuss the work of the schools of the district;

(5) Report to the county board the progress and general condition of the schools;

(6) Make reports as required by the state superintendent. In case the county superintendent fails to report as required, the state superintendent may direct that the salary of the county superintendent be withheld until an acceptable report is received; and

(7) Perform all other duties prescribed in this chapter or required by the county board or the state board.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1a. Eligibility of Members; training requirements.

(a) No person shall be eligible for membership on any county board who is not a citizen, resident in such county, or who accepts a position as teacher or service personnel in the school district in which he or she is a resident or who is an elected or an appointed member of any political party executive committee, or who becomes a candidate for any other office than to succeed oneself.

(b) No member or member-elect of any board shall be eligible for nomination, election or appointment to any public office, other than to succeed oneself, or for election or appointment as a member of any political party executive committee, unless and until after that
membership on the board, or his status as member-elect
to the board, has been terminated at or before the time of
his filing for such nomination for, or appointment to,
such public office or committee: Provided, That “office”
or “committee”, as used in this subsection and subsection
(a) of this section, does not include service on any board,
elected or appointed, profit or non profit, for which the
person does not receive compensation and whose primary
scope is not related to the public schools.

(c) A member or member elect of a county board, or a
person desiring to become a member of a county board,
may make a written request to the West Virginia ethics
commission for an advisory opinion on whether another
elected or appointed position held or sought by the
person is an office or public office which would bar
serving on the board pursuant to subsections (a) and (b)
of this section. Within thirty days of receipt of the
request, the ethics commission shall issue a written
advisory opinion in response to the request and shall also
publish such opinion in a manner which to the fullest
extent possible does not reveal the identity of the person
making the request. Any county board member who
relied in good faith upon an advisory opinion issued by
the West Virginia ethics commission that holding a
particular office or public office is not a bar from
membership on a county board of education and against
whom proceedings are subsequently brought for removal
from the county board on the basis of holding such office
or offices shall be entitled to reimbursement by the
county board for reasonable attorney’s fees and court
costs incurred by the member in defending against such
proceedings, regardless of the outcome of the proceed-
ings. Further, no vote cast by the member at a meeting
of the board shall be invalidated due to a subsequent
finding that holding the particular office or public is a
bar to membership on the county board. Good faith re-
liance on a written advisory opinion of the West Virginia
ethics commission that a particular office or public office
is not a bar to membership on a county board of education is an absolute defense to any civil suit or criminal prosecution arising from any proper action taken within the scope of membership on the board, becoming a member elect of the board or seeking election to the board.

(d) Any person who is elected or appointed to a county board on or after the fifth day of May, one thousand nine hundred ninety-two, shall possess at least a high school diploma or a general educational development (GED) diploma: Provided, That this provision shall not apply to members or members-elect who have taken office prior to the fifth day of May, one thousand nine hundred ninety-two, and who serve continuously therefrom.

(e) No person elected to a county board after the first day of July, one thousand nine hundred ninety, shall assume the duties of board member unless he or she has first attended and completed a course of orientation relating to boardsmanship and governance effectiveness which shall be given between the date of election and the beginning of the member's term of office: Provided, That a portion or portions of subsequent training such as that offered in orientation may be provided to members after they have commenced their term of office: Provided, however, That attendance at the session of orientation given between the date of election and the beginning of the member's term of office shall permit such member or members to assume the duties of board member, as specified in this section. Members appointed to the board shall attend and complete the next such course offered following their appointment: Provided further, That the provisions of this section relating to orientation shall not apply to members who have taken office prior to the first day of July, one thousand nine hundred eighty-eight, and who serve continuously therefrom.

(f) Commencing on the effective date of this section, members shall annually receive seven clock hours of training in areas relating to boardsmanship, governance
effectiveness, and school performance issues including, but not limited to, pertinent state and federal statutes such as the "Process for Improving Education" set forth in section five, article two-e of this chapter and the "No Child Left Behind Act" and their respective administrative rules. Such orientation and training shall be approved by the West Virginia school board association or other organization or organizations approved by the state board: Provided, That the state board may exclude time spent in training on school performance issues from the requisite seven hours herein required: Provided, however, That if the state board elects to exclude time spent in training on school performance issues from the requisite seven hours, such training shall be limited by the state board to a feasible and practicable amount of time. Failure to attend and complete such an approved course of orientation and training relating to boardsmanship and governance effectiveness without good cause as determined by legislative rules of the state board shall constitute neglect of duty.

(g) In the final year of any four-year term of office, a member shall satisfy the annual training requirement before the first day of January. The state board shall petition the circuit court of Kanawha County to remove any county board member who has failed to or who refuses to attend and complete the approved course of orientation and training. If the county board member fails to show good cause for not attending the approved course of orientation and training, the court shall remove the member from office.

§18-5-1c. Organization of board; evaluation.

(a) On the first Monday of July following each biennial primary election, each respective county board shall organize and shall elect a president from its own membership for a two-year term. The county board shall
report promptly to the state superintendent the name of
the member elected as county board president.

(b) Annually, each county board shall assess its own
performance using an instrument approved by the state
board. In developing or making determinations on
approving evaluation instruments, the state board may
consult with the West Virginia school board association
or other appropriate organizations. The evaluation
instrument selected shall focus on the effectiveness of the
county board in the following areas:

(1) Dealing with its various constituency groups and
with the general public;

(2) Providing a proper framework and the governance
strategies necessary to monitor and approve student
achievement on a continuing basis; and

(3) Enhancing the effective utilization of the policy
approach to governance.

At the conclusion of the evaluation, the county board
shall make available to the public a summary of the
evaluation, including areas in which the board concludes
improvement is warranted.

§18-5-4. Meetings; employment and assignment of teachers;
budget hearing; compensation of members;
affiliation with state and national associations.

(a) The county board shall meet on the first Monday in
July, and upon the dates provided by law for the laying
of levies, and at any other times the county board fixes
upon its records. Subject to adequate public notice,
nothing herein shall prohibit the county board from
conducting regular meetings in facilities within the
county other than the county board office. At any
meeting as authorized in this section and in compliance
with the provisions of article four of this chapter, the
county board may employ qualified teachers, or those
who will qualify by the time they enter upon their duties, necessary to fill existing or anticipated vacancies for the current or next ensuing school year. At a meeting of the county board, on or before the first Monday in May, the county superintendent shall furnish in writing to the county board a list of those teachers to be considered for transfer and subsequent assignment for the next ensuing school year. All other teachers not listed are considered as reassigned to the positions held at the time of this meeting. The list of those recommended for transfer shall be included in the minute record and the teachers listed shall be notified in writing. The notice shall be delivered in writing, by certified mail, return receipt requested, to the teachers’ last known addresses within ten days following the board meeting, of their having been recommended for transfer and subsequent assignment.

(b) Special meetings may be called by the president or any three members, but no business may be transacted other than that designated in the call.

(c) In addition, a public hearing shall be held concerning the preliminary operating budget for the next fiscal year not fewer than ten days after the budget has been made available to the public for inspection and within a reasonable time prior to the submission of the budget to the state board for approval. Reasonable time shall be granted at the hearing to any person who wishes to speak regarding any part of the budget. Notice of the hearing shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code.

(d) A majority of the members of the county board constitutes the quorum necessary for the transaction of official business.

(e) Board members may receive compensation at a rate not to exceed one hundred sixty dollars per meeting
attended, but they may not receive pay for more than
fifty meetings in any one fiscal year. Board members
who serve on an administrative council of a multicounty
vocational center also may receive compensation for
attending up to twelve meetings of the council at the
same rate as for meetings of the county board. Meetings
of the council are not counted as board meetings for
purposes of determining the limit on compensable board
meetings.

(f) Members also shall be paid, upon the presentation
of an itemized sworn statement, for all necessary travel-
ing expenses, including all authorized meetings, incurred
on official business, at the order of the county board.

(g) When, by a majority vote of its members, a county
board considers it a matter of public interest, the county
board may join the West Virginia school board associa-
tion and the national school board association and may
pay the dues prescribed by the associations and approved
by action of the respective county boards. Membership
dues and actual traveling expenses incurred by board
members for attending meetings of the West Virginia
school board association may be paid by their respective
county boards out of funds available to meet actual
expenses of the members, but no allowance may be made
except upon sworn itemized statements.

§18-5-7. Sale of school property at public auction; rights of
grantor of lands in rural communities; oil and gas
leases; disposition of proceeds; lease of school
property.

(a) Except as set forth in subsection (b) of this section,
if at any time a county board determines that any
building or any land is no longer needed for school
purposes, the county board may sell, dismantle, remove
or relocate the building and sell the land on which it is
located at public auction, after proper notice and on such
terms as it orders, to the highest responsible bidder.
(b) Notwithstanding the provisions of subsection (a) of this section, in rural communities, the grantor of the lands or his or her heirs or assigns has the right to purchase at the sale, the land, exclusive of the buildings on the land and the mineral rights, at the same price for which it was originally sold: Provided, That the sale to the board was not a voluntary arms length transaction for valuable consideration approximating the fair market value of the property at the time of the sale to the board: Provided, however, That the provisions of this section may not operate to invalidate any provision of the deed to the contrary.

(c) The county board, by the same method set forth in subsection (a) of this section for the sale of school buildings and lands, may, in lieu of offering the property for sale, enter into a lease for oil or gas or other minerals any lands or school sites owned in fee by it. The proceeds of the sales and rentals shall be placed to the credit of the fund or funds of the district as the county board may direct.

(d) The county board may make any sale of property subject to the provision that all liability for hazards associated with the premises are to be assumed by the purchaser. In any sale by the county board of improved property in which the actual consideration is less than ten thousand dollars or in any sale of unimproved property in which the actual consideration is less than one thousand dollars, the county board shall make any sale of property subject to the provision that all liability for hazards associated with the premises are to be assumed by the purchaser. The county board shall inform any prospective purchaser of known or suspected hazards associated with the property.

(e) Except as provided by the provisions of subsection (b) of this section, where a county board determines that any school property is no longer needed for school purposes, the county board may, upon determining that
it will serve the best interests of the school system and
the community, offer the property for lease. The proce-
dure set forth in subsection (a) of this section relating to
sale of school buildings and lands shall apply to leasing
the school property. Any lease authorized by the provi-
sions of this subsection shall be in writing. The writing
shall include a recitation of all known or reasonably
suspected hazards associated with the property, an
assumption by the lessee of all liability related to all
hazards, whether disclosed or not, and provisions
wherein the lessee assumes all liability for any actions
arising from the property during the term of the lease.

(f) Notwithstanding any provision of this section to the
contrary, the provisions of this section concerning sale or
lease at public auction may not apply to a county board
selling, leasing or otherwise disposing of its property for
a public use to the state of West Virginia, or its political
subdivisions, including county commissions, for an
adequate consideration without considering alone the
present commercial or market value of the property.


Each county board, subject to the provisions of this
chapter and the rules of the state board, has the author-
ity:

(a) To control and manage all of the schools and school
interests for all school activities and upon all school
property, whether owned or leased by the county,
including the authority to require that records be kept of
all receipts and disbursements of all funds collected or
received by any principal, teacher, student or other
person in connection with the schools and school inter-
ests, any programs, activities or other endeavors of any
nature operated or carried on by or in the name of the
school, or any organization or body directly connected
with the school, to audit the records and to conserve the
funds, which shall be considered quasipublic moneys,
including securing surety bonds by expenditure of board moneys;

(b) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools, programs or both, for post-high school instruction, subject to approval of the state board;

c) To close any school which is unnecessary and to assign the pupils of the school to other schools: Provided, That the closing shall be officially acted upon, and teachers and service personnel involved notified on or before the first Monday in April, in the same manner as provided in section four of this article, except in an emergency, subject to the approval of the state superintendent, or under subdivision (e) of this section;

d) To consolidate schools;

e) To close any elementary school whose average daily attendance falls below twenty pupils for two months in succession and send the pupils to other schools in the district or to schools in adjoining districts. If the teachers in the closed school are not transferred or reassigned to other schools, they shall receive one month’s salary;

(f) (1) To provide at public expense adequate means of transportation, including transportation across county lines for students whose transfer from one district to another is agreed to by both county boards as reflected in the minutes of their respective meetings, for all children of school age who live more than two miles distance from school by the nearest available road; to provide at public expense, according to such rules as the board may establish, adequate means of transportation for school children participating in county board-approved curricular and extracurricular activities; to provide at public expense, by rules and within the available revenues, transportation for those within two miles distance; and to provide, at no cost to the county
board and according to rules established by the board, transportation for participants in projects operated, financed, sponsored or approved by the commission on aging, all subject to the following:

(A) All costs and expenses incident in any way to transportation for projects connected with the commission on aging shall be borne by the commission or the local or county chapter of the commission;

(B) In all cases, the school buses owned by the county board shall be driven or operated only by drivers regularly employed by the county board;

(C) The county board may provide, under rules established by the state board, for the certification of professional employees as drivers of county board-owned vehicles with a seating capacity of less than ten passengers used for the transportation of pupils for school-sponsored activities other than transporting students between school and home. The use of the vehicles shall be limited to one for each school-sponsored activity; and

(D) Buses shall be used for extracurricular activities as provided in this section only when the insurance provided for by this section is in effect;

(2) To enter into agreements with one another as reflected in the minutes of their respective meetings to provide, on a cooperative basis, adequate means of transportation across county lines for children of school age subject to the conditions and restrictions of this subsection and subsection (h) of this section;

(g) (1) To lease school buses operated only by drivers regularly employed by the county board to public and private nonprofit organizations or private corporations to transport school-age children to and from camps or educational activities in accordance with rules established by the county board. All costs and expenses
incurred by or incidental to the transportation of the children shall be borne by the lessee;

(2) To contract with any college or university or officially recognized campus organizations to provide transportation for college or university students, faculty or staff to and from the college or university. Only college and university students, faculty and staff may be transported pursuant to this section. The contract shall include consideration and compensation for bus operators, repairs and other costs of service, insurance and any rules concerning student behavior;

(h) To provide at public expense for insurance against the negligence of the drivers of school buses, trucks or other vehicles operated by the board; and if the transportation of pupils is contracted, then the contract for the transportation shall provide that the contractor shall carry insurance against negligence in an amount specified by the board;

(i) To provide solely from county board funds for all regular full-time employees of the county board all or any part of the cost of a group plan or plans of insurance coverage not provided or available under the West Virginia public employees insurance act;

(j) To employ teacher aides, to provide in-service training for teacher aides, the training to be in accordance with rules of the state board and, in the case of service personnel assuming duties as teacher aides in exceptional children programs, to provide a four-clock-hour program of training prior to the assignment which shall, in accordance with rules of the state board, consist of training in areas specifically related to the education of exceptional children;

(k) To establish and conduct a self-supporting dormitory for the accommodation of the pupils attending a high school or participating in a post high school pro-
gram and of persons employed to teach in the high school
or post high school program;

(l) At the board’s discretion, to employ, contract with
or otherwise engage legal counsel in lieu of utilizing the
prosecuting attorney to advise, attend to, bring, prose-
cute or defend, as the case may be, any matters, actions,
suits and proceedings in which the board is interested;

(m) To provide appropriate uniforms for school service
personnel;

(n) To provide at public expense and under rules as
established by any county board for the payment of
traveling expenses incurred by any person invited to
appear to be interviewed concerning possible employ-
ment by the county board;

(o) To allow or disallow their designated employees to
use publicly provided carriage to travel from their
residences to their workplace and return: Provided, That
the usage is subject to the supervision of the county
board and is directly connected with and required by the
nature and in the performance of the employee’s duties
and responsibilities;

(p) To provide, at public expense, adequate public
liability insurance, including professional liability
insurance for county board employees;

(q) To enter into agreements with one another to
provide, on a cooperative basis, improvements to the
instructional needs of each district. The cooperative
agreements may be used to employ specialists in a field
of academic study or support functions or services, for
the academic study. The agreements are subject to
approval by the state board;

(r) To provide information about vocational or higher
education opportunities to students with handicapping
conditions. The county board shall provide in writing to
the students and their parents or guardians information relating to programs of vocational education and to programs available at state funded institutions of higher education. The information may include sources of available funding, including grants, mentorships and loans for students who wish to attend classes at institutions of higher education;

(s) To enter into agreements with one another, with the approval of the state board, for the transfer and receipt of any and all funds determined to be fair when students are permitted or required to attend school in a district other than the district of their residence; and

(t) To enter into job-sharing arrangements, as defined in section one, article one, chapter eighteen-a of this code, with its employees, subject to the following provisions:

(1) A job-sharing arrangement shall meet all the requirements relating to posting, qualifications and seniority, as provided for in article four, chapter eighteen-a of this code;

(2) Notwithstanding any provisions of this code or legislative rule and specifically the provisions of article sixteen, chapter five of this code to the contrary, a county board which enters into a job-sharing arrangement in which two or more employees voluntarily share an authorized full-time position shall provide the mutually agreed upon employee coverage but shall not offer insurance coverage to more than one of the job-sharing employees, including any group plan or group plans available under the state public employees insurance act;

(3) Each job-sharing agreement shall be in writing on a form prescribed and furnished by the county board. The agreement shall designate specifically one employee only who is entitled to the insurance coverage. Any
employee who is not so designated is not eligible for state
public employees insurance coverage regardless of the
number of hours he or she works;

(4) All employees involved in the job-sharing agree-
ment meet the requirements of subdivision (3), section
two, article sixteen, chapter five of this code; and

(5) When entering into a job sharing agreement, the
county board and the employees involved in the job-
sharing agreement shall consider issues such as retire-
ment benefits, termination of the job sharing agreement
and any other issue the parties to the agreement consider
appropriate. Any provision in the agreement relating to
retirement benefits shall not cause any cost to be in-
curred by the retirement system that is more than the
cost that would be incurred if a single employee were
filling the position.

"Quasipublic funds" as used in this section means any
money received by any principal, teacher, student or
other person for the benefit of the school system as a
result of curricular or noncurricular activities.

Each county board shall expend under rules it estab-
lishes for each child an amount not to exceed the propor-
tion of all school funds of the district that each child
would be entitled to receive if all the funds were distrib-
uted equally among all the children of school age in the
district upon a per capita basis.

§18-5-14. Policies to promote school board effectiveness.

(a) No later than the first day of August, two thousand
three, each county board shall adopt and file with the
state board copies of policies and summaries of policies
that promote school board effectiveness. These policies
may be modified by the county board as necessary, but
shall be refiled with the state board following each
modification. The policies shall address the following
objectives:
(1) Establishing direct links between the county board and its local school improvement councils and between the county board and its faculty senates for the purpose of enabling the county board to receive information, comments and suggestions directly from the councils and faculty senates regarding the broad guidelines for oversight procedures, standards of accountability and planning for future needs as required by this section. To further development of these linkages, each county board shall:

(A) Meet at least annually with a quorum of members from each local school improvement council in the district, at a time and in a manner to be determined by the county board, except, in order to facilitate scheduling, the county board may adopt an alternate procedure allowing it to conduct the required annual meeting with each council in the absence of a quorum of council members if the alternate procedure has received prior approval from the state board and if the school district serves more than twenty thousand students or has more than twelve public schools.

Nothing in this section prohibits a county board from meeting with representatives of a local school improvement council, but at least one annual meeting shall be held, as specified in this section.

At any time and with reasonable advance notice, county boards may schedule additional meetings with the council for any low performing school in the district;

(B) At least thirty days before an annual meeting with each local school improvement council, develop and submit to the council an agenda for the annual meeting which requires the council chair or a member designated by the chair, to address items designated by the county board from the report created pursuant to this section, and one or more of the following issues:
(i) School performance;
(ii) Curriculum;
(iii) Status of the school in meeting the unified school improvement plan established pursuant to section five, article two-e of this chapter; and
(iv) Status of the school in meeting the county plan established pursuant to section five, article two-e of this chapter;
(C) Make written requests for information from the local school improvement council throughout the year or hold community forums to receive input from the affected community as the county board considers necessary; and
(D) Report details to the state board concerning the meeting or meetings held with councils, as specified in this section. The information shall be provided to the state board at the conclusion of the school year, but no later than the first day of September of each year, and shall become an indicator in the performance accreditation process for each county. In order to facilitate development of this report, a county board may consult with and request assistance from members of the councils.
(2) Providing for the development of direct links between the county board and the community at large allowing for community involvement at regular county board meetings and specifying how the county board will communicate regularly with the public regarding important issues;
(3) Providing for the periodic review of personnel policies of the district in order to determine their effectiveness;
(4) Setting broad guidelines for the school district, including the establishment of specific oversight proce-
dures, development and implementation of standards of accountability and development of long-range plans to meet future needs as required by this section; and

(5) Using school-based accreditation and performance data provided by the state board and other available data in county board decisionmaking to meet the education goals of the state and other goals as the county board may establish.

(b) On or before the first day of August of each year, county school boards shall review the policies listed in subsection (a) of this section and may modify these policies as necessary.

§18-5-25. Duties of superintendent as secretary of board.

The county superintendent as secretary of the board shall:

(1) Take the oath prescribed in the constitution before performing any of the duties of his office;

(2) Attend all board meetings and record its official proceedings in a book kept for that purpose;

(3) Record the number of each order issued the name of the payee, the purpose for which the order was issued and the amount thereof. Every order shall be signed by the secretary and the president of the board;

(4) Care for and keep all papers belonging to the board, including evidences of title, contracts and obligations. They shall be kept in the secretary’s office, accessibly arranged for reference;

(5) Record and keep on file all papers and documents pertaining to the business of the board;

(6) Keep the accounts and certify the reports required by law or requested by the board;
(7) Administer oaths to school officers, teachers and others making reports;

(8) Deliver in proper condition to his successor all records and property pertaining to his office; and

(9) Exercise such other duties as are prescribed by law.

§18-5-45. School calendar.

(a) As used in this section, the following terms have the following meanings:

(1) "Instructional day" means a day within the instructional term which meets the following criteria:

(A) Instruction is offered to students for the amounts of time provided by state board rule;

(B) Instructional time is used for instruction, cocurricular activities and approved extracurricular activities and pursuant to the provisions of subdivision (12), subsection (b), section five, article five-a of this chapter, faculty senates; and

(C) Such other criteria as the state board determines appropriate.

(2) "Bank time" means time added beyond the required instructional day which may be accumulated and used in larger blocks of time during the school year for instructional or noninstructional activities, as further defined by the state board.

(3) "Extracurricular activities" are activities under the supervision of the school such as athletics, noninstructional assemblies, social programs, entertainment and other similar activities, as further defined by the state board.

(4) "Cocurricular activities" are activities that are closely related to identifiable academic programs or
areas of study that serve to complement academic curricula as further defined by the state board.

(b) Findings.–

(1) The primary purpose of the school system is to provide instruction for students.

(2) The school calendar, as defined in this section, is designed to define the school term both for employees and for instruction.

(3) The school calendar traditionally has provided for one hundred eighty actual days of instruction but numerous circumstances have combined to cause the actual number of instructional days to be less than one hundred eighty.

(4) The quality and amount of instruction offered during the instructional term is affected by the extracurricular and cocurricular activities allowed to occur during scheduled instructional time.

(5) Within reasonable guidelines, the school calendar should be designed at least to guarantee that one hundred eighty actual days of instruction are possible.

(c) The county board shall provide a school term for its schools that contains the following:

(1) An employment term for teachers of no less than two hundred days, exclusive of Saturdays and Sundays; and

(2) Within the employment term, an instructional term for students of no less than one hundred eighty separate instructional days.

(d) The instructional term for students shall include, one instructional day in each of the months of October, December, February, April and June which is an instructional support and enhancement day scheduled by the
board to include both instructional activities for students and professional activities for teachers to improve student instruction. The instructional activities for students may include, but are not limited to, both in-school and outside of school activities such as student mentoring, tutoring, counseling, student research and other projects or activities of an instructional nature, community service, career exploration, parent and teacher conferences, visits to the homes of students, college and financial aid workshops and college visits. The instructional activities for students shall be determined and scheduled at the local school level. The first two hours of the instructional day shall be used for instructional activities for students which require the direct supervision or involvement by teachers, and such activities shall be limited to two hours. To ensure that the students who attend are properly supervised, the instructional activities for students shall be arranged by appointment with the individual school through the principal, a teacher or other professional personnel at the school. The school shall establish a policy relating to the use of the two-hour block scheduled for instructional activities for students. The professional activities for teachers shall include a two-hour block of time immediately following the first two hours of instructional activities for students during which the faculty senate shall have the opportunity to meet. Any time not used by the faculty senate and the remainder of the school day, not including the duty free lunch period, shall be used for other professional activities for teachers to improve student instruction which may include, but are not limited to, professional staff development, curriculum team meetings, individualized education plan meetings and other meetings between teachers, principals, aides and paraprofessionals to improve student instruction as determined and scheduled at the local school level. Notwithstanding any other provision of law or policy to the contrary, the presence of any specific number of
students in attendance at the school for any specific
period of time shall not be required on instructional
support and enhancement days and the transportation of
students to the school shall not be required. Instruction-
al support and enhancement days are also a sched-
uled work day for all service personnel and shall be used
for training or other tasks related to their job classifica-
tion if their normal duties are not required.

(e) The instructional term shall commence no earlier
than the twenty-sixth day of August and terminate no
later than the eighth day of June.

(f) Noninstructional days shall total twenty and shall
be comprised of the following:

(1) Seven holidays as specified in section two, article
five, chapter eighteen-a of this code;

(2) Election day as specified in section two, article five,
chapter eighteen-a of this code;

(3) Six days to be designated by the county board to be
used by the employees outside the school environment;

and

(4) Six days to be designated by the county board for
any of the following purposes:

(A) Curriculum development;

(B) Preparation for opening and closing school;

(C) Professional development;

(D) Teacher-pupil-parent conferences;

(E) Professional meetings; and

(F) Making up days when instruction was scheduled
but not conducted.

(g) Three of the days described in subdivision (4),
subsection (f) of this section shall be scheduled prior to
the twenty-sixth day of August for the purposes of
preparing for the opening of school and staff develop-
ment.

(h) At least one of the days described in subdivision (4),
subsection (f) of this section shall be scheduled after the
eighth day of June for the purpose of preparing for the
closing of school. If one hundred eighty separate instruc-
tion days occur prior to the eighth day of June, this day
may be scheduled on or before the eighth day of June.

(i) At least four of the days described in subdivision (3),
subsection (f) of this section shall be scheduled after the
first day of March.

(j) At least two of the days described in subdivision (4),
subsection (f) of this section, will be scheduled for
professional development. The professional development
conducted on these days will be consistent with the goals
established by the state board pursuant to the provisions
of section twenty-three-a, article two, chapter eighteen
of this code.

(k) Subject to the provisions of subsection (h) of this
section, all noninstructional days will be scheduled prior
to the eighth day of June.

(l) Except as otherwise provided in this subsection, the
state board may not schedule the primary statewide
assessment program prior to the fifteenth day of May of
the instructional year, unless the state board determines
that the nature of the test mandates an earlier testing
date. For the school year beginning two thousand three
only, the state board may not schedule the primary
statewide assessment program prior to the fifteenth day
of April of the instructional year.

(m) If, on or after the first day of March, the county
board determines that it is not possible to complete one
hundred eighty separate days of instruction, the county
board shall schedule instruction on any available
noninstructional day, regardless of the purpose for which
the day originally was scheduled, and the day will be
used for instruction: Provided, That the noninstructional
days scheduled for professional development shall be the
last available noninstructional days to be rescheduled as
instructional days: Provided, however, That on or after
the first day in March, the county board also may require
additional minutes of instruction in the school day to
make up for lost instructional days in excess of the days
available through rescheduling and, if in its judgment it
is reasonable and necessary to improve student perfor-
manence, to avoid scheduling instruction on noninstruc-
tional days previously scheduled for professional devel-
opment. The provisions of this subsection do not apply
to: (1) Holidays; and (2) election day.

(n) The following applies to bank time:

(1) Except as provided in subsection (m) of this section,
bank time may not be used to avoid one hundred eighty
separate days of instruction;

(2) Bank time may not be used to lengthen the time
provided in law for faculty senates;

(3) The use of bank time for extracurricular activities
will be limited by the state board; and

(4) Such other requirements or restrictions as the state
board may provide in the rule required to be promul-
gated by this section.

(o) The following applies to cocurricular activities:

(1) The state board shall determine what activities may
be considered cocurricular;

(2) The state board shall determine the amount of
instructional time that may be consumed by cocurricular
activities; and
194 (3) Such other requirements or restrictions as the state board may provide in the rule required to be promulgated by this section.
197  (p) The following applies to extracurricular activities:
198        (1) Except as provided by subdivision (3) of this subsection, extracurricular activities may not be scheduled during instructional time;
201        (2) The use of bank time for extracurricular activities will be limited by the state board; and
203        (3) The state board shall provide for the attendance by students of certain activities sanctioned by the secondary schools activities commission when those activities are related to statewide tournaments or playoffs or are programs required for secondary schools activities commission approval.
209  (q) Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach.
212  (r) Nothing in this section prohibits establishing year-round schools in accordance with rules to be established by the state board.
215  (s) Prior to implementing the school calendar, the county board shall secure approval of its proposed calendar from the state board or, if so designated by the state board, from the state superintendent.
219  (t) The county board may contract with all or part of the personnel for a longer term.
221  (u) The minimum instructional term may be decreased by order of the state superintendent in any county declared a federal disaster area and where the event causing the declaration is substantially related to a reduction of instructional days.
(v) Where the employment term overlaps a teacher's or service personnel's participation in a summer institute or institution of higher education for the purpose of advancement or professional growth, the teacher or service personnel may substitute, with the approval of the county superintendent, the participation for up to five of the noninstructional days of the employment term.

(w) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

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

(a) A local school improvement council shall be established 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 parent 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 principal;

(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 may be a member of the school faculty or a member of the school service personnel employed at the school.

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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
represents 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) Under no circumstances may more than one parent
member of the council be then employed at that school in
any capacity.

(c) 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.

(d) 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.

(e) 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 personal circumstances so that the person is no
longer representative of the class of members from which
appointed. In the case of a vacancy in an elected mem-
bbership, the chair of the council shall appoint another
qualified person to serve the unexpired term of the
person being replaced or, in the case of an appointed member of the council, the principal shall appoint a replacement as soon as practicable.

(f) 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 organizational meeting of the school improvement council. The principal shall notify each member in writing at least two employment days in advance of the organizational meeting. At this meeting, the principal shall provide each member with the following:

1. A copy of the current applicable sections of this code;
2. Any state board rule or regulation promulgated pursuant to the operation of these councils; and
3. Any information as may be developed by the department of education on the operation and powers of local school improvement councils and their important role in improving student and school performance and progress.

(g) 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 consecutive terms. If the chair's position becomes vacant for any reason, the principal shall call a meeting of the council to elect another qualified person to serve the unexpired term. Once elected, the chair is responsible for notifying each member of the school improvement council in writing two employment days in advance of any council meeting.

(h) 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.
(i) The local school improvement council shall meet at least annually with the county board, in accordance with the provisions in section fourteen, article five of this chapter. At this annual meeting, the local school improvement council chair, or another member designated by the chair, shall be prepared to address any matters as may be requested by the county board as specified in the meeting agenda provided to the council and may further provide any other information, comments or suggestions the local school improvement council wishes to bring to the county board's attention. Anything presented under this subsection shall be submitted to the county board in writing.

(j) School improvement councils shall be considered for the receipt of school of excellence awards under section 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 jurisdiction. 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), guardian(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 business community;
(4) Encourage school volunteer programs and mentorship programs; and

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

(k) 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 countywide 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 alternative education programs and an implementation schedule for such guidelines. The guidelines shall include the following:

(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.

(l) The council may include in its report to the countywide 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.

(m) Councils may adopt their own guidelines estab-
lished 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 educa-
tion or the policies of the county board of education.

(n) The state board of education shall provide assis-
tance to a local school improvement council upon receipt
of a reasonable request for that assistance. The state
board also may solicit proposals from other parties or
entities to provide orientation training for local school
improvement council members and may enter into
contracts or agreements for that purpose. Any training
for members shall meet the guidelines established by the
state board.

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

(a) There is established at every public school in this
state a faculty senate which is comprised of all perma-
nent, full-time professional educators employed at the
school who shall all be voting members. Professional
educators, as used in this section, means professional
educators as defined in chapter eighteen-a of this code.
A quorum of more than one half of the voting members
of the faculty shall be present at any meeting of the
faculty senate at which official business is conducted.
Prior to the beginning of the instructional term each
year, but within the employment term, the principal shall
convene a meeting of the faculty senate to elect a chair,
vice chair and secretary and discuss matters relevant to
the beginning of the school year. The vice chair shall
preside at meetings when the chair is absent. Meetings of the faculty senate shall be held during the times provided in accordance with subdivision (12), subsection (b) of this section as determined by the faculty senate. Emergency meetings may be held during noninstructional time at the call of the chair or a majority of the voting members by petition submitted to the chair and vice chair. An agenda of matters to be considered at a scheduled meeting of the faculty senate shall be available to the members at least two employment days prior to the meeting. For emergency meetings the agenda shall be available as soon as possible prior to the meeting. The chair of the faculty senate may appoint such committees as may be desirable to study and submit recommendations to the full faculty senate, but the acts of the faculty senate shall be voted upon by the full body.

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

(1) Each faculty senate shall control funds allocated to the school from legislative appropriations pursuant to section nine, article nine-a of this chapter. From such funds, each classroom teacher and librarian shall be allotted fifty dollars for expenditure during the instructional year for academic materials, supplies or equipment which, in the judgment of the teacher or librarian, will assist him or her in providing instruction in his or her assigned academic subjects or shall be returned to
Provided, That nothing contained herein prohibits the funds from being used for programs and materials that, in the opinion of the teacher, enhance student behavior, increase academic achievement, improve self-esteem and address the problems of students at-risk. The remainder of funds shall be expended for academic materials, supplies or equipment in accordance with a budget approved by the faculty senate. Notwithstanding any other provisions of the law to the contrary, funds not expended in one school year are available for expenditure in the next school year: Provided, however, That the amount of county funds budgeted in a fiscal year may not be reduced throughout the year as a result of the faculty appropriations in the same fiscal year for such materials, supplies and equipment. Accounts shall be maintained of the allocations and expenditures of such funds for the purpose of financial audit. Academic materials, supplies or equipment shall be interpreted broadly, but does not include materials, supplies or equipment which will be used in or connected with interscholastic athletic events.

(2) A faculty senate may establish a process for faculty members to interview new prospective professional educators and paraprofessional employees at the school and submit recommendations regarding employment to the principal, who may also make independent recommendations, for submission to the county superintendent: Provided, That such process shall be chaired by the school principal and must permit the timely employment of persons to perform necessary duties.

(3) A faculty senate may nominate teachers for recognition as outstanding teachers under state and local teacher recognition programs and other personnel at the school, including parents, for recognition under other appropriate recognition programs and may establish such programs for operation at the school.
(4) A faculty senate may submit recommendations to the principal regarding the assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

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

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

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

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

(9) Each faculty senate shall have an opportunity to make recommendations on the selection of faculty to serve as mentors for beginning teachers under beginning teacher internship programs at the school.

(10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations and any other funds made available to the faculty senate: Provided, that the faculty senate shall select a member who has the duty of maintaining a record of all funds received and expended by the faculty senate, which record shall be kept in the school office and is subject to normal auditing procedures.

(11) Any faculty senate may review the evaluation procedure as conducted in their school to ascertain whether the evaluations were conducted in accordance with the written system required pursuant to section
twelve, article two, chapter eighteen-a of this code and
the general intent of this Legislature regarding meaning-
ful performance evaluations of school personnel. If a
majority of members of the faculty senate determine that
such evaluations were not so conducted, they shall
submit a report in writing to the state board of educa-
tion: Provided, That nothing herein creates any new right
of access to or review of any individual’s evaluations.

(12) A local board shall provide to each faculty senate
a two-hour block of time for a faculty senate meeting on
a day scheduled for the opening of school prior to the
beginning of the instructional term, and a two-hour
block of time on each instructional support and enhance-
ment day scheduled by the board for instructional
activities for students and professional activities for
teachers pursuant section forty-five, article five of this
chapter. A faculty senate may meet for an unlimited
block of time per month during noninstructional days to
discuss and plan strategies to improve student instruc-
tion and to conduct other faculty senate business. A
faculty senate meeting scheduled on a noninstructional
day shall be considered as part of the purpose for which
the noninstructional day is scheduled. This time may be
utilized and determined at the local school level and
includes, but is not limited to, faculty senate meetings.

(13) Each faculty senate shall develop a strategic plan
to manage the integration of special needs students into
the regular classroom at their respective schools and
submit the strategic plan to the superintendent of the
county board of education periodically pursuant to
guidelines developed by the state department of educa-
tion. Each faculty senate shall encourage the participa-
tion of local school improvement councils, parents and
the community at large in developing the strategic plan
for each school.

Each strategic plan developed by the faculty senate
shall include at least: (A) A mission statement; (B) goals;
(C) needs; (D) objectives and activities to implement plans relating to each goal; (E) work in progress to implement the strategic plan; (F) guidelines for placing additional staff into integrated classrooms to meet the needs of exceptional needs students without diminishing the services rendered to the other students in integrated classrooms; (G) guidelines for implementation of collaborative planning and instruction; and (H) training for all regular classroom teachers who serve students with exceptional needs in integrated classrooms.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

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

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

(b) In the case of five consecutive or ten total unexcused absences of a child during a school year, the attendance director or assistant shall serve written notice to the parent, guardian or custodian of such child that the attendance of such child at school is required and that within ten days of receipt of the notice the parent, guardian or custodian, accompanied by the child, shall report in person to the school the child attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the inexcusable absences of the child; and if the parent, guardian or custodian does not comply with the provisions of this article, then the attendance director or assistant shall
make complaint against the parent, guardian or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one summons or warrant may be issued on the same complaint. The summons or warrant shall be executed within ten days of its issuance.

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

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

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

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

(1) Assist in directing the taking of the school census to
see that it is taken at the time and in the manner pro-
vided by law;

(2) Confer with principals and teachers on the compari-
son of school census and enrollment for the detection of
possible nonenrollees;

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

(4) Prepare a report for submission by the county
superintendent to the state superintendent of schools on
school attendance, at such times and in such detail as
may be required. The state board shall promulgate a
legislative rule pursuant to article three-b, chapter
twenty-nine-a of this code that sets forth student ab-
sences that shall be excluded for accountability pur-
poses. The absences that shall be excluded by the rule
shall include, but not be limited to, excused student
absences, students not in attendance due to disciplinary
measures and absent students for whom the attendance
director has pursued judicial remedies to compel atten-
dance to the extent of his or her authority. The atten-
dance director shall file with the county superintendent
and county board of education at the close of each month
a report showing activities of the school attendance
office and the status of attendance in the county at the
time;
97  (5) Promote attendance in the county by the compilation of data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;

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

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

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

110  (9) Serve as the liaison for homeless children and youth.
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.

To take effect July 1, 2003.

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, 2003.

Governor