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HB 4625

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

## House Bill No. 4625

(By Delegates Campbell, Williams and Spencer)



Passed March 11, 2006

In Effect from Passage

FILED

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OFFICE WEST VIRGINIA  
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**E N R O L L E D**

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FOR

**H. B. 4625**

(BY DELEGATES CAMPBELL, WILLIAMS AND SPENCER)

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[Passed March 11, 2006; in effect from passage.]

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AN ACT to amend and reenact §18A-5-1 and §18A-5-1a of the Code of West Virginia, 1931, as amended, relating to authority over pupils and discipline; defining principal to include principal, assistant principal, vice principal, administrative head of school or professional personnel designee of school principal or administrative head.

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

That §18A-5-1 and §18A-5-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

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

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

10       (b) Subject to the rules of the State Board of Education, the  
11 teacher shall exclude from the school any pupil or pupils known  
12 to have or suspected of having any infectious disease, or any  
13 pupil or pupils who have been exposed to any infect-  
14 ious disease, and shall immediately notify the proper health  
15 officer or medical inspector of the exclusion. Any pupil so  
16 excluded shall not be readmitted to the school until the pupil  
17 has complied with all the requirements of the rules governing  
18 those cases or has presented a certificate of health signed by the  
19 medical inspector or other proper health officer.

20       (c) The teacher may exclude from his or her classroom or  
21 school bus any pupil who is guilty of disorderly conduct; who  
22 in any manner interferes with an orderly educational process;  
23 who threatens, abuses or otherwise intimidates or attempts to  
24 intimidate a school employee or a pupil; who willfully disobeys  
25 a school employee; or who uses abusive or profane language  
26 directed at a school employee. Any pupil excluded shall be  
27 placed under the control of the principal of the school or a  
28 designee. The excluded pupil may be admitted to the classroom  
29 or school bus only when the principal, or a designee, provides  
30 written certification to the teacher that the pupil may be  
31 readmitted and specifies the specific type of disciplinary action,  
32 if any, which was taken. If the principal finds that disciplinary  
33 action is warranted, he or she shall provide written and, if  
34 possible, telephonic notice of the action to the parent(s),

35 guardian(s) or custodian(s). When a teacher excludes the same  
36 pupil from his or her classroom or from a school bus three  
37 times in one school year, and after exhausting all reasonable  
38 methods of classroom discipline provided in the school disci-  
39 pline plan, the pupil may be readmitted to the teacher's class-  
40 room only after the principal, teacher and, if possible, the  
41 parent(s), guardian(s) or custodian(s) of the pupil have held a  
42 conference to discuss the pupil's disruptive behavior patterns,  
43 and the teacher and the principal agree on a course of discipline  
44 for the pupil and inform the parent(s), guardian(s) or custo-  
45 dian(s) of the course of action. Thereafter, if the pupil's  
46 disruptive behavior persists, upon the teacher's request, the  
47 principal may, to the extent feasible, transfer the pupil to  
48 another setting.

49 (d) The Legislature finds that suspension from school is not  
50 appropriate solely for a pupil's failure to attend class. There-  
51 fore, no pupil may be suspended from school solely for not  
52 attending class. Other methods of discipline may be used for the  
53 pupil which may include, but are not limited to, detention, extra  
54 class time or alternative class settings.

55 (e) Corporal punishment of any pupil by a school employee  
56 is prohibited.

57 (f) Each county board is solely responsible for the adminis-  
58 tration of proper discipline in the public schools of the county  
59 and shall adopt policies consistent with the provisions of this  
60 section to govern disciplinary actions. These policies shall  
61 encourage the use of alternatives to corporal punishment,  
62 providing for the training of school personnel in alternatives to  
63 corporal punishment and for the involvement of parent(s),  
64 guardian(s) or custodian(s) in the maintenance of school  
65 discipline. The county boards of education shall provide for the  
66 immediate incorporation and implementation in the schools of  
67 a preventive discipline program which may include the respon-

68 sible student program and a student involvement program  
69 which may include the peer mediation program, devised by the  
70 West Virginia Board of Education. Each board may modify  
71 those programs to meet the particular needs of the county. The  
72 county boards shall provide in-service training for teachers and  
73 principals relating to assertive discipline procedures and  
74 conflict resolution. The county boards of education also may  
75 establish cooperatives with private entities to provide middle  
76 educational programs which may include programs focusing on  
77 developing individual coping skills, conflict resolution, anger  
78 control, self-esteem issues, stress management and decision  
79 making for students and any other program related to preven-  
80 tive discipline.

81 (g) For the purpose of this section:

82 (1) "Pupil or student" includes any child, youth or adult  
83 who is enrolled in any instructional program or activity  
84 conducted under board authorization and within the facilities of  
85 or in connection with any program under public school direc-  
86 tion: *Provided*, That, in the case of adults, the pupil-teacher  
87 relationship shall terminate when the pupil leaves the school or  
88 other place of instruction or activity;

89 (2) "Teacher" means all professional educators as defined  
90 in section one, article one of this chapter and shall include the  
91 driver of a school bus or other mode of transportation; and

92 (3) "Principal" means the principal, assistant principal, vice  
93 principal or the administrative head of the school or a profes-  
94 sional personnel designee of the principal or the administrative  
95 head of the school.

96 (h) Teachers shall exercise other authority and perform  
97 other duties prescribed for them by law or by the rules of the

98 State Board not inconsistent with the provisions of this chapter  
99 and chapter eighteen of this code.

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

1 (a) A principal shall suspend a pupil from school or from  
2 transportation to or from the school on any school bus if the  
3 pupil, in the determination of the principal after an informal  
4 hearing pursuant to subsection (d) of this section, has: (i)  
5 Violated the provisions of subsection (b), section fifteen, article  
6 two, chapter sixty-one of this code; (ii) violated the provisions  
7 of subsection (b), section eleven-a, article seven of said chapter;  
8 or (iii) sold a narcotic drug, as defined in section one hundred  
9 one, article one, chapter sixty-a of this code, on the premises of  
10 an educational facility, at a school-sponsored function or on a  
11 school bus. If a student has been suspended pursuant to this  
12 subsection, the principal shall, within twenty-four hours,  
13 request that the county superintendent recommend to the county  
14 board that the student be expelled. Upon such a request by a  
15 principal, the county superintendent shall recommend to the  
16 county board that the student be expelled. Upon such recom-  
17 mendation, the county board shall conduct a hearing in accor-  
18 dance with subsections (e), (f) and (g) of this section to deter-  
19 mine if the student committed the alleged violation. If the  
20 county board finds that the student did commit the alleged  
21 violation, the county board shall expel the student.

22 (b) A principal shall suspend a pupil from school, or from  
23 transportation to or from the school on any school bus, if the  
24 pupil, in the determination of the principal after an informal

25 hearing pursuant to subsection (d) of this section, has: (i)  
26 Committed an act or engaged in conduct that would constitute  
27 a felony under the laws of this state if committed by an adult;  
28 or (ii) unlawfully possessed on the premises of an educational  
29 facility or at a school-sponsored function a controlled substance  
30 governed by the uniform controlled substances act as described  
31 in chapter sixty-a of this code. If a student has been suspended  
32 pursuant to this subsection, the principal may request that the  
33 superintendent recommend to the county board that the student  
34 be expelled. Upon such recommendation by the county superin-  
35 tendent, the county board may hold a hearing in accordance  
36 with the provisions of subsections (e), (f) and (g) of this section  
37 to determine if the student committed the alleged violation. If  
38 the county board finds that the student did commit the alleged  
39 violation, the county board may expel the student.

40 (c) A principal may suspend a pupil from school, or  
41 transportation to or from the school on any school bus, if the  
42 pupil, in the determination of the principal after an informal  
43 hearing pursuant to subsection (d) of this section: (i) Threatened  
44 to injure, or in any manner injured, a pupil, teacher, administra-  
45 tor or other school personnel; (ii) willfully disobeyed a teacher;  
46 (iii) possessed alcohol in an educational facility, on school  
47 grounds, a school bus or at any school-sponsored function; (iv)  
48 used profane language directed at a school employee or pupil;  
49 (v) intentionally defaced any school property; (vi) participated  
50 in any physical altercation with another person while under the  
51 authority of school personnel; or (vii) habitually violated school  
52 rules or policies. If a student has been suspended pursuant to  
53 this subsection, the principal may request that the superinten-  
54 dent recommend to the county board that the student be  
55 expelled. Upon such recommendation by the county superinten-  
56 dent, the county board may hold a hearing in accordance with  
57 the provisions of subsections (e), (f) and (g) of this section to  
58 determine if the student committed the alleged violation. If the

59 county board finds that the student did commit the alleged  
60 violation, the county board may expel the student.

61 (d) The actions of any pupil which may be grounds for his  
62 or her suspension or expulsion under the provisions of this  
63 section shall be reported immediately to the principal of the  
64 school in which the pupil is enrolled. If the principal determines  
65 that the alleged actions of the pupil would be grounds for  
66 suspension, he or she shall conduct an informal hearing for the  
67 pupil immediately after the alleged actions have occurred. The  
68 hearing shall be held before the pupil is suspended unless the  
69 principal believes that the continued presence of the pupil in the  
70 school poses a continuing danger to persons or property or an  
71 ongoing threat of disrupting the academic process, in which  
72 case the pupil shall be suspended immediately and a hearing  
73 held as soon as practicable after the suspension.

74 The pupil and his or her parent(s), guardian(s) or custo-  
75 dian(s), as the case may be, shall be given telephonic notice, if  
76 possible, of this informal hearing, which notice shall briefly  
77 state the grounds for suspension.

78 At the commencement of the informal hearing, the principal  
79 shall inquire of the pupil as to whether he or she admits or  
80 denies the charges. If the pupil does not admit the charges, he  
81 or she shall be given an explanation of the evidence possessed  
82 by the principal and an opportunity to present his or her version  
83 of the occurrence. At the conclusion of the hearing or upon the  
84 failure of the noticed student to appear, the principal may  
85 suspend the pupil for a maximum of ten school days, including  
86 the time prior to the hearing, if any, for which the pupil has  
87 been excluded from school.

88 The principal shall report any suspension the same day it  
89 has been decided upon, in writing, to the parent(s), guardian(s)  
90 or custodian(s) of the pupil by regular United States mail. The

91 suspension also shall be reported to the county superintendent  
92 and to the faculty senate of the school at the next meeting after  
93 the suspension.

94 (e) Prior to a hearing before the county board, the county  
95 board shall cause a written notice which states the charges and  
96 the recommended disposition to be served upon the pupil and  
97 his or her parent(s), guardian(s) or custodian(s), as the case may  
98 be. The notice shall state clearly whether the board will attempt  
99 at hearing to establish the student as a dangerous student, as  
100 defined by section one, article one of this chapter. The notice  
101 also shall include any evidence upon which the board will rely  
102 in asserting its claim that the student is a dangerous student.  
103 The notice shall set forth a date and time at which the hearing  
104 shall be held, which date shall be within the ten-day period of  
105 suspension imposed by the principal.

106 (f) The county board shall hold the scheduled hearing to  
107 determine if the pupil should be reinstated or should or, under  
108 the provisions of this section, must be expelled from school. If  
109 the county board determines that the student should or must be  
110 expelled from school, it also may determine whether the student  
111 is a dangerous student pursuant to subsection (g) of this section.  
112 At this, or any hearing before a county board conducted  
113 pursuant to this section, the pupil may be represented by  
114 counsel, may call his or her own witnesses to verify his or her  
115 version of the incident and may confront and cross-examine  
116 witnesses supporting the charge against him or her. The  
117 hearing shall be recorded by mechanical means unless recorded  
118 by a certified court reporter. The hearing may be postponed for  
119 good cause shown by the pupil but he or she shall remain under  
120 suspension until after the hearing. The State Board may adopt  
121 other supplementary rules of procedure to be followed in these  
122 hearings. At the conclusion of the hearing the county board  
123 shall either: (1) Order the pupil reinstated immediately at the  
124 end of his or her initial suspension; (2) suspend the pupil for a

125 further designated number of days; or (3) expel the pupil from  
126 the public schools of the county.

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

136 A county board that expels a student, and finds that the  
137 student is a dangerous student, may refuse to provide alternative  
138 education. However, after a hearing conducted pursuant to this  
139 section for determining whether a student is a dangerous  
140 student, when the student is found to be a dangerous student, is  
141 expelled and is denied alternative education, a hearing shall be  
142 conducted within three months after the refusal by the board to  
143 provide alternative education to reexamine whether or not the  
144 student remains a dangerous student and whether the student  
145 shall be provided alternative education. Thereafter, a hearing  
146 for the purpose of reexamining whether or not the student  
147 remains a dangerous student and whether the student shall be  
148 provided alternative education shall be conducted every three  
149 months for so long as the student remains a dangerous student  
150 and is denied alternative education. During the initial hearing,  
151 or in any subsequent hearing, the board may consider the  
152 history of the pupil's conduct as well as any improvements  
153 made subsequent to the expulsion. If it is determined during any  
154 of the hearings that the student is no longer a dangerous student  
155 or should be provided alternative education, the student shall be  
156 provided alternative education during the remainder of the  
157 expulsion period.

158 (h) The superintendent may apply to a circuit judge or  
159 magistrate for authority to subpoena witnesses and documents,  
160 upon his or her own initiative, in a proceeding related to a  
161 recommended student expulsion or dangerous student determi-  
162 nation, before a county board conducted pursuant to the  
163 provisions of this section. Upon the written request of any other  
164 party, the superintendent shall apply to a circuit judge or  
165 magistrate for the authority to subpoena witnesses, documents  
166 or both on behalf of the other party in a proceeding related to a  
167 recommended student expulsion or dangerous student determi-  
168 nation before a county board. If the authority to subpoena is  
169 granted, the superintendent shall subpoena the witnesses,  
170 documents or both requested by the other party. Furthermore,  
171 if the authority to subpoena is granted, it shall be exercised in  
172 accordance with the provisions of section one, article five,  
173 chapter twenty-nine-a of this code.

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

181 The county boards are directed to report the number of  
182 pupils determined to be dangerous students to the State Board  
183 of Education. The State Board will compile the county boards'  
184 statistics and shall report its findings to the Legislative Over-  
185 sight Commission on Education Accountability.

186 (i) Pupils may be expelled pursuant to the provisions of this  
187 section for a period not to exceed one school year, except that  
188 if a pupil is determined to have violated the provisions of  
189 subsection (a) of this section the pupil shall be expelled for a  
190 period of not less than twelve consecutive months: *Provided,*

191 That the county superintendent may lessen the mandatory  
192 period of twelve consecutive months for the expulsion of the  
193 pupil if the circumstances of the pupil's case demonstrably  
194 warrant. Upon the reduction of the period of expulsion, the  
195 county superintendent shall prepare a written statement setting  
196 forth the circumstances of the pupil's case which warrant the  
197 reduction of the period of expulsion. The county superintendent  
198 shall submit the statement to the county board, the principal, the  
199 faculty senate and the local school improvement council for the  
200 school from which the pupil was expelled. The county superin-  
201 tendent may use the following factors as guidelines in determin-  
202 ing whether or not to reduce a mandatory twelve-month  
203 expulsion:

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

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

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

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

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

210 (k) For purposes of this section, nothing herein may be  
211 construed to be in conflict with the federal provisions of the  
212 Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et*  
213 *seq.*

214 (l) Each suspension or expulsion imposed upon a pupil  
215 under the authority of this section shall be recorded in the  
216 uniform integrated regional computer information system  
217 (commonly known as the West Virginia Education Information  
218 System) described in subsection (f), section twenty-six, article  
219 two, chapter eighteen of this code.

220       (1) The principal of the school at which the pupil is enrolled  
221 shall create an electronic record within twenty-four hours of the  
222 imposition of the suspension or expulsion.

223       (2) Each record of a suspension or expulsion shall include  
224 the pupil's name and identification number, the reason for the  
225 suspension or expulsion, and the beginning and ending dates of  
226 the suspension or expulsion.

227       (3) The State Board of Education shall collect and dissemi-  
228 nate data so that any principal of a public school in West  
229 Virginia can review the complete history of disciplinary actions  
230 taken by West Virginia public schools against any pupil  
231 enrolled or seeking to enroll at that principal's school. The  
232 purposes of this provision are to allow every principal to fulfill  
233 his or her duty under subsection (b), section fifteen-f, article  
234 five, chapter eighteen of this code to determine whether a pupil  
235 requesting to enroll at a public school in West Virginia is  
236 currently serving a suspension or expulsion from another public  
237 school in West Virginia and to allow principals to obtain  
238 general information about pupils' disciplinary histories.

239       (m) Principals may exercise any other authority and  
240 perform any other duties to discipline pupils consistent with  
241 state and federal law, including policies of the State Board of  
242 Education.

243       (n) Each county board is solely responsible for the adminis-  
244 tration of proper discipline in the public schools of the county  
245 and shall adopt policies consistent with the provisions of this  
246 section to govern disciplinary actions.

247       (o) For the purpose of this section, "principal" means the  
248 principal, assistant principal, vice principal or the administra-  
249 tive head of the school or a professional personnel designee of  
250 the principal or the administrative head of the school.

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

  
\_\_\_\_\_  
Chairman Senate Committee

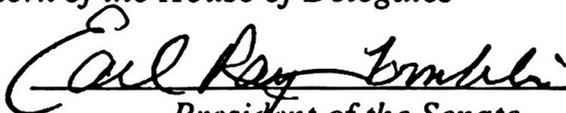
  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

In effect from passage.

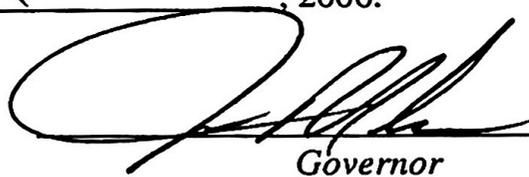
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 31<sup>st</sup>  
day of March, 2006.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 27 2006

Time

4:15pm