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

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

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

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

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

(f) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions. These policies shall encourage the use of alternatives to corporal punishment, providing for the training of school personnel in alternatives to corporal punishment and for the involvement of parent(s), guardian(s) or custodian(s) in the maintenance of school discipline. The county boards of education shall provide for the immediate incorporation and implementation in the schools of a preventive discipline program which may include the respon-
sible student program and a student involvement program
which may include the peer mediation program, devised by the
West Virginia Board of Education. Each board may modify
those programs to meet the particular needs of the county. The
county boards shall provide in-service training for teachers and
principals relating to assertive discipline procedures and
conflict resolution. The county boards of education also may
establish cooperatives with private entities to provide middle
educational programs which may include programs focusing on
developing individual coping skills, conflict resolution, anger
control, self-esteem issues, stress management and decision
making for students and any other program related to preven-
tive discipline.

(g) For the purpose of this section:

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

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

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

(h) Teachers shall exercise other authority and perform
other duties prescribed for them by law or by the rules of the
§ 18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.

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

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

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

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

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

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

The principal shall report any suspension the same day it has been decided upon, in writing, to the parent(s), guardian(s) or custodian(s) of the pupil by regular United States mail.
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(e) Prior to a hearing before the county board, the county board shall cause a written notice which states the charges and the recommended disposition to be served upon the pupil and his or her parent(s), guardian(s) or custodian(s), as the case may be. The notice shall state clearly whether the board will attempt at hearing to establish the student as a dangerous student, as defined by section one, article one of this chapter. The notice also shall include any evidence upon which the board will rely in asserting its claim that the student is a dangerous student. The notice shall set forth a date and time at which the hearing shall be held, which date shall be within the ten-day period of suspension imposed by the principal.

(f) The county board shall hold the scheduled hearing to determine if the pupil should be reinstated or should or, under the provisions of this section, must be expelled from school. If the county board determines that the student should or must be expelled from school, it also may determine whether the student is a dangerous student pursuant to subsection (g) of this section. At this, or any hearing before a county board conducted pursuant to this section, the pupil may be represented by counsel, may call his or her own witnesses to verify his or her version of the incident and may confront and cross-examine witnesses supporting the charge against him or her. The hearing shall be recorded by mechanical means unless recorded by a certified court reporter. The hearing may be postponed for good cause shown by the pupil but he or she shall remain under suspension until after the hearing. The State Board may adopt other supplementary rules of procedure to be followed in these hearings. At the conclusion of the hearing the county board shall either: (1) Order the pupil reinstated immediately at the end of his or her initial suspension; (2) suspend the pupil for a
further designated number of days; or (3) expel the pupil from the public schools of the county.

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

A county board that expels a student, and finds that the student is a dangerous student, may refuse to provide alternative education. However, after a hearing conducted pursuant to this section for determining whether a student is a dangerous student, when the student is found to be a dangerous student, is expelled and is denied alternative education, a hearing shall be conducted within three months after the refusal by the board to provide alternative education to reexamine whether or not the student remains a dangerous student and whether the student shall be provided alternative education. Thereafter, a hearing for the purpose of reexamining whether or not the student remains a dangerous student and whether the student shall be provided alternative education shall be conducted every three months for so long as the student remains a dangerous student and is denied alternative education. During the initial hearing, or in any subsequent hearing, the board may consider the history of the pupil's conduct as well as any improvements made subsequent to the expulsion. If it is determined during any of the hearings that the student is no longer a dangerous student or should be provided alternative education, the student shall be provided alternative education during the remainder of the expulsion period.
(h) The superintendent may apply to a circuit judge or magistrate for authority to subpoena witnesses and documents, upon his or her own initiative, in a proceeding related to a recommended student expulsion or dangerous student determination, before a county board conducted pursuant to the provisions of this section. Upon the written request of any other party, the superintendent shall apply to a circuit judge or magistrate for the authority to subpoena witnesses, documents or both on behalf of the other party in a proceeding related to a recommended student expulsion or dangerous student determination before a county board. If the authority to subpoena is granted, the superintendent shall subpoena the witnesses, documents or both requested by the other party. Furthermore, if the authority to subpoena is granted, it shall be exercised in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code.

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

The county boards are directed to report the number of pupils determined to be dangerous students to the State Board of Education. The State Board will compile the county boards' statistics and shall report its findings to the Legislative Oversight Commission on Education Accountability.

(i) Pupils may be expelled pursuant to the provisions of this section for a period not to exceed one school year, except that if a pupil is determined to have violated the provisions of subsection (a) of this section the pupil shall be expelled for a period of not less than twelve consecutive months: Provided,
That the county superintendent may lessen the mandatory period of twelve consecutive months for the expulsion of the pupil if the circumstances of the pupil’s case demonstrably warrant. Upon the reduction of the period of expulsion, the county superintendent shall prepare a written statement setting forth the circumstances of the pupil’s case which warrant the reduction of the period of expulsion. The county superintendent shall submit the statement to the county board, the principal, the faculty senate and the local school improvement council for the school from which the pupil was expelled. The county superintendent may use the following factors as guidelines in determining whether or not to reduce a mandatory twelve-month expulsion:

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

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

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

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

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

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

(l) Each suspension or expulsion imposed upon a pupil under the authority of this section shall be recorded in the uniform integrated regional computer information system (commonly known as the West Virginia Education Information System) described in subsection (f), section twenty-six, article two, chapter eighteen of this code.
(1) The principal of the school at which the pupil is enrolled shall create an electronic record within twenty-four hours of the imposition of the suspension or expulsion.

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

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

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

(n) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions.

(o) For the purpose of this section, "principal" means the principal, assistant principal, vice principal or the administrative head of the school or a professional personnel designee of 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 31st day of March, 2006.

Governor