WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007

---

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2189

(By Delegates Caputo, Paxton, Perry, Fragale and M. Poling)

---

Passed March 10, 2007

In Effect Ninety Days from Passage
AN ACT to amend and reenact §18-1-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-5-13 of said code; to amend and reenact §18-20-2 of said code; to amend and reenact §18A-1-1 of said code; to amend and reenact §18A-4-8, §18A-4-8b, §18A-4-8f, §18A-4-8g, §18A-4-10 and §18A-4-15 of said code; to amend said code by adding thereto two new sections, designated §18A-4-7c and §18A-4-10f; and to amend and reenact §18A-5-8 of said code, all relating to public schools and county boards of education; school service personnel; personal leave and leave banks for school personnel; authority of county boards of education; updating definitions; expanding purposes for which schools may expend funds; establishing certain vehicle and driver safety requirements for transporting students to a school-sponsored activity; expanding the purposes for which county boards may lease school buses; giving preference to a currently employed professional educator for summer employment; establishing service personnel classification title for licensed practical nurse; adding posting and notice requirements for filling service personnel positions; prohibiting displacement of aides to create vacancy for licensed practical nurse; establishing parameters for the workday and beginning work station for
certain service personnel; modifying process for determining certain service personnel hiring priority in cases of school merger or consolidation; authorizing transfer of personal leave in certain circumstances; modifying employment benefits accrued by substitute service personnel; requiring county boards of education to make certain training available to all regularly employed teachers’ aides; prohibiting an autism mentor or aide who works with autistic students from transferring to another position after the fifth day prior to the beginning of the instructional term under certain conditions; deleting obsolete language; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That § 18-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that § 18-5-13 of said Code be amended and reenacted; that § 18-20-2 of said Code be amended and reenacted; that § 18A-1-1 of said Code be amended and reenacted; that § 18A-4-8, § 18A-4-8b, § 18A-4-8f, § 18A-4-8g, § 18A-4-10 and § 18A-4-15 of said Code be amended and reenacted; that said Code be amended by adding thereto two new sections, designated § 18A-4-7c and § 18A-4-10f; and that § 18A-5-8 of said Code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

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

§ 18-1-1. Definitions.

The following words used in this chapter and in any proceedings pursuant thereto have the meanings ascribed to them unless the context clearly indicates a different meaning:

(a) "School" means the students and 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 a county board of education;

(e) "State superintendent" means the State Superintendent of Free Schools;

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

(g) "Teacher" means a 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, who has a baccalaureate degree; or any other person regularly employed for instructional purposes in a public school in this state;

(h) "Service person" or "service personnel", whether singular or plural, means any non-teaching school employee who is not included in the meaning of "teacher" as defined in this section, and who serves the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and aides. Any reference to "service employee" or "service employees" in this chapter or chapter eighteen-a of this code means service person or service personnel as defined in this section;

(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 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;
"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;

"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;

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

"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 Department of Education;

"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

"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 5. COUNTY BOARD OF EDUCATION.


Subject to the provisions of this chapter and the rules of the State Board, each county board may:

(a) Control and manage all of the schools and school interests for all school activities and upon all school property owned or leased by the county, including:
(1) Requiring schools to keep records regarding funds connected with the school or school interests, including all receipts and disbursements of all funds collected or received by:

(A) Any principal, teacher, student or other person in connection with the schools and school interests;

(B) Any program, activity or other endeavor of any nature operated or conducted by or in the name of the school; and

(C) Any organization or body directly connected with the school;

(2) Allowing schools to expend funds for student, parent, teacher and community recognition programs. A school may use only funds it generates through a fund-raising or donation-soliciting activity. Prior to commencing the activity, the school shall:

(A) Publicize the activity as intended for this purpose; and

(B) Designate for this purpose the funds generated;

(3) Auditing the records and conserving the funds, including securing surety bonds by expending board moneys. The funds described in this subsection are quasipublic funds, which means the moneys were received for the benefit of the school system as a result of curricular or noncurricular activities;

(b) Establish:

(1) Schools, from preschool through high school;

(2) Vocational schools; and

(3) Schools and programs for post-high school instruction, subject to approval of the State Board;
(c) Close any school:

(1) Which is unnecessary and assign the students to other schools. The closing shall occur pursuant to official action of the county board. Except in emergency situations when the timing and manner of notification are subject to approval by the state superintendent, the county board shall notify the affected teachers and service personnel of the county board action not later than the first Monday in April. The board shall provide notice in the same manner as set forth in section four of this article; or

(2) Pursuant to the provisions of subsection (e) of this section;

(d) Consolidate schools;

(e) Close any elementary school whose average daily attendance falls below twenty students for two consecutive months. The county board may assign the students 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) Provide transportation according to rules established by the county board, as follows:

(1) To provide at public expense adequate means of transportation:

(A) For all children of school age who live more than two miles distance from school by the nearest available road;

(B) For school children participating in county board-approved curricular and extracurricular activities;

(C) Across county lines for students transferred from one district to another by mutual agreement of both county boards. The agreement shall be recorded in the meeting minutes of each participating county board and is subject to the provisions of subsection (h) of this section; and
(D) Within available revenues, for students within two miles distance of the school; and

(2) To provide transportation for participants in projects operated, financed, sponsored or approved by the Bureau of Senior Services. This transportation shall be provided at no cost to the county board. All costs and expenses incident in any way to this transportation shall be borne by the Bureau or the local or county affiliate of the Bureau;

(3) Any school bus owned by the county board may be operated only by a bus operator regularly employed by the county board;

(4) Pursuant to rules established by the State Board, the county board may provide for professional employees to be certified to drive county board-owned vehicles that have a seating capacity of fewer than ten passengers. These employees may use the vehicles to transport students for school-sponsored activities, but may not use the vehicles to transport students between school and home. Not more than one of these vehicles may be used for any school-sponsored activity;

(5) Students may not be transported to a school-sponsored activity in any county-owned or leased vehicle that does not meet school bus or public transit ratings. This section does not prohibit a parent from transporting ten or fewer students in a privately-owned vehicle;

(6) Students may be transported to a school-sponsored activity in a vehicle that has a seating capacity of sixteen or more passengers which is not owned and operated by the county board only as follows:

(A) The State Board shall promulgate a rule to establish requirements for:

(i) Automobile insurance coverage;

(ii) Vehicle safety specifications;
Enr. Com. Sub. for H.B. 2189] 8

(iii) School bus or public transit ratings; and

(iv) Driver training, certification and criminal history record check; and

(B) The vehicle owner shall provide to the county board proof that the vehicle and driver satisfy the requirements of the State Board rule; and

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

(g) Lease school buses pursuant to rules established by the county board.

(1) Leased buses may be operated only by bus operators regularly employed by the county board.

(2) The lessee shall bear all costs and expenses incurred by, or incidental to the use of, the bus.

(3) The county board may lease buses to:

(A) Public and private nonprofit organizations and private corporations to transport school-age children for camps or educational activities

(B) Any college, university or officially recognized campus organization for transporting students, faculty and staff to and from the college or university. Only college and university students, faculty and staff may be transported pursuant to this paragraph. The lease shall include provisions for:

(i) Compensation for bus operators;

(ii) Consideration for insurance coverage, repairs and other costs of service; and
(iii) Any rules concerning student behavior;

(C) Public and private nonprofit organizations, including education employee organizations, for transportation associated with fairs, festivals and other educational and cultural events. The county board may charge fees in addition to those charges otherwise required by this subsection.

(h) To provide at public expense for insurance coverage against negligence of the drivers of school buses, trucks or other vehicles operated by the county board. Any contractual agreement for transportation of students shall require the vehicle owner to maintain insurance coverage against negligence in an amount specified by the county board;

(I) Provide for the full cost or any portion thereof for group plan insurance benefits not provided or available under the West Virginia Public Employees Insurance Act. Any of these benefits shall be provided:

(1) Solely from county board funds; and

(2) For all regular full-time employees of the county board;

(j) Employ teacher aides; to provide in-service training for the aides pursuant to rules established by the State Board; and, prior to assignment, to provide a four-clock-hour program of training for a service person assigned duties as a teacher aide in an exceptional children program. The four-clock-hour program shall consist of training in areas specifically related to the education of exceptional children;

(k) Establish and operate a self-supporting dormitory for:

(1) Students attending a high school or participating in a post high school program; and

(2) Persons employed to teach in the high school or post high school program;
(l) At the county board’s discretion, employ, contract with or otherwise engage legal counsel in lieu of using the services of the prosecuting attorney to advise, attend to, bring, prosecute or defend, as the case may be, any matters, actions, suits and proceedings in which the county board is interested;

(m) Provide appropriate uniforms for school service personnel;

(n) Provide at public expense for payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by the county board, subject to rules established by the county board;

(o) Allow designated employees to use publicly provided carriage to travel from their residences to their workplace and return. The use:

(1) Is subject to the supervision of the county board; and

(2) Shall be directly connected with, required by and essential to the performance of the employee’s duties and responsibilities;

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

(q) Enter into cooperative agreements with other county boards to provide improvements to the instructional needs of each district. The cooperative agreements may be used to employ specialists in a field of academic study or for support functions or services for the field. The agreements are subject to approval by the State Board;

(r) Provide information about vocational and higher education opportunities to exceptional students. 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 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) Enter into agreements with other county boards for the transfer and receipt of any funds determined to be fair when students are permitted or required to attend school in a district other than the district of their residence. These agreements are subject to the approval of the State Board;

and

(t) 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 contrary provision of this Code or legislative rule and specifically the provisions of article sixteen, chapter five of this Code, a county board that enters into a job-sharing arrangement:

(A) Shall provide insurance coverage to the one employee mutually agreed upon by the employees participating in that arrangement; and

(B) May not provide insurance benefits of any type to more than one of the job-sharing employees, including any group plan 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 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 agreement shall 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 participating employees shall consider issues such as retirement benefits, termination of the job-sharing agreement and any other issue the parties consider appropriate. Any provision in the agreement relating to retirement benefits may not cause any cost to be incurred by the retirement system that is more than the cost that would be incurred if a single employee were filling the position; and

(u) Under rules it establishes for each child, expend an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-2. Providing suitable educational facilities, equipment and services.

(a) Each county board shall provide suitable educational facilities, special equipment and special services that are necessary. Special services include provisions and procedures for finding and enumerating exceptional children of each type, diagnosis by appropriate specialists who will certify the child's need and eligibility for special education and make recommendations for treatment and prosthesis as may alleviate the disability, special teaching by qualified and specially trained teachers, transportation, lunches and remedial therapeutic services. Qualifications of teachers and therapists shall be in accordance with standards prescribed or approved by the State Board.

(b) A county board may provide for educating resident exceptional children by contracting with other counties or other educational agencies which maintain special education facilities. Fiscal matters shall follow policies approved by the State.
(c) The county board shall provide a four-clock-hour program of training for any teacher aide employed to assist teachers in providing services to exceptional children under this article prior to the assignment. The program shall consist of training in areas specifically related to the education of exceptional children, pursuant to rules of the State Board. The training shall occur during normal working hours and an opportunity to be trained shall be provided to service person prior to filling a vacancy in accordance with the provisions of section eight-b, article four, chapter eighteen-a of this Code.

(d) The county board annually shall make available during normal working hours to all regularly employed teachers’ aides twelve hours of training that satisfies the continuing education requirements for the aides regarding:

1. Providing services to children who have displayed violent behavior or have demonstrated the potential for violent behavior; and

2. Providing services to children diagnosed as autistic or with autism spectrum disorder. This training shall be structured to permit the employee to qualify as an autism mentor after a minimum of four years of training. The county board shall:

   (A) Notify in writing all teachers’ aides of the location, date and time when training will be offered for qualification as an autism mentor; and

   (B) Reimburse any regularly employed or substitute teacher’s aide who elects to attend this training for one-half of the cost of the tuition.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

The definitions contained in section one, article one, chapter eighteen of this Code apply to this chapter. In addition, the following words used in this chapter and in any
proceedings pursuant to this chapter have the meanings
ascribed to them unless the context clearly indicates a
different meaning:

(a) "School personnel" means all personnel employed by
a county board whether employed on a regular full-time
basis, an hourly basis or otherwise. “School personnel” is
comprised of two categories: Professional personnel and
service personnel;

(b) “Professional person” or "Professional personnel"
means those persons or employees who meet the certification
requirements of the state, licensing requirements of the state,
or both, and includes a professional educator and other
professional employee;

(c) "Professional educator" has the same meaning as
"teacher" as defined in section one, article one, chapter
eighteen of this Code. Professional educators are classified
as follows:

(1) "Classroom teacher" means a professional educator
who has a direct instructional or counseling relationship with
students and who spends the majority of his or her time in
this capacity;

(2) "Principal" means a professional educator who
functions as an agent of the county board and has
responsibility for the supervision, management and control of
a school or schools within the guidelines established by the
county board. The principal’s major area of responsibility is
the general supervision of all the schools and all school
activities involving students, teachers and other school
personnel;

(3) "Supervisor" means a professional educator who is
responsible for working primarily in the field with
professional and other personnel in instructional and other
school improvement. This category includes other
appropriate titles or positions with duties that fit within this
definition; and

(4) "Central office administrator" means a superintendent,
associate superintendent, assistant superintendent and other professional educators who are charged with administering and supervising the whole or some assigned part of the total program of the countywide school system. This category includes other appropriate titles or positions with duties that fit within this definition;

(d) "Other professional employee" means a person from another profession who is properly licensed and who is employed to serve the public schools. This definition includes a registered professional nurse, licensed by the West Virginia Board of Examiners for Registered Professional Nurses, who is employed by a county board and has completed either a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program;

(e) "Service person" or "service personnel", whether singular or plural, means a non-teaching school employee who is not included in the meaning of "teacher" as defined in section one, article one, chapter eighteen of this Code, and who serves the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and aides. Any reference to "service employee" or "service employees" in this chapter or chapter eighteen of this Code means service person or service personnel as defined in this section;

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

(g) "Center for Professional Development" means the Center created pursuant to section one, article three-a of this chapter;

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

(I) "Prospective employable professional person" whether
singular or plural, means a certified professional educator who:

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

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

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

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

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

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

(l) "Long-term substitute" means a substitute employee who fills a vacant position:

(1) That the county superintendent expects to extend for at least ninety consecutive days, and is either:

(A) Listed in the job posting as a long term substitute position of over ninety days; or

(B) Listed in a job posting as a regular, full-time position and:
(i) Is not filled by a regular, full-time employee; and

(ii) Is filled by a substitute employee.

For the purposes of section two, article sixteen, chapter five of this code, long-term substitute does not include a retired employee hired to fill the vacant position.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7c. Summer employment of professional educators.

(a) A county board shall hire professional educators for positions in summer school programs in accordance with section thirty-nine, article five, chapter eighteen of this code or section seven-a of this article, as applicable, except that a professional educator who is currently employed by the county board shall be given employment preference over applicants who are not current employees.

§18A-4-8. Employment term and class titles of service personnel; definitions.

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may not be less than ten months. A month is defined as twenty employment days: Provided, That the county board may contract with all or part of these service personnel for a longer term. The beginning and closing dates of the ten-month employment term may not exceed forty-three weeks.

(b) Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the two hundred day minimum employment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred day minimum employment term.
(d) A service person may not be required to report for work more than five days per week without his or her agreement, and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

(e) If a service person whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the service person shall be paid for at least one-half day of work for each day he or she reports for work. If the service person works more than three and one-half hours on any Saturday or Sunday, he or she shall be paid for at least a full day of work for each day.

(f) A custodian, aide, maintenance, office and school lunch service person required to work a daily work schedule that is interrupted shall be paid additional compensation.

   (1) A maintenance person is defined as a person who holds a classification title other than in a custodial, aide, school lunch, office or transportation category as provided in section one, article one of this chapter.

   (2) A service person’s schedule is considered to be interrupted if he or she does not work a continuous period in one day. Aides are not regarded as working an interrupted schedule when engaged exclusively in the duties of transporting students;

   (3) The additional compensation provided for in this subsection:

      (A) Is equal to at least one eighth of a service person’s total salary as provided by the state minimum pay scale and any county pay supplement; and

      (B) Is payable entirely from county board funds.

(g) When there is a change in classification or when a service person meets the requirements of an advanced classification, his or her salary shall be made to comply with the requirements of this article and any county salary
A service person’s contract as provided in section five, article two of this chapter, shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and on any county salary schedule in excess of the minimum requirements of this article.

(i) The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article, are defined as follows:

1. "Pay grade" means the monthly salary applicable to class titles of service personnel;

2. "Years of employment" means the number of years which an employee classified as a service person has been employed by a county board in any position prior to or subsequent to the effective date of this section and includes service in the armed forces of the United States, if the employee was employed at the time of his or her induction. For the purpose of section eight-a of this article, years of employment is limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article;

3. "Class title" means the name of the position or job held by a service person;

4. "Accountant I" means a person employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;

5. "Accountant II" means a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;

6. "Accountant III" means a person employed in the
county board office to manage and supervise accounts payable, payroll procedures, or both;

(7) “Accounts payable supervisor” means a person employed in the county board office who has primary responsibility for the accounts payable function and who either has completed twelve college hours of accounting courses from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(8) "Aide I" means a person selected and trained for a teacher-aide classification such as monitor aide, clerical aide, classroom aide or general aide;

(9) "Aide II" means a service person referred to in the "Aide I" classification who has completed a training program approved by the State Board, or who holds a high school diploma or has received a general educational development certificate. Only a person classified in an Aide II class title may be employed as an aide in any special education program;

(10) "Aide III" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed six semester hours of college credit at an institution of higher education; or

(B) Is employed as an aide in a special education program and has one year's experience as an aide in special education;

(11) "Aide IV" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed eighteen hours of State Board-approved college credit at a regionally accredited institution of higher education, or
(B) Has completed fifteen hours of State Board-approved college credit at a regionally accredited institution of higher education; and has successfully completed an in-service training program determined by the State Board to be the equivalent of three hours of college credit;

(12) "Audiovisual technician" means a person employed to perform minor maintenance on audiovisual equipment, films, and supplies and who fills requests for equipment;

(13) "Auditor" means a person employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;

(14) "Autism mentor" means a person who works with autistic students and who meets standards and experience to be determined by the State Board. A person who has held or holds an aide title and becomes employed as an autism mentor shall hold a multiclassification status that includes both aide and autism mentor titles, in accordance with section eight-b of this article;

(15) "Braille or sign language specialist" means a person employed to provide braille and/or sign language assistance to students. A service person who has held or holds an aide title and becomes employed as a braille or sign language specialist shall hold a multiclassification status that includes both aide and braille or sign language specialist title, in accordance with section eight-b of this article;

(16) "Bus operator" means a person employed to operate school buses and other school transportation vehicles as provided by the State Board;

(17) "Buyer" means a person employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs;
(18) "Cabinetmaker" means a person employed to construct cabinets, tables, bookcases and other furniture;

(19) "Cafeteria manager" means a person employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school;

(20) "Carpenter I" means a person classified as a carpenter's helper;

(21) "Carpenter II" means a person classified as a journeyman carpenter;

(22) "Chief mechanic" means a person employed to be responsible for directing activities which ensure that student transportation or other county board-owned vehicles are properly and safely maintained;

(23) "Clerk I" means a person employed to perform clerical tasks;

(24) "Clerk II" means a person employed to perform general clerical tasks, prepare reports and tabulations and operate office machines;

(25) "Computer operator" means a qualified person employed to operate computers;

(26) "Cook I" means a person employed as a cook's helper;

(27) "Cook II" means a person employed to interpret menus and to prepare and serve meals in a food service program of a school. This definition includes a service person who has been employed as a "Cook I" for a period of four years;
(28) "Cook III" means a person employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system;

(29) "Crew leader" means a person employed to organize the work for a crew of maintenance employees to carry out assigned projects;

(30) "Custodian I" means a person employed to keep buildings clean and free of refuse;

(31) "Custodian II" means a person employed as a watchman or groundsman;

(32) "Custodian III" means a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;

(33) "Custodian IV" means a person employed as head custodians. In addition to providing services as defined in "custodian III," duties may include supervising other custodian personnel;

(34) "Director or coordinator of services" means an employee of a county board who is assigned to direct a department or division.

(A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title;

(B) Professional personnel holding this class title may not be defined or classified as service personnel unless the professional person held a service personnel title under this section prior to holding the class title of "director or coordinator of services."

(C) The director or coordinator of services shall be classified either as a professional person or a service person for state aid formula funding purposes; and
(D) Funding for the position of director or coordinator of services is based upon the employment status of the director or coordinator either as a professional person or a service person;

(35) "Draftsman" means a person employed to plan, design and produce detailed architectural/engineering drawings;

(36) "Electrician I" means a person employed as an apprentice electrician helper or one who holds an electrician helper license issued by the state fire marshal;

(37) "Electrician II" means a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the state fire marshal;

(38) "Electronic technician I" means a person employed at the apprentice level to repair and maintain electronic equipment;

(39) "Electronic technician II" means a person employed at the journeyman level to repair and maintain electronic equipment;

(40) "Executive secretary" means a person employed as secretary to the county school superintendent or as a secretary who is assigned to a position characterized by significant administrative duties;

(41) "Food services supervisor" means a qualified person who is not a professional person or professional educator as defined in section one, article one of this chapter. The food services supervisor is employed to manage and supervise a county school system's food service program. The duties include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;

(42) "Foreman" means a skilled person employed to
supervise personnel who work in the areas of repair and
maintenance of school property and equipment;

(43) "General maintenance" means a person employed as
a helper to skilled maintenance employees and to perform
minor repairs to equipment and buildings of a county school
system;

(44) "Glazier" means a person employed to replace glass
or other materials in windows and doors and to do minor
carpentry tasks;

(45) "Graphic artist" means a person employed to prepare
graphic illustrations;

(46) "Groundsman" means a person employed to perform
duties that relate to the appearance, repair and general care of
school grounds in a county school system. Additional
assignments may include the operation of a small heating
plant and routine cleaning duties in buildings;

(47) "Handyman" means a person employed to perform
routine manual tasks in any operation of the county school
system;

(48) "Heating and air conditioning mechanic I" means a
person employed at the apprentice level to install, repair and
maintain heating and air conditioning plants and related
electrical equipment;

(49) "Heating and air conditioning mechanic II" means a
person employed at the journeyman level to install, repair and
maintain heating and air conditioning plants and related
electrical equipment;

(50) "Heavy equipment operator" means a person
employed to operate heavy equipment;

(51) "Inventory supervisor" means a person employed to
supervise or maintain operations in the receipt, storage,
inventory and issuance of materials and supplies;
(52) "Key punch operator" means a qualified person employed to operate key punch machines or verifying machines;

(53) “Licensed practical nurse” means a nurse, licensed by the West Virginia Board of Examiners for Licensed Practical Nurses, employed to work in a public school under the supervision of a school nurse;

(54) "Locksmith" means a person employed to repair and maintain locks and safes;

(55) "Lubrication man" means a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;

(56) "Machinist" means a person employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. A person holding this class title also should have the ability to work from blueprints and drawings;

(57) "Mail clerk" means a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

(58) "Maintenance clerk" means a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

(59) "Mason" means a person employed to perform tasks connected with brick and block laying and carpentry tasks related to these activities;

(60) "Mechanic" means a person employed to perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;
"Mechanic assistant" means a person employed as a mechanic apprentice and helper;

"Multiclassification" means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale shall be the higher pay grade of the class titles involved;

"Office equipment repairman I" means a person employed as an office equipment repairman apprentice or helper;

"Office equipment repairman II" means a person responsible for servicing and repairing all office machines and equipment. A person holding this class title is responsible for the purchase of parts necessary for the proper operation of a program of continuous maintenance and repair;

"Painter" means a person employed to perform duties painting, finishing and decorating wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

"Paraprofessional" means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of students under the direction of a principal, a teacher or another designated professional educator.

A person employed on the effective date of this section in the position of an aide may not be subject to a reduction in force or transferred to create a vacancy for the employment of a paraprofessional;

A person who has held or holds an aide title and becomes employed as a paraprofessional shall hold a multiclassification status that includes both aide and paraprofessional titles in accordance with section eight-b of this article; and
(C) When a service person who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

(67) "Payroll supervisor" means a person employed in the county board office who has primary responsibility for the payroll function and who either has completed twelve college hours of accounting from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(68) "Plumber I" means a person employed as an apprentice plumber and helper;

(69) "Plumber II" means a person employed as a journeyman plumber;

(70) "Printing operator" means a person employed to operate duplication equipment, and to cut, collate, staple, bind and shelve materials as required;

(71) "Printing supervisor" means a person employed to supervise the operation of a print shop;

(72) "Programmer" means a person employed to design and prepare programs for computer operation;

(73) "Roofing/sheet metal mechanic" means a person employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

(74) "Sanitation plant operator" means a person employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection;

(75) "School bus supervisor" means a qualified person employed to assist in selecting school bus operators and
routing and scheduling school buses, operate a bus when
needed, relay instructions to bus operators, plan emergency
routing of buses and promote good relationships with parents,
students, bus operators and other employees;

(76) "Secretary I" means a person employed to transcribe
from notes or mechanical equipment, receive callers, perform
clerical tasks, prepare reports and operate office machines;

(77) "Secretary II" means a person employed in any
elementary, secondary, kindergarten, nursery, special
education, vocational or any other school as a secretary. The
duties may include performing general clerical tasks;
transcribing from notes, stenotype, mechanical equipment or
a sound-producing machine; preparing reports; receiving
callers and referring them to proper persons; operating office
machines; keeping records and handling routine
correspondence. Nothing in this subdivision prevents a
service person from holding or being elevated to a higher
classification;

(78) "Secretary III" means a person assigned to the
county board office administrators in charge of various
instructional, maintenance, transportation, food services,
operations and health departments, federal programs or
departments with particular responsibilities in purchasing and
financial control or any person who has served for eight years
in a position which meets the definition of "secretary II" or
"secretary III";

(79) "Supervisor of maintenance" means a skilled person
who is not a professional person or professional educator as
defined in section one, article one of this chapter. The
responsibilities include directing the upkeep of buildings and
shops, and issuing instructions to subordinates relating to
cleaning, repairs and maintenance of all structures and
mechanical and electrical equipment of a county board;

(80) "Supervisor of transportation" means a qualified
person employed to direct school transportation activities
properly and safely, and to supervise the maintenance and
repair of vehicles, buses and other mechanical and mobile equipment used by the county school system;

(81) "Switchboard operator-receptionist" means a person employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

(82) "Truck driver" means a person employed to operate light or heavy duty gasoline and diesel-powered vehicles;

(83) "Warehouse clerk" means a person employed to be responsible for receiving, storing, packing and shipping goods;

(84) "Watchman" means a person employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties;

(85) "Welder" means a person employed to provide acetylene or electric welding services for a school system; and

(86) "WVEIS data entry and administrative clerk" means a person employed to work under the direction of a school principal to assist the school counselor or counselors in the performance of administrative duties, to perform data entry tasks on the West Virginia Education Information System, and to perform other administrative duties assigned by the principal.

(j) Notwithstanding any provision in this Code to the contrary, and in addition to the compensation provided for service personnel in section eight-a of this article, each service person is, entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this Code without regard to the employee's hours of employment or the methods or sources of compensation.
(k) A service person whose years of employment exceeds
the number of years shown and provided for under the state
minimum pay scale set forth in section eight-a of this article
may not be paid less than the amount shown for the
maximum years of employment shown and provided for in
the classification in which he or she is employed.

(l) Each county board shall review each service person’s
job classification annually and shall reclassify all service
persons as required by the job classifications. The state
superintendent may withhold state funds appropriated
pursuant to this article for salaries for service personnel who
are improperly classified by the county boards. Further, the
state superintendent shall order a county board to correct
immediately any improper classification matter and, with the
assistance of the attorney general, shall take any legal action
necessary against any county board to enforce the order.

(m) Without his or her written consent, a service person
may not be:

(1) Reclassified by class title; or

(2) Relegated to any condition of employment which
would result in a reduction of his or her salary, rate of pay,
compensation or benefits earned during the current fiscal
year; or for which he or she would qualify by continuing in
the same job position and classification held during that fiscal
year and subsequent years.

(n) Any county board failing to comply with the
provisions of this article may be compelled to do so by
mandamus and is liable to any party prevailing against the
board for court costs and the prevailing party's reasonable
attorney fee, as determined and established by the court.

(o) Notwithstanding any provision of this Code to the
contrary, a service person who holds a continuing contract in
a specific job classification and who is physically unable to
perform the job's duties as confirmed by a physician chosen
by the employee, shall be given priority status over any
employee not holding a continuing contract in filling other
service personnel job vacancies if the service person is
qualified as provided in section eight-e of this article.

(p) Any person employed in an aide position on the
effective date of this section may not be transferred or subject
to a reduction in force for the purpose of creating a vacancy
for the employment of a licensed practical nurse.

(q) Without the written consent of the service person, a
county board may not establish the beginning work station
for a bus operator or transportation aide at any site other than
a county board-owned facility with available parking. The
workday of the bus operator or transportation aide
commences at the bus at the designated beginning work
station and ends when the employee is able to leave the bus
at the designated beginning work station, unless he or she
agrees otherwise in writing. The application or acceptance of
a posted position may not be construed as the written consent
referred to in this subsection.

§18A-4-8b. Seniority rights for school service personnel.

(a) A county board shall make decisions affecting
promotions and the filling of any service personnel positions
of employment or jobs occurring throughout the school year
that are to be performed by service personnel as provided in
section eight of this article, on the basis of seniority,
qualifications and evaluation of past service.

(b) Qualifications means that the applicant holds a
classification title in his or her category of employment as
provided in this section and shall be given first opportunity
for promotion and filling vacancies. Other employees then
shall be considered and shall qualify by meeting the
definition of the job title as defined in section eight of this
article, that relates to the promotion or vacancy. If requested
by the employee, the county board shall show valid cause
why a service person with the most seniority is not promoted
or employed in the position for which he or she applies.
Applicants shall be considered in the following order:
(1) Regularly employed service personnel;

(2) Service personnel whose employment has been discontinued in accordance with this section;

(3) Professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, and who apply only for these temporary jobs or positions;

(4) Substitute service personnel; and

(5) New service personnel.

(c) The county board may not prohibit a service person from retaining or continuing his or her employment in any positions or jobs held prior to the effective date of this section and thereafter.

(d) A promotion is defined as any change in employment that the service person considers to improve his or her working circumstance within the classification category of employment.

(1) A promotion includes a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment.

(2) Each class title listed in section eight of this article is considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which shall be considered a single classification of employment:

(A) The cafeteria manager class title is included in the same classification category as cooks;

(B) The executive secretary class title is included in the same classification category as secretaries;
(C) Paraprofessional, autism mentor and braille or sign
language specialist class titles are included in the same
classification category as aides; and

(D) The mechanic assistant and chief mechanic class
titles are included in the same classification category as
mechanics.

(e) For purposes of determining seniority under this
section an service person's seniority begins on the date that
he or she enters into the assigned duties.

(f) Extra-duty assignments.

(1) For the purpose of this section, "extra-duty
assignments" are defined as irregular jobs that occur
periodically or occasionally such as, but not limited to, field
trips, athletic events, proms, banquets and band festival trips.

(2) Notwithstanding any other provisions of this chapter
to the contrary, decisions affecting service personnel with
respect to extra-duty assignments shall be made in the
following manner:

(A) A service person with the greatest length of service
time in a particular category of employment shall be given
priority in accepting extra duty assignments, followed by
other fellow employees on a rotating basis according to the
length of their service time until all such employees have had
an opportunity to perform similar assignments. The cycle
then shall be repeated.

(B) An alternative procedure for making extra-duty
assignments within a particular classification category of
employment may be used if the alternative procedure is
approved both by the county board and by an affirmative vote
of two thirds of the employees within that classification
category of employment.

(g) County boards shall post and date notices of all job
vacancies of established existing or newly created positions
in conspicuous places for all school service personnel to observe for at least five working days.

(1) Posting locations shall include any website maintained by or available for the use of the county board.

(2) Notice of a job vacancy shall include the job description, the period of employment, the amount of pay and any benefits and other information that is helpful to prospective applicants to understand the particulars of the job. Job postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply. Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant.

(3) After the five-day minimum posting period, all vacancies shall be filled within twenty working days from the posting date notice of any job vacancies of established existing or newly created positions.

(4) The county board shall notify any person who has applied for a job posted pursuant to this section of the status of his or her application as soon as possible after the county board makes a hiring decision regarding the posted position.

(h) All decisions by county boards concerning reduction in work force of service personnel shall be made on the basis of seniority, as provided in this section.

(i) The seniority of any service person shall be determined on the basis of the length of time the employee has been employed by the county board within a particular job classification. For the purpose of establishing seniority for a preferred recall list as provided in this section, when a service person has been employed in one or more classifications, the seniority accrued in each previous classification is retained by the employee.

(j) If a county board is required to reduce the number of
service personnel within a particular job classification, the following conditions apply:

(1) The employee with the least amount of seniority within that classification or grades of classification shall be properly released and employed in a different grade of that classification if there is a job vacancy;

(2) If there is no job vacancy for employment within that classification or grades of classification, the service person shall be employed in any other job classification which he or she previously held with the county board if there is a vacancy and shall retain any seniority accrued in the job classification or grade of classification.

(k) Prior to the first day of August after a reduction in force or transfer is approved:

(1) If the county board in its sole and exclusive judgment determines that the reason for any particular reduction in force or transfer no longer exists, the board shall rescind the reduction in force or transfer and notify the affected employee in writing of the right to be restored to his or her former position of employment.

(2) Within five days of being notified, the affected employee shall notify the county board of his or her intent to return to the former position of employment or the right of restoration to the former position terminates:

(3) The county board shall not rescind the reduction in force of an employee until all service personnel with more seniority in the classification category on the preferred recall list have been offered the opportunity for recall to regular employment as provided in this section.

(4) If there are insufficient vacant positions to permit reemployment of all more senior employees on the preferred recall list within the classification category of the service person who was subject to reduction in force, the position of
the released service person shall be posted and filled in accordance with this section.

(l) If two or more service persons accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the county board.

(m) All service personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.

(n) A service person placed upon the preferred list shall be recalled to any position openings by the county board within the classification(s) where he or she had previously been employed, or to any lateral position for which the service person is qualified or to a lateral area for which a service person has certification and/or licensure.

(o) A service person on the preferred recall list shall not forfeit the right to recall by the county board if compelling reasons require him or her to refuse an offer of reemployment by the county board.

(p) The county board shall notify all service personnel on the preferred recall list of all position openings that exist from time to time. The notice shall be sent by certified mail to the last known address of the service person. Each service person shall notify the county board of any change of address.

(q) No position openings may be filled by the county board, whether temporary or permanent, until all service personnel on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

(r) A service person released from employment for lack of need as provided in sections six and eight-a, article two of
this chapter shall be accorded preferred recall status on the first day of July of the succeeding school year if the he or she has not been reemployed as a regular employee.

(s) A county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.

(1) A service person denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactively to the date of the violation and shall be paid entirely from local funds.

(2) The county board is liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

§18A-4-8f. Seniority rights, school consolidation.

(a) Notwithstanding any provision of this article to the contrary, when a majority of the classroom teachers or school service personnel, who vote to do so, in accordance with procedures established in this section, and who are employed by a county board, the board shall give priority to classroom teachers or school service personnel in any school or schools to be closed as a result of a consolidation or merger when filling positions in the new school created by consolidation or newly created positions in existing schools as a result of the merger.

(b) Each year a consolidation or merger is proposed, prior to the implementation of that plan, the superintendent shall cause to be prepared and distributed to all faculty senates and to all schools or other work sites a ballot on which teachers and service personnel may indicate whether or not they desire those affected by school closings to be given priority status in filling new positions. A secret ballot election shall be conducted:
(1) In each faculty senate for classroom teachers. The faculty senate chair shall convey the results of the election to the superintendent; and

(2) At each school or work site for school service personnel. The service personnel supervisor at each school or work site shall convey the results of the election to the superintendent.

(c) The superintendent shall tabulate and post all results prior to the notice requirements for reduction in force and transfer as outlined in sections two and seven, article two of this chapter. The total number of votes shall be tabulated separately for classroom teachers and for service personnel. The provisions of this section also shall be implemented separately as follows:

(1) For classroom teachers only if a majority of the total number of teachers who cast a ballot vote to do so; and

(2) For school service personnel only if a majority of the total number of service personnel who cast a ballot vote to do so.

(d) If a majority approves, the teachers or school service personnel in the school or schools to be closed have priority in filling new positions in the new or merged schools for which the teachers are certified or for which the school service personnel are qualified and meet the standards set forth in the job posting on the basis of seniority within the county. A teacher or school service person may receive priority for filling a position at a school affected by a merger or consolidation only for the position being created by the influx of students from a consolidated or merged school into the school receiving students from their closed school or grade level.

(1) The most senior teacher from the closed school or schools shall be placed first, the second most senior shall be placed next and so on until all the newly created positions are filled, or until all the teachers in the closed school or schools
who wish to transfer into the newly created positions are placed.

(2) The most senior service person from the closed school or schools has priority in filling any position within his or her classification category. The second most senior service person from the closed school or schools then has priority in filling remaining vacancies and so on until all available positions are filled.

(3) If there are fewer new positions in the newly created school or merged school than there are classroom teachers or school service personnel from the school or schools to be closed, the teachers or school service personnel who were not placed in the new positions retain the same rights as all other teachers or service personnel with regard to seniority, transfer and reduction in force.

(4) This section does not grant any employee additional rights or protections with regard to reduction in force.

(c) For the purposes of this section only:

(1) A consolidation means that one or more schools are closed, or one or more grade levels are removed from one or more schools, and the students who previously attended the closed schools or grade levels are assigned to a new school.

(2) A merger means that one or more schools are closed or one or more grade levels are removed from one or more schools and the students who previously attended the closed schools or grade levels are assigned to another existing school.

(f) The provisions of this section do not apply to positions that are filled by a county board prior to the effective date of this section, as reenacted during the regular session of the Legislature, two thousand seven.

§18A-4-8g. Determination of seniority for service personnel.

(a) Seniority accumulation for a regular school service person:
(1) Begins on the date the employee enters upon regular employment duties pursuant to a contract as provided in section five, article two of this chapter;

(2) Continues until the service person’s employment as a regular employee is severed with the county board; and

(3) Does not cease to accumulate when the county board has authorized an absence whether without pay or due to illness or other reason over which the employee has no control.

(b) Seniority accumulation for a substitute service person:

(1) Begins on the date the employee enters upon the duties of a substitute as provided in section fifteen of this article, after executing with the county board a contract of employment as provided in section five, article two of this chapter; and

(2) Continues until the employee enters into the duties of a regular employment contract as provided in section five, article two of this chapter; or employment as a substitute service person with the county board is severed.

(c) Seniority of a regular or substitute service person does not continue to accumulate under the following conditions:

(1) When a service person is willfully absent from employment duties because of a concerted work stoppage or strike; or

(2) When a service person is suspended without pay.

(d) For all purposes including the filling of vacancies and reduction in force, seniority shall be accumulated within particular classification categories of employment as those classification categories are referred to in section eight-e of this article.

(e) When implementing a reduction in force, the service
person with the least seniority within a particular classification category shall be properly released and placed on the preferred recall list. The particular classification title held by a service person within the classification category may not be considered when implementing a reduction in force.

(f) On or before the first day of September and the fifteenth day of January of each school year, county boards shall post at each county school or working station the current seniority list or lists of each service personnel classification. Each list shall contain the name of each regularly employed school service person employed in each classification and the date that each employee began performing his or her assigned duties in each classification. Current seniority lists of substitute school service personnel shall be available to employees upon request at the county board office.

(g) The seniority of a service person who transfers out of a class title or classification category of employment and subsequently returns to that class title or classification category of employment is calculated as follows:

(1) The county board shall establish the number of calendar days between the date the service person left the class title or category of employment in question and the date of return to the class title or classification category of employment.

(2) This number of days shall be added to the service person’s initial seniority date to establish a new beginning seniority date within the class title or classification category.

(3) The service person then shall be considered as having held uninterrupted service within the class title or classification category from the newly established seniority date. The seniority of an employee who has had a break in the accumulation of seniority as a result of being willfully absent from employment duties because of a concerted work stoppage or strike shall be calculated in the same manner.
(h) Beginning on the first day of July, two thousand seven, a substitute school service person shall acquire regular employment status, but not regular employee job bidding rights or regular seniority, if the employee receives a position pursuant to the leave of absence or suspension provisions of subdivisions (2) and (5), subsection (a), section fifteen of this article.

(1) A substitute service person shall accumulate substitute employee seniority while holding a position acquired pursuant to subsections (2) and (5).

(2) Upon termination of the regular service person’s leave of absence or suspension, the substitute service person shall return to the status previously held.

(3) County boards are not prohibited from providing any benefits of regular employment for substitute service personnel, but the benefits may not include regular service personnel employee status or seniority.

(i) If two or more service personnel accumulate identical seniority, the priority shall be determined by a random selection system established by the service personnel and approved by the county board.

(1) A board shall conduct the random selection within thirty days of the time the service personnel establish an identical seniority date. All service personnel with an identical seniority date within the same class title or classification category shall participate in the random selection.

(2) As long as the affected employees hold identical seniority within the same classification category, the initial random selection conducted by the board shall be permanent for the duration of the employment within the same classification category of the employees by the board. This random selection priority applies to the filling of vacancies and to the reduction in force of school service personnel.

(3) If any other service person subsequently acquires seniority identical to the employees involved in the original
random selection, a second random selection shall be held within thirty days to determine the seniority ranking of the new employee within the group.

(A) The priority between the employees who participated in the original random selection remains the same.

(B) The second random selection is performed by placing numbered pieces of paper equal to the number of employees with identical seniority in a container. Any service person who was not involved in the original random selection shall draw a number from the container which will determine his or her seniority within the group as a whole.

(C) This process will be repeated if any additional service person subsequently acquires identical seniority.

(D) The same process shall be used if any additional service person is subsequently discovered to have the same seniority as the original group of employees but who did not participate in the original random selection due to oversight or mistake.

(j) Service personnel who are employed in a classification category of employment at the time when a vacancy is posted in the same classification category of employment shall be given first opportunity to fill the vacancy.

(k) Seniority acquired as a substitute service person and as a regular service person shall be calculated separately and may not be combined for any purpose. Seniority acquired within different classification categories shall be calculated separately. If a school service employee applies for a position outside of the classification category he or she currently holds, and if the vacancy is not filled by an applicant within the classification category of the vacancy, the applicant shall combine all regular employment seniority acquired for the purpose of bidding on the position.

(l) A school service person who holds a multiclassification title accrues seniority in each
classification category of employment that the employee holds and is considered an employee of each classification category contained within his or her multiclassification title. A multiclassified service person is subject to reduction in force in any category of employment contained within his or her multiclassification title, based upon the seniority accumulated within that category of employment. If a multiclassified service person is subject to a reduction in force in one classification category, the service person retains employment in any of the other classification categories that he or she holds within his or her multiclassification title. In that case, the county board shall delete the appropriate classification title or classification category from the contract of the multiclassified employee.

(m) When applying to fill a vacancy outside the classification categories held by a multiclassified service person, seniority acquired simultaneously in different classification categories is calculated as if accrued in one classification category only.

(n) The seniority conferred in this section applies retroactively to all affected school service personnel, but the rights incidental to the seniority commence as of the effective date of this section.

§ 18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.

(a) Personal Leave.

1 (1) At the beginning of the employment term, any full-time employee of a county board is entitled annually to at least one and one-half days personal leave for each employment month or major fraction thereof in the employee's employment term. Unused leave shall be accumulative without limitation and is transferable within the state. A change in job assignment during the school year does not affect the employee's rights or benefits.

2 (2) A regular full-time employee who is absent from
assigned duties due to accident, sickness, death in the immediate family, or life threatening illness of the employee's spouse, parents or child, or other cause authorized or approved by the board, shall be paid the full salary from his or her regular budgeted salary appropriation during the period which the employee is absent, but not to exceed the total amount of leave to which the employee is entitled.

(3) Each employee is permitted to use three days of leave annually without regard to the cause for the absence. Personal leave without cause may not be used on consecutive work days unless authorized or approved by the employee's principal or immediate supervisor, as appropriate. The employee shall give notice of leave without cause to the principal or immediate supervisor at least twenty-four hours in advance, except that in the case of sudden and unexpected circumstances, notice shall be given as soon as reasonably practicable. The principal or immediate supervisor may deny use of the day if, at the time notice is given, either fifteen percent of the employees or three employees, whichever is greater, under the supervision of the principal or immediate supervisor, have previously given notice of their intention to use that day for leave. Personal leave may not be used in connection with a concerted work stoppage or strike. Where the cause for leave originated prior to the beginning of the employment term, the employee shall be paid for time lost after the start of the employment term. If an employee uses personal leave which the employee has not yet accumulated on a monthly basis and subsequently leaves the employment, the employee is required to reimburse the board for the salary or wages paid for the unaccumulated leave.

(4) The State Board shall maintain a rule to restrict the payment of personal leave benefits and the charging of personal leave time used to an employee receiving a workers' compensation benefit from a claim filed against and billed to the county board by which the person is employed. If an employee is awarded this benefit, the employee shall receive personal leave compensation only to the extent the compensation is required, when added to the workers' compensation benefit, to equal the amount of compensation
regularly paid the employee. If personal leave compensation equal to the employee's regular pay is paid prior to the award of the workers' compensation benefit, the amount which, when added to the benefit, is in excess of the employee's regular pay shall be deducted from the employee's subsequent pay. The employee's accrued personal leave days shall be charged only for such days as equal the amount of personal leave compensation required to compensate the employee at the employee's regular rate of pay.

(5) The county board may establish reasonable rules for reporting and verification of absences for cause. If any error in reporting absences occurs, the county board may make necessary salary adjustments:

(A) In the next pay after the employee has returned to duty; or

(B) In the final pay if the absence occurs during the last month of the employment term.

(b) Leave Banks.

(1) Each county board shall establish a personal leave bank that is available to all school personnel. The board may establish joint or separate banks for professional personnel and school service personnel. Each employee may contribute up to two days of personal leave per school year. An employee may not be coerced or compelled to contribute to a personal leave bank.

(2) The personal leave bank shall be established and operated pursuant to a rule adopted by the county board. The rule:

(A) May limit the maximum number of days used by an employee;

(B) Shall limit the use of leave bank days to an active employee with fewer than five days accumulated personal leave who is absent from work due to accident or illness of the employee; and
(C) Shall prohibit the use of days to:

(i) Qualify for or add to service for any retirement system administered by the state; or

(ii) Extend insurance coverage pursuant to section thirteen, article sixteen, chapter five of this code.

(D) Shall require that each personal leave day contributed:

(i) Is deducted from the number of personal leave days to which the donor employee is entitled by this section;

(ii) Is not deducted from the personal leave days without cause to which a donor employee is entitled if sufficient general personal leave days are otherwise available to the donor employee;

(iii) Is credited to the receiving employee as one full personal leave day;

(iv) May not be credited for more or less than a full day by calculating the value of the leave according to the hourly wage of each employee; and

(v) May be used only for an absence due to the purpose for which the leave was transferred. Any transferred days remaining when the catastrophic medical emergency ends revert back to the leave bank.

(3) The administration, subject to county board approval, may use its discretion as to the need for a substitute where limited absence may prevail, when an allowable absence does not:

(i) Directly affect the instruction of the students; or

(ii) Require a substitute employee because of the nature of the work and the duration of the cause for the absence.
(4) If funds in any fiscal year, including transfers, are insufficient to pay the full cost of substitutes for meeting the provisions of this section, the remainder shall be paid on or before the thirty-first day of August from the budget of the next fiscal year.

(5) A county board may supplement the leave provisions in any manner it considers advisable in accordance with applicable rules of the State Board and the provisions of this chapter and chapter eighteen of this code.

§18A-4-10f. Leave donation program.

(a) Definitions.

For the purposes of this section and section ten of this article, the following words have the meanings specified unless the context clearly indicates a different meaning:

(1) "Catastrophic medical emergency" means a medical or physical condition that:

(A) Incapacitates an employee or an immediate family member for whom the employee will provide care;

(B) Is likely to require the prolonged absence of the employee from duty; and

(C) Will result in a substantial loss of income to the employee because the employee:

(i) Has exhausted all accrued personal leave; and

(ii) Is not eligible to receive personal leave or has exhausted personal leave available from a leave bank established pursuant to this article;

(2) "Employee" means a professional educator or school service person who is employed by a county board and entitled to accrue personal leave as a benefit of employment;
(3) "Donor employee" means a professional educator or school service person employed by a county board who voluntarily contributes personal leave to another designated employee; and

(4) "Receiving employee" means a professional educator or school service person employed by a county board who receives donated personal leave from another employee.

(b) Leave donation program.

(1) In addition to any personal leave bank established pursuant to this article, a county board shall establish a leave donation program pursuant to which a donor employee may transfer accrued personal leave to the personal leave account of another designated employee.

(2) A county board:

(A) May not limit the number of personal leave days a donor employee may transfer to a receiving employee who is his or her spouse;

(B) May not limit the total number of personal leave days a receiving employee receives; and

(C) May limit the number of days a donor employee transfers to a receiving employee who is not his or her spouse.

(c) Rule.

(1) The county board shall adopt a rule to implement the program.

(2) The rule shall set forth at least the following conditions:

(A) The donor employee voluntarily agrees to the leave transfer;
(B) The donor employee selects the employee designated to receive the personal leave transferred; and

(C) The receiving employee requires additional personal leave because of a catastrophic medical emergency;

(D) The donated leave may not be used to:

(i) Qualify for or add to service for any retirement system administered by the state; or

(ii) Extend insurance coverage pursuant to section thirteen, article sixteen, chapter five of this code;

(E) Each personal leave day contributed:

(i) Shall be deducted from the number of personal leave days to which the donor employee is entitled by section ten of this article;

(ii) Shall not be deducted from the number of personal leave days without cause to which the donor employee is entitled if sufficient general personal leave days are otherwise available to the donor employee;

(iii) Shall be credited to the receiving employee as one full personal leave day;

(iv) May not be credited for more or less than a full day by calculating the value of the leave according to the hourly wage of each employee; and

(v) May be used only for an absence due to the purpose for which the leave was transferred. Any transferred days remaining when the catastrophic medical emergency ends revert back to the donor employee; and

(F) An employee may not be coerced or compelled to contribute to a leave donation program.
§18A-4-15. Employment of service personnel substitutes.

(a) The county board shall employ and the county superintendent, subject to the approval of the county board, shall assign substitute service personnel on the basis of seniority to perform any of the following duties:

(1) To fill the temporary absence of another service employee;

(2) To fill the position of a regular service person as follows:

(A) If the regular service person requests a leave of absence from the county board in writing and is granted the leave in writing by the county board; or

(B) If the regular service person is on workers’ compensation and absent.

(C) If an absence pursuant to paragraph (A) or (B) of this subdivision is to extend beyond thirty working days, the county board shall post the position of the absent employee under the procedures set forth in section eight-b of this article. If a substitute service person is employed to fill the position of the absent employee and is employed in the position for twenty or more working days, the substitute service person:

(i) Acquires regular employment status with the exception of regular employee job bidding rights;

(ii) Does not accrue regular seniority; and

(iii) Is accorded all other rights, privileges and benefits pertaining to the position until the regular employee returns to the position or ceases to be employed by the county board;

(D) If a regular or substitute employee fills a vacancy that is related in any manner to a leave of absence or the absence of an employee on workers’ compensation as provided in this
section, upon termination of the absence the employee shall be returned to his or her original position or status;

(E) A service person may not be:

(i) Required to request or to take a leave of absence; or

(ii) Deprived of any right or privilege of regular employment status for refusal to request or failure to take a leave of absence;

(3) To perform the service of a service person who is authorized to be absent from duties without loss of pay;

(4) To temporarily fill a vacancy in a permanent position caused by severance of employment by the resignation, transfer, retirement, permanent disability, dismissal pursuant to section eight, article two of this chapter, or death of the regular service person who had been assigned to the position. Within twenty working days from the commencement of the vacancy, the county board shall fill the vacancy under the procedures set forth in section eight-b of this article and section five, article two of this chapter. The person hired to fill the vacancy shall have and be accorded all rights, privileges and benefits pertaining to the position;

(5) To fill the vacancy created by a regular employee's suspension.

(A) If the suspension is for more than thirty working days, the county board shall post the position of the suspended employee under the procedures set forth in section eight-b of this article.

(B) If a substitute service person is employed to fill the suspended employee's position, the substitute service person:

(i) Acquires regular employment status with the exception of regular employee job-bidding rights;

(ii) Does not accrue regular seniority; and
(iii) Is accorded all other rights, privileges and benefits pertaining to the position until the termination by the county board becomes final or the suspended employee is returned to employment.

(C) If the suspended employee is not returned to his or her job, the county board shall fill the vacancy under the procedures set forth in section eight-b of this article and section five, article two of this chapter; and

(6) To fill temporarily a vacancy in a newly created position prior to employing a service person on a regular basis pursuant to section eight-b of this article.

(b) Service personnel substitutes shall be assigned in the following manner:

(1) The substitute with the greatest length of service time in the vacant category of employment has priority in accepting the assignment throughout the period of the regular service person’s absence or until the vacancy is filled on a regular basis pursuant to section eight-b of this article. Length of service time is calculated from the date a substitute service person begins assigned duties as a substitute in a particular category of employment.

(2) All service personnel substitutes are employed on a rotating basis according to their lengths of service time until each substitute has had an opportunity to perform similar assignments.

(3) Any regular service person employed in the same building or working station and the same classification category of employment as the absent employee shall be given the first opportunity to fill the position of the absent employee on a rotating and seniority basis. In such case the regular service person’s position is filled by a substitute service person. A regular service person assigned to fill the position of an absent employee has the opportunity to hold that position throughout the absence. For the purpose of this section only, all regularly employed school bus operators are
considered to be employed within the same building or
working station.

c) The county board shall return a regular school service
person to the same position held prior to any approved leave
of absence or period of recovery from injury or illness. The
school service person:

(1) Retains all rights, privileges and benefits which had
accrued at the time of the absence or accrued under any other
provision of law during the absence; and

(2) Has all rights, privileges and benefits generally
accorded school service personnel at the time of return to
work.

d) The salary of a substitute service person is
determined:

(1) Based upon his or her years of employment as defined
in section eight of this article;

(2) As provided in the state minimum pay scale set forth
in section eight-a of this article; and

(3) In accordance with the salary schedule of persons
regularly employed in the same position in the county in
which he or she is employed.

e) A substitute service person shall execute a written
contract with the county board pursuant to section five,
article two of this chapter, prior to beginning assigned duties.

f) The following method shall be used to establish a fair,
equitable and uniform system for assigning service personnel
substitutes to their duties for the first time:

(1) The initial order of assigning newly-employed
substitutes is determined by a random selection system
established by the affected substitute employees and
approved by the county board; and
(2) The initial order is effective only until the substitute service personnel have begun their duties for the first time.

(g) A substitute service person who has worked thirty days for a school system has all rights pertaining to suspension, dismissal and contract renewal as are granted to regular service personnel in sections six, seven, eight and eight-a, article two of this chapter.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-8. Authority of certain aides to exercise control over students; compensation; transfers.

(a) Within the limitations provided in this section, any aide who agrees to do so shall stand in the place of the parent or guardian and shall exercise such authority and control over students as is required of a teacher as provided in section one of this article. The principal shall designate aides in the school who agree to exercise that authority on the basis of seniority as an aide and shall enumerate the instances in which the authority shall be exercised by an aide when requested by the principal, assistant principal or professional employee to whom the aide is assigned.

(b) The authority provided for in subsection (a) of this section may not extend to suspending or expelling any student, participating in the administration of corporal punishment or performing instructional duties as a teacher or substitute teacher. However, the authority extends to supervising students undergoing in-school suspension if the instructional duties required by the supervision are limited solely to handing out class work and collecting class work. The authority to supervise students undergoing in-school suspension may not include actual instruction.

(c) An aide designated by the principal under subsection (a) of this section shall receive a salary not less than one pay grade above the highest pay grade held by the service person under section eight-a, article four of this chapter and any
county salary schedule in excess of the minimum requirements of this article.

(d) An aide may not be required by the operation of this section to perform noninstructional duties for an amount of time which exceeds that required under the aide's contract of employment or that required of other aides in the same school unless the assignment of the duties is mutually agreed upon by the aide and the county superintendent, or the superintendent's designated representative, subject to board approval.

(1) The terms and conditions of the agreement shall be in writing, signed by both parties, and may include additional benefits.

(2) The agreement shall be uniform as to aides assigned similar duties for similar amounts of time within the same school.

(3) Aides have the option of agreeing to supervise students and of renewing related assignments annually. If an aide elects not to renew the previous agreement to supervise students, the minimum salary of the aide shall revert to the pay grade specified in section eight-a, article four of this chapter for the classification title held by the aide and any county salary schedule in excess of the minimum requirements of this article.

(e) For the purposes of this section, aide means any aide class title as defined in section eight, article four of this chapter regardless of numeric classification.

(f) Subject to the limitations set forth in subsection (g) of this section, an aide may transfer to another position of employment one time only during any one half of a school term, unless otherwise mutually agreed upon by the aide and the county superintendent, or the superintendent's designee, subject to board approval. During the first year of employment as an aide, an aide may not transfer to another position of employment during the first one-half school term.
(g) Autism mentors and aides providing services to children diagnosed as autistic or with autism spectrum disorder.

(1) Legislative findings and intent.

(A) The Legislature finds that it is not in the best interest of students with autism to have multiple teachers, mentors, aides or any combination thereof during the instructional term; and

(B) It is the intent of the Legislature that filling positions for autism mentors and aides who work with autistic students through transfers of personnel from one position to another after the fifth day prior to the beginning of the instructional term be kept to a minimum.

(2) Transfer limitations and conditions.

(A) After the fifth day prior to the beginning of the instructional term, no service person employed and assigned as an autism mentor or aide who works with autistic students may transfer to another position in the county during that instructional term unless the service person holding that position does not have valid certification.

(B) The provisions of this subsection are subject to the following conditions:

(i) The aide or autism mentor may apply for any posted, vacant position with the successful applicant assuming the position at the beginning of the next instructional term;

(ii) The county board, upon recommendation of the superintendent, may fill a position before the beginning of the next instructional term when it is determined to be in the best interest of the students; and
(iii) The county superintendent shall notify the State Board when a service person employed in a position as autism mentor or aide working with autistic students is transferred to another position after the fifth day prior to the beginning of the instructional term;

(h) Regular service personnel employed in a category of employment other than aide who seek employment as an aide shall hold a high school diploma or shall have received a general educational development certificate and shall have the opportunity to receive appropriate training pursuant to subsection (10), section thirteen, article five, chapter eighteen of this code and section two, article twenty of said chapter.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 14th day of April, 2007.

[Signature]
Governor