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2007 APR -4 PM 3: 55

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

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COMMITTEE SUBSTITUTE

FOR

OFFICE WEST VIRGINIA
SECRETARY OF STATE

H. B. 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.

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

4 (a) "School" means the students and teachers assembled
5 in one or more buildings, organized as a unit;

6 (b) "District" means county school district;

7 (c) "State board" means the West Virginia Board of
8 Education;

9 (d) "County board" or "board" means a county board of
10 education;

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

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

15 (g) "Teacher" means a teacher, supervisor, principal,
16 superintendent or public school librarian; registered
17 professional nurse, licensed by the West Virginia Board of
18 Examiners for Registered Professional Nurses and employed
19 by a county board, who has a baccalaureate degree; or any
20 other person regularly employed for instructional purposes in
21 a public school in this state;

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

32 (i) "Social worker" means a nonteaching school employee
33 who, at a minimum, possesses an undergraduate degree in
34 social work from an accredited institution of higher learning
35 and who provides various professional social work services,
36 activities or methods as defined by the State Board for the
37 benefit of students;

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

42 (k) "Career clusters" means broad groupings of related
43 occupations;

44 (l) "Work-based learning" means a structured activity that
45 correlates with and is mutually supportive of the
46 school-based learning of the student and includes specific
47 objectives to be learned by the student as a result of the
48 activity;

49 (m) "School-age juvenile" means any individual who is
50 entitled to attend or who, if not placed in a residential facility,
51 would be entitled to attend public schools in accordance with:
52 (1) Section five, article two of this chapter; (2) sections
53 fifteen and eighteen, article five of this chapter; or (3) section
54 one, article twenty of this chapter;

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

58 (o) "Low-density county" means a county whose ratio of
59 student population to square miles is less than or equal to the
60 state average ratio as computed by the State Department of
61 Education;

62 (p) "High-density county" means a county whose ratio of
63 student population to square miles is greater than the state
64 average ratio as computed by the State Department of
65 Education; and

66 (q) "Casual deficit" means a deficit of not more than three
67 percent of the approved levy estimate or a deficit that is
68 nonrecurring from year to year.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

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

3 (a) Control and manage all of the schools and school
4 interests for all school activities and upon all school property
5 owned or leased by the county, including:

6 (1) Requiring schools to keep records regarding funds
7 connected with the school or school interests, including all
8 receipts and disbursements of all funds collected or received
9 by:

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

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

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

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

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

24 (B) Designate for this purpose the funds generated;

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

31 (b) Establish:

32 (1) Schools, from preschool through high school;

33 (2) Vocational schools; and

34 (3) Schools and programs for post-high school
35 instruction, subject to approval of the State Board;

36 (c) Close any school:

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

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

48 (d) Consolidate schools;

49 (e) Close any elementary school whose average daily
50 attendance falls below twenty students for two consecutive
51 months. The county board may assign the students to other
52 schools in the district or to schools in adjoining districts. If
53 the teachers in the closed school are not transferred or
54 reassigned to other schools, they shall receive one month's
55 salary;

56 (f) Provide transportation according to rules established
57 by the county board, as follows:

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

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

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

64 (C) Across county lines for students transferred from one
65 district to another by mutual agreement of both county
66 boards. The agreement shall be recorded in the meeting
67 minutes of each participating county board and is subject to
68 the provisions of subsection (h) of this section; and

69 (D) Within available revenues, for students within two
70 miles distance of the school; and

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

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

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

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

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

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

100 (i) Automobile insurance coverage;

101 (ii) Vehicle safety specifications;

102 (iii) School bus or public transit ratings; and

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

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

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

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

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

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

117 (3) The county board may lease buses to:

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

121

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

128 (i) Compensation for bus operators;

129 (ii) Consideration for insurance coverage, repairs and
130 other costs of service; and

131 (iii) Any rules concerning student behavior;

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

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

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

148 (1) Solely from county board funds; and

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

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

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

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

161 (2) Persons employed to teach in the high school or post
162 high school program;

163 (l) At the county board's discretion, employ, contract
164 with or otherwise engage legal counsel in lieu of using the
165 services of the prosecuting attorney to advise, attend to,
166 bring, prosecute or defend, as the case may be, any matters,
167 actions, suits and proceedings in which the county board is
168 interested;

169 (m) Provide appropriate uniforms for school service
170 personnel;

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

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

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

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

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

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

191 (r) Provide information about vocational and higher
192 education opportunities to exceptional students. The county
193 board shall provide in writing to the students and their
194 parents or guardians information relating to programs of
195 vocational education and to programs available at state
196 institutions of higher education. The information may

197 include sources of available funding, including grants,
198 mentorships and loans for students who wish to attend classes
199 at institutions of higher education;

200 (s) Enter into agreements with other county boards for the
201 transfer and receipt of any funds determined to be fair when
202 students are permitted or required to attend school in a
203 district other than the district of their residence. These
204 agreements are subject to the approval of the State Board;
205 and

206 (t) Enter into job-sharing arrangements, as defined in
207 section one, article one, chapter eighteen-a of this Code, with
208 its employees, subject to the following provisions:

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

213 (2) Notwithstanding any contrary provision of this Code
214 or legislative rule and specifically the provisions of article
215 sixteen, chapter five of this Code, a county board that enters
216 into a job-sharing arrangement:

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

220 (B) May not provide insurance benefits of any type to
221 more than one of the job-sharing employees, including any
222 group plan available under the State Public Employees
223 Insurance Act;

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

231 (4) All employees involved in the job-sharing agreement
232 shall meet the requirements of subdivision (3), section two,
233 article sixteen, chapter five of this Code; and

234 (5) When entering into a job-sharing agreement, the
235 county board and the participating employees shall consider
236 issues such as retirement benefits, termination of the job-
237 sharing agreement and any other issue the parties consider
238 appropriate. Any provision in the agreement relating to
239 retirement benefits may not cause any cost to be incurred by
240 the retirement system that is more than the cost that would be
241 incurred if a single employee were filling the position ; and

242 (u) Under rules it establishes for each child, expend an
243 amount not to exceed the proportion of all school funds of the
244 district that each child would be entitled to receive if all the
245 funds were distributed equally among all the children of
246 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.

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

13 (b) A county board may provide for educating resident
14 exceptional children by contracting with other counties or
15 other educational agencies which maintain special education
16 facilities. Fiscal matters shall follow policies approved by
17 the State.

18 (c) The county board shall provide a four-clock-hour
19 program of training for any teacher aide employed to assist
20 teachers in providing services to exceptional children under
21 this article prior to the assignment. The program shall consist
22 of training in areas specifically related to the education of
23 exceptional children, pursuant to rules of the State Board.
24 The training shall occur during normal working hours and an
25 opportunity to be trained shall be provided to service person
26 prior to filling a vacancy in accordance with the provisions of
27 section eight-b, article four, chapter eighteen-a of this Code.

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

32 (1) Providing services to children who have displayed
33 violent behavior or have demonstrated the potential for
34 violent behavior; and

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

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

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

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

1 The definitions contained in section one, article one,
2 chapter eighteen of this Code apply to this chapter. In
3 addition, the following words used in this chapter and in any

4 proceedings pursuant to this chapter have the meanings
5 ascribed to them unless the context clearly indicates a
6 different meaning;

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

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

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

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

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

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

39 (4) "Central office administrator" means a superintendent,

40 associate superintendent, assistant superintendent and other
41 professional educators who are charged with administering
42 and supervising the whole or some assigned part of the total
43 program of the countywide school system. This category
44 includes other appropriate titles or positions with duties that
45 fit within this definition;

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

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

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

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

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

76 (I) "Prospective employable professional person" whether

77 singular or plural, means a certified professional educator
78 who:

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

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

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

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

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

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

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

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

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

108 (B) Listed in a job posting as a regular, full-time position
109 and:

110 (i) Is not filled by a regular, full-time employee; and

111 (ii) Is filled by a substitute employee.

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

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

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

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

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

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

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

14 (c) Service personnel employed in the same classification
15 for more than the two hundred day minimum employment
16 term shall be paid for additional employment at a daily rate
17 of not less than the daily rate paid for the two hundred day
18 minimum employment term.

19 (d) A service person may not be required to report for
20 work more than five days per week without his or her
21 agreement, and no part of any working day may be
22 accumulated by the employer for future work assignments,
23 unless the employee agrees thereto.

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

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

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

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

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

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

49 (B) Is payable entirely from county board funds.

50 (g) When there is a change in classification or when a
51 service person meets the requirements of an advanced
52 classification, his or her salary shall be made to comply with
53 the requirements of this article and any county salary

54 schedule in excess of the minimum requirements of this
55 article, based upon the service person's advanced
56 classification and allowable years of employment.

57 (h) A service person's, contract as provided in section
58 five, article two of this chapter, shall state the appropriate
59 monthly salary the employee is to be paid, based on the class
60 title as provided in this article and on any county salary
61 schedule in excess of the minimum requirements of this
62 article.

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

66 (1) "Pay grade" means the monthly salary applicable to
67 class titles of service personnel;

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

78 (3) "Class title" means the name of the position or job
79 held by a service person;

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

83 (5) "Accountant II" means a person employed to maintain
84 accounting records and to be responsible for the accounting
85 process associated with billing, budgets, purchasing and
86 related operations;

87 (6) "Accountant III" means a person employed in the

88 county board office to manage and supervise accounts
89 payable, payroll procedures, or both;

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

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

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

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

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

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

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

118 (A) Has completed eighteen hours of State Board-
119 approved college credit at a regionally accredited institution
120 of higher education, or

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

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

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

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

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

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

150 (17) "Buyer" means a person employed to review and
151 write specifications, negotiate purchase bids and recommend
152 purchase agreements for materials and services that meet
153 predetermined specifications at the lowest available costs;

154 (18) "Cabinetmaker" means a person employed to
155 construct cabinets, tables, bookcases and other furniture;

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

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

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

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

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

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

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

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

180 (27) "Cook II" means a person employed to interpret
181 menus and to prepare and serve meals in a food service
182 program of a school. This definition includes a service
183 person who has been employed as a "Cook I" for a period of
184 four years;

185 (28) "Cook III" means a person employed to prepare and
186 serve meals, make reports, prepare requisitions for supplies,
187 order equipment and repairs for a food service program of a
188 school system;

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

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

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

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

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

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

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

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

213 (C) The director or coordinator of services shall be
214 classified either as a professional person or a service person
215 for state aid formula funding purposes; and

216 (D) Funding for the position of director or coordinator of
217 services is based upon the employment status of the director
218 or coordinator either as a professional person or a service
219 person;

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

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

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

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

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

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

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

248 (42) "Foreman" means a skilled person employed to

249 supervise personnel who work in the areas of repair and
250 maintenance of school property and equipment;

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

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

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

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

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

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

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

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

278 (51) "Inventory supervisor" means a person employed to
279 supervise or maintain operations in the receipt, storage,
280 inventory and issuance of materials and supplies;

281 (52) "Key punch operator" means a qualified person
282 employed to operate key punch machines or verifying
283 machines;

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

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

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

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

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

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

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

308 (60) "Mechanic" means a person employed to perform
309 skilled duties independently in the maintenance and repair of
310 automobiles, school buses and other mechanical and mobile
311 equipment to use in a county school system;

312 (61) "Mechanic assistant" means a person employed as a
313 mechanic apprentice and helper;

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

319 (63) "Office equipment repairman I" means a person
320 employed as an office equipment repairman apprentice or
321 helper;

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

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

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

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

341 (B) A person who has held or holds an aide title and
342 becomes employed as a paraprofessional shall hold a
343 multiclassification status that includes both aide and
344 paraprofessional titles in accordance with section eight-b of
345 this article; and

346 (C) When a service person who holds an aide title
347 becomes certified as a paraprofessional and is required to
348 perform duties that may not be performed by an aide without
349 paraprofessional certification, he or she shall receive the
350 paraprofessional title pay grade;

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

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

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

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

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

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

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

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

376 (75) "School bus supervisor" means a qualified person
377 employed to assist in selecting school bus operators and

378 routing and scheduling school buses, operate a bus when
379 needed, relay instructions to bus operators, plan emergency
380 routing of buses and promote good relationships with parents,
381 students, bus operators and other employees;

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

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

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

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

411 (80) "Supervisor of transportation" means a qualified
412 person employed to direct school transportation activities
413 properly and safely, and to supervise the maintenance and

414 repair of vehicles, buses and other mechanical and mobile
415 equipment used by the county school system;

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

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

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

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

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

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

440 (j) Notwithstanding any provision in this Code to the
441 contrary, and in addition to the compensation provided for
442 service personnel in section eight-a of this article, each
443 service person is, entitled to all service personnel employee
444 rights, privileges and benefits provided under this or any
445 other chapter of this Code without regard to the employee's
446 hours of employment or the methods or sources of
447 compensation.

448 (k) A service person whose years of employment exceeds
449 the number of years shown and provided for under the state
450 minimum pay scale set forth in section eight-a of this article
451 may not be paid less than the amount shown for the
452 maximum years of employment shown and provided for in
453 the classification in which he or she is employed.

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

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

466 (1) Reclassified by class title; or

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

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

478 (o) Notwithstanding any provision of this Code to the
479 contrary, a service person who holds a continuing contract in
480 a specific job classification and who is physically unable to
481 perform the job's duties as confirmed by a physician chosen
482 by the employee, shall be given priority status over any

483 employee not holding a continuing contract in filling other
484 service personnel job vacancies if the service person is
485 qualified as provided in section eight-e of this article.

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

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

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

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

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

18 (1) Regularly employed service personnel;

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

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

25 (4) Substitute service personnel; and

26 (5) New service personnel.

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

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

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

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

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

46 (B) The executive secretary class title is included in the
47 same classification category as secretaries;

48 (C) Paraprofessional, autism mentor and braille or sign
49 language specialist class titles are included in the same
50 classification category as aides; and

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

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

57 (f) *Extra-duty assignments.*

58 (1) For the purpose of this section, "extra-duty
59 assignments" are defined as irregular jobs that occur
60 periodically or occasionally such as, but not limited to, field
61 trips, athletic events, proms, banquets and band festival trips.
62

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

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

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

80 (g) County boards shall post and date notices of all job
81 vacancies of established existing or newly created positions

82 in conspicuous places for all school service personnel to
83 observe for at least five working days.

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

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

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

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

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

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

115 (j) If a county board is required to reduce the number of

116 service personnel within a particular job classification, the
117 following conditions apply:

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

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

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

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

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

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

145 (4) If there are insufficient vacant positions to permit
146 reemployment of all more senior employees on the preferred
147 recall list within the classification category of the service
148 person who was subject to reduction in force, the position of

149 the released service person shall be posted and filled in
150 accordance with this section.

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

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

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

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

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

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

181 (r) A service person released from employment for lack
182 of need as provided in sections six and eight-a, article two of

183 this chapter shall be accorded preferred recall status on the
184 first day of July of the succeeding school year if the he or she
185 has not been reemployed as a regular employee.

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

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

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

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

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

11 (b) Each year a consolidation or merger is proposed, prior
12 to the implementation of that plan, the superintendent shall
13 cause to be prepared and distributed to all faculty senates and
14 to all schools or other work sites a ballot on which teachers
15 and service personnel may indicate whether or not they desire
16 those affected by school closings to be given priority status
17 in filling new positions. A secret ballot election shall be
18 conducted:

19 (1) In each faculty senate for classroom teachers. The
20 faculty senate chair shall convey the results of the election to
21 the superintendent; and

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

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

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

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

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

50 (1) The most senior teacher from the closed school or
51 schools shall be placed first, the second most senior shall be
52 placed next and so on until all the newly created positions are
53 filled, or until all the teachers in the closed school or schools

54 who wish to transfer into the newly created positions are
55 placed.

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

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

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

71 (c) For the purposes of this section only:

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

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

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

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

1 (a) Seniority accumulation for a regular school service
2 person:

3 (1) Begins on the date the employee enters upon regular
4 employment duties pursuant to a contract as provided in
5 section five, article two of this chapter;

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

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

12 (b) Seniority accumulation for a substitute service person:

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

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

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

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

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

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

33 (e) When implementing a reduction in force, the service

34 person with the least seniority within a particular
35 classification category shall be properly released and placed
36 on the preferred recall list. The particular classification title
37 held by a service person within the classification category
38 may not be considered when implementing a reduction in
39 force.

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

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

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

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

63 (3) The service person then shall be considered as having
64 held uninterrupted service within the class title or
65 classification category from the newly established seniority
66 date. The seniority of an employee who has had a break in
67 the accumulation of seniority as a result of being willfully
68 absent from employment duties because of a concerted work
69 stoppage or strike shall be calculated in the same manner.

70 (h) Beginning on the first day of July, two thousand
71 seven, a substitute school service person shall acquire regular
72 employment status, but not regular employee job bidding
73 rights or regular seniority, if the employee receives a position
74 pursuant to the leave of absence or suspension provisions of
75 subdivisions (2) and (5), subsection (a), section fifteen of this
76 article.

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

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

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

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

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

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

104 (3) If any other service person subsequently acquires
105 seniority identical to the employees involved in the original

106 random selection, a second random selection shall be held
107 within thirty days to determine the seniority ranking of the
108 new employee within the group.

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

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

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

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

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

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

138 (l) A school service person who holds a
139 multiclassification title accrues seniority in each

140 classification category of employment that the employee
 141 holds and is considered an employee of each classification
 142 category contained within his or her multiclassification title.
 143 A multiclassified service person is subject to reduction in
 144 force in any category of employment contained within his or
 145 her multiclassification title, based upon the seniority
 146 accumulated within that category of employment. If a
 147 multiclassified service person is subject to a reduction in
 148 force in one classification category, the service person retains
 149 employment in any of the other classification categories that
 150 he or she holds within his or her multiclassification title. In
 151 that case, the county board shall delete the appropriate
 152 classification title or classification category from the contract
 153 of the multiclassified employee.

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

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

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

1 (a) *Personal Leave.*

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

10 (2) A regular full-time employee who is absent from

11 assigned duties due to accident, sickness, death in the
12 immediate family, or life threatening illness of the
13 employee's spouse, parents or child, or other cause authorized
14 or approved by the board, shall be paid the full salary from
15 his or her regular budgeted salary appropriation during the
16 period which the employee is absent, but not to exceed the
17 total amount of leave to which the employee is entitled.

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

41 (4) The State Board shall maintain a rule to restrict the
42 payment of personal leave benefits and the charging of
43 personal leave time used to an employee receiving a workers'
44 compensation benefit from a claim filed against and billed to
45 the county board by which the person is employed. If an
46 employee is awarded this benefit, the employee shall receive
47 personal leave compensation only to the extent the
48 compensation is required, when added to the workers'
49 compensation benefit, to equal the amount of compensation

50 regularly paid the employee. If personal leave compensation
51 equal to the employee's regular pay is paid prior to the award
52 of the workers' compensation benefit, the amount which,
53 when added to the benefit, is in excess of the employee's
54 regular pay shall be deducted from the employee's
55 subsequent pay. The employee's accrued personal leave days
56 shall be charged only for such days as equal the amount of
57 personal leave compensation required to compensate the
58 employee at the employee's regular rate of pay.

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

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

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

67 (b) *Leave Banks.*

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

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

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

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

84 (C) Shall prohibit the use of days to:

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

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

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

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

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

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

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

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

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

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

111 (ii) Require a substitute employee because of the nature
112 of the work and the duration of the cause for the absence.

113 (4) If funds in any fiscal year, including transfers, are
114 insufficient to pay the full cost of substitutes for meeting the
115 provisions of this section, the remainder shall be paid on or
116 before the thirty-first day of August from the budget of the
117 next fiscal year.

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

§18A-4-10f. Leave donation program.

1 (a) *Definitions.*

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

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

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

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

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

13 (i) Has exhausted all accrued personal leave; and

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

17 (2) "Employee" means a professional educator or school
18 service person who is employed by a county board and
19 entitled to accrue personal leave as a benefit of employment;

20 (3) "Donor employee" means a professional educator or
21 school service person employed by a county board who
22 voluntarily contributes personal leave to another designated
23 employee; and

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

27 (b) *Leave donation program.*

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

33 (2) A county board:

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

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

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

42 (c) *Rule.*

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

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

47 (A) The donor employee voluntarily agrees to the leave
48 transfer;

49 (B) The donor employee selects the employee designated
50 to receive the personal leave transferred; and

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

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

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

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

58 (E) Each personal leave day contributed:

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

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

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

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

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

75 (F) An employee may not be coerced or compelled to
76 contribute to a leave donation program.

§18A-4-15. Employment of service personnel substitutes.

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

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

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

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

12 (B) If the regular service person is on workers'
13 compensation and absent.

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

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

24 (ii) Does not accrue regular seniority; and

25 (iii) Is accorded all other rights, privileges and benefits
26 pertaining to the position until the regular employee returns
27 to the position or ceases to be employed by the county board;
28

29 (D) If a regular or substitute employee fills a vacancy that
30 is related in any manner to a leave of absence or the absence
31 of an employee on workers' compensation as provided in this

32 section, upon termination of the absence the employee shall
33 be returned to his or her original position or status;

34 (E) A service person may not be:

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

36

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

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

42 (4) To temporarily fill a vacancy in a permanent position
43 caused by severance of employment by the resignation,
44 transfer, retirement, permanent disability, dismissal pursuant
45 to section eight, article two of this chapter, or death of the
46 regular service person who had been assigned to the position.

47 Within twenty working days from the commencement of the
48 vacancy, the county board shall fill the vacancy under the
49 procedures set forth in section eight-b of this article and
50 section five, article two of this chapter. The person hired to
51 fill the vacancy shall have and be accorded all rights,
52 privileges and benefits pertaining to the position;

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

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

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

61

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

64 (ii) Does not accrue regular seniority; and

65 (iii) Is accorded all other rights, privileges and benefits
66 pertaining to the position until the termination by the county
67 board becomes final or the suspended employee is returned
68 to employment.

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

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

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

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

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

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

100 considered to be employed within the same building or
101 working station.

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

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

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

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

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

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

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

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

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

127 (1) The initial order of assigning newly-employed
128 substitutes is determined by a random selection system
129 established by the affected substitute employees and
130 approved by the county board; and

131 (2) The initial order is effective only until the substitute
132 service personnel have begun their duties for the first time
133 .

134 (g) A substitute service person who has worked thirty
135 days for a school system has all rights pertaining to
136 suspension, dismissal and contract renewal as are granted to
137 regular service personnel in sections six, seven, eight and
138 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.

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

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

21 (c) An aide designated by the principal under subsection
22 (a) of this section shall receive a salary not less than one pay
23 grade above the highest pay grade held by the service person
24 under section eight-a, article four of this chapter and any

25 county salary schedule in excess of the minimum
26 requirements of this article.

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

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

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

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

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

52 (f) Subject to the limitations set forth in subsection (g) of
53 this section, an aide may transfer to another position of
54 employment one time only during any one half of a school
55 term, unless otherwise mutually agreed upon by the aide and
56 the county superintendent, or the superintendent's designee,
57 subject to board approval. During the first year of
58 employment as an aide, an aide may not transfer to another
59 position of employment during the first one-half school term

60 of employment unless mutually agreed upon by the aide and
61 county superintendent, subject to board approval.

62 (g) *Autism mentors and aides providing services to*
63 *children diagnosed as autistic or with autism spectrum*
64 *disorder.*

65 (1) Legislative findings and intent.

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

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

75 (2) Transfer limitations and conditions.

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

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

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

87 (ii) The county board, upon recommendation of the
88 superintendent, may fill a position before the beginning of the
89 next instructional term when it is determined to be in the best
90 interest of the students; and

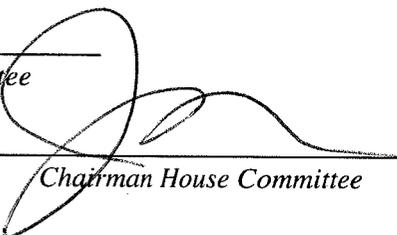
91 (iii) The county superintendent shall notify the State
92 Board when a service person employed in a position as
93 autism mentor or aide working with autistic students is
94 transferred to another position after the fifth day prior to the
95 beginning of the instructional term;

96 (h) Regular service personnel employed in a category of
97 employment other than aide who seek employment as an aide
98 shall hold a high school diploma or shall have received a
99 general educational development certificate and shall have
100 the opportunity to receive appropriate training pursuant to
101 subsection (10), section thirteen, article five, chapter eighteen
102 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.



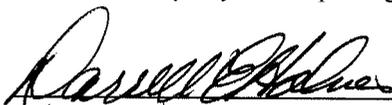
Chairman Senate Committee



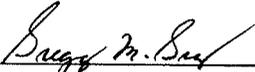
Chairman House Committee

Originating in the House.

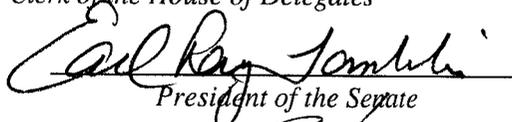
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

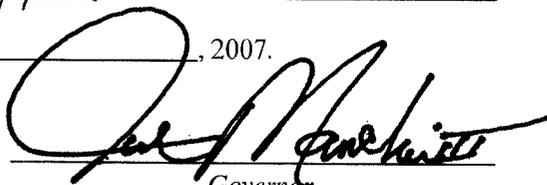


President of the Senate



Speaker of the House of Delegates

The within is approved this the 4th
day of April, 2007.



Governor

PRESENTED TO THE
GOVERNOR

MAR 21 2007

Time 3:50 pm