WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4368

(By Delegates DeLong, Caputo, Fragale, M. Poling, D. Poling and Tucker)

Passed March 6, 2008

In Effect Ninety Days from Passage
AN ACT to amend and reenact §18-5A-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-5-1 of said code; and to further amend said code by adding thereto a new section, designated §18A-5-1c, all relating to student behavior and discipline in schools; reducing school violence and disorderly conduct; alternative learning settings; establishing and implementing consistent and effective discipline policies; legislative findings; and establishing the Bill of Rights and Responsibilities for Students and School Personnel.

Be it enacted by the Legislature of West Virginia:

That §18-5A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-5-1 of said code be amended and reenacted; and that said code be further amended by adding thereto a new section, designated §18A-5-1c, all to read as follows:
CHAPTER 18. EDUCATION.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

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

(a) A local school improvement council shall be established at every school consisting of the following:

1. The principal, who serves as an ex officio member of the council and is entitled to vote;

2. Three teachers elected by the faculty senate of the school;

3. One bus operator who transports students enrolled at the school and one school service person, each elected by the school service personnel employed at the school;

4. Three parent(s), guardian(s) or custodian(s) of students enrolled at the school elected by the parent(s), guardian(s) or custodian(s) members of the school's parent teacher organization. If there is no parent teacher organization, the parent(s), guardian(s) or custodian(s) members shall be elected by the parent(s), guardian(s) or custodian(s) of students enrolled at the school in such manner as may be determined by the principal;

5. Two at-large members appointed by the principal, one of whom resides in the school's attendance area and one of whom represents business or industry, neither of whom is eligible for membership under any of the other elected classes of members;

6. In the case of vocational-technical schools, the vocational director. If there is no vocational director, then
the principal may appoint no more than two additional representatives, one of whom represents business and one of whom represents industry;

(7) In the case of a school with students in grade seven or higher, the student body president or other student in grade seven or higher elected by the student body in those grades.

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

(c) The principal shall arrange for such elections to be held prior to the fifteenth day of September of each school year to elect a council and shall give notice of the elections at least one week prior to the elections being held. To the extent practicable, all elections to select council members shall be held within the same week.

(d) Parent(s), guardian(s) or custodian(s), teachers and service personnel elected to the council shall serve a two-year term and elections shall be arranged in such a manner that no more than two teachers, no more than two parent(s), guardian(s) or custodian(s) and no more than one service person are elected in a given year. All other non-ex officio members shall serve one-year terms.

(e) Council members may only be replaced upon death, resignation, failure to appear at three consecutive meetings of the council for which notice was given, or a change in personal circumstances so that the person is no longer representative of the class of members from which appointed. In the case of a vacancy in an elected position, the chair of the council shall appoint another qualified person to serve the unexpired term of the person being replaced or, in the case of an appointed member of the council, the principal shall appoint a replacement as soon as practicable.
(f) As soon as practicable after the election of council members, and no later than the first day of October of each school year, the principal shall convene an organizational meeting of the school improvement council. The principal shall notify each member in writing at least two employment days in advance of the organizational meeting. At this meeting, the principal shall provide each member with the following:

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

(g) The council shall elect from its membership a chair and two members to assist the chair in setting the agenda for each council meeting. The chair shall serve a term of one year and a person may not serve as chair for more than two consecutive terms. If the chair's position becomes vacant for any reason, the principal shall call a meeting of the council to elect another qualified person to serve the unexpired term. Once elected, the chair is responsible for notifying each member of the school improvement council in writing two employment days in advance of any council meeting.

(h) School improvement councils shall meet at least once every nine weeks or equivalent grading period at the call of the chair or by three fourths of its members.

1. The school improvement council shall schedule any meeting that involves the issue of student discipline pursuant
to subdivision (2), subsection (1) of this section, outside the regularly scheduled working hours of any school employee member of the council.

(2) The school improvement council annually shall conduct a meeting to engage parents, students, school employees and other interested parties in a positive and interactive dialogue regarding effective discipline policies. The meeting shall afford ample time for the dialogue and comply with any applicable provision of state, federal or county board policy, rule or law, as appropriate, regarding student privacy rights.

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

(j) School improvement councils shall be considered for the receipt of school of excellence awards under section three of this article and competitive grant awards under section twenty-nine, article two of this chapter and may receive and expend such grants for the purposes provided in such section. In any and all matters which may fall within the scope of both the school improvement councils and the school curriculum teams authorized in section five of this article, the school curriculum teams have jurisdiction.
(k) In order to promote innovations and improvements in the environment for teaching and learning at the school, a school improvement council shall receive cooperation from the school in implementing policies and programs it may adopt to:

(1) Encourage the involvement of parent(s), guardian(s) or custodian(s) in their child's educational process and in the school;

(2) Encourage businesses to provide time for their employees who are parent(s), guardian(s) or custodian(s) to meet with teachers concerning their child's education;

(3) Encourage advice and suggestions from the business community;

(4) Encourage school volunteer programs and mentorship programs; and

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

(l) Each local school improvement council annually shall develop and deliver a report to the countywide council on productive and safe schools. The report shall include:

(1) Guidelines for the instruction and rehabilitation of students who have been excluded from the classroom, suspended from the school or expelled from the school, the description and recommendation of in-school suspension programs, a description of possible alternative settings, schedules for instruction and alternative education programs and an implementation schedule for such guidelines. The guidelines shall include the following:
(A) A system to provide for effective communication and coordination between school and local emergency services agencies;

(B) A preventive discipline program which may include the responsible students program devised by the West Virginia board of education as adopted by the county board, pursuant to the provisions of subsection (e), section one, article five, chapter eighteen-a of this code; and

(C) A student involvement program, which may include the peer mediation program or programs devised by the West Virginia board of education as adopted by the county board, pursuant to the provisions of subsection (e), section one, article five, chapter eighteen-a of this code; and

(2) The local school improvement council’s findings regarding its examination of the following, which also shall be reported to the county superintendent:

(A) Disciplinary measures at the school; and

(B) The fairness and consistency of disciplinary actions at the school. If the council believes that student discipline at the school is not enforced fairly or consistently, it shall transmit that determination in writing, along with supporting information, to the county superintendent. Within ten days of receiving the report, the superintendent, or designee, shall respond in writing to the council. The county board shall retain and file all such correspondence and maintain it for public review.

(C) Any report or communication made as required by this subdivision shall comply with any applicable provision of state, federal or county board policy, rule or law, as appropriate, regarding student privacy rights.
(m) The council may include in its report to the county-wide council on productive and safe schools provisions of the state board of education policy 4373, student code of conduct, or any expansion of such policy which increases the safety of students in schools in this state and is consistent with the policies and other laws of this state.

(n) Councils may adopt their own guidelines established under this section. In addition, the councils may adopt all or any part of the guidelines proposed by other local school improvement councils, as developed under this section, which are not inconsistent with the laws of this state, the policies of the West Virginia board of education or the policies of the county board.

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

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

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

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

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

(c) The teacher may exclude from his or her classroom or school bus any student who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a student; who willfully disobeys a school employee; or who uses abusive or profane language directed at a school employee. Any student excluded shall be placed under the control of the principal of the school or a designee. The excluded student may be admitted to the classroom or school bus only when the principal, or a designee, provides written certification to the teacher that the student may be readmitted and specifies the specific type of disciplinary action, if any, that was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of the action to the parent(s), guardian(s) or custodian(s). When a student is excluded from a classroom or a school bus two times in one semester, and after exhausting all reasonable
methods of classroom discipline provided in the school discipline plan, the student may be readmitted to the classroom or the school bus only after the principal, teacher and, if possible, the parent(s), guardian(s) or custodian(s) of the student have held a conference to discuss the student’s disruptive behavior patterns, and the teacher and the principal agree on a course of discipline for the student and inform the parent(s), guardian(s) or custodian(s) of the course of action. Thereafter, if the student’s disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting. The Legislature finds that isolating students or placing them in alternative learning centers may be the best setting for chronically disruptive students. The county board shall create more alternative learning centers or expand its capacity for alternative placements, subject to funding, to correct these students’ behaviors so they can return to a regular classroom without engaging in further disruptive behavior.

(d) The Legislature finds that suspension from school is not appropriate solely for a student’s failure to attend class. Therefore, a student may not be suspended from school solely for not attending class. Other methods of discipline may be used for the student which may include, but are not limited to, detention, extra class time or alternative class settings.

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

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

(g) For the purpose of this section:

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

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

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

(h) Teachers shall exercise other authority and perform other duties prescribed for them by law or by the rules of the state board not inconsistent with the provisions of this chapter and chapter eighteen of this code.


(a) The Legislature finds that:

(1) The mission of public schools is to prepare students for equal and responsible citizenship and productive adulthood;

(2) Democratic citizenship and productive adulthood begin with standards of conduct in schools;

(3) Schools should be safe havens for learning with high standards of conduct for students; and

(4) Rights necessarily carry responsibilities.

(b) In recognition of the findings in this section, the following Bill of Rights and Responsibilities for Students and School Personnel is established:

(1) The right to attend a school and ride a bus that is safe, orderly and drug free;

(2) The right to learn and work in a school that has clear discipline codes with fair and consistently enforced consequences for misbehavior;
(3) The right to learn and work in a school that has alternative educational placements for violent or chronically disruptive students;

(4) The right to be treated with courtesy and respect;

(5) The right to attend a school and ride on a bus that is free from bullying;

(6) The right to support from school administrators when enforcing discipline policies;

(7) The right to support from parents, the community, public officials and businesses in their efforts to uphold high standards of conduct; and

(8) The responsibility to adhere to the principles in this Bill of Rights and Responsibilities for Students and School Personnel, and to behave in a manner that guarantees that other students and school personnel enjoy the same rights.
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 enacted this the 17th
day of March, 2008.

Governor