

HB 4368

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OFFICE OF THE
SECRETARY OF STATE

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

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(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.

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

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

5 (2) Three teachers elected by the faculty senate of the
6 school;

7 (3) One bus operator who transports students enrolled at
8 the school and one school service person, each elected by the
9 school service personnel employed at the school;

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

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

23 (6) In the case of vocational-technical schools, the
24 vocational director. If there is no vocational director, then

25 the principal may appoint no more than two additional
26 representatives, one of whom represents business and one of
27 whom represents industry;

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

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

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

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

47 (e) Council members may only be replaced upon death,
48 resignation, failure to appear at three consecutive meetings of
49 the council for which notice was given, or a change in
50 personal circumstances so that the person is no longer
51 representative of the class of members from which appointed.
52 In the case of a vacancy in an elected position, the chair of
53 the council shall appoint another qualified person to serve the
54 unexpired term of the person being replaced or, in the case of
55 an appointed member of the council, the principal shall
56 appoint a replacement as soon as practicable.

57 (f) As soon as practicable after the election of council
58 members, and no later than the first day of October of each
59 school year, the principal shall convene an organizational
60 meeting of the school improvement council. The principal
61 shall notify each member in writing at least two employment
62 days in advance of the organizational meeting. At this
63 meeting, the principal shall provide each member with the
64 following:

65 (1) A copy of the current applicable sections of this
66 code;

67 (2) Any state board rule or regulation promulgated
68 pursuant to the operation of these councils; and

69 (3) Any information as may be developed by the
70 department of education on the operation and powers of local
71 school improvement councils and their important role in
72 improving student and school performance and progress.

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

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

86 (1) The school improvement council shall schedule any
87 meeting that involves the issue of student discipline pursuant

88 to subdivision (2), subsection (l) of this section, outside the
89 regularly scheduled working hours of any school employee
90 member of the council.

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

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

111 (j) School improvement councils shall be considered for
112 the receipt of school of excellence awards under section three
113 of this article and competitive grant awards under section
114 twenty-nine, article two of this chapter and may receive and
115 expend such grants for the purposes provided in such section.
116 In any and all matters which may fall within the scope of
117 both the school improvement councils and the school
118 curriculum teams authorized in section five of this article, the
119 school curriculum teams have jurisdiction.

120 (k) In order to promote innovations and improvements
121 in the environment for teaching and learning at the school, a
122 school improvement council shall receive cooperation from
123 the school in implementing policies and programs it may
124 adopt to:

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

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

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

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

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

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

140 (1) Guidelines for the instruction and rehabilitation of
141 students who have been excluded from the classroom,
142 suspended from the school or expelled from the school, the
143 description and recommendation of in-school suspension
144 programs, a description of possible alternative settings,
145 schedules for instruction and alternative education programs
146 and an implementation schedule for such guidelines. The
147 guidelines shall include the following:

148 (A) A system to provide for effective communication
149 and coordination between school and local emergency
150 services agencies;

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

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

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

164 (A) Disciplinary measures at the school; and

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

174 (C) Any report or communication made as required by
175 this subdivision shall comply with any applicable provision
176 of state, federal or county board policy, rule or law, as
177 appropriate, regarding student privacy rights.

178 (m) The council may include in its report to the county-
179 wide council on productive and safe schools provisions of the
180 state board of education policy 4373, student code of
181 conduct, or any expansion of such policy which increases the
182 safety of students in schools in this state and is consistent
183 with the policies and other laws of this state.

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

191 (o) The state board of education shall provide assistance
192 to a local school improvement council upon receipt of a
193 reasonable request for that assistance. The state board also
194 may solicit proposals from other parties or entities to provide
195 orientation training for local school improvement council
196 members and may enter into contracts or agreements for that
197 purpose. Any training for members shall meet the guidelines
198 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.

1 (a) The teacher shall stand in the place of the parent(s),
2 guardian(s) or custodian(s) in exercising authority over the
3 school and has control of all students enrolled in the school

4 from the time they reach the school until they have returned
5 to their respective homes, except that where transportation of
6 students is provided, the driver in charge of the school bus or
7 other mode of transportation shall exercise such authority and
8 control over the students while they are in transit to and from
9 the school.

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

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

38 methods of classroom discipline provided in the school
39 discipline plan, the student may be readmitted to the
40 classroom or the school bus only after the principal, teacher
41 and, if possible, the parent(s), guardian(s) or custodian(s) of
42 the student have held a conference to discuss the student's
43 disruptive behavior patterns, and the teacher and the principal
44 agree on a course of discipline for the student and inform the
45 parent(s), guardian(s) or custodian(s) of the course of action.
46 Thereafter, if the student's disruptive behavior persists, upon
47 the teacher's request, the principal may, to the extent feasible,
48 transfer the student to another setting. The Legislature finds
49 that isolating students or placing them in alternative learning
50 centers may be the best setting for chronically disruptive
51 students. The county board shall create more alternative
52 learning centers or expand its capacity for alternative
53 placements, subject to funding, to correct these students'
54 behaviors so they can return to a regular classroom without
55 engaging in further disruptive behavior.

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

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

65 (f) Each county board is solely responsible for the
66 administration of proper discipline in the public schools of
67 the county and shall adopt policies consistent with the
68 provisions of this section to govern disciplinary actions.
69 These policies shall encourage the use of alternatives to
70 corporal punishment, providing for the training of school

71 personnel in alternatives to corporal punishment and for the
72 involvement of parent(s), guardian(s) or custodian(s) in the
73 maintenance of school discipline. The county boards shall
74 provide for the immediate incorporation and implementation
75 in the schools of a preventive discipline program which may
76 include the responsible student program and a student
77 involvement program which may include the peer mediation
78 program, devised by the West Virginia Board of Education.
79 Each county board may modify those programs to meet the
80 particular needs of the county. The county boards shall
81 provide in-service training for teachers and principals relating
82 to assertive discipline procedures and conflict resolution.
83 The county boards also may establish cooperatives with
84 private entities to provide middle educational programs
85 which may include programs focusing on developing
86 individual coping skills, conflict resolution, anger control,
87 self-esteem issues, stress management and decision making
88 for students and any other program related to preventive
89 discipline.

90 (g) For the purpose of this section:

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

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

101 (3) "Principal" means the principal, assistant principal,
102 vice principal or the administrative head of the school or a

103 professional personnel designee of the principal or the
104 administrative head of the school.

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

**§18A-5-1c. Bill of Rights and Responsibilities for Students and
School Personnel.**

1 (a) The Legislature finds that:

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

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

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

9 (4) Rights necessarily carry responsibilities.

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

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

15 (2) The right to learn and work in a school that has clear
16 discipline codes with fair and consistently enforced
17 consequences for misbehavior;

18 (3) The right to learn and work in a school that has
19 alternative educational placements for violent or chronically
20 disruptive students;

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


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

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

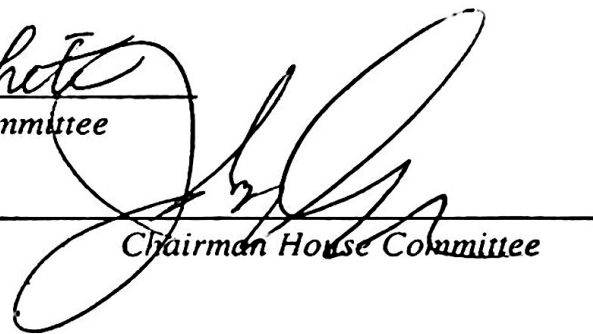
26 (7) The right to support from parents, the community,
27 public officials and businesses in their efforts to uphold high
28 standards of conduct; and

29 (8) The responsibility to adhere to the principles in this
30 Bill of Rights and Responsibilities for Students and School
31 Personnel, and to behave in a manner that guarantees that
32 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.

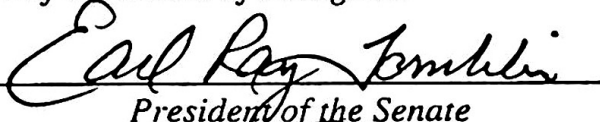
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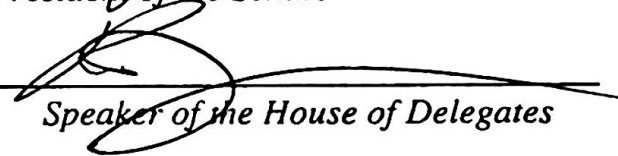
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within wappined this the 17th
day of May, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 11 2008

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