WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008

ENROLLED

House Bill No. 4478

(By Delegates M. Poling, Paxton, Wysong, Rodighiero,
Ellis, Duke, Rowan, Gall and Wells)

Passed March 4, 2008

In Effect Ninety Days from Passage
AN ACT to amend and reenact §18A-5-8 of the Code of West Virginia, 1931, as amended, relating to authority of certain aides to exercise control over students; compensation; transfers and limitations thereof; and expanding the classifications of service personnel for which transfers during the instructional term are limited.

Be it enacted by the Legislature of West Virginia:

That §18A-5-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

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

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

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

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

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

(1) The terms and conditions of the agreement shall be in
writing, signed by both parties, and may include additional
benefits.
(2) The agreement shall be uniform as to aides assigned similar duties for similar amounts of time within the same school.

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

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

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

(g) Autism mentors and aides providing services to children diagnosed as autistic or with autism spectrum disorder; and paraprofessionals, interpreters and aides providing one-on-one services to students with exceptionalities as required by the students' individualized education programs (IEP).
(1) Legislative findings and intent.

(A) The Legislature finds that it is not in the best interest of a student with autism or a student with an exceptionality whose IEP requires one-on-one services to have multiple teachers, mentors, aides, paraprofessionals, interpreters or any combination thereof during the instructional term; and

(B) It is the intent of the Legislature that filling positions through transfers of personnel from one position to another after the fifth day prior to the beginning of the instructional term be kept to a minimum for autism mentors and aides who work with students with autism and for paraprofessionals, interpreters and aides who work with students with exceptionalities whose IEPs require one-on-one services.

(2) Transfer limitations and conditions.

(A) Notwithstanding the provisions of subsection (f) of this section, after the fifth day prior to the beginning of the instructional term, a service person may not transfer to another position in the county during that instructional term, unless he or she does not have valid certification, if the service person is employed and assigned as an autism mentor or aide who works with students with autism, or as a paraprofessional, interpreter or aide who works with a student with an exceptionality whose IEP requires one-on-one services.

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

(i) The aide, autism mentor, paraprofessional or interpreter may apply for any posted, vacant position with the successful applicant assuming the position at the beginning of the next instructional term;
(ii) The county board, upon recommendation of the superintendent, may fill a position before the beginning of the next instructional term when it is determined to be in the best interest of the students; and

(iii) The county superintendent shall notify the State Board when a service person who is subject to the provisions of this subsection is transferred to another position after the fifth day prior to the beginning of the instructional term;

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

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 approved this the 12th day of March, 2008.

Governor