

HB 4478

FILED

2008 MAR 12 AM 4: 48

OFFICE OF THE
SECRETARY OF STATE

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

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WEST VIRGINIA
LEGISLATURE
OFFICE OF CLERK

(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.

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 does 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 does 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 county
34 board approval.

35 (l) 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 county 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 county board approval.

62 (g) Autism mentors and aides providing services to
63 children diagnosed as autistic or with autism spectrum
64 disorder; and paraprofessionals, interpreters and aides
65 providing one-on-one services to students with
66 exceptionalities as required by the students' individualized
67 education programs (IEP).

68 (1) Legislative findings and intent.

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

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

81 (2) Transfer limitations and conditions.

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

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

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

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

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

106 (h) Regular service personnel employed in a category of
107 employment other than aide who seek employment as an aide
108 shall hold a high school diploma or shall have received a
109 general educational development certificate and shall have
110 the opportunity to receive appropriate training pursuant to
111 subsection (j), section thirteen, article five, chapter eighteen
112 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.

Chandy White
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Darrell Gibbs
Clerk of the Senate

Suzanne R. Lee
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *approved* this the *12th*
day of *March*, 2008.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

MAR 7 X 2008

Time 9:35 pm