WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4512

(By Delegates Caputo, Paxton, Perry, Fragale and D. Walker)

Passed March 13, 2010
In Effect July 1, 2010
AN ACT to amend and reenact §18A-4-8, §18A-4-8b and §18A-4-8e of the Code of West Virginia, 1931, as amended, all relating to school service personnel; limiting assignments of director or coordinator of services; requiring school bus supervisor to be certified to operate a bus or previously certified to operate a bus; requiring supervisor of transportation and multiclassification position that includes this title first employed after certain date to have five years of experience working in transportation department and defining experience; defining itinerant status, assignments, posting, limit on positions, and exclusions; requiring additional content of notice of a job vacancy generally and aide classification category specifically; and modifying test frequency for re-certifying a bus operators.

Be it enacted by the Legislature of West Virginia:

That §18A-4-8, §18A-4-8b and §18A-4-8e of the Code of West Virginia, 1931, as amended. be amended and reenacted. all to read as follows:
ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

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

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

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

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

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

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

(f) A custodian, aide, maintenance, office and school
lunch service person required to work a daily work schedule
that is interrupted shall be paid additional compensation in
accordance with this subsection.

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

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

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

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

(B) Is payable entirely from county board funds.

(g) When there is a change in classification or when a
service person meets the requirements of an advanced
classification, his or her salary shall be made to comply with
the requirements of this article and any county salary
schedule in excess of the minimum requirements of this
article, based upon the service person’s advanced
classification and allowable years of employment.
(h) A service person’s contract, as provided in section five, article two of this chapter, shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and on any county salary schedule in excess of the minimum requirements of this article.

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

1. “Pay grade” means the monthly salary applicable to class titles of service personnel;

2. “Years of employment” means the number of years which an employee classified as a service person has been employed by a county board in any position prior to or subsequent to the effective date of this section and includes service in the Armed Forces of the United States, if the employee was employed at the time of his or her induction. For the purpose of section eight-a of this article, years of employment is limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article;

3. “Class title” means the name of the position or job held by a service person;

4. “Accountant I” means a person employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;

5. “Accountant II” means a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;
(6) "Accountant III" means a person employed in the county board office to manage and supervise accounts payable, payroll procedures, or both;

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

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

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

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

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

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

(11) "Aide IV" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and
(A) Has completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or

(B) Has completed fifteen hours of state board-approved college credit at a regionally accredited institution of higher education; and has successfully completed an in-service training program determined by the state board to be the equivalent of three hours of college credit;

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

(13) “Auditor” means a person employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;

(14) “Autism mentor” means a person who works with autistic students and who meets standards and experience to be determined by the state board. A person who has held or holds an aide title and becomes employed as an autism mentor shall hold a multiclassification status that includes both aide and autism mentor titles, in accordance with section eight-b of this article;

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

(16) “Bus operator” means a person employed to operate school buses and other school transportation vehicles as provided by the state board;
(17) "Buyer" means a person employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs;

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

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

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

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

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

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

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

(25) "Computer operator" means a qualified person employed to operate computers;
(26) “Cook I” means a person employed as a cook’s helper;

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

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

(29) “Crew leader” means a person employed to organize the work for a crew of maintenance employees to carry out assigned projects;

(30) “Custodian I” means a person employed to keep buildings clean and free of refuse;

(31) “Custodian II” means a person employed as a watchman or groundsman;

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

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

(34) “Director or coordinator of services” means an employee of a county board who is assigned to direct a department or division.
(A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title;

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

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

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

(E) A person employed under the class title “director or coordinator of services” may not be exclusively assigned to perform the duties ascribed to any other class title as defined in this subsection: Provided, That nothing in this paragraph prohibits a person in this position from being multiclassified;

(35) “Draftsman” means a person employed to plan, design and produce detailed architectural/engineering drawings;

(36) “Electrician I” means a person employed as an apprentice electrician helper or one who holds an electrician helper license issued by the State Fire Marshal;

(37) “Electrician II” means a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the State Fire Marshal;
(38) “Electronic technician I” means a person employed at the apprentice level to repair and maintain electronic equipment;

(39) “Electronic technician II” means a person employed at the journeyman level to repair and maintain electronic equipment;

(40) “Executive secretary” means a person employed as secretary to the county school superintendent or as a secretary who is assigned to a position characterized by significant administrative duties;

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

(42) “Foreman” means a skilled person employed to supervise personnel who work in the areas of repair and maintenance of school property and equipment;

(43) “General maintenance” means a person employed as a helper to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system;

(44) “Glazier” means a person employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;
(45) "Graphic artist" means a person employed to prepare graphic illustrations;

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

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

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

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

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

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

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

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

294 (54) “Locksmith” means a person employed to repair and maintain locks and safes;

296 (55) “Lubrication man” means a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;

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

304 (57) “Mail clerk” means a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

307 (58) “Maintenance clerk” means a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

311 (59) “Mason” means a person employed to perform tasks connected with brick and block laying and carpentry tasks related to these activities;

314 (60) “Mechanic” means a person employed to perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

318 (61) “Mechanic assistant” means a person employed as a mechanic apprentice and helper;
(62) "Multiclassification" means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale shall be the higher pay grade of the class titles involved;

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

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

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

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

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

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

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

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

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

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

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

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

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

(73) "Roofing/sheet metal mechanic" means a person
employed to install, repair, fabricate and maintain roofs,
gutters, flashing and duct work for heating and ventilation;
“Sanitation plant operator” means a person employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant’s effluent for human consumption or environmental protection;

“School bus supervisor” means a qualified person:

(A) Employed to assist in selecting school bus operators and routing and scheduling school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promote good relationships with parents, students, bus operators and other employees; and

(B) Certified to operate a bus or previously certified to operate a bus;

“Secretary I” means a person employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;

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

“Secretary III” means a person assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or
408 departments with particular responsibilities in purchasing and
409 financial control or any person who has served for eight years
410 in a position which meets the definition of "secretary II" or
411 "secretary III";

412 (79) "Supervisor of maintenance" means a skilled person
413 who is not a professional person or professional educator as
414 defined in section one, article one of this chapter. The
415 responsibilities include directing the upkeep of buildings and
416 shops, and issuing instructions to subordinates relating to
417 cleaning, repairs and maintenance of all structures and
418 mechanical and electrical equipment of a county board;

419 (80) "Supervisor of transportation" means a qualified
420 person employed to direct school transportation activities
421 properly and safely, and to supervise the maintenance and
422 repair of vehicles, buses and other mechanical and mobile
423 equipment used by the county school system. After July 1,
424 2010, all persons employed for the first time in a position
425 with this classification title or in a multi-classification
426 position that includes this title shall have five years of
427 experience working in the transportation department of a
428 county board. Experience working in the transportation
429 department shall consist of serving as a bus operator, bus
430 aide, assistant mechanic, mechanic, chief mechanic or in a
431 clerical position within the transportation department;

432 (81) "Switchboard operator-receptionist" means a person
433 employed to refer incoming calls, to assume contact with the
434 public, to direct and to give instructions as necessary, to
435 operate switchboard equipment and to provide clerical
436 assistance;

437 (82) "Truck driver" means a person employed to operate
438 light or heavy duty gasoline and diesel-powered vehicles;
(83) "Warehouse clerk" means a person employed to be responsible for receiving, storing, packing and shipping goods;

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

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

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

(j) Notwithstanding any provision in this code to the contrary, and in addition to the compensation provided for service personnel in section eight-a of this article, each service person is entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to the employee’s hours of employment or the methods or sources of compensation.

(k) A service person whose years of employment exceeds the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he or she is employed.
(l) Each county board shall review each service person’s job classification annually and shall reclassify all service persons as required by the job classifications. The state superintendent may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order a county board to correct immediately any improper classification matter and, with the assistance of the Attorney General, shall take any legal action necessary against any county board to enforce the order.

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

(1) Reclassified by class title; or

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

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

(o) Notwithstanding any provision of this code to the contrary, a service person who holds a continuing contract in a specific job classification and who is physically unable to perform the job’s duties as confirmed by a physician chosen by the employee, shall be given priority status over any employee not holding a continuing contract in filling other service personnel job vacancies if the service person is qualified as provided in section eight-e of this article.
(p) Any person employed in an aide position on the effective date of this section may not be transferred or subject to a reduction in force for the purpose of creating a vacancy for the employment of a licensed practical nurse.

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

(r) Itinerant status means a service person who does not have a fixed work site and may be involuntarily reassigned to another work site. A service person is considered to hold itinerant status if he or she has bid upon a position posted as itinerant or has agreed to accept this status. A county board may establish positions with itinerant status only within the aide and autism mentor classification categories and only when the job duties involve exceptional students. A service person with itinerant status may be assigned to a different work site upon written notice ten days prior to the reassignment without the consent of the employee and without posting the vacancy. A service person with itinerant status may be involuntarily reassigned no more than twice during the school year. At the conclusion of each school year, the county board shall post and fill, pursuant to section eight-b of this article, all positions that have been filled without posting by a service person with itinerant status. A service person who is assigned to a beginning and ending work site and travels at the expense of the county board to
other work sites during the daily schedule, shall not be considered to hold itinerant status.

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

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

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

(1) Regularly employed service personnel who hold a classification title within the classification category of the vacancy;

(2) Service personnel who have held a classification title within the classification category of the vacancy whose employment has been discontinued in accordance with this section;

(3) Regularly employed service personnel who do not hold a classification title within the classification category of vacancy;
(4) Service personnel who have not held a classification title within the classification category of the vacancy and whose employment has been discontinued in accordance with this section;

(5) Substitute service personnel who hold a classification title within the classification category of the vacancy;

(6) Substitute service personnel who do not hold a classification title within the classification category of the vacancy; and

(7) New service personnel.

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

(d) A promotion means any change in employment that the service person considers to improve his or her working circumstance within the classification category of employment.

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

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

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

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

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

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

(3) The assignment of an aide to a particular position within a school is based on seniority within the aide classification category if the aide is qualified for the position.

(4) Assignment of a custodian to work shifts in a school or work site is based on seniority within the custodian classification category.

(e) For purposes of determining seniority under this section a service person’s seniority begins on the date that he or she enters into the assigned duties.

(f) Extra-duty assignments. —

(1) For the purpose of this section, “extra-duty assignment” means an irregular job that occurs periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

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

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

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

(g) County boards shall post and date notices of all job vacancies of existing or newly created positions in conspicuous places for all school service personnel to observe for at least five working days.

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

(2) Notice of a job vacancy shall include the job description, the period of employment, the work site, the starting and ending time of the daily shift, the amount of pay and any benefits and other information that is helpful to prospective applicants to understand the particulars of the job. The notice of a job vacancy in the aide classification categories shall include the program or primary assignment of the position. Job postings for vacancies made pursuant to this section shall be written to ensure that the largest possible pool of qualified applicants may apply. Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant.

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

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

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

(i) The seniority of a service person is determined on the
basis of the length of time the employee has been employed
by the county board within a particular job classification. For
the purpose of establishing seniority for a preferred recall list
as provided in this section, a service person who has been
employed in one or more classifications retains the seniority
accrued in each previous classification.

(j) If a county board is required to reduce the number of
service personnel within a particular job classification, the
following conditions apply:

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

(2) If there is no job vacancy for employment within that
classification or grades of classification, the service person is
employed in any other job classification which he or she
previously held with the county board if there is a vacancy
and retains any seniority accrued in the job classification or
grade of classification.
(k) After a reduction in force or transfer is approved, but prior to August 1, a county board in its sole and exclusive judgment may determine that the reason for any particular reduction in force or transfer no longer exists.

(1) If the board makes this determination, it shall rescind the reduction in force or transfer and notify the affected employee in writing of the right to be restored to his or her former position of employment.

(2) The affected employee shall notify the county board of his or her intent to return to the former position of employment within five days of being notified or lose the right to be restored to the former position.

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

(4) If there are insufficient vacant positions to permit reemployment of all more senior employees on the preferred recall list within the classification category of the service person who was subject to reduction in force, the position of the released service person shall be posted and filled in accordance with this section.

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

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

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

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

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

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

(r) A service person released from employment for lack
of need as provided in sections six and eight-a, article two of
this chapter is accorded preferred recall status on July 1 of
the succeeding school year if he or she has not been
reemployed as a regular employee.

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

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

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

§18A-4-8e. Competency testing for service personnel; and
recertification testing for bus operators.

(a) The State Board of Education shall develop and make
available competency tests for all of the classification titles
defined in section eight of this article and listed in section
eight-a of this article for service personnel. Each
classification title defined and listed is considered a separate
classification category of employment for service personnel
and has a separate competency test, except for those class
titles having Roman numeral designations, which are
considered a single classification of employment and have a
single competency test.

(1) The cafeteria manager class title is included in the
same classification category as cooks and has the same
competency test.

(2) The executive secretary class title is included in the
same classification category as secretaries and has the same
competency test.

(3) The classification titles of chief mechanic, mechanic
and assistant mechanic are included in one classification title
and have the same competency test.
(b) The purpose of these tests is to provide county boards a uniform means of determining whether school service personnel who do not hold a classification title in a particular category of employment meet the definition of the classification title in another category of employment as defined in section eight of this article. Competency tests may not be used to evaluate employees who hold the classification title in the category of their employment.

(c) The competency test consists of an objective written or performance test, or both. Applicants may take the written test orally if requested. Oral tests are recorded mechanically and kept on file. The oral test is administered by persons who do not know the applicant personally.

(1) The performance test for all classifications and categories other than bus operator is administered by an employee of the county board or an employee of a multicounty vocational school that serves the county at a location designated by the superintendent and approved by the board. The location may be a vocational school that serves the county.

(2) A standard passing score is established by the state Department of Education for each test and is used by county boards.

(3) The subject matter of each competency test is commensurate with the requirements of the definitions of the classification titles as provided in section eight of this article. The subject matter of each competency test is designed in such a manner that achieving a passing grade does not require knowledge and skill in excess of the requirements of the definitions of the classification titles. Achieving a passing score conclusively demonstrates the qualification of an applicant for a classification title.
(4) Once an employee passes the competency test of a classification title, the applicant is fully qualified to fill vacancies in that classification category of employment as provided in section eight-b of this article and may not be required to take the competency test again.

(d) An applicant who fails to achieve a passing score is given other opportunities to pass the competency test when making application for another vacancy within the classification category.

(e) Competency tests are administered to applicants in a uniform manner under uniform testing conditions. County boards are responsible for scheduling competency tests, notifying applicants of the date and time of the one day of training prior to taking the test, and the date and time of the test. County boards may not use a competency test other than the test authorized by this section.

(f) When scheduling of the competency test conflicts with the work schedule of a school employee who has applied for a vacancy, the employee is excused from work to take the competency test without loss of pay.

(g) A minimum of one day of appropriate in-service training is provided to employees to assist them in preparing to take the competency tests.

(h) Competency tests are used to determine the qualification of new applicants seeking initial employment in a particular classification title as either a regular or substitute employee.

(i) Notwithstanding any provisions in this code to the contrary, once an employee holds or has held a classification title in a category of employment, that employee is
considered qualified for the classification title even though
that employee no longer holds that classification.

(j) The requirements of this section do not alter the
definitions of class titles as provided in section eight of this
article or the procedure and requirements of section eight-b
of this article.

(k) Notwithstanding any other provision of this code to
the contrary and notwithstanding any rules of the school
board concerning school bus operator certification in effect
on the effective date of this section, the certification test for
school bus operators shall be required as follows, and school
bus operators shall not be required to take the certification
test more frequently:

(1) For substitute school bus operators and for school bus
operators with regular employee status but on a probationary
contract, the certification test shall be administered annually;

(2) For school bus operators with regular employee status
and continuing contract status, the certification test shall be
administered triennially; and

(3) For substitute school bus operators who are retired
from a county board and who at the time of retirement had
ten years of experience as a regular full-time bus operator,
the certification test shall be administered triennially.

The state board shall promulgate in accordance with
article three-b, chapter twenty-nine-a of this code, revised
rules in compliance with this subsection.
That the Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

In effect July 1, 2010.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within was approved this the __ day of __, 2010.

[Signature]
Governor