

**WEST VIRGINIA LEGISLATURE** FILED

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**2016 REGULAR SESSION**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4566**

(BY DELEGATES ESPINOSA, DUKE, STATLER

AND D. EVANS)

[Passed March 12, 2016; in effect ninety days from passage.]

HB 4566

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**(BY DELEGATES ESPINOSA, DUKE, STATLER**

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**[Passed March 12, 2016; in effect ninety days from passage.]**

1 AN ACT to amend and reenact §18-4-2 of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §18A-2-2, §18A-2-5a, §18A-2-6, §18A-2-7 and §18A-2-8a of said code; to  
3 amend said code by adding thereto a new section, designated §18A-2-7b; to amend and  
4 reenact, §18A-4-7a, §18A-4-8b and §18A-4-8e of said code; and to amend and reenact  
5 §18A-5-8 of said code, all relating to school personnel; including assistant and associate  
6 superintendents under provisions for permanent administrative certification for  
7 superintendents; changing deadline for county board vote on termination of continuing  
8 contracts of teachers; requiring the department to report on database system certain  
9 disqualifications to teach; changing deadlines for teachers and service personnel to give  
10 notice of retirement to qualify for early notification payment; changing deadline for county  
11 board vote on termination of continuing contracts of service persons; changing deadline  
12 for notice of consideration for transfer; changing deadline for hearing on proposed transfer;  
13 changing deadline to provide list of employees considered for transfer to county board;  
14 changing method of notification and documentation of receipt of notice to employees  
15 recommended for transfer; making technical alignment of dates on personnel action and  
16 foreseen need for personnel; consolidating limitations on employee transfers after  
17 twentieth day prior to instructional term; removing reports to state superintendent;  
18 removing exemption for position vacated but not posted; changing transfer limit to  
19 twentieth day for prior for service person employed and assigned as autism mentor or  
20 certain aid, paraprofessional, interpreter or early childhood assistant teacher; limiting  
21 transfers service persons after the twentieth day prior with certain exceptions; changing  
22 deadline providing county board list of probationary teachers recommended for rehire;  
23 providing for filling position known on or before March 1 to exist for the next school year  
24 and requiring employees subject to release to be considered prior to posting for application  
25 for nonemployees; removing requirement to submit lateral transfer policies to state board  
26 to be complied for reports to LOCEA; facilitating postings for longer than the five-day

27 minimum; removing requirement to any applicant of status of his or her application after  
28 hiring decision made; changing requirements for notice and receipt notification to persons  
29 on preferred recall of all position openings; requiring periodic review and update of service  
30 personnel competency tests; removing requiring requirement for minimum one day in-  
31 service training to assist preparation for competency tests; removing obsolete language  
32 and making technical improvements.

*Be it enacted by the Legislature of West Virginia:*

1 That §18-4-2 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; that §18A-2-2, §18A-2-5a, §18A-2-8, §18A-2-7 and §18A-2-8a of said code be  
3 amended and reenacted; that said code be amended by adding thereto a new section, designated  
4 §18A-2-7b; that §18A-4-7a, §18A-4-8b and §18A-4-8e of said code be amended and reenacted;  
5 and that §18A-5-8 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.**

#### **§18-4-2. Qualifications; health certificate; disability; acting superintendent.**

1 (a) Each county superintendent shall hold a professional administrative certificate  
2 endorsed for superintendent, or a first class permit endorsed for superintendent, subject to the  
3 following:

4 (1) A superintendent who holds a first class permit may be appointed for one year only,  
5 and may be reappointed two times for an additional year each upon an annual evaluation by the  
6 county board and a determination of satisfactory performance and reasonable progress toward  
7 completion of the requirements for a professional administrative certificate endorsed for  
8 superintendent;

9 (2) Any candidate for superintendent, assistant superintendent or associate  
10 superintendent, who possesses an earned doctorate from an accredited institution of higher

11 education and either has completed three successful years of teaching in public education or has  
12 the equivalent of three years of experience in management or supervision as defined by state  
13 board rule, after employment by the county board shall be granted a permanent administrative  
14 certificate and shall be a licensed county superintendent;

15 (3) The state board shall promulgate a legislative rule in accordance with article three-b,  
16 chapter twenty-nine-a of this code, to address those cases where a county board finds that course  
17 work needed by the county superintendent who holds a first class permit is not available or is not  
18 scheduled at state institutions of higher education in a manner which will enable the county  
19 superintendent to complete normal requirements for a professional administrative certificate  
20 within the three-year period allowed under the permit; and

21 (4) Any person employed as assistant superintendent or educational administrator prior to  
22 June 27, 1988, and who was previously employed as superintendent is not required to hold the  
23 professional administrative certificate endorsed for superintendent.

24 (b) In addition to other requirements set forth in this section, a county superintendent shall  
25 meet the following health-related conditions of employment:

26 (1) Before entering upon the discharge of his or her duties, file with the president of the  
27 county board a certificate from a licensed physician certifying the following:

28 (A) A tuberculin skin test, of the type Mantoux test (PPD skin test), approved by the  
29 Director of the Division of Health, has been made within four months prior to the beginning of the  
30 term of the county superintendent; and

31 (B) The county superintendent does not have tuberculosis in a communicable state based  
32 upon the test results and any further study;

33 (2) After completion of the initial test, the county superintendent shall have an approved  
34 tuberculin skin test once every two years or more frequently if medically indicated. Positive  
35 reactors to the skin test are to be referred immediately to a physician for evaluation and indicated  
36 treatment or further studies;

37           (3) A county superintendent who is certified by a licensed physician to have tuberculosis  
38 in a communicable stage shall have his or her employment discontinued or suspended until the  
39 disease has been arrested and is no longer communicable; and

40           (4) A county superintendent who fails to complete required follow-up examinations as set  
41 forth in this subsection shall be suspended from employment until a report of examination is  
42 confirmed.

## **CHAPTER 18A. SCHOOL PERSONNEL.**

### **ARTICLE 2. SCHOOL PERSONNEL.**

#### **§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof; written notice bonus for teachers and professional personnel.**

1           (a) Before entering upon their duties, all teachers shall execute a contract with their county  
2 boards, which shall state the salary to be paid and shall be in the form prescribed by the state  
3 superintendent. Each contract shall be signed by the teacher and by the president and secretary  
4 of the county board and shall be filed, together with the certificate of the teacher, by the secretary  
5 of the office of the county board. When necessary to facilitate the employment of employable  
6 professional personnel and prospective and recent graduates of teacher education programs who  
7 have not yet attained certification, the contract may be signed upon the condition that the  
8 certificate is issued to the employee prior to the beginning of the employment term in which the  
9 employee enters upon his or her duties.

10           (b) Each teacher's contract, under this section, shall be designated as a probationary or  
11 continuing contract. A probationary teachers contract shall be for a term of not less than one nor  
12 more than three years, one of which shall be for completion of a beginning teacher internship  
13 pursuant to the provisions of section two-b, article three of this chapter, if applicable. If, after three

14 years of such employment, the teacher who holds a professional certificate, based on at least a  
15 bachelor's degree, has met the qualifications for a bachelors degree and the county board enter  
16 into a new contract of employment, it shall be a continuing contract, subject to the following:

17 (1) Any teacher with less than a bachelor's degree who holds a valid certificate and is  
18 employed in a county beyond the three-year probationary period shall be granted continuing  
19 contract status upon qualifying for the professional certificate based upon a bachelor's degree, if  
20 the teacher becomes reemployed; and

21 (2) A teacher holding continuing contract status with one county shall be granted  
22 continuing contract status with any other county upon completion of one year of acceptable  
23 employment if the employment is during the next succeeding school year or immediately following  
24 an approved leave of absence extending no more than one year.

25 (c) The continuing contract of any teacher shall remain in full force and effect except as  
26 modified by mutual consent of the school board and the teacher, unless and until terminated,  
27 subject to the following:

28 (1) A continuing contract may not be terminated except:

29 (A) By a majority vote of the full membership of the county board on or before May 1 of  
30 the then current year, after written notice, served upon the teacher, return receipt requested,  
31 stating cause or causes and an opportunity to be heard at a meeting of the board prior to the  
32 board's action on the termination issue; or

33 (B) By written resignation of the teacher on or before May 1 to initiate termination of a  
34 continuing contract;

35 (2) The termination shall take effect at the close of the school year in which the contract  
36 is terminated;

37 (3) The contract may be terminated at any time by mutual consent of the school board and  
38 the teacher;

39           (4) This section does not affect the powers of the school board to suspend or dismiss a  
40 principal or teacher pursuant to section eight of this article;

41           (5) A continuing contract for any teacher holding a certificate valid for more than one year  
42 and in full force and effect during the school year 1984-1985 shall remain in full force and effect;

43           (6) A continuing contract does not operate to prevent a teacher's dismissal based upon  
44 the lack of need for the teacher's services pursuant to the provisions of law relating to the  
45 allocation to teachers and pupil-teacher ratios. The written notification of teachers being  
46 considered for dismissal for lack of need shall be limited to only those teachers whose  
47 consideration for dismissal is based upon known or expected circumstances which will require  
48 dismissal for lack of need. An employee who was not provided notice and an opportunity for a  
49 hearing pursuant to this subsection may not be included on the list. In case of dismissal for lack  
50 of need, a dismissed teacher shall be placed upon a preferred list in the order of their length of  
51 service with that board. A teacher may not be employed by the board until each qualified teacher  
52 on the preferred list, in order, has been offered the opportunity for reemployment in a position for  
53 which he or she is qualified, not including a teacher who has accepted a teaching position  
54 elsewhere. The reemployment shall be upon a teacher's preexisting continuing contract and has  
55 the same effect as though the contract had been suspended during the time the teacher was not  
56 employed.

57           (d) In the assignment of position or duties of a teacher under a continuing contract, the  
58 board may provide for released time of a teacher for any special professional or governmental  
59 assignment without jeopardizing the contractual rights of the teacher or any other rights, privileges  
60 or benefits under the provisions of this chapter. Released time shall be provided for any  
61 professional educator while serving as a member of the Legislature during any duly constituted  
62 session of that body and its interim and statutory committees and commissions without  
63 jeopardizing his or her contractual rights or any other rights, privileges, benefits or accrual of



64 experience for placement on the state minimum salary schedule in the following school year under  
65 the provisions of this chapter, board policy and law.

66 (e) A teacher is disqualified to teach in any public school in the state for the duration of  
67 the next ensuing school year, if that teacher:

68 (1) Fails to fulfill his or her contract with the board, unless prevented from doing so by  
69 personal illness or other just cause or unless released from his or her contract by the board, or

70 (2) Violates any lawful provision of his or her contract: *Provided*, That the marriage of a  
71 teacher is not considered a failure to fulfill, or violation of, the contract.

72 The State Department of Education or board may hold all papers and credentials of the  
73 teacher on file for a period of one year for the violation and shall report such disqualification status  
74 in the National Association of State Directors of Teacher Education and Certification (NASDTEC)  
75 database system.

76 (f) Any classroom teacher, as defined in section one, article one of this chapter, who  
77 desires to resign employment with a county board or request a leave of absence, the resignation  
78 or leave of absence to become effective on or before July 15 of the same year and after  
79 completion of the employment term, may do so at any time during the school year by written  
80 notification of the resignation or leave of absence and any notification received by a county board  
81 shall automatically extend the teacher's public employee insurance coverage until August 31 of  
82 the same year.

83 (g) (1) A classroom teacher who gives written notice to the county board on or before  
84 March 1 of the school year of his or her retirement from employment with the board at the  
85 conclusion of the school year shall be paid \$500 from the early notification of retirement line item  
86 established for the Department of Education for this purpose, subject to appropriation by the  
87 Legislature. If the appropriations to the Department of Education for this purpose are insufficient  
88 to compensate all applicable teachers, the Department of Education shall request a supplemental  
89 appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are

90 still insufficient to compensate all applicable teachers, the priority of payment is for teachers who  
91 give written notice the earliest. This payment may not be counted as part of the final average  
92 salary for the purpose of calculating retirement.

93 (2) The position of a classroom teacher providing written notice of retirement pursuant to  
94 this subsection may be considered vacant and the county board may immediately post the  
95 position as an opening to be filled at the conclusion of the school year. If a teacher has been hired  
96 to fill the position of a retiring classroom teacher prior to the start of the next school year, the  
97 retiring classroom teacher is disqualified from continuing his or her employment in that position.  
98 However, the retiring classroom teacher may be permitted to continue his or her employment in  
99 that position and forfeit the early retirement notification payment if, after giving notice of retirement  
100 in accordance with this subsection, he or she becomes subject to a significant unforeseen  
101 financial hardship, including a hardship caused by the death or illness of an immediate family  
102 member or loss of employment of a spouse. Other significant unforeseen financial hardships shall  
103 be determined by the county superintendent on a case-by-case basis. This subsection does not  
104 prohibit a county school board from eliminating the position of a retiring classroom teacher.

**§18A-2-5a. Authorizing payment for notification of retirement.**

1 Each county board is authorized to pay, entirely from local funds, \$500 or less to any  
2 service employee, or to any professional employee who is not a classroom teacher, who gives  
3 written notice to the county board on or before March 1 of the school year of his or her retirement  
4 from employment with the board at the conclusion of the school year.

**§18A-2-6. Continuing contract status for service personnel; termination.**

1 After three years of acceptable employment, each service person who enters into a new  
2 contract of employment with the board shall be granted continuing contract status. A service  
3 person holding continuing contract status with one county shall be granted continuing contract  
4 status with any other county upon completion of one year of acceptable employment if such  
5 employment is during the next succeeding school year or immediately following an approved

6 leave of absence which extends no more than one year. The continuing contract of any such  
7 employee shall remain in full force and effect except as modified by mutual consent of the school  
8 board and the employee, unless and until terminated with written notice, stating cause or causes,  
9 to the employee, by a majority vote of the full membership of the board on or before May 1 of the  
10 then current year, or by written resignation of the employee on or before that date. The affected  
11 employee has the right of a hearing before the board, if requested, before final action is taken by  
12 the board upon the termination of such employment.

13 Those employees who have completed three years of acceptable employment as of the  
14 effective date of this legislation shall be granted continuing contract status.

**§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation  
of dismissal of school personnel by superintendent; preliminary notice of  
transfer; hearing on the transfer; proof required.**

1 (a) The superintendent, subject only to approval of the board, may assign, transfer,  
2 promote, demote or suspend school personnel and recommend their dismissal pursuant to  
3 provisions of this chapter. However, an employee shall be notified in writing by the superintendent  
4 on or before April 1 if he or she is being considered for transfer or to be transferred. Only those  
5 employees whose consideration for transfer or intended transfer is based upon known or  
6 expected circumstances which will require the transfer of employees shall be considered for  
7 transfer or intended for transfer and the notification shall be limited to only those employees. Any  
8 teacher or employee who desires to protest the proposed transfer may request in writing a  
9 statement of the reasons for the proposed transfer. The statement of reasons shall be delivered  
10 to the teacher or employee within ten days of the receipt of the request. Within ten days of the  
11 receipt of the statement of the reasons, the teacher or employee may make written demand upon  
12 the superintendent for a hearing on the proposed transfer before the county board. The hearing  
13 on the proposed transfer shall be held on or before May 1. At the hearing, the reasons for the  
14 proposed transfer must be shown.

15           (b) The superintendent at a meeting of the board on or before May 1 shall furnish in writing  
16 to the board a list of teachers and other employees to be considered for transfer and subsequent  
17 assignment for the next ensuing school year. An employee who was not provided notice and an  
18 opportunity for a hearing pursuant to subsection (a) of this section may not be included on the list.  
19 All other teachers and employees not so listed shall be considered as reassigned to the positions  
20 or jobs held at the time of this meeting. The list of those recommended for transfer shall be  
21 included in the minute record of the meeting and all those so listed shall be notified in writing and  
22 shall be delivered within ten days following the board meeting, with written receipt notification  
23 documented by the superintendent, and shall state that the person is being recommended for  
24 transfer and subsequent assignment and the reasons therefor.

25           (c) The superintendent's authority to suspend school personnel shall be temporary only  
26 pending a hearing upon charges filed by the superintendent with the county board and the period  
27 of suspension may not exceed thirty days unless extended by order of the board.

28           (d) The provisions of this section respecting hearing upon notice of transfer are not  
29 applicable in emergency situations where a school building becomes damaged or destroyed  
30 through an unforeseeable act and which act necessitates a transfer of the school personnel  
31 because of the aforementioned condition of the building.

32           (e) Notwithstanding this section or any provision of this code, when actual student  
33 enrollment in a grade level or program, unforeseen on or before May 1 of the preceding school  
34 year, permits the assignment of fewer teachers or service personnel to or within a school under  
35 any pupil-teacher ratio, class size or caseload standard established in section eighteen-a, article  
36 five, chapter eighteen of this code or any policy of the state board, the superintendent, with board  
37 approval, may reassign the surplus personnel to another school or to another grade level or  
38 program within the school if needed there to comply with any such pupil-teacher ratio, class size  
39 or caseload standard.

40 (1) Before any reassignment may occur pursuant to this subsection, notice shall be  
41 provided to the employee and the employee shall be provided an opportunity to appear before  
42 the county board to state the reasons for his or her objections, if any, prior to the board voting on  
43 the reassignment.

44 (2) Except as otherwise provided in subdivision (1) of this subsection, the reassignment  
45 may be made without following the notice and hearing provisions of this section, and at any time  
46 during the school year when the conditions of this subsection are met: *Provided*, That the  
47 reassignment may not occur after the last day of the second school month.

48 (3) A professional employee reassigned under this subsection shall be the least senior of  
49 the surplus professional personnel who holds certification or licensure to perform the duties at the  
50 other school or at the grade level or program within the school.

51 (4) A service employee reassigned under this subsection shall be the least senior of the  
52 surplus personnel who holds the same classification or multiclassification needed to perform the  
53 duties at the other school or at the grade level or program within the same school.

54 (5) No school employee's annual contract term, compensation or benefits shall be  
55 changed as a result of a reassignment under this subsection.

**§18A-2-7b. Limitations on voluntary transfer of school employees to posted vacant  
position after twentieth day prior to beginning of instructional term.**

1 (a) The Legislature finds that it is not in the best interest of the students particularly in the  
2 elementary grades to have multiple teachers for any one grade level or course during the  
3 instructional term. Therefore, it is the intent of the Legislature that the filling of positions through  
4 transfers of personnel from one professional position to another after the twentieth day prior to  
5 the beginning of the instructional term should be kept to a minimum in accordance with the  
6 following:

7 (1) After the twentieth day prior to the beginning of the instructional term, no person  
8 employed and assigned to a professional position may transfer to another professional position

9 in the county during that instructional term unless the person holding that position does not have  
10 valid certification;

11 (2) The person may apply for any posted, vacant positions with the successful applicant  
12 assuming the position at the beginning of the next instructional term;

13 (3) Professional personnel who have been on an approved leave of absence may fill these  
14 vacancies upon their return from the approved leave of absence; and

15 (4) The county board, upon recommendation of the superintendent may fill a position  
16 before the next instructional term when it is determined to be in the best interest of the students.

17 (b) The Legislature finds that it is not in the best interest of students with autism or with an  
18 exceptionality whose IEP requires one-on-one services, or students in the early childhood years,  
19 to have multiple teachers, mentors, aides, paraprofessionals, interpreters or any combination  
20 thereof during the instructional term. Therefore, it is the intent of the Legislature that after the  
21 twentieth day prior to the beginning of the instructional term, filling positions through transfers of  
22 personnel from one position to another be kept to a minimum for autism mentors and aides who  
23 work with students with autism and for paraprofessionals, interpreters, early childhood classroom  
24 assistant teachers and aides who work with students with exceptionalities whose IEPs require  
25 one-on-one services, in accordance with the following:

26 (1) After the twentieth day prior to the beginning of the instructional term, a service person  
27 may not transfer to another position in the county during that instructional term, unless he or she  
28 does not have valid certification, if the service person is employed and assigned as an autism  
29 mentor or aide who works with students with autism, or as a paraprofessional, interpreter, early  
30 childhood classroom assistant teacher, or aide who works with a student with an exceptionality  
31 whose IEP requires one-on-one services;

32 (2) The aide, autism mentor, paraprofessional, interpreter or early childhood classroom  
33 assistant teacher may apply for any posted, vacant position with the successful applicant  
34 assuming the position at the beginning of the next instructional term; and

35           (3) The county board, upon recommendation of the superintendent, may fill a position  
36 before the beginning of the next instructional term when it is determined to be in the best interest  
37 of the students.

38           (c) Except as provided in subsection (b) of this section, after the twentieth day prior to the  
39 beginning of the instructional term, a service person may transfer to another position of  
40 employment one time only during any one half of the instructional term, unless otherwise mutually  
41 agreed upon by the service person and the county superintendent, or the superintendent's  
42 designee, subject to county board approval. During the first year of employment as a service  
43 person, a service person may not transfer to another position of employment during the first one  
44 half of the instructional term unless mutually agreed upon by the service person and county  
45 superintendent, subject to county board approval, except as follows:

46           (1) Upon return from an approved leave of absence, a service person may fill a vacant  
47 position for which he or she is qualified or holds valid certification;

48           (2) A service person may apply for a posted, vacant position at any time. The successful  
49 applicant for the position may not assume the position until the beginning of the next one half of  
50 the instructional term; and

51           (3) Extracurricular assignments for school bus operators pursuant to section sixteen,  
52 article four of this chapter are exempt from the requirements of this subsection.

**§18A-2-8a. Notice to probationary personnel of rehiring or nonrehiring; hearing.**

1           The superintendent at a meeting of the board on or before May 1 of each year shall provide  
2 in writing to the board a list of all probationary teachers that he or she recommends to be rehired  
3 for the next ensuing school year. The board shall act upon the superintendent's recommendations  
4 at that meeting in accordance with section one of this article. The board at this same meeting  
5 shall also act upon the retention of other probationary employees as provided in sections two and  
6 five of this article. Any such probationary teacher or other probationary employee who is not  
7 rehired by the board at that meeting shall be notified in writing, by certified mail, return receipt

8 requested, to such persons' last known addresses within ten days following said board meeting,  
9 of their not having been rehired or not having been recommended for rehiring.

10 Any probationary teacher who receives notice that he or she has not been recommended  
11 for rehiring or other probationary employee who has not been reemployed may within ten days  
12 after receiving the written notice request a statement of the reasons for not having been rehired  
13 and may request a hearing before the board. The hearing shall be held at the next regularly  
14 scheduled board of education meeting or a special meeting of the board called within thirty days  
15 of the request for hearing. At the hearing, the reasons for the nonrehiring must be shown.

#### **ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

##### **§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.**

1 (a) A county board of education shall make decisions affecting the filling of vacancies in  
2 professional positions of employment on the basis of the applicant with the highest qualifications:  
3 *Provided*, That the county superintendent shall be hired under separate criteria pursuant to  
4 section two, article four, chapter eighteen of this code.

5 (b) In judging qualifications for the filling of vacancies of professional positions of  
6 employment, consideration shall be given to each of the following:

7 (1) Appropriate certification, licensure or both;

8 (2) Amount of experience relevant to the position or, in the case of a classroom teaching  
9 position, the amount of teaching experience in the required certification area;

10 (3) The amount of course work, degree level or both in the relevant field and degree level  
11 generally;

12 (4) Academic achievement;

13 (5) In the case of a principal or classroom teaching position, certification by the National  
14 Board for Professional Teaching Standards;

15 (6) Specialized training relevant to performing the duties of the job;



16 (7) Past performance evaluations conducted pursuant to section twelve, article two of this  
17 chapter and section two, article three-c of this chapter or, in the case of a classroom teacher, past  
18 evaluations of the applicants performance in the teaching profession;

19 (8) Seniority;

20 (9) Other measures or indicators upon which the relative qualifications of the applicant  
21 may fairly be judged;

22 (10) in the case of a classroom teaching position, the recommendation of the principal of  
23 the school at which the applicant will be performing a majority of his or her duties; and

24 (11) in the case of a classroom teaching position, the recommendation, if any, resulting  
25 from the process established pursuant to the provisions of section five, article five-a, chapter  
26 eighteen of this code by the faculty senate of the school at which the employee will be performing  
27 a majority of his or her duties.

28 (c) When filling of a vacancy pursuant to this section, a county board is entitled to  
29 determine the appropriate weight to apply to each of the criterion when assessing an applicants  
30 qualifications: *Provided*, That if one or more permanently employed instructional personnel apply  
31 for a classroom teaching position and meet the standards set forth in the job posting, each  
32 criterion under subsection (b) of this section shall be given equal weight except that the criterion  
33 in subdivisions (10) and (11) shall each be double weighted.

34 (d) For a classroom teaching position, if the principal and faculty senate recommend the  
35 same applicant pursuant to subdivisions (10) and (11), subsection (b) of this section, and the  
36 superintendent concurs with those recommendations, then the other provisions of subsections  
37 (b) and (c) of this section do not apply and the county board shall appoint that applicant  
38 notwithstanding any other provision of this code to the contrary.

39 (e) The state board shall promulgate a rule, including an emergency rule if necessary, in  
40 accordance with the provisions of article three-b, chapter twenty-nine-a of this code to implement  
41 and interpret the provisions of this section. The rule may provide for a classroom teacher who

42 directly participates in making recommendations pursuant to this section to be compensated at  
43 the appropriate daily rate during periods of participation beyond his or her individual contract.

44 (f) The recommendations of the principal and faculty senate made pursuant to  
45 subdivisions (10) and (11), subsection (b) of this section shall be based on a determination as to  
46 which applicant is the most highly qualified for the position: *Provided*, That nothing in this  
47 subsection may require principals or faculty senates to assign any amount of weight to any factor  
48 in making a recommendation.

49 (g) With the exception of guidance counselors, the seniority of classroom teachers, as  
50 defined in section one, article one of this chapter, shall be determined on the basis of the length  
51 of time the employee has been employed as a regular full-time certified and/or licensed  
52 professional educator by the county board of education and shall be granted in all areas that the  
53 employee is certified, licensed or both.

54 (h) Upon completion of one hundred thirty-three days of employment in any one school  
55 year, substitute teachers, except retired teachers and other retired professional educators  
56 employed as substitutes, shall accrue seniority exclusively for the purpose of applying for  
57 employment as a permanent, full-time professional employee. One hundred thirty-three days or  
58 more of said employment shall be prorated and shall vest as a fraction of the school year worked  
59 by the permanent, full-time teacher.

60 (i) Guidance counselors and all other professional employees, as defined in section one,  
61 article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching  
62 area of professional employment on the basis of the length of time the employee has been  
63 employed by the county board of education in that area: *Provided*, That if an employee is certified  
64 as a classroom teacher, the employee accrues classroom teaching seniority for the time that  
65 employee is employed in another professional area. For the purposes of accruing seniority under  
66 this paragraph, employment as principal, supervisor or central office administrator, as defined in  
67 section one, article one of this chapter, shall be considered one area of employment.

68 (j) Employment for a full employment term equals one year of seniority, but an employee  
69 may not accrue more than one year of seniority during any given fiscal year. Employment for less  
70 than the full employment term shall be prorated. A random selection system established by the  
71 employees and approved by the county board shall be used to determine the priority if two or  
72 more employees accumulate identical seniority: *Provided*, That when two or more principals have  
73 accumulated identical seniority, decisions on reductions in force shall be based on qualifications.

74 (k) Whenever a county board is required to reduce the number of professional personnel  
75 in its employment, the employee with the least amount of seniority shall be properly notified and  
76 released from employment pursuant to the provisions of section two, article two of this chapter.  
77 The provisions of this subsection are subject to the following:

78 (1) All persons employed in a certification area to be reduced who are employed under a  
79 temporary permit shall be properly notified and released before a fully certified employee in such  
80 a position is subject to release;

81 (2) Notwithstanding any provision of this code to the contrary, for any vacancy in an  
82 established, existing or newly created position that, on or before March 1, is known to exist for  
83 the ensuing school year, upon recommendation of the superintendent, the board shall appoint the  
84 successful applicant from among all qualified applicants. All employees subject to release shall  
85 be considered applicants for the positions for which they are qualified and shall be considered  
86 before posting such vacancies for application by nonemployees;

87 (3) An employee subject to release shall be employed in any other professional position  
88 where the employee is certified and was previously employed or to any lateral area for which the  
89 employee is certified, licensed or both, if the employees seniority is greater than the seniority of  
90 any other employee in that area of certification, licensure or both;

91 (4) if an employee subject to release holds certification, licensure or both in more than one  
92 lateral area and if the employees seniority is greater than the seniority of any other employee in  
93 one or more of those areas of certification, licensure or both, the employee subject to release

94 shall be employed in the professional position held by the employee with the least seniority in any  
95 of those areas of certification, licensure or both; and

96 (5) if, prior to August 1 of the year, a reduction in force is approved, the reason for any  
97 particular reduction in force no longer exists as determined by the county board in its sole and  
98 exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the  
99 released employee in writing of his or her right to be restored to his or her position of employment.  
100 Within five days of being so notified, the released employee shall notify the board, in writing, of  
101 his or her intent to resume his or her position of employment or the right to be restored shall  
102 terminate. Notwithstanding any other provision of this subdivision, if there is another employee on  
103 the preferred recall list with proper certification and higher seniority, that person shall be placed  
104 in the position restored as a result of the reduction in force being rescinded.

105 (i) For the purpose of this article, all positions which meet the definition of "classroom  
106 teacher" as defined in section one, article one of this chapter shall be lateral positions. For all  
107 other professional positions, the county board of education shall adopt a policy by October 31,  
108 1993, and may modify the policy thereafter as necessary, which defines which positions shall be  
109 lateral positions. in adopting the policy, the board shall give consideration to the rank of each  
110 position in terms of title; nature of responsibilities; salary level; certification, licensure or both; and  
111 days in the period of employment.

112 (m) All professional personnel whose seniority with the county board is insufficient to allow  
113 their retention by the county board during a reduction in work force shall be placed upon a  
114 preferred recall list. As to any professional position opening within the area where they had  
115 previously been employed or to any lateral area for which they have certification, licensure or  
116 both, the employee shall be recalled on the basis of seniority if no regular, full-time professional  
117 personnel, or those returning from leaves of absence with greater seniority, are qualified, apply  
118 for and accept the position.

119           (n) Before position openings that are known or expected to extend for twenty consecutive  
120 employment days or longer for professional personnel may be filled by the board, the board shall  
121 be required to notify all qualified professional personnel on the preferred list and give them an  
122 opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall.  
123 The notice shall be sent by certified mail to the last known address of the employee, and it shall  
124 be the duty of each professional personnel to notify the board of continued availability annually,  
125 of any change in address or of any change in certification, licensure or both.

126           (o) Openings in established, existing or newly created positions shall be processed as  
127 follows:

128           (1) Boards shall be required to post and date notices of each opening at least once. At  
129 their discretion, boards may post an opening for a position other than classroom teacher more  
130 than once in order to attract more qualified applicants. At their discretion, boards may post an  
131 opening for a classroom teacher one additional time after the first posting in order to attract more  
132 qualified applicants only if fewer than three individuals apply during the first posting subject to the  
133 following:

134           (A) Each notice shall be posted in conspicuous working places for all professional  
135 personnel to observe for at least five working days;

136           (B) At least one notice shall be posted within twenty working days of the position openings  
137 and shall include the job description;

138           (C) Any special criteria or skills that are required by the position shall be specifically stated  
139 in the job description and directly related to the performance of the job;

140           (D) Postings for vacancies made pursuant to this section shall be written so as to ensure  
141 that the largest possible pool of qualified applicants may apply; and

142           (E) Job postings may not require criteria which are not necessary for the successful  
143 performance of the job and may not be written with the intent to favor a specific applicant;

144 (2) No vacancy may be filled until after the five-day minimum posting period of the most  
145 recent posted notice of the vacancy;

146 (3) If one or more applicants under all the postings for a vacancy meets the qualifications  
147 listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board  
148 within thirty working days of the end of the first posting period;

149 (4) A position held by a teacher who is certified, licensed or both, who has been issued a  
150 permit for full-time employment and is working toward certification in the permit area shall not be  
151 subject to posting if the certificate is awarded within five years; and

152 (5) Nothing provided herein may prevent the county board of education from eliminating a  
153 position due to lack of need.

154 (p) Notwithstanding any other provision of the code to the contrary, where the total number  
155 of classroom teaching positions in an elementary school does not increase from one school year  
156 to the next, but there exists in that school a need to realign the number of teachers in one or more  
157 grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels  
158 for which they are certified without that position being posted: *Provided*, That the employee and  
159 the county board mutually agree to the reassignment.

160 (q) Reductions in classroom teaching positions in elementary schools shall be processed  
161 as follows:

162 (1) When the total number of classroom teaching positions in an elementary school needs  
163 to be reduced, the reduction shall be made on the basis of seniority with the least senior classroom  
164 teacher being recommended for transfer; and

165 (2) When a specified grade level needs to be reduced and the least senior employee in  
166 the school is not in that grade level, the least senior classroom teacher in the grade level that  
167 needs to be reduced shall be reassigned to the position made vacant by the transfer of the least  
168 senior classroom teacher in the school without that position being posted: *Provided*, That the  
169 employee is certified, licensed or both and agrees to the reassignment.

170 (r) Any board falling to comply with the provisions of this article may be compelled to do  
171 so by mandamus and shall be liable to any party prevailing against the board for court costs and  
172 reasonable attorney fees as determined and established by the court. Further, employees denied  
173 promotion or employment in violation of this section shall be awarded the job, pay and any  
174 applicable benefits retroactive to the date of the violation and payable entirely from local funds.  
175 Further, the board shall be liable to any party prevailing against the board for any court reporter  
176 costs including copies of transcripts.

177 (s) The county board shall compile, update annually on July 1 and make available by  
178 electronic or other means to all employees a list of all professional personnel employed by the  
179 county, their areas of certification and their seniority.

180 (t) Notwithstanding any other provision of this code to the contrary, upon recommendation  
181 of the principal and approval by the classroom teacher and county board, a classroom teacher  
182 assigned to the school may at any time be assigned to a new or existing classroom teacher  
183 position at the school without the position being posted.

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

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

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

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

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

16           (3) Regularly employed service personnel who do not hold a classification title within the  
17 classification category of vacancy;

18           (4) Service personnel who have not held a classification title within the classification  
19 category of the vacancy and whose employment has been discontinued in accordance with this  
20 section;

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

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

25           (7) New service personnel.

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

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

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

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



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

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

41 (C) Paraprofessional, autism mentor, early classroom assistant teacher and braille or sign  
42 support specialist class titles are included in the same classification category as aides; and

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

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

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

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

51 (f) *Extra-duty assignments.* —

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

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

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

61 (B) An alternative procedure for making extra-duty assignments within a particular  
62 classification category of employment may be used if the alternative procedure is approved both

63 by the county board and by an affirmative vote of two-thirds of the employees within that  
64 classification category of employment.

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

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

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

78 (3) All vacancies in existing or newly created positions shall be filled within twenty working  
79 days from the closing date of the job posting for the position.

80 (4) The county board shall notify the successful applicant as soon as possible after the  
81 county board makes a hiring decision regarding the posted position.

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

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

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

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

94 (2) If there is no job vacancy for employment within that classification or grades of  
95 classification, the service person is employed in any other job classification which he or she  
96 previously held with the county board if there is a vacancy and retains any seniority accrued in  
97 the job classification or grade of classification.

98 (k) After a reduction in force or transfer is approved, but prior to August 1, a county board  
99 in its sole and exclusive judgment may determine that the reason for any particular reduction in  
100 force or transfer no longer exists.

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

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

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

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

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

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

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

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

126 (p) The county board shall notify all service personnel on the preferred recall list of all  
127 position openings that exist from time to time. The notification shall be sent annually, with written  
128 receipt notification documented by the superintendent, and shall list instructions to access job  
129 postings on any website maintained by or available for the use of the county board.

130 (q) A position opening may be filled by the county board, whether temporary or permanent,  
131 until all service personnel on the preferred recall list have been properly notified of existing  
132 vacancies and have been given an opportunity to accept reemployment.

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

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

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

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

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

1 (a) The state board shall develop and make available competency tests for all of the  
2 classification titles defined in section eight of this article and listed in section eight-a of this article  
3 for service personnel. The board shall review and, if needed, update the competency tests at least  
4 every five years. Each classification title defined and listed is considered a separate classification  
5 category of employment for service personnel and has a separate competency test, except for  
6 those class titles having Roman numeral designations, which are considered a single  
7 classification of employment and have a single competency test.

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

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

12 (3) The classification titles of chief mechanic, mechanic and assistant mechanic are  
13 included in one classification title and have the same competency test.

14 (b) The purpose of these tests is to provide county boards a uniform means of determining  
15 whether school service personnel who do not hold a classification title in a particular category of  
16 employment meet the definition of the classification title in another category of employment as  
17 defined in section eight of this article. Competency tests may not be used to evaluate employees  
18 who hold the classification title in the category of their employment.

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

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

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

28           (3) The subject matter of each competency test is commensurate with the requirements  
29 of the definitions of the classification titles as provided in section eight of this article. The subject  
30 matter of each competency test is designed in such a manner that achieving a passing grade  
31 does not require knowledge and skill in excess of the requirements of the definitions of the  
32 classification titles. Achieving a passing score conclusively demonstrates the qualification of an  
33 applicant for a classification title.

34           (4) Once an employee passes the competency test of a classification title, the applicant is  
35 fully qualified to fill vacancies in that classification category of employment as provided in section  
36 eight-b of this article and may not be required to take the competency test again.

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

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

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

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

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

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

53 (j) Notwithstanding any other provision of this code to the contrary and notwithstanding  
54 any rules of the school board concerning school bus operator certification, the certification test for  
55 school bus operators shall be required as follows, and school bus operators may not be required  
56 to take the certification test more frequently:

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

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

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

64 (4) *School bus operator certificate.*

65 (A) A school bus operator certificate may be issued to a person who has attained the age  
66 of twenty-one, completed the required training set forth in state board rule, and met the physical  
67 requirements and other criteria to operate a school bus set forth in state board rule.

68           **(B) The state superintendent may, after ten days' notice and upon proper evidence, revoke**  
69 **the certificate of any bus operator for any of the following causes:**

70           **(i) Intemperance, untruthfulness, cruelty or immorality;**

71           **(ii) Conviction of or guilty plea or plea of no contest to a felony charge;**

72           **(iii) Conviction of or guilty plea or plea of no contest to any charge involving sexual**  
73 **misconduct with a minor or a student;**

74           **(iv) Just and sufficient cause for revocation as specified by state board rule; and**

75           **(v) Using fraudulent, unapproved or insufficient credit to obtain the certificates.**

76           **(vi) Of the causes for certificate revocation listed in this paragraph (B), the following causes**  
77 **constitute grounds for revocation only if there is a rational nexus between the conduct of the bus**  
78 **operator and the performance of the job:**

79           **(i) Intemperance, untruthfulness, cruelty or immorality;**

80           **(ii) Just and sufficient cause for revocation as specified by state board rule; and**

81           **(iii) Using fraudulent, unapproved or insufficient credit to obtain the certificate.**

82           **(C) The certificate of a bus operator may not be revoked for either of the following unless**  
83 **it can be proven by clear and convincing evidence that the bus operator has committed one of**  
84 **the offenses listed in this subsection and his or her actions render him or her unfit to operate a**  
85 **school bus:**

86           **(i) Any matter for which the bus operator was disciplined, less than dismissal, by the**  
87 **employing county board; or**

88           **(ii) Any matter for which the bus operator is meeting or has met an improvement plan**  
89 **determined by the county board.**

90           **(D) The state superintendent shall designate a review panel to conduct hearings on**  
91 **certificate revocations or denials and make recommendations for action by the state**  
92 **superintendent. The state board, after consultation with employee organizations representing**



93 school service personnel, shall promulgate a rule to establish the review panel membership and  
94 composition, method of appointment, governing principles and meeting schedule.

95 (E) it is the duty of any county superintendent who knows of any acts on the part of a bus  
96 operator for which a certificate may be revoked in accordance with this section to report the same,  
97 together with all the facts and evidence, to the state superintendent for such action as in the state  
98 superintendent's judgment may be proper.

99 (F) If a certificate has been granted through an error, oversight or misinformation, the state  
100 superintendent may recall the certificate and make such corrections as will conform to the  
101 requirements of law and state board rules.

102 (5) The state board shall promulgate, in accordance with article three-b, chapter twenty-  
103 nine-a of this code, revised rules in compliance with this subsection.

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

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

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

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

22           (1) The terms and conditions of the agreement shall be in writing, signed by both parties,  
23 and may include additional benefits.

24           (2) The agreement shall be uniform as to aides assigned similar duties for similar amounts  
25 of time within the same school.


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

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

33           (f) Regular service personnel employed in a category of employment other than aide who  
34 seek employment as an aide shall hold a high school diploma or shall have received a general  
35 educational development certificate and shall have the opportunity to receive appropriate training  
36 pursuant to subsection (j), section thirteen, article five, chapter eighteen of this code and section  
37 two, article twenty of said chapter.

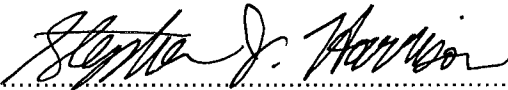
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


  
.....  
Chairman, House Committee

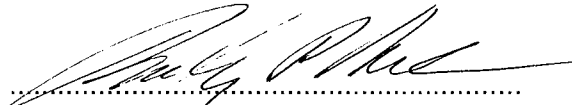
  
.....  
Chairman, Senate Committee

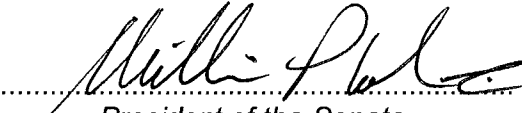
Originating in the House.

In effect ninety days from passage.

  
.....  
Clerk of the House of Delegates

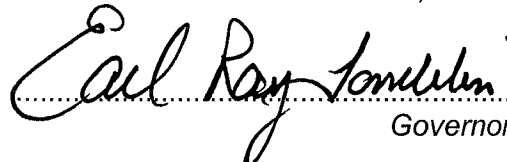
  
.....  
Clerk of the Senate

  
.....  
Speaker of the House of Delegates

  
.....  
President of the Senate

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The within is approved this the 1<sup>st</sup> day of April, 2016.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 24 2013

Time 3:14 pm