

WEST VIRGINIA LEGISLATURE
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ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 252

(SENATORS PALUMBO AND NOHE, *ORIGINAL SPONSORS*)

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

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AN ACT to amend and reenact §18A-5-1a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18A-5-1d, all relating to allowing a school expulsion period to be reduced for certain student participants in Juvenile Drug Court; specifying individuals who may refer an expelled student to Juvenile Drug Court; designating responsibilities of Juvenile Drug Court, judge and treatment team of Juvenile Drug Court, county superintendent and student assistance team; granting Juvenile Drug Court jurisdiction over certain students; providing that successful completion or satisfactory progress toward successful completion of Juvenile Drug Court warrants consideration for reduced expulsion period; recommendations and determinations regarding expulsion period reduction; and providing for reinstatement of students in school, subject to approval of the superintendent.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.

1 (a) A principal shall suspend a student from school or
2 from transportation to or from the school on any school bus
3 if the student, in the determination of the principal after an
4 informal hearing pursuant to subsection (d) of this section,
5 has: (i) Violated the provisions of subsection (b), section
6 fifteen, article two, chapter sixty-one of this code; (ii)
7 violated the provisions of subsection (b), section eleven-a,
8 article seven of said chapter; or (iii) sold a narcotic drug, as
9 defined in section one hundred one, article one, chapter sixty-
10 a of this code, on the premises of an educational facility, at a
11 school-sponsored function or on a school bus. If a student
12 has been suspended pursuant to this subsection, the principal
13 shall, within twenty-four hours, request that the county
14 superintendent recommend to the county board that the
15 student be expelled. Upon such a request by a principal, the
16 county superintendent shall recommend to the county board
17 that the student be expelled. Upon such recommendation, the

18 county board shall conduct a hearing in accordance with
19 subsections (e), (f) and (g) of this section to determine if the
20 student committed the alleged violation. If the county board
21 finds that the student did commit the alleged violation, the
22 county board shall expel the student.

23 (b) A principal shall suspend a student from school, or
24 from transportation to or from the school on any school bus,
25 if the student, in the determination of the principal after an
26 informal hearing pursuant to subsection (d) of this section,
27 has: (i) Committed an act or engaged in conduct that would
28 constitute a felony under the laws of this state if committed
29 by an adult; or (ii) unlawfully possessed on the premises of
30 an educational facility or at a school-sponsored function a
31 controlled substance governed by the uniform controlled
32 substances act as described in chapter sixty-a of this code. If
33 a student has been suspended pursuant to this subsection, the
34 principal may request that the superintendent recommend to
35 the county board that the student be expelled. Upon such
36 recommendation by the county superintendent, the county
37 board may hold a hearing in accordance with the provisions
38 of subsections (e), (f) and (g) of this section to determine if
39 the student committed the alleged violation. If the county
40 board finds that the student did commit the alleged violation,
41 the county board may expel the student.

42 (c) A principal may suspend a student from school, or
43 transportation to or from the school on any school bus, if the
44 student, in the determination of the principal after an informal
45 hearing pursuant to subsection (d) of this section: (i)
46 Threatened to injure, or in any manner injured, a student,
47 teacher, administrator or other school personnel; (ii) willfully
48 disobeyed a teacher; (iii) possessed alcohol in an educational
49 facility, on school grounds, a school bus or at any school-
50 sponsored function; (iv) used profane language directed at a
51 school employee or student; (v) intentionally defaced any

52 school property; (vi) participated in any physical altercation
53 with another person while under the authority of school
54 personnel; or (vii) habitually violated school rules or policies.
55 If a student has been suspended pursuant to this subsection,
56 the principal may request that the superintendent recommend
57 to the county board that the student be expelled. Upon such
58 recommendation by the county superintendent, the county
59 board may hold a hearing in accordance with the provisions
60 of subsections (e), (f) and (g) of this section to determine if
61 the student committed the alleged violation. If the county
62 board finds that the student did commit the alleged violation,
63 the county board may expel the student.

64 (d) The actions of any student which may be grounds for
65 his or her suspension or expulsion under the provisions of
66 this section shall be reported immediately to the principal of
67 the school in which the student is enrolled. If the principal
68 determines that the alleged actions of the student would be
69 grounds for suspension, he or she shall conduct an informal
70 hearing for the student immediately after the alleged actions
71 have occurred. The hearing shall be held before the student
72 is suspended unless the principal believes that the continued
73 presence of the student in the school poses a continuing
74 danger to persons or property or an ongoing threat of
75 disrupting the academic process, in which case the student
76 shall be suspended immediately and a hearing held as soon as
77 practicable after the suspension.

78 The student and his or her parent(s), guardian(s) or
79 custodian(s), as the case may be, shall be given telephonic
80 notice, if possible, of this informal hearing, which notice shall
81 briefly state the grounds for suspension.

82 At the commencement of the informal hearing, the
83 principal shall inquire of the student as to whether he or she
84 admits or denies the charges. If the student does not admit

85 the charges, he or she shall be given an explanation of the
86 evidence possessed by the principal and an opportunity to
87 present his or her version of the occurrence. At the
88 conclusion of the hearing or upon the failure of the noticed
89 student to appear, the principal may suspend the student for
90 a maximum of ten school days, including the time prior to the
91 hearing, if any, for which the student has been excluded from
92 school.

93 The principal shall report any suspension the same day it
94 has been decided upon, in writing, to the parent(s),
95 guardian(s) or custodian(s) of the student by regular United
96 States mail. The suspension also shall be reported to the
97 county superintendent and to the faculty senate of the school
98 at the next meeting after the suspension.

99 (e) Prior to a hearing before the county board, the county
100 board shall cause a written notice which states the charges
101 and the recommended disposition to be served upon the
102 student and his or her parent(s), guardian(s) or custodian(s),
103 as the case may be. The notice shall state clearly whether the
104 board will attempt at hearing to establish the student as a
105 dangerous student, as defined by section one, article one of
106 this chapter. The notice also shall include any evidence upon
107 which the board will rely in asserting its claim that the
108 student is a dangerous student. The notice shall set forth a
109 date and time at which the hearing shall be held, which date
110 shall be within the ten-day period of suspension imposed by
111 the principal.

112 (f) The county board shall hold the scheduled hearing to
113 determine if the student should be reinstated or should or,
114 under the provisions of this section, must be expelled from
115 school. If the county board determines that the student
116 should or must be expelled from school, it also may
117 determine whether the student is a dangerous student

118 pursuant to subsection (g) of this section. At this, or any
119 hearing before a county board conducted pursuant to this
120 section, the student may be represented by counsel, may call
121 his or her own witnesses to verify his or her version of the
122 incident and may confront and cross examine witnesses
123 supporting the charge against him or her. The hearing shall
124 be recorded by mechanical means unless recorded by a
125 certified court reporter. The hearing may be postponed for
126 good cause shown by the student but he or she shall remain
127 under suspension until after the hearing. The state board may
128 adopt other supplementary rules of procedure to be followed
129 in these hearings. At the conclusion of the hearing the county
130 board shall either: (1) Order the student reinstated
131 immediately at the end of his or her initial suspension; (2)
132 suspend the student for a further designated number of days;
133 or (3) expel the student from the public schools of the county.

134 (g) A county board that did not intend prior to a hearing
135 to assert a dangerous student claim, that did not notify the
136 student prior to the hearing that a dangerous student
137 determination would be considered and that determines
138 through the course of the hearing that the student may be a
139 dangerous student shall schedule a second hearing within ten
140 days to decide the issue. The hearing may be postponed for
141 good cause shown by the student, but he or she remains under
142 suspension until after the hearing.

143 A county board that expels a student, and finds that the
144 student is a dangerous student, may refuse to provide
145 alternative education. However, after a hearing conducted
146 pursuant to this section for determining whether a student is
147 a dangerous student, when the student is found to be a
148 dangerous student, is expelled and is denied alternative
149 education, a hearing shall be conducted within three months
150 after the refusal by the board to provide alternative education
151 to reexamine whether or not the student remains a dangerous

152 student and whether the student shall be provided alternative
153 education. Thereafter, a hearing for the purpose of
154 reexamining whether or not the student remains a dangerous
155 student and whether the student shall be provided alternative
156 education shall be conducted every three months for so long
157 as the student remains a dangerous student and is denied
158 alternative education. During the initial hearing, or in any
159 subsequent hearing, the board may consider the history of the
160 student's conduct as well as any improvements made
161 subsequent to the expulsion. If it is determined during any of
162 the hearings that the student is no longer a dangerous student
163 or should be provided alternative education, the student shall
164 be provided alternative education during the remainder of the
165 expulsion period.

166 (h) The superintendent may apply to a circuit judge or
167 magistrate for authority to subpoena witnesses and
168 documents, upon his or her own initiative, in a proceeding
169 related to a recommended student expulsion or dangerous
170 student determination, before a county board conducted
171 pursuant to the provisions of this section. Upon the written
172 request of any other party, the superintendent shall apply to
173 a circuit judge or magistrate for the authority to subpoena
174 witnesses, documents or both on behalf of the other party in
175 a proceeding related to a recommended student expulsion or
176 dangerous student determination before a county board. If
177 the authority to subpoena is granted, the superintendent shall
178 subpoena the witnesses, documents or both requested by the
179 other party. Furthermore, if the authority to subpoena is
180 granted, it shall be exercised in accordance with the
181 provisions of section one, article five, chapter twenty-nine-a
182 of this code.

183 Any hearing conducted pursuant to this subsection may
184 be postponed: (1) For good cause shown by the student; (2)
185 when proceedings to compel a subpoenaed witness to appear

186 must be instituted; or (3) when a delay in service of a
187 subpoena hinders either party's ability to provide sufficient
188 notice to appear to a witness. A student remains under
189 suspension until after the hearing in any case where a
190 postponement occurs.

191 The county boards are directed to report the number of
192 students determined to be dangerous students to the state
193 board. The state board will compile the county boards'
194 statistics and shall report its findings to the Legislative
195 Oversight Commission on Education Accountability.

196 (i) Students may be expelled pursuant to this section for
197 a period not to exceed one school year, except that if a
198 student is determined to have violated the provisions of
199 subsection (a) of this section the student shall be expelled for
200 a period of not less than twelve consecutive months, subject
201 to the following:

202 (1) The county superintendent may lessen the mandatory
203 period of twelve consecutive months for the expulsion of the
204 student if the circumstances of the student's case
205 demonstrably warrant;

206 (2) Upon the reduction of the period of expulsion, the
207 county superintendent shall prepare a written statement
208 setting forth the circumstances of the student's case which
209 warrant the reduction of the period of expulsion. The county
210 superintendent shall submit the statement to the county board,
211 the principal, the faculty senate and the local school
212 improvement council for the school from which the student
213 was expelled. The county superintendent may use the
214 following factors as guidelines in determining whether or not
215 to reduce a mandatory twelve-month expulsion:

216 (A) The extent of the student's malicious intent;

217 (B) The outcome of the student's misconduct;

218 (C) The student's past behavior history;

219 (D) The likelihood of the student's repeated misconduct;
220 and

221 (E) If applicable, successful completion or making
222 satisfactory progress toward successful completion of
223 Juvenile Drug Court pursuant to section one-d of this section.

224 (j) In all hearings under this section, facts shall be found
225 by a preponderance of the evidence.

226 (k) For purposes of this section, nothing herein may be
227 construed to be in conflict with the federal provisions of the
228 Individuals with Disabilities Education Act, 20 U. S. C. §1400
229 *et seq.*

230 (l) Each suspension or expulsion imposed upon a student
231 under the authority of this section shall be recorded in the
232 uniform integrated regional computer information system
233 (commonly known as the West Virginia Education
234 Information System) described in subsection (f), section
235 twenty-six, article two, chapter eighteen of this code.

236 (1) The principal of the school at which the student is
237 enrolled shall create an electronic record within twenty-four
238 hours of the imposition of the suspension or expulsion.

239 (2) Each record of a suspension or expulsion shall include
240 the student's name and identification number, the reason for
241 the suspension or expulsion and the beginning and ending
242 dates of the suspension or expulsion.

243 (3) The state board shall collect and disseminate data so
244 that any principal of a public school in West Virginia can
245 review the complete history of disciplinary actions taken by
246 West Virginia public schools against any student enrolled or
247 seeking to enroll at that principal's school. The purposes of
248 this provision are to allow every principal to fulfill his or her
249 duty under subsection (b), section fifteen-f, article five,
250 chapter eighteen of this code to determine whether a student
251 requesting to enroll at a public school in West Virginia is
252 currently serving a suspension or expulsion from another
253 public school in West Virginia and to allow principals to
254 obtain general information about students' disciplinary
255 histories.

256 (m) Principals may exercise any other authority and
257 perform any other duties to discipline students consistent with
258 state and federal law, including policies of the state board.

259 (n) Each county board is solely responsible for the
260 administration of proper discipline in the public schools of
261 the county and shall adopt policies consistent with the
262 provisions of this section to govern disciplinary actions.

263 (o) For the purpose of this section, "principal" means the
264 principal, assistant principal, vice principal or the
265 administrative head of the school or a professional personnel
266 designee of the principal or the administrative head of the
267 school.

**§18A-5-1d. Return to school through Juvenile Drug Court for
certain students.**

1 (a) When a student is expelled from school pursuant to
2 section one-a of this article, the county board, county
3 superintendent or principal for the school from which the

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4 student was expelled or the parent, guardian or custodian may
5 refer the student to a Juvenile Drug Court, operated pursuant
6 to section two-b, article five, chapter forty-nine of this code.
7 Upon such referral, the judge assigned to Juvenile Drug
8 Court shall determine whether the student is an appropriate
9 candidate for Juvenile Drug Court.

10 (b) If the judge determines the student is an appropriate
11 candidate for Juvenile Drug Court, then the court has
12 jurisdiction over the student in the same manner as it has
13 jurisdiction over all other persons in Juvenile Drug Court.
14 Such jurisdiction over students includes the ability to issue
15 any of the various sanctions available to the Juvenile Drug
16 Court, including temporary detention.

17 (c) (1) Successful completion of Juvenile Drug Court or
18 certification by the Juvenile Drug Court judge that the student
19 is making satisfactory progress toward successful completion
20 of Juvenile Drug Court warrants consideration for reduction
21 of the expulsion period, pursuant to section one-a of this
22 article.

23 (2) The Juvenile Drug Court shall notify the county
24 superintendent of such completion or certification. The
25 county superintendent shall arrange a meeting with the
26 Juvenile Drug Court treatment team, the court and the student
27 assistance team of the school from which the student was
28 expelled to discuss the student's history, progress and
29 potential for improvement.

30 (3) The student assistance team shall evaluate and
31 recommend whether the student's expulsion period should be
32 reduced and the student reinstated in school.

33 (4) The student assistance team's recommendation shall
34 be presented to the superintendent, who shall make the final

35 determination. The superintendent shall prepare a statement
36 detailing reasons for or against school reinstatement and
37 submit the statement to the county board. If the
38 superintendent determines to reduce the expulsion period, he
39 or she shall submit the statement required by subsection (i),
40 section one-a of this article and place the student in an
41 appropriate school within the district.

42 (5) A student to be reinstated shall be permitted to return
43 to school no later than the tenth regular school day following
44 notice by the court to the superintendent regarding the
45 student's successful completion or satisfactory progress
46 toward successful completion of Juvenile Drug Court.

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

.....
Chairman Senate Committee

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this
the Day of, 2014.

.....
Governor