

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

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5 FOR

6 **Senate Bill No. 252**

7 (By Senators Palumbo and Nohe)

8 _____
9 [Originating in the Committee on the Judiciary;
10 reported February 18, 2014.]

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13 A BILL to amend and reenact §18A-5-1a of the Code of West Virginia,
14 1931, as amended; and to amend said code by adding thereto a
15 new section, designated §18A-5-1d, all relating to allowing
16 the county board of education and certain other individuals to
17 refer an expelled pupil to a Juvenile Drug Court; allowing the
18 Juvenile Drug Court judge to determine if the pupil is an
19 appropriate candidate for Juvenile Drug Court; granting the
20 Juvenile Drug Court the same jurisdiction over the pupil as it
21 has over others participating in Juvenile Drug Court;
22 providing that a pupil who successfully completes or is
23 certified as making satisfactory progress toward successful
24 completion of Juvenile Drug Court shall return to school by a

1 lessening of the period of expulsion; and providing exception
2 when a pupil brings a firearm to or possesses a firearm in a
3 school.

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

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

9 **ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

10 **§18A-5-1a. Possessing deadly weapons on premises of educational**
11 **facilities; possessing a controlled substance on**
12 **premises of educational facilities; assaults and**
13 **batteries committed by pupils upon teachers or**
14 **other school personnel; temporary suspension,**
15 **hearing; procedure, notice and formal hearing;**
16 **extended suspension; sale of narcotic; expulsion;**
17 **exception; alternative education.**

18 (a) A principal shall suspend a pupil from school or from
19 transportation to or from the school on any school bus if the
20 pupil, in the determination of the principal after an informal
21 hearing pursuant to subsection (d) of this section, has: (i)
22 Violated the provisions of subsection (b), section fifteen, article
23 two, chapter sixty-one of this code; (ii) violated the provisions
24 of subsection (b), section eleven-a, article seven of said chapter;

1 or (iii) sold a narcotic drug, as defined in section one hundred
2 one, article one, chapter sixty-a of this code, on the premises of
3 an educational facility, at a school-sponsored function or on a
4 school bus. If a student has been suspended pursuant to this
5 subsection, the principal shall, within twenty-four hours, request
6 that the county superintendent recommend to the county board that
7 the student be expelled. Upon such a request by a principal, the
8 county superintendent shall recommend to the county board that the
9 student be expelled. Upon such recommendation, the county board
10 shall conduct a hearing in accordance with subsections (e), (f) and
11 (g) of this section to determine if the student committed the
12 alleged violation. If the county board finds that the student did
13 commit the alleged violation, the county board shall expel the
14 student.

15 (b) A principal shall suspend a pupil from school, or from
16 transportation to or from the school on any school bus, if the
17 pupil, in the determination of the principal after an informal
18 hearing pursuant to subsection (d) of this section, has: (i)
19 Committed an act or engaged in conduct that would constitute a
20 felony under the laws of this state if committed by an adult; or
21 (ii) unlawfully possessed on the premises of an educational
22 facility or at a school-sponsored function a controlled substance
23 governed by the uniform controlled substances act as described in
24 chapter sixty-a of this code. If a student has been suspended

1 pursuant to this subsection, the principal may request that the
2 superintendent recommend to the county board that the student be
3 expelled. Upon such recommendation by the county superintendent,
4 the county board may hold a hearing in accordance with the
5 provisions of subsections (e), (f) and (g) of this section to
6 determine if the student committed the alleged violation. If the
7 county board finds that the student did commit the alleged
8 violation, the county board may expel the student.

9 (c) A principal may suspend a pupil from school, or
10 transportation to or from the school on any school bus, if the
11 pupil, in the determination of the principal after an informal
12 hearing pursuant to subsection (d) of this section: (i) Threatened
13 to injure, or in any manner injured, a pupil, teacher,
14 administrator or other school personnel; (ii) willfully disobeyed
15 a teacher; (iii) possessed alcohol in an educational facility, on
16 school grounds, a school bus or at any school-sponsored function;
17 (iv) used profane language directed at a school employee or pupil;
18 (v) intentionally defaced any school property; (vi) participated in
19 any physical altercation with another person while under the
20 authority of school personnel; or (vii) habitually violated school
21 rules or policies. If a student has been suspended pursuant to
22 this subsection, the principal may request that the superintendent
23 recommend to the county board that the student be expelled. Upon
24 such recommendation by the county superintendent, the county board

1 may hold a hearing in accordance with the provisions of subsections
2 (e), (f) and (g) of this section to determine if the student
3 committed the alleged violation. If the county board finds that
4 the student did commit the alleged violation, the county board may
5 expel the student.

6 (d) The actions of any pupil which may be grounds for his or
7 her suspension or expulsion under the provisions of this section
8 shall be reported immediately to the principal of the school in
9 which the pupil is enrolled. If the principal determines that the
10 alleged actions of the pupil would be grounds for suspension, he or
11 she shall conduct an informal hearing for the pupil immediately
12 after the alleged actions have occurred. The hearing shall be held
13 before the pupil is suspended unless the principal believes that
14 the continued presence of the pupil in the school poses a
15 continuing danger to persons or property or an ongoing threat of
16 disrupting the academic process, in which case the pupil shall be
17 suspended immediately and a hearing held as soon as practicable
18 after the suspension.

19 The pupil and his or her parent(s), guardian(s) or
20 custodian(s), as the case may be, shall be given telephonic notice,
21 if possible, of this informal hearing, which notice shall briefly
22 state the grounds for suspension.

23 At the commencement of the informal hearing, the principal
24 shall inquire of the pupil as to whether he or she admits or denies

1 the charges. If the pupil does not admit the charges, he or she
2 shall be given an explanation of the evidence possessed by the
3 principal and an opportunity to present his or her version of the
4 occurrence. At the conclusion of the hearing or upon the failure
5 of the noticed student to appear, the principal may suspend the
6 pupil for a maximum of ten school days, including the time prior to
7 the hearing, if any, for which the pupil has been excluded from
8 school.

9 The principal shall report any suspension the same day it has
10 been decided upon, in writing, to the parent(s), guardian(s) or
11 custodian(s) of the pupil by regular United States mail. The
12 suspension also shall be reported to the county superintendent and
13 to the faculty senate of the school at the next meeting after the
14 suspension.

15 (e) Prior to a hearing before the county board, the county
16 board shall cause a written notice which states the charges and the
17 recommended disposition to be served upon the pupil and his or her
18 parent(s), guardian(s) or custodian(s), as the case may be. The
19 notice shall state clearly whether the board will attempt at
20 hearing to establish the student as a dangerous student, as defined
21 by section one, article one of this chapter. The notice also shall
22 include any evidence upon which the board will rely in asserting
23 its claim that the student is a dangerous student. The notice
24 shall set forth a date and time at which the hearing shall be held,

1 which date shall be within the ten-day period of suspension imposed
2 by the principal.

3 (f) The county board shall hold the scheduled hearing to
4 determine if the pupil should be reinstated or should or, under the
5 provisions of this section, must be expelled from school. If the
6 county board determines that the student should or must be expelled
7 from school, it also may determine whether the student is a
8 dangerous student pursuant to subsection (g) of this section. At
9 this, or any hearing before a county board conducted pursuant to
10 this section, the pupil may be represented by counsel, may call his
11 or her own witnesses to verify his or her version of the incident
12 and may confront and cross examine witnesses supporting the charge
13 against him or her. The hearing shall be recorded by mechanical
14 means unless recorded by a certified court reporter. The hearing
15 may be postponed for good cause shown by the pupil but he or she
16 shall remain under suspension until after the hearing. The state
17 board may adopt other supplementary rules of procedure to be
18 followed in these hearings. At the conclusion of the hearing the
19 county board shall either: (1) Order the pupil reinstated
20 immediately at the end of his or her initial suspension; (2)
21 suspend the pupil for a further designated number of days; or (3)
22 expel the pupil from the public schools of the county.

23 (g) A county board that did not intend prior to a hearing to
24 assert a dangerous student claim, that did not notify the student

1 prior to the hearing that a dangerous student determination would
2 be considered and that determines through the course of the hearing
3 that the student may be a dangerous student shall schedule a second
4 hearing within ten days to decide the issue. The hearing may be
5 postponed for good cause shown by the pupil, but he or she remains
6 under suspension until after the hearing.

7 A county board that expels a student, and finds that the
8 student is a dangerous student, may refuse to provide alternative
9 education. However, after a hearing conducted pursuant to this
10 section for determining whether a student is a dangerous student,
11 when the student is found to be a dangerous student, is expelled
12 and is denied alternative education, a hearing shall be conducted
13 within three months after the refusal by the board to provide
14 alternative education to reexamine whether or not the student
15 remains a dangerous student and whether the student shall be
16 provided alternative education. Thereafter, a hearing for the
17 purpose of reexamining whether or not the student remains a
18 dangerous student and whether the student shall be provided
19 alternative education shall be conducted every three months for so
20 long as the student remains a dangerous student and is denied
21 alternative education. During the initial hearing, or in any
22 subsequent hearing, the board may consider the history of the
23 pupil's conduct as well as any improvements made subsequent to the
24 expulsion. If it is determined during any of the hearings that the

1 student is no longer a dangerous student or should be provided
2 alternative education, the student shall be provided alternative
3 education during the remainder of the expulsion period.

4 (h) The superintendent may apply to a circuit judge or
5 magistrate for authority to subpoena witnesses and documents, upon
6 his or her own initiative, in a proceeding related to a recommended
7 student expulsion or dangerous student determination, before a
8 county board conducted pursuant to the provisions of this section.
9 Upon the written request of any other party, the superintendent
10 shall apply to a circuit judge or magistrate for the authority to
11 subpoena witnesses, documents or both on behalf of the other party
12 in a proceeding related to a recommended student expulsion or
13 dangerous student determination before a county board. If the
14 authority to subpoena is granted, the superintendent shall subpoena
15 the witnesses, documents or both requested by the other party.
16 Furthermore, if the authority to subpoena is granted, it shall be
17 exercised in accordance with the provisions of section one, article
18 five, chapter twenty-nine-a of this code.

19 Any hearing conducted pursuant to this subsection may be
20 postponed: (1) For good cause shown by the pupil; (2) when
21 proceedings to compel a subpoenaed witness to appear must be
22 instituted; or (3) when a delay in service of a subpoena hinders
23 either party's ability to provide sufficient notice to appear to a
24 witness. A pupil remains under suspension until after the hearing

1 in any case where a postponement occurs.

2 The county boards are directed to report the number of pupils
3 determined to be dangerous students to the State Board of
4 Education. The state board will compile the county boards'
5 statistics and shall report its findings to the Legislative
6 Oversight Commission on Education Accountability.

7 (i) Pupils may be expelled pursuant to the provisions of this
8 section for a period not to exceed one school year, except that if
9 a pupil is determined to have violated the provisions of subsection
10 (a) of this section the pupil shall be expelled for a period of not
11 less than twelve consecutive months, subject to the following:

12 (1) ~~Provided, That the~~ The county superintendent may lessen
13 the mandatory period of twelve consecutive months for the expulsion
14 of the pupil if the circumstances of the pupil's case demonstrably
15 warrant, except as provided in subdivision (2) of this subsection;

16 (2) If a Juvenile Drug Court notifies the county
17 superintendent of successful completion of or certification of
18 making satisfactory progress toward successful completion of
19 Juvenile Drug Court pursuant to section one-d of this article and
20 the expulsion did not result from bringing a firearm to a school or
21 possessing a firearm at a school in violation of 20 U. S. C. §7151,
22 the county superintendent shall lessen the period of expulsion
23 pursuant to section one-d of this article;

24 (3) Upon the reduction of the period of expulsion, the county

1 superintendent shall prepare a written statement setting forth the
2 circumstances of the pupil's case which warrant the reduction of
3 the period of expulsion. The county superintendent shall submit
4 the statement to the county board, the principal, the faculty
5 Senate and the local school improvement council for the school from
6 which the pupil was expelled. ~~The~~ Subject to subdivision (2) of
7 this subsection, the county superintendent may use the following
8 factors as guidelines in determining whether or not to reduce a
9 mandatory twelve-month expulsion:

- 10 ~~(1)~~ (A) The extent of the pupil's malicious intent;
11 ~~(2)~~ (B) The outcome of the pupil's misconduct;
12 ~~(3)~~ (C) The pupil's past behavior history; ~~and~~
13 ~~(4)~~ (D) The likelihood of the pupil's repeated misconduct; and
14 (E) If applicable, the successful completion or the making of
15 satisfactory progress toward the successful completion of Juvenile
16 Drug Court.

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

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

23 (l) Each suspension or expulsion imposed upon a pupil under
24 the authority of this section shall be recorded in the uniform

1 integrated regional computer information system (commonly known as
2 the West Virginia Education Information System) described in
3 subsection (f), section twenty-six, article two, chapter eighteen
4 of this code.

5 (1) The principal of the school at which the pupil is enrolled
6 shall create an electronic record within twenty-four hours of the
7 imposition of the suspension or expulsion.

8 (2) Each record of a suspension or expulsion shall include the
9 pupil's name and identification number, the reason for the
10 suspension or expulsion and the beginning and ending dates of the
11 suspension or expulsion.

12 (3) The State Board of Education shall collect and disseminate
13 data so that any principal of a public school in West Virginia can
14 review the complete history of disciplinary actions taken by West
15 Virginia public schools against any pupil enrolled or seeking to
16 enroll at that principal's school. The purposes of this provision
17 are to allow every principal to fulfill his or her duty under
18 subsection (b), section fifteen-f, article five, chapter eighteen
19 of this code to determine whether a pupil requesting to enroll at
20 a public school in West Virginia is currently serving a suspension
21 or expulsion from another public school in West Virginia and to
22 allow principals to obtain general information about pupils'
23 disciplinary histories.

24 (m) Principals may exercise any other authority and perform

1 any other duties to discipline pupils consistent with state and
2 federal law, including policies of the State Board of Education.

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

7 (o) For the purpose of this section, "principal" means the
8 principal, assistant principal, vice principal or the
9 administrative head of the school or a professional personnel
10 designee of the principal or the administrative head of the school.

11 **§18A-5-1d. Return to school through Juvenile Drug Court for**
12 **certain juveniles.**

13 (a) When a pupil is expelled from school pursuant to the
14 provisions of section one-a of this article, the county board for
15 that county, the county superintendent of schools, the principal of
16 the school from which the pupil was expelled or the parent,
17 guardian or custodian may refer the pupil to a Juvenile Drug Court,
18 operated pursuant to section two-b, article five, chapter forty-
19 nine of this code. Upon a referral to Juvenile Drug Court under
20 the provisions of this section, the judge assigned to Juvenile Drug
21 Court shall determine if the pupil is an appropriate candidate for
22 Juvenile Drug Court.

23 (b) If the pupil is an appropriate candidate for Juvenile Drug
24 Court, then the court shall have jurisdiction over the pupil in the

1 same manner as it has jurisdiction over all other persons in
2 Juvenile Drug Court. The Juvenile Drug Court's jurisdiction over
3 pupils pursuant to this section shall include the ability to issue
4 any of the various sanctions available to the Juvenile Drug Court
5 up to, and including, temporary detention.

6 (c) Successful completion of Juvenile Drug Court or
7 certification by the Juvenile Drug Court judge that the pupil is
8 making satisfactory progress toward successful completion of
9 Juvenile Drug Court warrants reduction of the period of expulsion,
10 pursuant to subsection (i) of section one-a of this article. Upon
11 successful completion or satisfactory progress toward successful
12 completion, the Juvenile Drug Court shall notify the county
13 superintendent of successful completion or certification of
14 satisfactory progress and the superintendent shall, in consultation
15 with the Juvenile Drug Court treatment team and the court, submit
16 the statement required by subsection (i) of section one-a of this
17 article and place the pupil in an appropriate school within the
18 district. The pupil who successfully completes Juvenile Drug Court
19 or is certified as making satisfactory progress toward successful
20 completion, as provided in this section, shall be permitted to
21 return to school no later than the fifth regular school day
22 following notice to the superintendent of the successful completion
23 of Juvenile Drug Court or of certification of satisfactory progress
24 toward successful completion. Notwithstanding any other provision

1 of this subsection to the contrary, a county superintendent is not
2 required to reduce an expulsion pursuant to this subsection if the
3 expulsion is the result of bringing a firearm to a school or
4 possessing a firearm at a school in violation of 20 U. S. C. §7151.