

1 be amended and reenacted; and that said code be amended by adding
2 thereto a new section, designated §18A-5-1d, all to read as
3 follows:

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

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

13 (a) A principal shall suspend a pupil from school or from
14 transportation to or from the school on any school bus if the
15 pupil, in the determination of the principal after an informal
16 hearing pursuant to subsection (d) of this section, has: (I)
17 Violated the provisions of subsection (b), section fifteen, article
18 two, chapter sixty-one of this code; (ii) violated the provisions
19 of subsection (b), section eleven-a, article seven of said chapter;
20 or (iii) sold a narcotic drug, as defined in section one hundred
21 one, article one, chapter sixty-a of this code, on the premises of
22 an educational facility, at a school-sponsored function or on a

1 school bus. If a student has been suspended pursuant to this
2 subsection, the principal shall, within twenty-four hours, request
3 that the county superintendent recommend to the county board that
4 the student be expelled. Upon such a request by a principal, the
5 county superintendent shall recommend to the county board that the
6 student be expelled. Upon such recommendation, the county board
7 shall conduct a hearing in accordance with subsections (e), (f) and
8 (g) of this section to determine if the student committed the
9 alleged violation. If the county board finds that the student did
10 commit the alleged violation, the county board shall expel the
11 student.

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

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

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

1 (e), (f) and (g) of this section to determine if the student
2 committed the alleged violation. If the county board finds that
3 the student did commit the alleged violation, the county board may
4 expel the student.

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

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

22 At the commencement of the informal hearing, the principal
23 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

1 shall set forth a date and time at which the hearing shall be held,
2 which date shall be within the ten-day period of suspension imposed
3 by the principal.

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

1 (g) A county board that did not intend prior to a hearing to
2 assert a dangerous student claim, that did not notify the student
3 prior to the hearing that a dangerous student determination would
4 be considered and that determines through the course of the hearing
5 that the student may be a dangerous student shall schedule a second
6 hearing within ten days to decide the issue. The hearing may be
7 postponed for good cause shown by the pupil, but he or she remains
8 under suspension until after the hearing.

9 A county board that expels a student, and finds that the
10 student is a dangerous student, may refuse to provide alternative
11 education. However, after a hearing conducted pursuant to this
12 section for determining whether a student is a dangerous student,
13 when the student is found to be a dangerous student, is expelled
14 and is denied alternative education, a hearing shall be conducted
15 within three months after the refusal by the board to provide
16 alternative education to reexamine whether or not the student
17 remains a dangerous student and whether the student shall be
18 provided alternative education. Thereafter, a hearing for the
19 purpose of reexamining whether or not the student remains a
20 dangerous student and whether the student shall be provided
21 alternative education shall be conducted every three months for so
22 long as the student remains a dangerous student and is denied
23 alternative education. During the initial hearing, or in any

1 subsequent hearing, the board may consider the history of the
2 pupil's conduct as well as any improvements made subsequent to the
3 expulsion. If it is determined during any of the hearings that the
4 student is no longer a dangerous student or should be provided
5 alternative education, the student shall be provided alternative
6 education during the remainder of the expulsion period.

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

22 Any hearing conducted pursuant to this subsection may be
23 postponed: (1) For good cause shown by the pupil; (2) when

1 proceedings to compel a subpoenaed witness to appear must be
2 instituted; or (3) when a delay in service of a subpoena hinders
3 either party's ability to provide sufficient notice to appear to a
4 witness. A pupil remains under suspension until after the hearing
5 in any case where a postponement occurs.

6 The county boards are directed to report the number of pupils
7 determined to be dangerous students to the state Board of
8 Education. The state board will compile the county boards'
9 statistics and shall report its findings to the Legislative
10 Oversight Commission on Education Accountability.

11 (i) Pupils may be expelled pursuant to the provisions of this
12 section for a period not to exceed one school year, except that if
13 a pupil is determined to have violated the provisions of subsection
14 (a) of this section the pupil shall be expelled for a period of not
15 less than twelve consecutive months: *Provided*, That the county
16 superintendent may lessen the mandatory period of twelve
17 consecutive months for the expulsion of the pupil if the
18 circumstances of the pupil's case demonstrably warrant or if the
19 pupil meets the requirements of section one-d of this article.

20 Upon the reduction of the period of expulsion, the county
21 superintendent shall prepare a written statement setting forth the
22 circumstances of the pupil's case which warrant the reduction of
23 the period of expulsion. The county superintendent shall submit

1 the statement to the county board, the principal, the faculty
2 Senate and the local school improvement council for the school from
3 which the pupil was expelled. The county superintendent may use
4 the following factors as guidelines in determining whether or not
5 to reduce a mandatory twelve-month expulsion:

6 (1) The extent of the pupil's malicious intent;

7 (2) The outcome of the pupil's misconduct;

8 (3) The pupil's past behavior history; and

9 (4) The likelihood of the pupil's repeated misconduct.

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

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

16 (l) Each suspension or expulsion imposed upon a pupil under
17 the authority of this section shall be recorded in the uniform
18 integrated regional computer information system (commonly known as
19 the West Virginia Education Information System) described in
20 subsection (f), section twenty-six, article two, chapter eighteen
21 of this code.

22 (1) The principal of the school at which the pupil is enrolled
23 shall create an electronic record within twenty-four hours of the

1 imposition of the suspension or expulsion.

2 (2) Each record of a suspension or expulsion shall include the
3 pupil's name and identification number, the reason for the
4 suspension or expulsion, and the beginning and ending dates of the
5 suspension or expulsion.

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

18 (m) Principals may exercise any other authority and perform
19 any other duties to discipline pupils consistent with state and
20 federal law, including policies of the state Board of Education.

21 (n) Each county board is solely responsible for the
22 administration of proper discipline in the public schools of the
23 county and shall adopt policies consistent with the provisions of

1 this section to govern disciplinary actions.

2 (o) For the purpose of this section, "principal" means the
3 principal, assistant principal, vice principal or the
4 administrative head of the school or a professional personnel
5 designee of the principal or the administrative head of the school.

6 **§18A-5-1d. Return to school through Juvenile Drug Court for**
7 **certain juveniles.**

8 (a) When a pupil is expelled from school for a period of not
9 less than twelve consecutive months pursuant to the provisions of
10 section one-a of this article, the school board for that county,
11 the county superintendent of schools or the principal of the school
12 from which the pupil was expelled, or the parent, guardian or
13 custodian may refer the pupil to a Juvenile Drug Court, operated
14 pursuant to section two-b, article five, chapter forty-nine of this
15 code. Upon a referral to Juvenile Drug Court under the provisions
16 of this section, the judge assigned to Juvenile Drug Court shall
17 determine if the pupil is an appropriate candidate for Juvenile
18 Drug Court.

19 (b) If the pupil is an appropriate candidate for Juvenile Drug
20 Court, then the court shall have jurisdiction over the pupil in the
21 same manner as it has jurisdiction over all other persons in
22 Juvenile Drug Court. The Juvenile Drug Court's jurisdiction over
23 pupils pursuant to this section shall include the ability to issue

1 any of the various sanctions available to the Juvenile Drug Court
2 up to, and including, temporary detention.

3 (c) Successful completion of Juvenile Drug Court or
4 certification by the Juvenile Drug Court judge that the pupil is
5 making satisfactory progress toward completion of Juvenile Drug
6 Court, warrants reduction of the period of expulsion, pursuant to
7 subsection (i) of section one-a of this article. Upon successful
8 completion, the Juvenile Drug Court shall notify the county
9 superintendent of schools of completion or certification of
10 satisfactory progress and the superintendent shall promptly submit
11 the statement required by subsection (i) of section one-a of this
12 article. The pupil who successfully completes Juvenile Drug Court,
13 as provided in this section, shall be permitted to return to school
14 no later than the third regular school day following notice to the
15 superintendent of the successful completion of Juvenile Drug Court.

NOTE: The purpose of this bill is to authorize school boards, superintendents and principals to allow certain expelled students the opportunity to return to school through the Juvenile Drug Court through the provisions of the new §18A-5-1d.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§18A-5-1d is new; therefore, strike-throughs and underscoring have been omitted.