

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-FIRST LEGISLATURE**  
**REGULAR SESSION, 2014**



**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*

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The within ..... this  
the ..... Day of ....., 2014.

.....  
*Governor*