

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2662

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[Originating in the Committee on the Judiciary;

February 22, 2019.]

1 A BILL to amend and reenact §18A-2-5 and §18A-4-8e of the Code of West Virginia, 1931, as
2 amended, all relating to certificates or employment of school personnel; providing that a
3 service personnel contract of employment is automatically terminated if the employee is
4 convicted of certain crimes; and providing that a bus operator certificate is automatically
5 revoked if the bus driver is convicted of certain crimes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-5. Employment of service personnel; limitation.

1 The board is authorized to employ such service personnel, including substitutes, as is
2 deemed necessary for meeting the needs of the county school system: *Provided*, That the board
3 may not employ a number of such personnel whose minimum monthly salary under section eight-
4 a, article four, of this chapter is specified as pay grade “H”, which number exceeds the number
5 employed by the board on March 1, 1988.

6 Effective July 1, 1988, a county board shall not employ for the first time any person who
7 has not obtained a high school diploma or general educational development certificate (GED) or
8 who is not enrolled in an approved adult education course by the date of employment in
9 preparation for obtaining a GED: *Provided*, That such employment is contingent upon continued
10 enrollment or successful completion of the GED program.

11 Before entering upon their duties service personnel shall execute with the board a written
12 contract which shall be in the following form:

13 “COUNTY BOARD OF EDUCATION

14 SERVICE PERSONNEL CONTRACT OF EMPLOYMENT

15 THIS (Probationary or Continuing) CONTRACT OF EMPLOYMENT, made and entered
16 into this _____ day of _____, 19____, by and between THE BOARD OF
17 EDUCATION OF THE COUNTY OF _____, a corporation, hereinafter called the

18 'Board,' and (Name and Social Security Number of Employee), of (Mailing Address), hereinafter
19 called the 'Employee.'

20 WITNESSETH, that whereas, at a lawful meeting of the Board of Education of the County
21 of _____ held at the offices of said Board, in the City of _____,
22 _____ County, West Virginia, on the _____ day of _____,
23 19____, the Employee was duly hired and appointed for employment as a (Job Classification) at
24 (Place of Assignment) for the school year commencing _____ for the employment term and
25 at the salary and upon the terms hereinafter set out.

26 NOW, THEREFORE, pursuant to said employment, Board and Employee mutually agree
27 as follows:

28 (1) The Employee is employed by the board as a (Job Classification) at (Place of
29 Assignment) for the school year or remaining part thereof commencing _____,
30 19____. The period of employment is _____ days at an annual salary of \$_____ at the rate
31 of \$_____ per month.

32 (2) The Board hereby certifies that the Employee's employment has been duly approved
33 by the board and will be a matter of the board's minute records.

34 (3) The services to be performed by the Employee shall be such services as are prescribed
35 for the job classification set out above in paragraph (1) and as defined in Section 8, Article 4,
36 Chapter 18A of the Code of West Virginia, as amended.

37 (4) The Employee may be dismissed at any time for immorality, incompetency, cruelty,
38 insubordination, intemperance or willful neglect of duty pursuant to the provisions of Section 8,
39 Article 2, Chapter 18A of the Code of West Virginia, as amended.

40 (5) The Superintendent of the _____ County Board of Education, subject to the
41 approval of the board, may transfer and assign the Employee in the manner provided by Section
42 7, Article 2, Chapter 18A of the Code of West Virginia, as amended.

43 (6) This contract shall at all times be subject to any and all existing laws, or such laws as
44 may hereafter be lawfully enacted, and such laws shall be a part of this contract.

45 (7) This contract may be terminated or modified at any time by the mutual consent of the
46 board and the Employee.

47 (8) This contract shall be automatically terminated if the Employee is convicted under §61-
48 8D-3 or §61-8D-5 of this code or comparable statute in any other state, of any criminal offense
49 that requires the Employee to register as a sex offender, or of any criminal offense which has as
50 an element delivery or distribution of a controlled substance: *Provided*, That should the conviction
51 resulting in automatic revocation pursuant to this section be overturned by any Court of this state
52 or the United States, the Employee's contract shall be reinstated unless otherwise prohibited by
53 law.

54 ~~(8)~~(9) This contract must be signed and returned to the board at its address of
55 _____ within thirty days after being received by the
56 Employee.

57 ~~(9)~~(10) By signing this contract the Employee accepts employment upon the terms herein
58 set out.

59 WITNESS the following signatures as of the day, month and year first above written:
60 _____, (President, _____ County Board of Education) _____,
61 (Secretary, _____ County Board of Education) _____, (Employee)"

62 The use of this form shall not be interpreted to authorize boards to discontinue any
63 employee's contract status with the board or rescind any rights, privileges or benefits held under
64 contract or otherwise by any employee prior to the effective date of this section.

65 Each contract of employment shall be designated as a probationary or continuing contract.
66 The employment of service personnel shall be made a matter of minute record. The employee
67 shall return the contract of employment to the county board of education within thirty days after
68 receipt or otherwise he or she shall forfeit his or her right to employment.

69 Under such regulation and policy as may be established by the county board, service
70 personnel selected and trained for teacher-aide classifications, such as monitor aide, clerical aide,
71 classroom aide and general aide, shall work under the direction of the principal and teachers to
72 whom assigned.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§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 shall be automatically revoked if the bus operator is convicted under
83 §61-8D-3 or §61-8D-5 of this code or comparable statute in any other state, of any criminal offense
84 that requires the bus operator to register as a sex offender, or of any criminal offense which has
85 as an element the distribution of a controlled substance: *Provided*, That should the conviction
86 resulting in automatic revocation pursuant to this section be overturned by any Court of this state
87 or the United States, the bus operator's certificate shall be reinstated unless otherwise prohibited
88 by law.

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

93 ~~(i) Any matter for which the bus operator was disciplined, less than dismissal, by the~~
94 ~~employing county board; or~~

95 ~~(ii) Any matter for which the bus operator is meeting or has met an improvement plan~~
96 ~~determined by the county board.~~

97 (D) The state superintendent shall designate a review panel to conduct hearings on
98 certificate revocations or denials and make recommendations for action by the state
99 superintendent. The state board, after consultation with employee organizations representing
100 school service personnel, shall promulgate a rule to establish the review panel membership and
101 composition, method of appointment, governing principles and meeting schedule.

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

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

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