

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 809

FISCAL
NOTE

BY SENATORS IHLENFELD AND PLYMALE

[Introduced February 17, 2020; referred
to the Committee on Education]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §18A-2A-1, §18A-2A-2, §18A-2A-3, §18A-2A-4, §18A-2A-5, §18A-2A-6, and
 3 §18A-2A-7, all relating to persons not eligible for employment in public schools.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. PERSONS NOT ELIGIBLE FOR EMPLOYMENT IN PUBLIC SCHOOLS.

§18A-2A-1. Definitions.

1 In this article:
 2 “Charter School” means a public charter school as defined in §18-5G-2 of this code;
 3 “State board” means the West Virginia Board of Education

§18A-2A-2. Registry of persons not eligible for employment in public schools.

1 (a) The state superintendent shall maintain and make available through the Internet portal
 2 developed and maintained by the state superintendent under §18A-2A-5 of this code a registry of
 3 persons who are not eligible to be employed by a county board of education or charter school.

4 (b) A county board of education or charter school shall discharge or refuse to hire a person
 5 listed on the registry maintained under this section.

6 (c) The registry maintained under this section shall list the following persons as not eligible
 7 to be employed by public schools:

8 (1) A person determined by the state superintendent as a person who would not be eligible
 9 for educator certification under §18A-3-1 et seq. of this code;

10 (2) A person determined by the state superintendent to be not eligible for employment
 11 based on the person’s criminal history record information review, as provided by §18A-3-10 of
 12 this code;

13 (3) A person who is not eligible for employment based on criminal history record
 14 information received by the state superintendent under §18A-3-6 of this code;

15 (4) A person whose certification issued under §18A-3-1 et seq. of this code is revoked by
 16 the state superintendent on a finding that the person engaged in misconduct described in §18A-

17 3-6 of this code; and

18 (5) A person who is determined by a county board of education under §18A-2A-4 of this
19 code to have engaged in misconduct described by §18A-2A-3(c)(1)(A) or (B) of this code.

20 (d) The state superintendent shall provide private schools and public schools equivalent
21 access to the registry maintained under this section.

§18A-2A-3. Requirement to report employee misconduct.

1 (a) In this section, “abused child” has the meaning as assigned in §49-1-201 of this code,
2 and includes any sexual conduct involving a student or minor.

3 (b) This section applies to a person who is employed by a county board of education or
4 charter school, and who does not hold a certification issued under §18A-3-1 et seq. of this code.

5 (c) In addition to the reporting requirement under §49-2-803 of this code, the
6 superintendent of a county board of education or the director of a charter school shall notify the
7 state superintendent if:

8 (1) An employee’s employment at the county board of education or charter school was
9 terminated and there is evidence that the employee:

10 (A) Abused or otherwise committed an unlawful act with a student or minor; or

11 (B) Was involved in a romantic relationship with or solicited or engaged in sexual contact
12 with a student or minor; or

13 (2) The employee resigned and there is evidence that the employee engaged in
14 misconduct described by subdivision (1) of this subsection.

15 (d) A county board of education or the governing board of a charter school shall complete
16 an investigation of an employee that involves evidence that the employee may have engaged in
17 misconduct described by subdivision (1), subsection (c) of this section, despite the employee’s
18 resignation from employment before completion of the investigation.

19 (e) A principal of a public school or charter school must notify the superintendent of the
20 county board of education or the governing board of the charter school not later than the seventh

21 business day after the date of an employee termination of employment or resignation following
22 an alleged incident of misconduct described by paragraphs (A) or (B), subdivision (1), subsection
23 (c) of this section.

24 (f) The county board of education or governing board of the charter school shall notify the
25 state superintendent by filing a report with the state superintendent not later than the seventh
26 business day after the date the county board of education or governing board of the charter school
27 receives a report or is made aware of an employee's termination of employment or resignation
28 following an alleged incident of misconduct described by paragraph (A) or (B), subdivision (1),
29 subsection (c) of this section. The report must be:

30 (1) In writing; and

31 (2) In a form prescribed by the state superintendent.

32 (g) The county board of education or governing board of the charter school shall notify the
33 employee of the filing of the report required by subsection (f) of this section.

34 (h) A county superintendent, county board of education, or governing board who in good
35 faith and while acting in an official capacity files a report with the state superintendent under
36 subsection (f) of this section or a principal who in good faith and while acting in an official capacity
37 notifies a county board of education or governing board under subsection (e) of this section is
38 immune from civil or criminal liability that might otherwise be incurred or imposed.

39 (i) The name of a student or minor who is the victim of abuse or unlawful conduct by an
40 employee must be included in a report filed under this section, but the name of the student or
41 minor is not public information under §29B-1-1 *et seq.* of this code.

42 (j) The state superintendent may review the records of a county board of education or
43 charter school to ensure compliance with the requirement to report misconduct under this section.

§18A-2A-4. Notice of alleged misconduct; investigation; hearing.

1 (a) A person described by §18A-2A-3(b) of this code and who is the subject of a report
2 that alleges misconduct described by §18A-2A-3(c)(1)(A) or (B) of this code is entitled to a hearing

3 on the merits of the allegations of misconduct under the procedures provided by §18A-2-8 of this
4 code to contest the allegation in the report.

5 (b) On receiving a report filed under §18A-2A-3(f) of this code, the county board of
6 education shall promptly send to the person who is the subject of the report a notice that includes:

7 (1) A statement informing the person that the person must request a hearing on the merits
8 of the allegations of misconduct within the period provided by subsection (c) of this section;

9 (2) A request that the person submit a written response within the period provided by
10 subsection (c) of this section to show cause why the county board of education should not pursue
11 an investigation; and

12 (3) A statement informing the person that if the person does not timely submit a written
13 response to show cause as provided by subdivision (2) of this subsection, the county board of
14 education superintendent shall provide information indicating the person is under investigation in
15 the manner provided by subsection (d) of this section.

16 (c) A person entitled to a hearing under subsection (a) must request a hearing and submit
17 a written response to show cause not later than the 10th day after the date the person receives
18 the notice from the county board of education provided under subsection (b) of this section.

19 (d) If a person who receives notice provided under subsection (b) of this section does not
20 timely submit a written response to show cause why the county board of education should not
21 pursue an investigation, the county board of education shall instruct the state superintendent to
22 make available through the Internet portal developed and maintained by the state superintendent
23 under §18A-2A-5 of this code information indicating that the person is under investigation for
24 alleged misconduct.

25 (e) If a person entitled to a hearing under subsection (a) of this section does not request
26 a hearing as provided by subsection (c) of this section, the county board of education shall:

27 (1) Based on the report filed under §18A-2A-3(f) of this code, make a determination
28 whether the person engaged in misconduct; and

29 (2) If the county board of education determines that the person engaged in misconduct
30 described by §18A-2A-3(c)(1)(A) or (B) of this code, instruct the state superintendent to add the
31 person's name to the registry maintained under §18A-2A-2 of this code.

32 (f) If a person entitled to a hearing under subsection (a) requests a hearing as provided
33 by subsection (c) of this section and the final decision in that hearing determines that the person
34 engaged in misconduct described by §18A-2A-3(c)(1)(A) or (B) of this code, the county board of
35 education shall instruct the state superintendent to add the person's name to the registry
36 maintained under §18A-2A-2 of this code.

37 (g) If a person entitled to a hearing under subsection (a) requests a hearing as provided
38 by subsection (c) of this section and the final decision in that hearing determines that the person
39 did not engage in misconduct described by §18A-2A-3(c)(1)(A) or (B) of this code, the county
40 board of education shall instruct the state superintendent to immediately remove from the Internet
41 portal developed and maintained by the state superintendent under §18A-2A-5 of this code the
42 information indicating that the person is under investigation for alleged misconduct.

§18A-2A-5. Internet portal.

1 The state superintendent shall develop and maintain an Internet portal through which:

2 (1) A report required under §18A-2A-3(f) of this code may be confidentially and securely
3 filed; and

4 (2) The state superintendent makes available:

5 (A) The registry of persons who are not eligible to be employed in public schools as
6 described by §18A-2A-2 of this code; and

7 (B) Information indicating that a person is under investigation for alleged misconduct in
8 accordance with §18A-2A-4(d) of this code, provided that the state superintendent must provide
9 the information through a procedure other than the registry described under paragraph (A) of this
10 subdivision.

§18A-2A-6. Compliance monitoring.

1 The state superintendent shall periodically conduct site visits and review the records of
2 county board of educations and charter schools to ensure compliance with §18A-2A-2(b) of this
3 code.

§18A-2A-7. Rules.

1 The state superintendent shall propose legislative rules in accordance with the provisions
2 of §29A-3A-1, et seq. of this code necessary to implement this article.

NOTE: The purpose of this bill is to create a registry of persons not eligible for employment in public schools.

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