

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2832

BY DELEGATE HOLSTEIN

[Introduced March 02, 2021; Referred to the
Committee on Education then the Judiciary]

1 A BILL to amend and reenact §18-5-13 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §18A-2-1 of said code; to amend and reenact §18A-4-7a of said code;
3 to amend and reenact §18A-5-1 of said code; and to amend and reenact §18B-8-6 of said
4 code, all relating to providing that expression of political ideas and speech (verbal or
5 written), may not be a factor in hiring or employment, admittance, suspension or expulsion
6 in schools, colleges, or universities.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

1 Subject to the provisions of this chapter and the rules of the state board, each county
2 board may:

3 (a) Control and manage all of the schools and school interests for all school activities and
4 upon all school property owned or leased by the county, including:

5 (1) Requiring schools to keep records regarding funds connected with the school or school
6 interests, including all receipts and disbursements of all funds collected or received by:

7 (A) Any principal, teacher, student, or other person in connection with the schools and
8 school interests;

9 (B) Any program, activity or other endeavor of any nature operated or conducted by or in
10 the name of the school; and

11 (C) Any organization or body directly connected with the school;

12 (2) Allowing schools to expend funds for student, parent, teacher and community
13 recognition programs. A school may use only funds it generates through a fund-raising or
14 donation-soliciting activity. Prior to commencing the activity, the school shall:

15 (A) Publicize the activity as intended for this purpose; and

- 16 (B) Designate for this purpose the funds generated;
- 17 (3) Auditing the records and conserving the funds, including securing surety bonds by
18 expending board moneys. The funds described in this subsection are quasipublic funds, which
19 means the moneys were received for the benefit of the school system as a result of curricular or
20 noncurricular activities;
- 21 (b) Establish:
- 22 (1) Schools, from preschool through high school;
- 23 (2) Vocational schools; and
- 24 (3) Schools and programs for post-high school instruction, subject to approval of the state
25 board;
- 26 (c) Close any school:
- 27 (1) Which is unnecessary and assign the students to other schools. The closing shall occur
28 pursuant to official action of the county board. Except in emergency situations when the timing
29 and manner of notification are subject to approval by the state superintendent, the county board
30 shall notify the affected teachers and service personnel of the county board action not later than
31 the first Monday in April. The board shall provide notice in the same manner as set forth in section
32 four of this article; or
- 33 (2) Pursuant to subsection (e) of this section;
- 34 (d) Consolidate schools;
- 35 (e) Close any elementary school whose average daily attendance falls below 20 students
36 for two consecutive months. The county board may assign the students to other schools in the
37 district or to schools in adjoining districts. If the teachers in the closed school are not transferred
38 or reassigned to other schools, they shall receive one month's salary;
- 39 (f) Provide transportation according to rules established by the county board, as follows:
- 40 (1) To provide at public expense adequate means of transportation:
- 41 (A) For all children of school age who live more than two-miles distance from school by

42 the nearest available road;

43 (B) For school children participating in county board-approved curricular and
44 extracurricular activities;

45 (C) Across county lines for students transferred from one district to another by mutual
46 agreement of both county boards. The agreement shall be recorded in the meeting minutes of
47 each participating county board and is subject to subsection (h) of this section; and

48 (D) Within available revenues, for students within two-miles distance of the school; and

49 (2) To provide transportation for participants in projects operated, financed, sponsored, or
50 approved by the Bureau of Senior Services. This transportation shall be provided at no cost to
51 the county board. All costs and expenses incident in any way to this transportation shall be borne
52 by the bureau or the local or county affiliate of the bureau;

53 (3) Any school bus owned by the county board may be operated only by a bus operator
54 regularly employed by the county board, except as provided in subsection (g) of this section;

55 (4) Pursuant to rules established by the state board, the county board may provide for
56 professional employees to be certified to drive county board-owned vehicles that have a seating
57 capacity of fewer than 10 passengers. These employees may use the vehicles to transport
58 students for school-sponsored activities, but may not use the vehicles to transport students
59 between school and home. Not more than one of these vehicles may be used for any school-
60 sponsored activity;

61 (5) Students may not be transported to a school-sponsored activity in any county-owned
62 or leased vehicle that does not meet school bus or public transit ratings. This section does not
63 prohibit a parent from transporting ten or fewer students in a privately-owned vehicle;

64 (6) Students may be transported to a school-sponsored activity in a vehicle that has a
65 seating capacity of 16 or more passengers which is not owned and operated by the county board
66 only as follows:

67 (A) The state board shall promulgate a rule to establish requirements for:

- 68 (i) Automobile insurance coverage;
- 69 (ii) Vehicle safety specifications;
- 70 (iii) School bus or public transit ratings; and
- 71 (iv) Driver training, certification, and criminal history record check; and
- 72 (B) The vehicle owner shall provide to the county board proof that the vehicle and driver
- 73 satisfy the requirements of the state board rule; and
- 74 (7) Buses shall be used for extracurricular activities as provided in this section only when
- 75 the insurance coverage required by this section is in effect;
- 76 (g) Lease school buses pursuant to rules established by the county board.
- 77 (1) Leased buses may be operated only by bus operators regularly employed by the
- 78 county board, except that these buses may be operated by bus operators regularly employed by
- 79 another county board in this state if bus operators from the owning county are unavailable.
- 80 (2) The lessee shall bear all costs and expenses incurred by, or incidental to the use of,
- 81 the bus.
- 82 (3) The county board may lease buses to:
- 83 (A) Public and private nonprofit organizations and private corporations to transport school-
- 84 age children for camps or educational activities;
- 85 (B) Any college, university or officially recognized campus organization for transporting
- 86 students, faculty, and staff to and from the college or university. Only college and university
- 87 students, faculty and staff may be transported pursuant to this paragraph. The lease shall include
- 88 provisions for:
- 89 (i) Compensation for bus operators;
- 90 (ii) Consideration for insurance coverage, repairs, and other costs of service; and
- 91 (iii) Any rules concerning student behavior;
- 92 (C) Public and private nonprofit organizations, including education employee
- 93 organizations, for transportation associated with fairs, festivals, and other educational and cultural

94 events. The county board may charge fees in addition to those charges otherwise required by this
95 subsection;

96 (h) To provide at public expense for insurance coverage against negligence of the drivers
97 of school buses, trucks or other vehicles operated by the county board. Any contractual
98 agreement for transportation of students shall require the vehicle owner to maintain insurance
99 coverage against negligence in an amount specified by the county board;

100 (i) Provide for the full cost or any portion thereof for group plan insurance benefits not
101 provided or available under the West Virginia Public Employees Insurance Act. Any of these
102 benefits shall be provided:

103 (1) Solely from county board funds; and

104 (2) For all regular full-time employees of the county board;

105 (j) Employ teacher aides; to provide in-service training for the aides pursuant to rules
106 established by the state board; and, prior to assignment, to provide a four-clock-hour program of
107 training for a service person assigned duties as a teacher aide in an exceptional children program.
108 The four-clock-hour program shall consist of training in areas specifically related to the education
109 of exceptional children;

110 (k) Establish and operate a self-supporting dormitory for:

111 (1) Students attending a high school or participating in a post high school program; and

112 (2) Persons employed to teach in the high school or post high school program;

113 (l) At the county board's discretion, employ, contract with, or otherwise engage legal
114 counsel in lieu of using the services of the prosecuting attorney to advise, attend to, bring,
115 prosecute, or defend, as the case may be, any matters, actions, suits and proceedings in which
116 the county board is interested;

117 (m) Provide appropriate uniforms for school service personnel;

118 (n) Provide at public expense for payment of traveling expenses incurred by any person
119 invited to appear to be interviewed concerning possible employment by the county board, subject

120 to rules established by the county board;

121 (o) Allow designated employees to use publicly provided carriage to travel from their
122 residences to their workplace and return. The use:

123 (1) Is subject to the supervision of the county board; and

124 (2) Shall be directly connected with, required by and essential to the performance of the
125 employee's duties and responsibilities;

126 (p) Provide at public expense adequate public liability insurance, including professional
127 liability insurance, for county board employees;

128 (q)(1) Enter into cooperative agreements with one or more county boards or educational
129 services cooperative to provide improvements to the instructional needs of each district. The
130 cooperative agreements may be used to employ specialists in a field of academic study or for
131 support functions or services for the field.

132 (2) Enter into cooperative agreements with one or more county boards to facilitate
133 coordination and cooperation in areas of service to reduce administrative and/or operational
134 costs, including the consolidation of administrative, coordinating, and other county level functions
135 into shared functions to promote the efficient administration and operation of the public school
136 systems including, but not limited to:

137 (A) Purchasing;

138 (B) Operation of specialized programs for exceptional children;

139 (C) Employment of any school personnel as defined in §18A-1-1 of this code: Provided,
140 That expression of political ideas and speech (verbal or written), may not be a factor in hiring or
141 employment.

142 (D) Professional development;

143 (E) Technology including, but not limited to WVEIS; and

144 (F) Billing for school-based Medicaid services in schools throughout the state.

145 Each such cooperative agreement shall be in writing and agreed to by each county board

146 participating in the cooperative agreement. Each cooperative agreement that is an employment
147 agreement may be entered into on a case-by-case basis. Notwithstanding the geographic
148 quadrants as provided in §18-5-13b of this code, school systems may enter into cooperative
149 agreements with any school system in the state.

150 (3) Enter into a cooperative agreement with other county boards to establish educational
151 services cooperatives as provided in §18-5-13c of this code.

152 (r) Provide information about vocational and higher education opportunities to exceptional
153 students. The county board shall provide in writing to the students and their parents or guardians
154 information relating to programs of vocational education and to programs available at state
155 institutions of higher education. The information may include sources of available funding,
156 including grants, mentorships and loans for students who wish to attend classes at institutions of
157 higher education;

158 (s) Enter into agreements with other county boards for the transfer and receipt of any funds
159 determined to be fair when students are permitted or required to attend school in a district other
160 than the district of their residence. These agreements are subject to the approval of the state
161 board; and

162 (t) Enter into job-sharing arrangements, as defined in §18A-1-1 of this code, with its
163 employees, subject to the following provisions:

164 (1) A job sharing arrangement shall meet all the requirements relating to posting,
165 qualifications and seniority, as provided in §18A-4-1 *et seq.* of this code;

166 (2) Notwithstanding any contrary provision of this code or legislative rule and specifically
167 §5-16-1 *et seq.* of this code, a county board that enters into a job-sharing arrangement:

168 (A) Shall provide insurance coverage to the one employee mutually agreed upon by the
169 employees participating in that arrangement; and

170 (B) May not provide insurance benefits of any type to more than one of the job-sharing
171 employees, including any group plan available under the State Public Employees Insurance Act;

172 (3) Each job-sharing agreement shall be in writing on a form prescribed and furnished by
173 the county board. The agreement shall designate specifically one employee only who is entitled
174 to the insurance coverage. Any employee who is not designated is not eligible for state public
175 employees insurance coverage regardless of the number of hours he or she works;

176 (4) All employees involved in the job-sharing agreement shall meet the requirements of
177 §5-16-2(3) of this code; and

178 (5) When entering into a job-sharing agreement, the county board and the participating
179 employees shall consider issues such as retirement benefits, termination of the job-sharing
180 agreement and any other issue the parties consider appropriate. Any provision in the agreement
181 relating to retirement benefits may not cause any cost to be incurred by the retirement system
182 that is more than the cost that would be incurred if a single employee were filling the position; and

183 (u) Under rules it establishes for each child, expend an amount not to exceed the
184 proportion of all school funds of the district that each child would be entitled to receive if all the
185 funds were distributed equally among all the children of school age in the district upon a per capita
186 basis.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-1. Employment in general.

1 (a) The employment of professional personnel shall be made by the board only upon
2 nomination and recommendation of the superintendent, subject to the following:

3 (1) The superintendent shall provide the principal at the school at which the professional
4 educator or paraprofessional employee is to be employed an opportunity to interview all qualified
5 applicants and make recommendations to the county superintendent regarding their employment;

6 (2) The principal may not recommend for employment an individual who is related to him
7 or her as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece,

8 husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-
9 law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half
10 sister;

11 (3) Nothing shall prohibit the timely employment of persons to perform necessary duties;
12 nor may expression of political ideas and speech (verbal or written), be a factor in hiring or
13 employment;

14 (4) In case the board refuses to employ any or all of the persons nominated, the
15 superintendent shall nominate others and submit the same to the board at such time as the board
16 may direct;

17 (5) All personnel so nominated and recommended for employment and for subsequent
18 assignment shall meet the certification, licensing, training, and other eligibility classifications as
19 may be required by provisions of this chapter and by state board rule. In addition to any other
20 information required, the application for any certification or licensing shall include the applicant's
21 Social Security number.

22 (b) Professional personnel employed as deputy, associate, or assistant superintendents
23 by the board in offices, departments, or divisions at locations other than a school and who are
24 directly answerable to the superintendent shall serve at the will and pleasure of the superintendent
25 and may be removed by the superintendent upon approval of the board. Such professional
26 personnel shall retain seniority rights only in the area or areas in which they hold valid certification
27 or licensure.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7a. Employment, promotion, and transfer of professional personnel; qualifications.

1 (a) A county board of education shall make decisions affecting the filling of vacancies in
2 professional positions of employment on the basis of the applicant with the highest qualifications:
3 *Provided*, That the county superintendent shall be hired under separate criteria pursuant to §18-
4 4-2 of this code.

5 (b) In judging qualifications for the filling of vacancies of professional positions of
6 employment, consideration shall be given to each of the following:

7 (1) Appropriate certification, licensure, or both;

8 (2) Amount of experience relevant to the position or, in the case of a classroom teaching
9 position, the amount of teaching experience in the required certification area;

10 (3) The amount of course work, degree level or both in the relevant field and degree level
11 generally;

12 (4) Academic achievement;

13 (5) In the case of a principal or classroom teaching position, certification by the National
14 Board for Professional Teaching Standards;

15 (6) Specialized training relevant to performing the duties of the job;

16 (7) Past performance evaluations conducted pursuant to §18A-2-12 and §18A-3C-2 of this
17 code or, in the case of a classroom teacher, past evaluations of the applicant's performance in
18 the teaching profession;

19 (8) Seniority;

20 (9) Other measures or indicators upon which the relative qualifications of the applicant
21 may fairly be judged: Provided, That expression of political ideas and speech (verbal or written),
22 may not be a factor in hiring or employment;

23 (10) In the case of a classroom teaching position, the recommendation of the principal of
24 the school at which the applicant will be performing a majority of his or her duties; and

25 (11) In the case of a classroom teaching position, the recommendation, if any, resulting
26 from the process established pursuant to the provisions of §18-5A-5 of this code by the faculty
27 senate of the school at which the employee will be performing a majority of his or her duties.

28 (c) When filling of a vacancy pursuant to this section, a county board is entitled to
29 determine the appropriate weight to apply to each of the criterion when assessing an applicant's
30 qualifications: *Provided, That if one or more permanently employed instructional personnel apply*

31 for a classroom teaching position and meet the standards set forth in the job posting, each
32 criterion under subsection (b) of this section shall be given equal weight except that the criteria in
33 subdivisions (10) and (11) of this section shall each be double weighted.

34 (d) For a classroom teaching position, if the principal and faculty senate recommend the
35 same applicant pursuant to subdivisions (10) and (11), subsection (b) of this section, and the
36 superintendent concurs with those recommendations, then the other provisions of subsections
37 (b) and (c) of this section do not apply and the county board shall appoint that applicant
38 notwithstanding any other provision of this code to the contrary.

39 (e) The state board shall promulgate a rule, including an emergency rule if necessary, in
40 accordance with the provisions of §29A-3B-1 *et seq.* of this code to implement and interpret the
41 provisions of this section. The rule may provide for a classroom teacher who directly participates
42 in making recommendations pursuant to this section to be compensated at the appropriate daily
43 rate during periods of participation beyond his or her individual contract.

44 (f) The recommendations of the principal and faculty senate made pursuant to
45 subdivisions (10) and (11), subsection (b) of this section shall be based on a determination as to
46 which applicant is the most highly qualified for the position: *Provided*, That nothing in this
47 subsection may require principals or faculty senates to assign any amount of weight to any factor
48 in making a recommendation.

49 (g) With the exception of guidance counselors, the seniority of classroom teachers, as
50 defined in §18A-1-1 of this code, shall be determined on the basis of the length of time the
51 employee has been employed as a regular full-time certified and/or licensed professional educator
52 by the county board of education and shall be granted in all areas that the employee is certified,
53 licensed or both.

54 (h) If two or more employees with the same certification establish an identical seniority
55 date as a result of initial employment as a regular teacher on or after July 1, 2019, the priority
56 between these employees shall be determined by a random selection system established by the

57 employees and approved by the county board. A board shall conduct the random selection within
58 30 days of the time the employees with the same certification establish an identical seniority date.
59 All employees with an identical seniority date and the same certification shall participate in the
60 random selection. As long as the affected employees hold the identical seniority date within a
61 certification, the initial random selection conducted by the board shall be permanent for the
62 duration of the employment of the employees by the board.

63 (i) Upon completion of 133 days of employment in any one school year, substitute
64 teachers, except retired teachers and other retired professional educators employed as
65 substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a
66 permanent, full-time professional employee. One hundred thirty-three days or more of said
67 employment shall be prorated and shall vest as a fraction of the school year worked by the
68 permanent, full-time teacher.

69 (j) Guidance counselors and all other professional employees, as defined in §18A-1-1 of
70 this code, except classroom teachers, shall gain seniority in their nonteaching area of professional
71 employment on the basis of the length of time the employee has been employed by the county
72 board of education in that area: *Provided*, That if an employee is certified as a classroom teacher,
73 the employee accrues classroom teaching seniority for the time that employee is employed in
74 another professional area. For the purposes of accruing seniority under this subsection,
75 employment as principal, supervisor, or central office administrator, as defined in §18A-1-1 of this
76 code, shall be considered one area of employment.

77 (k) Employment for a full employment term equals one year of seniority, but an employee
78 may not accrue more than one year of seniority during any given fiscal year. Employment for less
79 than the full employment term shall be prorated.

80 (l) All decisions on reductions in force shall be based on qualifications as set forth in a
81 county board policy. Furthermore, for the purposes of this subsection and subsections (m) through
82 (t), inclusive, of this section, the word "qualifications" means the qualifications set forth in county

83 board policy and only means qualifications set forth in subsection (b) of this section to the extent
84 those qualifications are set forth in county board policy: *Provided*, That in defining the word
85 “qualifications” in its policy, the county board:

86 (1) Shall consider including the following criteria:

87 (A) Seniority;

88 (B) Appropriate certification, licensure, or both;

89 (C) Amount of experience relevant to the position or, in the case of a classroom teaching
90 position, the amount of teaching experience in the required certification area;

91 (D) The amount of course work, degree level, or both in the relevant field and degree level
92 generally;

93 (E) Academic achievement;

94 (F) In the case of a principal or classroom teaching position, certification by the National
95 Board for Professional Teaching Standards;

96 (G) Specialized training relevant to performing the duties of the job;

97 (H) Past performance evaluations conducted pursuant to §18A-2-12 and §18A-3C-2 of
98 this code or, in the case of a classroom teacher, past evaluations of the applicant's performance
99 in the teaching profession;

100 (I) Other measures or indicators upon which the relative qualifications of the applicant
101 may fairly be judged;

102 (J) In the case of transfer or recall to a classroom teaching position, the recommendation
103 of the principal of the school at which the applicant will be performing a majority of his or her
104 duties; and

105 (K) In the case of transfer or recall to a classroom teaching position, the recommendation,
106 if any, resulting from the process established pursuant to the provisions of §18-5A-5 of this code
107 by the faculty senate of the school at which the employee will be performing a majority of his or
108 her duties;

109 (2) Shall consider other criteria set forth in subdivision (1) of this subsection to the extent
110 they are included in the county board policy only after considering personnel whose last
111 performance evaluation conducted pursuant to §18A-2-12 or §18A-3C-2 of this code, as
112 applicable, is less than satisfactory; and

113 (3) May not include salary as one of the criteria in the definition.

114 (m) Whenever a county board is required to reduce the number of professional personnel
115 in its employment, the selection of the employee to be properly notified and released from
116 employment pursuant to the provisions of section two, article two of this chapter shall be based
117 upon seniority, certification, licensure, and performance evaluations. The provisions of this
118 subsection are subject to the following:

119 (1) ~~In the event of~~ If there is a reduction in force, a county board of education may properly
120 notify and release from employment pursuant to ~~the provisions of~~ §18A-2-2 of this code any
121 classroom teacher with unsatisfactory evaluations for the previous two consecutive years
122 regardless of years of service instead of release from employment of less senior classroom
123 teachers with satisfactory performance evaluations;

124 (2) All persons employed in a certification area to be reduced who are employed under a
125 temporary permit shall be properly notified and released before a fully certified employee in such
126 a position is subject to release;

127 (3) Notwithstanding any provision of this code to the contrary, for any vacancy in an
128 established, existing, or newly created position that, on or before March 1, is known to exist for
129 the ensuing school year, upon recommendation of the superintendent, the board shall appoint the
130 successful applicant from among all qualified applicants. All employees subject to release shall
131 be considered applicants for the positions for which they are qualified and shall be considered
132 before posting such vacancies for application by nonemployees;

133 (4) An employee subject to release shall be employed in any other professional position
134 where the employee is certified and was previously employed or to any lateral area for which the

135 employee is certified, licensed or both, if the employee's seniority is greater than the seniority of
136 any other employee in that area of certification, licensure, or both;

137 (5) If an employee subject to release holds certification, licensure, or both in more than
138 one lateral area and if the employee's seniority is greater than the seniority of any other employee
139 in one or more of those areas of certification, licensure or both, the employee subject to release
140 shall be employed in the professional position held by the employee with the least seniority in any
141 of those areas of certification, licensure or both; and

142 (6) If, prior to August 1 of the year, a reduction in force is approved, the reason for any
143 particular reduction in force no longer exists as determined by the county board in its sole and
144 exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the
145 released employee in writing of his or her right to be restored to his or her position of employment.
146 Within five days of being so notified, the released employee shall notify the board, in writing, of
147 his or her intent to resume his or her position of employment or the right to be restored shall
148 terminate. Notwithstanding any other provision of this subdivision, if there is another employee on
149 the preferred recall list with proper certification and higher seniority, that person shall be placed
150 in the position restored as a result of the reduction in force being rescinded.

151 (n) For the purpose of this article, all positions which meet the definition of "classroom
152 teacher" as defined in §18A-1-1 of this code shall be lateral positions. For all other professional
153 positions, the county board of education shall adopt a policy by October 31, 1993, and may modify
154 the policy thereafter as necessary, which defines which positions shall be lateral positions. In
155 adopting the policy, the board may give consideration to the rank of each position in terms of title;
156 nature of responsibilities; salary level; and certification, licensure, or both; along with the days in
157 the period of employment.

158 (o) All professional personnel whose lesser qualifications, as determined by county board
159 policy, with the county board is insufficient to allow their retention by the county board during a
160 reduction in workforce shall be placed upon a preferred recall list. As to any professional position

161 opening within the area where they had previously been employed or to any lateral area for which
162 they have certification, licensure or both, the employee shall be recalled on the basis of
163 qualifications if no regular, full-time professional personnel, or those returning from leaves of
164 absence with greater qualifications apply for and accept the position.

165 (p) The board shall annually notify professional personnel on the preferred list of the job
166 application procedures and any websites used to advertise vacancies. The notice shall be sent
167 by certified mail via the U.S. Postal Service to the last known address of the employee, and it
168 shall be the duty of each professional person to notify the board of continued availability annually
169 of any change in address, or of any change in certification, licensure, or both.

170 (q) Openings in established, existing or newly created positions shall be processed as
171 follows:

172 (1) Boards shall be required to post and date notices of each opening at least once. At
173 their discretion, boards may post an opening for a position other than classroom teacher more
174 than once in order to attract more qualified applicants. At their discretion, boards may repost an
175 opening for a classroom teacher after the first posting in order to attract more qualified applicants
176 subject to the following:

177 (A) Each notice shall be posted in conspicuous working places for all professional
178 personnel to observe for at least five working days which may include any website maintained by
179 the county board;

180 (B) At least one notice shall be posted within 20 working days of the position openings
181 and shall include the job description;

182 (C) Any special criteria or skills that are required by the position shall be specifically stated
183 in the job description and directly related to the performance of the job;

184 (D) Postings for vacancies made pursuant to this section shall be written so as to ensure
185 that the largest possible pool of qualified applicants may apply; and

186 (E) Job postings may not require criteria which are not necessary for the successful

187 performance of the job and may not be written with the intent to favor a specific applicant;

188 (2) No vacancy may be filled until after the five-day minimum posting period of the most
189 recent posted notice of the vacancy;

190 (3) If one or more applicants under all the postings for a vacancy meets the qualifications
191 listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board
192 within 30 working days of the end of the first posting period;

193 (4) A position held by a teacher who is certified, licensed or both, who has been issued a
194 permit for full-time employment and is working toward certification in the permit area shall not be
195 subject to posting if the certificate is awarded within five years; and

196 (5) Nothing provided herein may prevent the county board of education from eliminating a
197 position due to lack of need.

198 (r) Notwithstanding any other provision of the code to the contrary, where the total number
199 of classroom teaching positions in an elementary school does not increase from one school year
200 to the next, but there exists in that school a need to realign the number of teachers in one or more
201 grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels
202 for which they are certified without that position being posted: *Provided*, That the employee and
203 the county board mutually agree to the reassignment.

204 (s) Reductions in classroom teaching positions in elementary schools shall be determined
205 pursuant to the considerations set forth in county board policy and processed as follows:

206 (1) When the total number of classroom teaching positions in an elementary school needs
207 to be reduced, the reduction shall be made on the basis of qualifications with the least qualified
208 classroom teacher being recommended for transfer; and

209 (2) When a specified grade level needs to be reduced and the least qualified employee in
210 the school is not in that grade level, the least qualified classroom teacher in the grade level that
211 needs to be reduced shall be reassigned to the position made vacant by the transfer of the least
212 qualified classroom teacher in the school without that position being posted: *Provided*, That the

213 employee is certified, licensed or both and agrees to the reassignment.

214 (t) Any board failing to comply with the provisions of this article may be compelled to do
215 so by mandamus and shall be liable to any party prevailing against the board for court costs and
216 reasonable attorney fees as determined and established by the court. Further, employees denied
217 promotion or employment in violation of this section shall be awarded the job, pay and any
218 applicable benefits retroactive to the date of the violation and payable entirely from local funds.
219 Further, the board shall be liable to any party prevailing against the board for any court reporter
220 costs including copies of transcripts.

221 (u) Notwithstanding any other provision of this code to the contrary, upon recommendation
222 of the principal and approval by the classroom teacher and county board, a classroom teacher
223 assigned to the school may at any time be assigned to a new or existing classroom teacher
224 position at the school without the position being posted.

225 (v) All personnel in a public charter school shall continue to accrue seniority in the same
226 manner that they would accrue seniority if employed in a noncharter public school in the county
227 for the purpose of employment in noncharter public schools.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.

1 (a) The teacher shall stand in the place of the parent(s), guardian(s) or custodian(s) in
2 exercising authority over the school and has control of all students enrolled in the school from the
3 time they reach the school until they have returned to their respective homes, except that where
4 transportation of students is provided, the driver in charge of the school bus or other mode of
5 transportation shall exercise such authority and control over the students while they are in transit
6 to and from the school.

7 (b) Subject to the rules of the State Board of Education, the teacher shall exclude from the

8 school any student known to have or suspected of having any infectious disease, or any student
9 who has been exposed to any infectious disease, and shall immediately notify the proper health
10 officer or medical inspector of the exclusion. Any student so excluded may not be readmitted to
11 the school until he or she has complied with all the requirements of the rules governing those
12 cases or has presented a certificate of health signed by the medical inspector or other proper
13 health officer.

14 (c) The teacher may exclude from his or her classroom or school bus any student who is
15 guilty of disorderly conduct; who in any manner interferes with an orderly educational process;
16 who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a
17 student; who willfully disobeys a school employee; or who uses abusive or profane language
18 directed at a school employee. Any student excluded shall be placed under the control of the
19 principal of the school or a designee. The excluded student may be admitted to the classroom or
20 school bus only when the principal, or a designee, provides written certification to the teacher that
21 the student may be readmitted and specifies the specific type of disciplinary action, if any, that
22 was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written
23 and, if possible, telephonic notice of the action to the parent(s), guardian(s) or custodian(s). When
24 a student is excluded from a classroom or a school bus two times in one semester, and after
25 exhausting all reasonable methods of classroom discipline provided in the school discipline plan,
26 the student may be readmitted to the classroom or the school bus only after the principal, teacher
27 and, if possible, the parent(s), guardian(s) or custodian(s) of the student have held a conference
28 to discuss the student's disruptive behavior patterns, and the teacher and the principal agree on
29 a course of discipline for the student and inform the parent(s), guardian(s) or custodian(s) of the
30 course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's
31 request, the principal may, to the extent feasible, transfer the student to another setting. The
32 Legislature finds that isolating students or placing them in alternative learning centers may be the
33 best setting for chronically disruptive students. The county board shall create more alternative

34 learning centers or expand its capacity for alternative placements, subject to funding, to correct
35 these students' behaviors so they can return to a regular classroom without engaging in further
36 disruptive behavior.

37 (d) The Legislature finds that suspension from school is not appropriate solely for a
38 student's failure to attend class. Therefore, a student may not be suspended from school solely
39 for not attending class. Other methods of discipline may be used for the student which may
40 include, but are not limited to, detention, extra class time or alternative class settings.

41 (e) Corporal punishment of any student by a school employee is prohibited.

42 (f) Each county board is solely responsible for the administration of proper discipline in the
43 public schools of the county and shall adopt policies consistent with the provisions of this section
44 to govern disciplinary actions. These policies shall encourage the use of alternatives to corporal
45 punishment, providing for the training of school personnel in alternatives to corporal punishment
46 and for the involvement of parent(s), guardian(s) or custodian(s) in the maintenance of school
47 discipline. The county boards shall provide for the immediate incorporation and implementation
48 in the schools of a preventive discipline program which may include the responsible student
49 program and a student involvement program which may include the peer mediation program,
50 devised by the West Virginia Board of Education. Each county board may modify those programs
51 to meet the particular needs of the county. The county boards shall provide in-service training for
52 teachers and principals relating to assertive discipline procedures and conflict resolution. The
53 county boards also may establish cooperatives with private entities to provide middle educational
54 programs which may include programs focusing on developing individual coping skills, conflict
55 resolution, anger control, self-esteem issues, stress management and decision making for
56 students and any other program related to preventive discipline.

57 (g) For the purpose of this section:

58 (1) "Student" includes any child, youth or adult who is enrolled in any instructional program
59 or activity conducted under board authorization and within the facilities of or in connection with

60 any program under public school direction: *Provided*, That, in the case of adults, the student–
 61 teacher relationship shall terminate when the student leaves the school or other place of
 62 instruction or activity;

63 (2) “Teacher” means all professional educators as defined in section one, article one of
 64 this chapter and includes the driver of a school bus or other mode of transportation; and

65 (3) “Principal” means the principal, assistant principal, vice principal or the administrative
 66 head of the school or a professional personnel designee of the principal or the administrative head
 67 of the school.

68 (h) Teachers shall exercise other authority and perform other duties prescribed for them
 69 by law or by the rules of the state board not inconsistent with the provisions of this chapter and
 70 chapter 18 of this code: *Provided*, That a student’s expression of political ideas and speech (verbal
 71 or written), may not be a factor in suspension or expulsion.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.

§18B-8-6. Faculty employment practices; campus administrators required to teach or perform research.

1 Each governing board, with the advice and assistance of the faculty senate, shall
 2 promulgate and adopt a rule in accordance with section six, article one of this chapter addressing
 3 the following issues:

4 (a) Defining an appropriate balance between full-time and adjunct faculty members and
 5 the appropriate role of adjunct faculty; and

6 (b) Requiring each administrator on each campus who holds faculty rank to teach at least
 7 one course during each 18-month employment period or to perform ongoing research in lieu of
 8 teaching.

1 (c) Rules shall be promulgated and adopted pursuant to this article that provide that

- 2 expression of political ideas and speech (verbal or written), may not be a factor in hiring or
3 employment.

NOTE: The purpose of this bill is to provide that expression of political ideas and speech (verbal or written) may not be a factor in hiring or employment, admittance, suspension or expulsion in schools, colleges, or universities.

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