WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4016

By Delegates D. Jeffries, Foster, and Steele

[Introduced February 1, 2022; referred
to the Committee on Education then the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-44; to amend said code by adding thereto a new article, designated §18-2L-1, §18-2L-2, §18-2L-3, §18-2L-4, and §18-2L-5; to amend said code by adding thereto a new section, designated §18-5-50; to amend and reenact §18-5G-3 of said code; to amend and reenact §18-5G-6 of said code; and to amend and reenact §18A-2-8 of said code, all relating to creating the Anti-Racism, Anti-Sexism, and Prevention of Political-Economic Bias in School Curriculum and Pedagogy Act of 2022; prohibiting curricula, pedagogy, and employee training that is racist, sexist, biologically and/or genetically counter-factual, or presents biased and/or historically inaccurate information concerning political-economic systems in state public schools and public charter schools; providing findings; defining terms; specifying controlling law to resolve conflicts with other provisions; identifying prohibited content; providing for curricula transparency; requiring cancellation, modification or reformation of existing inconsistent contractual provisions; requiring county boards ensure their employees comply with the act; authorizing a county board to dismiss an employee for violation of the act; providing that a public charter school authorizer require charter schools and their employees comply with the act; providing that violations of the act by a charter school or its employee may be grounds for suspension and/or revocation of a charter school contract; and establishing an effective date;

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-44. Express Mandate to State Board of Education to Ensure Compliance of all West Virginia Public School Districts and Independent Charter Schools with the Anti-Racism, Anti-Sexism, and Prevention of Political-Economic Bias in School Curriculum and Pedagogy Act of 2022.

(a) The Department of Education shall ensure that all county boards of education and authorized charter schools within the state of West Virginia shall comply with the requirements of the Anti-Racism, Anti-Sexism, and Prevention of Political-Economic Bias in School Curriculum and Pedagogy Act of 2022, as set forth in and pursuant to §18-2L-1 *et seq.* of this code.

(b) County boards of education shall implement the required mandate outlined in subsection (a) of this section with the ultimate goal of improving the empirical, historical, biological and social-scientific validity and substantive academic quality of all West Virginia school curricula and pedagogies.

(c) The Department of Education shall provide any and all information, training and materials necessary for the strict and effective implementation of the required mandate outlined in subsection (a) of this section.

ARTICLE 2L. THE ANTI-RACISM, ANTI-SEXISM, AND PREVENTION OF POLITICAL-ECONOMIC BIAS IN SCHOOL CURRICULUM AND PEDAGOGY ACT OF 2022.

§18-2L-1. Definitions.

As used in this article:

“Authorizer” means the entity empowered pursuant to §18-5G-1 *et seq*. of this code to accept, reject, renew, or revoke public charter school contracts and to oversee the operation of public charter schools under its authority;

“Charter school” means a public charter school operating pursuant to §18-5G-1 *et seq*. of this code;

“County school board” or “school board” means a county board of education that supervises and controls its county school district pursuant to §18-5-1 *et seq.* of the code;

“Employee” means any person hired by a county school board or charter school for employment, on a full-time, part-time, temporary, or probationary basis or as an independent contractor;

“Public school” means any public school under the general supervision of the West Virginia Board of Education;

“State board” means the West Virginia Board of Education; and

“Stereotypes” means character traits ascribed to a particular race, sex, ethnicity, religion, or national origin, or to an individual because of his or her race, sex, ethnicity, religion, or national origin.

§18-2L-2. Effect of the Anti-Racism, Anti-Sexism, and Prevention of Political-Economic Bias in School Curriculum and Pedagogy Act of 2022.

Notwithstanding any other provision of this code, or rule promulgated thereunder, that is either expressly or implicitly to the contrary, the provisions of this Anti-Racism, Anti-Sexism, and Prevention of Political-Economic Bias in School Curriculum and Pedagogy Act of 2022 shall supersede such contrary code provisions and shall control the subject matter covered by this article.

§18-2L-3. Requirements for curricula, pedagogy and employee training regarding race and sex stereotyping, biological and genetic accuracy, and bias in presentation of comparative political economic systems.

(a) A school board or the operator of a charter school established under §18-5G-1 *et seq.* of this code shall not allow a teacher in the course or scope of public service or employment to teach, promote, embrace, or endorse: stereotyping based on sex, ethnicity, religion, or national origin; biologically and/or genetically counterfactual curricula; or bias in the presentation of comparative political economic systems including, but not limited to, any of the following concepts, to pupils in any course or as part of any curriculum or instructional pedagogy:

(1) One race or sex is inherently superior to another race, sex, ethnicity, religion, or national origin;

(2) An individual, by virtue of the individual’s race, sex, ethnicity, religion, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;

(3) An individual should be discriminated against or receive adverse treatment because of the individual’s race, sex, ethnicity, religion, or national origin;

(4) Individuals of one race, sex, ethnicity, religion, or national origin are not able to and should not attempt to treat others without respect to race, sex, ethnicity, religion, or national origin.

(5) An individual’s moral character is necessarily determined, in whole or in part, by the individual’s race, sex, ethnicity, religion, or national origin;

(6) An individual, by virtue of the individual’s race, sex, ethnicity, religion, or national origin, bears responsibility for acts committed in the past by other individuals of the same race, sex, ethnicity, religion, or national origin, or should be blamed for actions committed in the past by other members of the same race, sex, ethnicity, religion, or national origin;

(7) An individual should feel discomfort, guilt, anguish, or any other form of psychological distress because of the individual’s race, sex, ethnicity, religion, or national origin;

(8) That individuals should be required to recognize and address another individual’s sex in any manner not consistent with the biological sex of such person as determined by X and Y chromosomes of such other person’s genetic makeup;

(9) Systems based on meritocracy or traits such as a hard work ethic are racist or sexist or are created by individuals of a particular race to oppress individuals of another race, sex, ethnicity, religion, or national origin;

(10) The presentation or promotion of any political, economic, or political-economic system that is based on ideological concepts rooted in or inspired by Marxism, Marxist-Leninism, Maoism, socialism, communism, or so-called critical political theory or critical economic theory, of any form or intellectual tradition whatsoever, without: (A) The inclusion of the historically documented occurrences, scope and scale of state sponsored terror and murder, absence of legal process and protection of civil and political rights, forced labor, economic inefficiency, and starvations which have transpired under such forms of political economy; and (B) the provision of equal pedagogical instruction time and student curricula material content dedicated to political-economic systems based in the western tradition of constitutional representative democracy; (C) the preservation in law of civil, political rights, private property rights, intellectual property rights in constitutional representative democracies; (D) the historically documented greater efficiency and productivity of free enterprise, and free market capitalism in constitutional representative democracies; (E) the impact of monetary policy on pricing and inflation; and (F) presentation of political spectrums as measured by the factors of state control versus individual liberty, regardless of economic model; and

(11) The cloaking or obfuscation of the concepts described in subdivisions (1) through (10) of this subsection under the guise of “social-emotional learning,” the “1619 Project” or any other pedagogical euphemism or labeling intended to obscure the prohibited content of such curricula.

(b) Nothing in this section shall prohibit discussing:

(1) How such stereotypes have been or are wrongfully embraced or utilized to discriminate on the basis of race, sex, ethnicity, religion, or national origin; or

(2) Data or scientific studies that categorize people based on race, sex, ethnicity, religion, or national origin, or that reveal disparities between different groups within any of those categories.

(c) A school board or the operator of a charter school established under §18-5G-1 *et seq.* of this code shall not:

(1) Require its employees to attend training in which the school board or operator, or a contractor hired by the school board or operator, teaches, advocates, acts upon, or promotes race, sex, ethnicity, religion, or national origin stereotyping, including any of the concepts described in subsection (a) of this section;

(2) Use public funds to contract with, hire, or otherwise engage consultants, trainers, or other persons to:

(A) Direct or otherwise compel a student, teacher, administrator, or other employee to affirm, adopt, or adhere to any belief or concept described in subsection (a) of this section; or

(B) Advocate concepts described in subsection (a) of this section, unless:

(i) The school, agency, or political subdivision expressly makes clear that it does not sponsor, approve, or endorse such concepts or materials; and

(ii) The school, agency, or political subdivision affords students, teachers, administrators, and other employees the opportunity to opt out of any speeches by or sessions with such outside contractors, and schedules equal time and allocates equal resources for presentation of rebuttal training, curriculum or pedagogy to any training, curriculum or pedagogy presented or allowed to have been presented by the public school board, school, or the operator of a charter school established under §18-5G-1 *et seq.* of this code; or

(C) Require a student, teacher, administrator, or other employee to attend or participate in a training, seminar, continuing education, orientation, or therapy that promotes any concept described subsection (a) of this section.

(d) If the state school board superintendent determines that a school board or the operator of a charter school established under §18-5G-1 *et seq.* of this code has by curricula or pedagogy violated subsection (a) or subsection (c) of this section, the state superintendent shall notify the school board or operator of the violation, and shall also simultaneously notify the chairs of the West Virginia House and Senate Education Committees, and the Office of the Governor of West Virginia.

(e) If, at least 10 days after sending a notification under subsection (d) of this section to a school board, the state superintendent determines that the school board has not remedied the violation that is the subject of the notification, the state superintendent shall provide written notification to all parents of students subjected to the curricula or pedagogy in violation subsection (a) of this section, or the employees subjected to training in violation of subsection (c) of this code of such determination.

(f) If, at least 10 days after sending a notification under subsection (d) of this section to the operator of a charter school established under §18-5G-1 *et seq.* of this code, the state superintendent determines that the governing body has not remedied the violation that is the subject of the notification, the state superintendent shall provide written notification to all parents of students subjected to the curricula or pedagogy in violation of subsection (a) of this section, or to the employees subjected to training in violation of subsection (c) of this section of such failure to remedy the violation.

(g) Nothing in this section shall be construed as prohibiting:

(1) Speech protected by the First Amendment of the U.S. Constitution or Article III, §7 of the West Virginia Constitution;

(2) Voluntary attendance at a training session, seminar, continuing education, orientation, or therapy, provided that no inducement or coercion for such attendance exists;

(3) Access to sources on an individual basis that advocate concepts described in subsection (a) of this section for the purpose of research or independent study; or

(4) Discussion of concepts described in subsection (a) of this section or the assignment of materials that incorporate such concepts for educational purposes: *Provided*, That the public school, including a public primary school, public secondary school, or public charter school, state agency, or political subdivision expressly makes clear that it does not sponsor, approve, or endorse such concepts or materials, and schedules equal time and allocates equal resources for presentation of rebuttal training, curriculum, or pedagogy to any training, curriculum or pedagogy presented or allowed to have been presented by the public school board, school, or the operator of a charter school established under §18-5G-1 *et seq*. of this code.

§18-2L-4. Curricula transparency.

(a) The governing body of a public school, including a public primary school, public secondary school, or public charter school, shall ensure that the curricula and teacher training for each public school and charter school shall be posted on that school’s website, or, if the school has no website, the curricula shall be posted on the county board or authorizer’s website. The posting on the appropriate website shall appear in a publicly accessible location and shall, at a minimum, contain the following information:

(1) All training materials, including materials for instructors, concerning or used for staff and faculty training on all matters of nondiscrimination, diversity, equity, inclusion, race, ethnicity, sex, or bias, or any combination of these concepts with other concepts;

(2) All instructional or curricular materials concerning nondiscrimination, diversity, equity, inclusion, race, ethnicity, sex, or bias, or any combination of these concepts with other concepts, including;

(A) The title, author, organization, and any website associated with each instructional material;

(B) A brief description of the instructional material;

(C) A link to the instructional material, if publicly available on the internet, or information on how to request review of a copy of the instructional material; and

(D) The identity of the teacher, if the instructional material was created by the teacher; and

(3) Any procedures for the documentation, review, or approval of the training, instructional, or curricular materials used for staff and faculty training or student instruction at the school, including by the principal, curriculum administrators, or other teachers.

(b) Nothing in this subsection shall be construed to require the digital reproduction or posting of copies of the instructional materials themselves if such reproduction would infringe upon copyrighted material; but in such cases, original materials should still be linked, if possible, or provided upon request, as required under subdivision (2)(C) of this section.

(c) Any changes to posted curricula and teacher training shall be updated within five business days.

(d) No changes to posted curricula or teacher training may be made which are inconsistent with the Anti-Racism, Anti-Sexism, and Prevention of Political-Economic Bias in School Curriculum and Pedagogy Act of 2022 as fully set forth in this article.

(e) Any individual may request printed copies of curricula offered by a public school or charter school. The requested copies shall be provided at no cost to the individual.

§18-2L-5. State board rulemaking; effective date; effect on existing contracts.

(a) The Anti-Racism, Anti-Sexism, and Prevention of Political-Economic Bias in School Curriculum and Pedagogy Act of 2022 shall be effective on passage.

(b) If there is any existing contract with any public school board, public school, or charter school established under §18-5G-1 *et seq.* of this code that provides curricula, pedagogical resources or teacher training that is inconsistent with the Anti-Racism, Anti-Sexism, and Prevention of Political-Economic Bias in School Curriculum and Pedagogy Act of 2022, the parties shall either cancel, modify, or reform, as of the effective date of this section to ensure compliance with the Anti-Racism, Anti-Sexism, and Prevention of Political-Economic Bias in School Curriculum and Pedagogy Act of 2022 as fully set forth in this article*.*

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-50. County boards duty to enforce the Anti-Racism, Anti-Sexism, and Prevention of Political-Economic Bias in School Curriculum and Pedagogy Act of 2022.

(a) County boards shall ensure that all their employees comply with the Anti-Racism, Anti-Sexism, and Prevention of Political Economic Bias in School Curriculum and Pedagogy Act of 2022, as fully set forth in §18-2L-1 *et seq.*

(b) If a county superintendent finds that an employee has violated the provisions of this act, the employee shall be subject to dismissal pursuant to §18A-2-8 of this code.

ARTICLE 5G. PUBLIC CHARTER SCHOOLs.

§18-5G-3. Public charter school criteria, governance structure and statutory compliance requirements; applicable federal and state laws.

(a) Public charter schools authorized pursuant to this article shall meet the following general criteria:

(1) Are part of the state’s system of public schools and are subject to general supervision by the West Virginia Board of Education for meeting the student performance standards required of other public school students under §18-2E-5(d) and (e) of this code;

(2) Are subject to the oversight of the school’s authorizer for operating in accordance with its approved charter contract and for meeting the terms and performance standards established in the charter contract;

(3) Are not home school-based;

(4) Are not affiliated with or espouse any specific religious denomination, organization, sect, or belief and do not promote or engage in any religious practices in their educational program, admissions, employment policies, or operations;

(5) Are not affiliated with any organized group whose espoused beliefs attack or malign an entire class of people, typically for immutable characteristics, as identified through listings of such groups as may be made by the U.S. Department of Justice, the Federal Bureau of Investigation, or officials having similar jurisdiction in this state;

(6) Are public schools to which parents or legal guardians choose to send their child or children;

(7) Do not charge tuition and may only charge such fees as may be imposed by noncharter public schools in this state; and

(8) Have no requirements that would exclude any child from enrollment who would not be excluded at a noncharter public school.

(b) A public charter school authorized pursuant to this article shall be governed by a board that meets the requirements established in §18-5G-7 of this code and:

(1) Has autonomy over key decisions, including, but not limited to, decisions concerning finance, personnel, scheduling, curriculum, and instruction except as provided in this article;

(2) Has no power to levy taxes;

(3) Operates in pursuit of a specific set of educational objectives as defined in its charter contract;

(4) Provides a program of public education that:

(A) Includes one or more of the following: Prekindergarten and any grade or grades from kindergarten to grade 12 including any associated post-secondary embedded credit, dual credit, advanced placement, internship, and industry or workforce credential programs that the public charter school chooses to incorporate into its programs;

(B) May include in its mission a specific focus on students with special needs, including, but not limited to, at-risk students, English language learners, students with severe disciplinary problems at a noncharter public school, or students involved with the juvenile justice system; and

(C) May include a specific academic approach or theme including, but not limited to, approaches or themes such as STEM education, mastery-based education, early college, or fine and performing arts;

(5) Provides programs and services to a student with a disability in accordance with the student’s individualized education program and all federal and state laws, regulations, rules and policies. A charter school shall deliver the services directly or contract with a county board or another provider to deliver the services as set forth in its charter contract;

 (6) Is eligible to participate in state-sponsored or district-sponsored athletic and academic interscholastic leagues, competitions, awards, scholarships, and recognition programs for students, educators, administrators, and schools to the same extent as noncharter public schools;

 (7) Employs its own personnel as employees of the public charter school and is ultimately responsible for processing employee paychecks, managing its employees’ participation in the applicable retirement system, and managing its employees’ participation in insurance plans: *Provided,* That nothing in this subdivision prohibits the public charter school from contracting with another person or entity to perform services relating to managing its employees’ participation in the retirement system or insurance plan. A county board may not require any employee of its school system to be employed in a public charter school. A county board may not harass, threaten, discipline, discharge, retaliate, or in any manner discriminate against any school system employee involved directly or indirectly with an application to establish a public charter school as authorized under this section. All personnel in a public charter school who were previously employed by the county board shall continue to accrue seniority with the county board in the same manner that they would accrue seniority if employed in a noncharter public school in the county for purposes of employment in noncharter public schools; and

(8) Is responsible for establishing a staffing plan that includes the requisite qualifications and any associated certification and/or licensure necessary for teachers and other instructional staff to be employed at the public charter school and for verifying that these requirements are met.

(c) A public charter school authorized pursuant to this article is exempt from all statutes and rules applicable to a noncharter public school or board of education except the following:

(1) All federal laws and authorities applicable to noncharter public schools in this state including, but not limited to, the same federal nutrition standards, the same civil rights, disability rights and health, life and safety requirements applicable to noncharter public schools in this state;

(2) The provisions of §29B-1-1 *et seq.* of this code relating to freedom of information and the provisions of §6-9A-1 *et seq.* of this code relating to open governmental proceedings;

(3) The same immunization requirements applicable to noncharter public schools;

(4) The same compulsory school attendance requirements applicable to noncharter public schools;

(5) The same minimum number of days or an equivalent amount of instructional time per year as required of noncharter public school students under §18-5-45 of this code;

(6) The same student assessment requirements applicable to noncharter public schools in this state, but only to the extent that will allow the state board to measure the performance of public charter school students pursuant to §18-2E-5(d) and (e) of this code. Nothing precludes a public charter school from establishing additional student assessment measures that go beyond state requirements;

(7) The Student Data Accessibility, Transparency and Accountability Act pursuant to §18-2-5h of this code;

(8) Use of the electronic education information system established by the West Virginia Department of Education for the purpose of reporting required information;

(9) Reporting information on student and school performance to parents, policy-makers, and the general public in the same manner as noncharter public schools utilizing the electronic format established by the West Virginia Department of Education. Nothing precludes a public charter school from utilizing additional measures for reporting information on student and school performance that go beyond state requirements;

(10) All applicable accounting and financial reporting requirements as prescribed for public schools, including adherence to generally accepted accounting principles. A public charter school shall annually engage an external auditor to perform an independent audit of the school’s finances. The public charter school shall submit the audit to its authorizer and to the state superintendent of schools within nine months of the end of the fiscal year for which the audit is performed;

(11) A criminal history check pursuant to §18A-3-10 of this code for any staff person that would be required if the person was employed in a noncharter public school, unless a criminal history check has already been completed for that staff person pursuant to that section. Governing board members and other public charter school personnel are subject to criminal history record checks and fingerprinting requirements applicable to noncharter public schools in this state. Contractors and service providers or their employees are prohibited from making direct, unaccompanied contact with students and from access to school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers or employees have not previously been convicted of a qualifying offense pursuant to §18-5-15c of this code;

(12) The same zoning rules for its facilities that apply to noncharter public schools in this state;

(13) The same building codes, regulations and fees for its facilities that apply to noncharter public schools in this state, including any inspections required for noncharter public schools under this chapter and the West Virginia State Fire Marshal for inspection and issuance of a certificate of occupancy for any facility used by the public charter school; and

(14) The same student transportation safety laws applicable to public schools when transportation is provided; and

(15) The Anti-Racism, Anti-Sexism, and Prevention of Political-Economic Bias in School Curriculum and Pedagogy Act of 2022, pursuant to §18-2L-1 *et seq.* of this code.

§18-5G-6. Authorizer powers and duties.

(a) Each authorizing authority is responsible for exercising in accordance with this article the following powers and duties with respect to the oversight and authorization of public charter schools:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and

(D) Charter approval, renewal, and revocation decision-making.

(3) Solicit applications and guide the development of high-quality public charter school applications;

(4) Approve new charter applications that meet the requirements of this article and on the basis of their application satisfying all requirements of §18-5G-8 of this code, that demonstrate the ability to operate the school in an educationally and fiscally sound manner, and that are likely to improve student achievement through the program detailed in the charter application;

(5) Decline to approve charter applications that fail to meet the requirements of §18-5G-8 of this code;

(6) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(7) Monitor the performance and compliance of public charter schools according to the terms of the charter contract; and

(8) Determine whether each charter contract it authorizes merits renewal or revocation.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(4) Provide a detailed analysis of the application to the applicant or applicants;

(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and

(6) Approve or deny a charter application based on established objective criteria or request additional information.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-8 of this code;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer’s charter application approval shall be submitted to the West Virginia Department of Education.

(f) An authorizer shall conduct or require oversight activities that enable it to fulfill its responsibilities under this article, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of this article, adhere to the terms of the charter contract and do not unduly inhibit the autonomy granted to charter schools. In the event that a public charter school’s performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify in writing the public charter school governing board of perceived problems and provide reasonable opportunity for the school to remedy the problems.

(g) An authorizer shall take appropriate corrective actions or exercise sanctions in response to apparent deficiencies in a charter school’s performance or legal compliance. If warranted, the actions or sanctions may include requiring a charter school to develop and execute a corrective action plan within a specified time frame;

(h) An authorizer shall require that all charter schools and their employees comply with the mandates of the Anti-Racism, Anti-Sexism, and Prevention of Political Economic Bias in School Curriculum and Pedagogy Act of 2022, pursuant to §18-2L-1 *et seq.* of this code. If an authorizer finds that a charter school or its employee has violated the provisions of this act, the authorizer shall make the charter school’s contract subject to suspension pending confirmation that violation has been remedied. Violation of the act may be grounds for revocation or nonrenewal of the charter school contract.

~~(h)~~(i) An authorizer shall require each charter school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school, consistent with the statutory requirements of this act and the charter contract.

~~(i)~~ (j) To cover authorizer costs for overseeing public charter schools, each public charter school shall remit to its respective authorizer an oversight fee drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school as established by the state board by rule pursuant to §18-5G-5 of this code.

~~(j)~~ (k) An authorizer may receive and expend appropriate gifts, grants and donations of any kind from any public or private entity to carry out the purposes of this act, subject to all lawful terms and conditions under which the gifts, grants or donations are given, and may apply for any federal funds that may be available for the implementation of public charter school programs;

~~(k)~~ (l) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

~~(l)~~ (m) Regulation of public charter schools by the state board and a county board shall be limited to those powers and duties of authorizers prescribed in this article and general supervision consistent with the spirit and intent of this article.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

(a) Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, a violation of the Anti-Racism, Anti-Sexism, and Prevention of Political-Economic Bias in School Curriculum and Pedagogy Act of 2022, as provided in §18-2L-1 *et seq.* of this code, a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 *et seq.* of this code, the conviction of a misdemeanor or a guilty plea or a plea of nolo contendere to a misdemeanor charge that has a rational nexus between the conduct and performance of the employee’s job, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

(b) A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to §18A-2-12 of this code. The charges shall be stated in writing served upon the employee within two days of presentation of the charges to the board.

(c) The affected employee shall be given an opportunity, within five days of receiving the written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions of §6C-2-1 *et seq.* of this code, except that dismissal for a finding of abuse or the conviction of a felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grounds for a grievance proceeding. An employee charged with the commission of a felony, a misdemeanor with a rational nexus between the conduct and performance of the employee’s job, or child abuse may be reassigned to duties which do not involve direct interaction with pupils pending final disposition of the charges.

(d) A county board of education has the duty and authority to provide a safe and secure environment in which students may learn and prosper; therefore, it may take necessary steps to suspend or dismiss any person in its employment at any time should the health, safety, and welfare of students be jeopardized or the learning environment of other students has been impacted. A county board shall complete an investigation of an employee that involves evidence that the employee may have engaged in conduct that jeopardizes the health, safety, or welfare of students despite the employee’s resignation from employment prior to completion of the investigation.

(e) It shall be the duty of any county superintendent to report any employee suspended or dismissed, or resigned during the course of an investigation of the employee’s alleged misconduct, in accordance with this section, including the rationale for the suspension or dismissal, to the state superintendent within seven business days of the suspension, dismissal, or resignation. The state superintendent shall maintain a database of all individuals suspended or dismissed for jeopardizing the health, safety, and welfare of students, or for impacting the learning environment of other students. The database shall also include the rationale for the suspension or dismissal. The database shall be confidential and shall only be accessible to county human resource directors, county superintendents, and the state superintendent.

NOTE: The purpose of this bill is to prohibit race or sex stereotyping, biologically and or genetically counter factual instruction, and/or or a biased and historically inaccurate account of comparative political economic systems in 1) instruction provided to pupils in school districts and independent charter schools; and 2) training provided to employees of school boards and independent charter schools. Under the bill, any course or part of any curriculum or pedagogy, or employee training that violates the requirements of the act is prohibited. Among the concepts that are prohibited from being taught under the bill are the following: that one race or sex is inherently superior to another race or sex and that an individual, by virtue of the individual’s race or sex, bears responsibility for acts committed in the past by other individuals of the same race or sex, that persons must recognize identifications contrary to biology and/or genetics, and the presentation of any socialist, communist, or otherwise Marxist, Maoist or critical theory inspired system of political economy without the accurate inclusion of the historically documented scale of state sponsored terror and murder, economic inefficiency, and starvations which have occurred under such forms of political economy and co-equal instructional time dedicated to free-market economies, capitalism and freely elected constitutional democratic republics. The bill provides that the state superintendent of public instruction notify parents and employees of violations of the act, waives sovereign immunity for violations of the act, and provides a private right of action by a parent, guardian or employee for violations of the act.

The bill also requires each school board to post all curricula and training for teachers used in schools in the school district on the school district’s internet site and, if a school board maintains an internet site for an individual school, on the individual school’s
internet site. If an internet site is maintained for an independent charter school, the
bill requires the authorizer of the independent charter school to ensure that all
curricula used in the independent charter school are posted on the independent
charter school’s internet site. Under the bill, upon request, a school board or
independent charter school operator must provide a printed copy of any curriculum
that it is required to post on its internet site, at no cost to the requester.

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