

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENGROSSED

House Bill 4776

By Delegates Gearheart, Ellington, Smith, Maynor, E.

Pritt, Kump, Hornby, Riley, Toney, Heckert, and

Cooper

[Introduced January 16, 2024; Referred

to the Committee on Education]

1 A BILL to amend and reenact §18A-5-1 of the Code of West Virginia, 1931, as amended, relating
2 to adding elementary schools into school disciplinary measures added during the 2023
3 Regular Session of the Legislature.

Be it enacted by the Legislature of West Virginia:

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 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 who is suspected of having, any infectious disease, or any
9 student who has been exposed to any infectious disease and shall immediately notify the proper
10 health officer or medical inspector of the exclusion. Any student so excluded may not be
11 readmitted to the school until he or she has complied with all the requirements of the rules
12 governing those cases or has presented a certificate of health signed by the medical inspector or
13 other proper 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 behaves in a manner that obstructs the teaching or learning process of others in the
17 classroom; who threatens, abuses or otherwise intimidates or attempts to intimidate a school
18 employee or a student; who willfully disobeys a school employee; or who uses abusive or profane

19 language directed at a school employee. Any student excluded shall be placed under the control of
20 the principal of the school or a designee. The excluded student may be admitted to the classroom
21 or school bus only when the principal, or a designee, provides written certification to the teacher
22 that the student may be readmitted and specifies the specific type of disciplinary action, if any, that
23 was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written
24 and, if possible, telephonic notice of the action to the parent(s), guardian(s), or custodian(s). When
25 a student is excluded from a classroom or a school bus two times in one semester, and after
26 exhausting all reasonable methods of classroom discipline provided in the school discipline plan,
27 the student may be readmitted to the classroom or the school bus only after the principal, teacher
28 and, if possible, the parent(s), guardian(s), or custodian(s) of the student have held a conference
29 to discuss the student's disruptive behavior patterns, and the teacher and the principal agree on a
30 course of discipline for the student and inform the parent(s), guardian(s), or custodian(s) of the
31 course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's
32 request, the principal may, to the extent feasible, transfer the student to another setting. The
33 Legislature finds that isolating students or placing them in alternative learning centers may be the
34 best setting for chronically disruptive students. The county board shall create more alternative
35 learning centers or expand its capacity for alternative placements, subject to funding, to correct
36 these students' behaviors so they can return to a regular classroom without engaging in further
37 disruptive behavior.

38 (d) When a grade six through 12 teacher, excluding an elementary school teacher,
39 determines that the behavior of the student is disorderly conduct, is interfering with an orderly
40 educational process, or obstructs the teaching or learning process of others in the classroom:

41 (1) The student may be excluded from that teacher's classroom and if excluded may not re-
42 enter that teacher's classroom for at least the remainder of the instructional day;

43 (2) If the student is excluded pursuant to subdivision (1) of this subsection;

44 (A) The principal shall communicate with the teacher within 24 hours of the student being
45 excluded from the teacher's classroom about the exclusion;

46 (B) The teacher has 24 hours to create an electronic record and place the report of this
47 action into the West Virginia Education Information System (WVEIS), without any repercussion to
48 the teacher; and

49 (C) If the student is removed from a classroom a total of three times in one month for one or
50 more of the behaviors set forth in this subsection, the student shall receive as determined by the
51 principal an in-school suspension, an out-of-school suspension, or may be considered for
52 placement in an alternative learning center if one is available within the school district.

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

57 (f) Corporal punishment of any student by a school employee is prohibited.

58 (g) Each county board is solely responsible for the administration of proper discipline in the
59 public schools of the county and shall adopt policies consistent with the provisions of this section
60 to govern disciplinary actions. These policies shall encourage the use of alternatives to discipline
61 practices, provide for the training of school personnel in alternatives to discipline practices, and
62 provide for encouraging the involvement of parent(s), guardian(s) or custodian(s) in the
63 maintenance of school discipline. To promote a teaching and learning environment free from
64 substantial classroom disturbances, each county board shall ensure that each school implements
65 a tier system policy, with teacher input, to provide a framework for student behaviors and
66 punishments. The policy shall be clear and concise with specific guidelines and examples. The
67 principal shall support the teacher in the discipline of the students if proper cause and
68 documentation is provided following the schoolwide discipline policy. The teacher may not be
69 reprimanded if their actions are legal and within the structure of the county board's policy for

70 student behavior and punishment. The county board policies shall also include an appeal
71 procedure whereby a teacher may appeal to the county superintendent if a school principal
72 refuses to allow the exclusion of a student from the classroom or if a teacher believes the school
73 principal has prematurely ended the exclusion of a student from the classroom. The county boards
74 shall provide for the immediate incorporation and implementation in schools of a preventive
75 discipline program which may include the responsible student program and a student involvement
76 program, which may include the peer mediation program, devised by the West Virginia Board of
77 Education. Each county board may modify those programs to meet the particular needs of the
78 county. The county boards shall provide in-service training for teachers and principals relating to
79 assertive discipline procedures and conflict resolution. The county boards also may establish
80 cooperatives with private entities to provide middle educational programs, which may include
81 programs focusing on developing individual coping skills, conflict resolution, anger control, self-
82 esteem issues, stress management and decision making for students, and any other program
83 related to preventive discipline.

84 (h) For the purpose of this section:

85 (1) "Student" includes any child, youth or adult who is enrolled in any instructional program
86 or activity conducted under board authorization and within the facilities of, or in connection with,
87 any program under public school direction: *Provided*, That, in the case of adults, the student-
88 teacher relationship shall terminate when the student leaves the school or other place of
89 instruction or activity;

90 (2) "Teacher" means all professional educators as defined in §18A-1-1 of this code and
91 includes the driver of a school bus or other mode of transportation; and

92 (3) "Principal" means the principal, assistant principal, vice principal or the administrative
93 head of the school, or a professional personnel designee of the principal or the administrative
94 head of the school.

95 (i) Teachers shall exercise other authority and perform other duties prescribed for them by
96 law or by the rules of the state board not inconsistent with the provisions of this chapter and
97 chapter 18 of this code.

98 (j) A teacher may remove a student in grades pre-k through 5 only under the following
99 circumstances:

100 (1) Through documentation by the teacher that the student's behavior is repeatedly
101 interfering with the teacher's instruction and classmates' ability to learn. If the teacher determines
102 that the student has consistently shown unruly, disruptive, or abusive behavior and affects his or
103 her classmates' abilities to learn or if the student shows violent and aggressive behaviors, causing
104 or intending to cause physical harm, to the teacher or the students in the classroom setting.

105 (2) The student may not be returned to that teacher's classroom without the teacher's
106 consent unless the discipline committee, established by each individual school, determines that
107 such placement is the best or only alternative available. If the student was removed from the
108 teacher's class due to any physically harming behaviors or the intent to physically harm, the
109 student may not be returned to the teacher's class without the teacher's consent and the teacher
110 may not be coerced to consent.

111 (3) Not later than the third day of class after the day on which a student is removed from
112 class by the teacher under this section, or by the school principal or other appropriate
113 administrator under this section, the school discipline team shall schedule a conference including
114 the teacher who requested removal of the student, the guardian of the student, and principal. The
115 student may not be returned to the regular classroom pending the conference. Following the
116 conference, and whether or not each requested person is in attendance after valid attempts to
117 require the persons attendance, the school discipline team shall take consideration of the factors
118 under this section and shall order the placement of the student for a period consistent with the
119 schoolwide discipline policy.

120 (4) Before ordering the suspension, expulsions, removal to a disciplinary alternative
121 education program, or placement in another classroom, the school discipline team shall consider
122 whether the student acted in self-defense, the intent or lack of intent at the time the student
123 engaged in the conduct, the students disciplinary history, and whether the student has a disability
124 that substantially impairs the students capacity to appreciate the wrongfulness of the students
125 conduct regardless of whether the decision of the behavior coordinator concerns a mandatory or
126 discretionary action.

127 (5) Exceptions may be made when a student's behavior is characteristic of his or her
128 diagnosis and is addressed in that student's IEP plan or 504 plan.