

# WEST VIRGINIA LEGISLATURE

## 2024 REGULAR SESSION

### ENROLLED

## House Bill 4838

BY DELEGATES HOLSTEIN, STATLER, DITTMAN, SHAMBLIN,

BARNHART, E. PRITT, HOUSEHOLDER, HORNBY,

MAZZOCCHI, FORSHT, AND CANNON

[Passed March 1, 2024; in effect ninety days from  
passage.]



1 AN ACT to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating  
2 to requiring county boards of education to inform persons, who are hired as long-term  
3 substitute teachers, about IEP and 504 plans, detailing their uses and what those long-  
4 term substitute teachers should do to implement these plans upon their hiring.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 2. SCHOOL PERSONNEL.**

**§18A-2-3. Employment of substitute teachers; and employment of retired teachers as  
substitutes in areas of critical need and shortage.**

1 (a) The county superintendent, subject to approval of the county board, may employ and  
2 assign substitute teachers to any of the following duties:

3 (1) Fill the temporary absence of any teacher or an unexpired school term made vacant  
4 by resignation, death, suspension, or dismissal;

5 (2) Fill a teaching position of a regular teacher on leave of absence; and

6 (3) Perform the instructional services of any teacher who is authorized by law to be absent  
7 from class without loss of pay, providing the absence is approved by the board of education in  
8 accordance with the law.

9 The substitute shall be a duly certified teacher.

10 (b) Notwithstanding any other provision of this code to the contrary, a substitute teacher  
11 who has been assigned as a classroom teacher in the same classroom continuously for more  
12 than one half of a grading period and whose assignment remains in effect two weeks prior to the  
13 end of the grading period, shall remain in the assignment until the grading period has ended,  
14 unless the principal of the school certifies that the regularly employed teacher has communicated  
15 with and assisted the substitute with the preparation of lesson plans and monitoring student  
16 progress or has been approved to return to work by his or her physician. For the purposes of this  
17 section, teacher and substitute teacher, in the singular or plural, mean professional educator as  
18 defined in §18A-1-1 of this code.

19 (c) Persons who are hired as long-term substitute teachers shall be provided information  
20 by the county board relating to an IEP plan and 504 plan, detailing their uses and what those  
21 long-term substitute teachers should do to implement these plans upon their hiring.

22 (d) (1) The Legislature hereby finds and declares that due to a shortage of qualified  
23 substitute teachers, a compelling state interest exists in expanding the use of retired teachers to  
24 provide service as substitute teachers in areas of critical need and shortage. The Legislature  
25 further finds that diverse circumstances exist among the counties for the expanded use of retired  
26 teachers as substitutes.

27 (2) For the purposes of this subsection:

28 (A) "Area of critical need and shortage for substitute teachers" means an area of  
29 certification and training in which the number of available substitute teachers in the county who  
30 hold certification and training in that area and who are not retired is insufficient to meet the  
31 projected need for substitute teachers; and

32 (B) "Teacher or substitute teacher" includes speech pathologists, school nurses, and  
33 school counselors.

34 (3) A person receiving retirement benefits under §18-7A-1 *et seq.* of this code or who is  
35 entitled to retirement benefits during the fiscal year in which that person retired may accept  
36 employment as a critical needs substitute teacher for an unlimited number of days each fiscal  
37 year without affecting the monthly retirement benefit to which the retirant is otherwise entitled if  
38 the following conditions are satisfied:

39 (A) The county board adopts a policy recommended by the superintendent to address  
40 areas of critical need and shortage for substitute teachers;

41 (B) The policy sets forth the areas of critical need and shortage for substitute teachers in  
42 the county in accordance with the definition of area of critical need and shortage for substitute  
43 teachers set forth in subdivision (2) of this subsection;

44 (C) The policy provides for the employment of retired teachers as critical needs substitute

45 teachers during the school year on an expanded basis in areas of critical need and shortage for  
46 substitute teachers as provided in this subsection;

47 (D) The policy provides that a retired teacher may be employed as a substitute teacher in  
48 an area of critical need and shortage for substitute teachers on an expanded basis as provided  
49 in this subsection only when no other teacher who holds certification and training in the area and  
50 who is not retired is available and accepts the substitute assignment;

51 (E) The policy is effective for one school year only and is subject to annual renewal by the  
52 county board;

53 (F) The state board approves the policy and the use of retired teachers as substitute  
54 teachers on an expanded basis in areas of critical need and shortage for substitute teachers as  
55 provided in this subsection; and

56 (G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond  
57 the post-retirement employment limitations established by the Consolidated Public Retirement  
58 Board, the superintendent of the affected county submits to the state board in a form approved  
59 by the Consolidated Public Retirement Board and the state board, an affidavit signed by the  
60 superintendent stating the name of the county, the fact that the county has adopted a policy to  
61 employ retired teachers as substitutes to address areas of critical need and shortage, the name  
62 or names of the person or persons to be employed as a critical needs substitute pursuant to the  
63 policy, the critical need and shortage area position filled by each person, the date that the person  
64 gave notice to the county board of the person's intent to retire, and the effective date of the  
65 person's retirement. Upon verification of compliance with this section and the eligibility of the  
66 critical needs substitute teacher for employment beyond the post-retirement limit, the state board  
67 shall submit the affidavit to the Consolidated Public Retirement Board.

68 (4) Any person who retires and begins work as a critical needs substitute teacher within  
69 the same fiscal year in which that person retired shall lose those retirement benefits attributed to  
70 the annuity reserve, effective from the first day of employment as a retiree critical needs substitute

71 teacher in that fiscal year and ending with the month following the date the retiree ceases to  
72 perform service as a critical needs substitute teacher.

73 (5) Retired teachers employed to perform expanded substitute service pursuant to this  
74 subsection are considered day-to-day, temporary, part-time employees. The substitutes are not  
75 eligible for additional pension or other benefits paid to regularly employed employees and may  
76 not accrue seniority.

77 (6) A retired teacher is eligible to be employed as a critical needs substitute teacher to fill  
78 a vacant position without any loss of retirement benefits attributed to the annuity reserve only if  
79 the retired teacher's retirement became effective before the first day of July preceding at least the  
80 fiscal year during which he or she is employed as a critical needs substitute teacher.

81 (7) When a retired teacher is employed as a critical needs substitute to fill a vacant  
82 position, the county board shall continue to post the vacant position until it is filled with a regularly  
83 employed teacher who is fully certified or permitted for the position.

84 (8) When a retired teacher is employed as a critical needs substitute to fill a vacant  
85 position, the position vacancy shall be posted electronically and easily accessible to prospective  
86 employees as determined by the state board.

87 (9) Until this subsection is expired pursuant to subdivision (10) of this subsection, the state  
88 board shall report to the Joint Committee on Government and Finance, prior to February 1 of each  
89 year, information indicating the effectiveness of the provisions of this subsection on reducing the  
90 critical need and shortage of substitute teachers including, but not limited to, the number of retired  
91 teachers, by critical need and shortage area position filled and by county, employed beyond the  
92 post-retirement employment limit established by the Consolidated Public Retirement Board, the  
93 date that each person gave notice to the county board of the person's intent to retire, and the  
94 effective date of the person's retirement. A copy of the report shall also be provided to the  
95 Legislative Oversight Commission on Education Accountability.

96 (10) The provisions of this subsection shall expire on June 30, 2025.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

Originated in the House of Delegates.

In effect ninety days from passage.

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within is ..... this the.....  
Day of ....., 2024.

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*Governor*