

# **WEST VIRGINIA LEGISLATURE**

**2024 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 5262**

BY DELEGATES ELLINGTON, STATLER, TONEY,  
MAZZOCCHI, HORNBY, W. CLARK, THORNE, FOGGIN,  
SMITH, JENNINGS, AND LONGANACRE

[Passed March 9, 2024; in effect ninety days from  
passage.]



1 AN ACT to amend and reenact §18-5-18b of the Code of West Virginia, 1931, as amended; to  
2 amend said code by adding thereto a new section, designated §18-20-12; and to amend  
3 said code by adding thereto a new article, designated §18A-2A-1; all relating generally to  
4 the rights of certain school professional personnel; providing that school counselors may  
5 not perform certain duties without written agreement; requiring school counselors to  
6 participate in certain training; limiting the student/instructor ratio in self-contained and  
7 resource classrooms, as well as any special education environment; allowing for a two-  
8 week waiver with the understanding that the local county board is responsible to remediate  
9 the situation while compensating the teacher with overage pay provided by the county per  
10 county or federal funds; allowing the district upon agreement of the teacher to submit a  
11 waiver to the state board of education if the district is unable to find an additional classroom  
12 teacher; prohibiting county from submitting a waiver to exceed a certain limit of students  
13 without the written consent of the special education instructor; providing that county may  
14 not allow more than three students over the limit, even with the additional pay for the  
15 teacher; defining supplemental duty; requiring each classroom teacher, full-time  
16 counselor, and full-time librarian to be provided with a calendar that specifies the days  
17 each employee is expected to work for that school year; requiring that any supplemental  
18 duty exceeding the eight hour contracted day be by agreement with the employee unless  
19 the duty is the result of an anticipated emergency; and requiring overtime pay to be by  
20 agreement and approved by the county superintendent or designee.

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

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

#### **§18-5-18b. School counselors in public schools.**

1 (a) A school counselor means a professional educator who holds a valid school  
2 counselor's certificate in accordance with §18A-1-1 of this code.

3 (b) Each county board shall provide counseling services for each pupil enrolled in the  
4 public schools of the county.

5 (c) The school counselor shall work with individual pupils and groups of pupils in providing  
6 developmental, preventive and remedial guidance and counseling programs to meet academic,  
7 social, emotional, and physical needs; including programs to identify and address the problem of  
8 potential school dropouts. The school counselor also may provide consultant services for parents,  
9 teachers, and administrators and may use outside referral services, when appropriate, if no  
10 additional cost is incurred by the county board.

11 (d) The state board may adopt rules consistent with the provisions of this section that  
12 define the role of a school counselor based on the "National Standards for School Counseling  
13 Programs" of the American School Counselor Association. A school counselor is authorized to  
14 perform such services as are not inconsistent with the provisions of the rule as adopted by the  
15 state board. To the extent that any funds are made available for this purpose, county boards shall  
16 provide training for counselors and administrators to implement the rule as adopted by the state  
17 board.

18 (e) Each county board shall develop a comprehensive drop-out prevention program  
19 utilizing the expertise of school counselors and any other appropriate resources available.

20 (f) School counselors shall be full-time professional personnel, shall spend at least 80  
21 percent of work time in a direct counseling relationship with pupils, and shall devote no more than  
22 20 percent of the workday to administrative activities: *Provided*, That such activities are directly  
23 related to their counseling duties: *Provided further*, That school counselors may not perform the  
24 following duties without a written agreement:

25 (1) Administering cognitive, aptitude, and achievement testing programs: *Provided*, That  
26 school counselors may administer make up tests and any tests that are required for virtual  
27 students, should no other person be available to administer the test;

28 (2) Routinely signing excuses for students who are tardy or absent;

29 (3) Performing disciplinary actions or assigning discipline consequences;

30 (4) Routinely covering classes when teachers are absent or to create teacher planning  
31 time;

32 (5) Maintaining student records: *Provided*, That school counselors may have access to  
33 student records;

34 (6) Computing grade-point averages: *Provided*, That school counselors may compute  
35 grade-point averages for the purpose of determining a student's eligibility for scholarships or post-  
36 secondary goals;

37 (7) Routinely supervising classrooms or common areas;

38 (8) Keeping clerical records: *Provided*, That school counselors may access clerical  
39 records;

40 (9) Coordinating Individual Education Plans: *Provided*, That this does not preclude school  
41 counselors from otherwise participating in Individual Education Plans when appropriate:

42 (10) Coordinating 504 Plans: *Provided*, That this does not preclude school counselors  
43 from otherwise participating in 504 Plans when appropriate; and

44 (11) Coordinating Student Study Teams; *Provided*, That this does not preclude school  
45 counselors from otherwise participating in Student Study Teams when appropriate.

46 (g) Beginning with the 2024—25 school year, school counselors shall participate in the  
47 training set forth below.

48 (1) At least once every two years, school counselors serving students in grades Pre-K  
49 through 12 shall participate in the School Counselors Conference, which shall address the  
50 following components:

- 51 (A) Career Counseling and Life Planning;
- 52 (B) Career awareness;
- 53 (C) Career and life planning;
- 54 (D) Career and life success;
- 55 (E) Opportunities with Career Technical Education available in West Virginia;
- 56 (F) Post secondary options;
- 57 (G) Academic Counseling and Personalized Planning;
- 58 (H) Academic motivation;
- 59 (I) Goal setting;
- 60 (J) Academic scheduling;
- 61 (K) Personalized Education Plans;
- 62 (L) Dual credit;
- 63 (M) Learning skills;
- 64 (N) Personal and Social Counseling;
- 65 (O) Decision making;
- 66 (P) Personal responsibility;
- 67 (Q) Conflict resolution; and
- 68 (R) Prevention.

69 (2) Every two years, school counselors serving students in grades seven through 12 shall  
70 receive training regarding building and trades and apprenticeship programs available to students  
71 in West Virginia. This training shall be administered by the department of education and provided  
72 at no cost to the counselors.

73 (h) Nothing in this section prohibits a county board from exceeding the provisions of this  
74 section, or requires any specific level of funding by the Legislature.

**ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

**§18-20-12. Special education student instructor ratio; waiver; compensation to teacher when ratio exceeded.**

1           (a) Self-contained and resource classrooms, as well as any special education  
2 environment, shall not have a student/instructor ratio over the current limit provided for in the  
3 Individuals with Disabilities Education Act 2004 and State Board Policy 2419. A two-week waiver  
4 may be signed with the understanding that the local county board is responsible to remediate the  
5 situation while compensating the teacher with overage pay provided by the county per county or  
6 federal funds. This waiver shall be good for two weeks to allow the district time to find an additional  
7 classroom teacher. Should the district be unable to find an additional classroom teacher, the  
8 district, upon the agreement of the teacher, may submit a waiver to the state board of education.  
9 This waiver shall have the teachers signature acknowledging that although they are over the limit,  
10 they recognize that this is a dire situation.

11           (b) The county may not submit a waiver to exceed the current limit of students set forth in  
12 Individuals with Disabilities Education Act 2004 and Policy 2419 without the written consent of the  
13 special education instructor. If the instructor chooses to sign the waiver to exceed the limit, that  
14 instructor shall be entitled to the full amount of compensation as provided per county.

15           (c) The county may not allow more than three students over the limit, even with the  
16 additional pay for the teacher.

**CHAPTER 18A. SCHOOL PERSONNEL.**

**ARTICLE 2A. TEACHERS BILL OF RIGHTS.**

**§18A-2A-1. Supplemental duty calendar provisions.**

1           (a) In this section, "supplemental duty" means a duty other than a duty assigned under an  
2 employee's contract that is generally expected to be performed during an educational day and  
3 which may be governed by an agreement, other than the employee's contract, between the district  
4 and the employee.

5           (b) Not later than the 15th day before the first day of the employment term of each school  
6 year, the county board shall adopt and provide to each classroom teacher, full-time counselor,  
7 and full-time librarian employed by the district a calendar that specifies the days each employee  
8 is expected to work for that school year: *Provided*, That any supplemental duty exceeding the  
9 eight hour contracted day shall be by agreement with the employee and preapproved by the  
10 county superintendent or by his or her designee, unless the supplemental duty is the result of an  
11 unanticipated emergency, and shall be paid in accordance with the agreement between the  
12 employee and the county.

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*