

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5262

By Delegates Ellington, Statler, Toney, Mazzocchi,
Hornby, W. Clark, Thorne, Foggin, Smith, Jennings
and Longanacre

[Originating in the Committee on Education; Reported
on February 7, 2024]

1 A BILL to amend and reenact §18-5-18b of the Code of West Virginia, 1931, as amended; to
 2 amend and reenact §18-20-1c of said code; to amend said code by adding thereto a new
 3 section, designated §18-20-12; to amend and reenact §18A-1-1 of said code; to amend
 4 and reenact §18A-2-2 of said code; to amend said code by adding thereto a new article,
 5 designated §18A-2A-1; and to amend and reenact §18A-5-1 and §18A-5-1c of said code;
 6 all relating generally to the rights of school counselors, special education teachers, and
 7 teachers; defining the duties of counselors; ensuring that counselors are provided with the
 8 same classification as professional educators to be consistent with the code; clarifying
 9 data to be provided; ensuring that school counselors are afforded the protections of
 10 teachers as set forth in the Teachers Bill of Rights; defining the special education student to
 11 instructor ratio, a waiver process, and compensation given to a teacher when the ratio is
 12 exceeded; ensuring that special education teachers are afforded the protections of
 13 teachers as set forth in the Teachers Bill of Rights; providing for the creation of a Teachers
 14 Bill of Rights Educational Doctrine; providing for supplemental duty calendar provisions;
 15 and clarifying the process for the removal of students.

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 school counselor who holds a valid
 2 school counselor's certificate in accordance with §18A-1-1(c)(2) 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 ~~work day~~ workday to administrative activities: *Provided*, That such activities are
23 ~~counselor-related~~ directly related to their counseling duties: *Provide further*, That school
24 counselors may not perform the following duties without a written agreement:

25 (1) Build the master schedule;

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

29 (3) Routinely sign excuses for students who are tardy or absent;

30 (4) Perform disciplinary actions or assign discipline consequences;

31 (5) Provide more than 8 sessions of counseling in schools to address psychological
32 disorders; *Provided*, That students who have experienced an emergency situation such as, but not

33 limited to, CPS investigation, death, abuse, or home removal may be addressed regardless of how
34 many sessions have previously been utilized.

35 (6) Cover classes when teachers are absent or to create teacher planning time;

36 (7) The counselor may have access but may not maintain student records;

37 (8) Compute grade-point averages;

38 (9) Supervise classrooms or common areas;

39 (10) May access but not keep clerical records;

40 (11) Coordinate schoolwide plans including:

41 (A) Individual Education Plans;

42 (B) 504 Plans;

43 (C) Student Study Teams;

44 (D) Response to Intervention Plans;

45 (E) Multi-Tiered System of Support; and

46 (F) May access attendance records but may not oversee School Attendance Review

47 Boards.

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

50 (h) School counselors shall be afforded the protections set forth in §18-2A-1 et seq. of this
51 code.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1c. Integrated classrooms serving students with exceptional needs; and requirements as to the assistance, training, and information to be provided to the affected classroom teacher.

1 (a) The ~~regular~~ general education classroom teacher is entitled to the following when
2 placing a student with exceptional needs, into an integrated classroom when the student's

2 individualized education program requires an adjustment in either the curriculum, instruction, or
3 service to be provided by the ~~regular~~ general education classroom teacher:

4 (1) Training provided pursuant to the integrated classroom program and additional
5 individualized training, pursuant to the rules developed by the State Board of Education, if
6 requested by the ~~regular~~ general education classroom teacher to prepare the teacher to meet the
7 exceptional needs of individual students. Whenever possible, the training shall be provided prior to
8 the placement. Where prior training is not possible, the training shall be commenced no later than
9 ten days following the placement of the student into the ~~regular~~ general education classroom.
10 Unavoidable delays in the provision of training may not result in the exclusion of a special needs
11 student from any class if the training cannot be provided in ten days;

12 (2) A signed copy of the individualized education program for the special education student
13 prior to the placement of the student into the ~~regular~~ general education classroom. The receiving
14 and referring teachers shall participate in the development of that student's individualized
15 education program and shall also sign the individualized education program as developed. In all
16 cases the teacher shall receive a copy of the individualized education program for the special
17 education student prior to or at the time of the placement of the student into the ~~regular~~ general
18 education classroom. Any teacher disagreeing with the individualized education program
19 committee's recommendation shall file a written explanation outlining his or her disagreement or
20 recommendation;

21 (3) Participation by referring teachers in all eligibility committees and participation by
22 referring and receiving teachers in all individualized education program committees which involve
23 possible placement of an exceptional student in an integrated classroom;

24 (4) Opportunity to reconvene the committee responsible for the individualized education
25 program of the student with ~~special needs~~ exceptionalities assigned to the ~~regular~~ general
26 education classroom teacher. The meeting shall include all persons involved in a student's

27 individualized education program and shall be held within 21 days of the time the request is made;
28 and

29 (5) Assistance from persons trained or certified to deal with a student's exceptional needs
30 whenever assistance is part of the student's individualized education program as necessary to
31 promote accomplishment of the program's goals and objectives: *Provided*, That aides in the area
32 of special education cannot be reassigned to more than one school without the employee's
33 consent; and

34 (b) ~~Except~~ In addition to the teachers already required to participate in the development of
35 a student's individualized education program and sign it as provided in subdivision (2) of this
36 section, all other teachers in whose class or program a student with exceptional needs shall:

37 (1) Participate in the meeting to develop the student's individualized education program, or
38 read and sign a copy of the student's individualized education program plan acknowledging that
39 he or she has read and understands it; ~~and~~ .

40 (2) Make accommodations and modifications for the student, if needed or identified, to help
41 the student succeed in the class or program.

42 (3) Data to support this decision shall be included in the Individualized Education Plan.

43 (4) Should the general education teacher provide data after 45 days, showing that the
44 student is not in the least restrictive environment for academic growth, the data shall be used to
45 support the student in whatever way is necessary, including, but not limited to, increasing the
46 amount of minutes for the special education environment. The general education teacher, special
47 education teacher, and principal shall be in attendance in this meeting. The general education
48 teacher, special education teacher, and principal shall agree upon this placement; *Provided*,
49 understanding that the placement and services are two distinct decisions made and needed IEP
50 services are required prior to placement decisions. The parent has final authority, according to
51 federal statute and regulations, to decline services or suggestions. If any have a disagreement as
52 to the placement, that individual shall submit their disagreement and reasons for any

53 disagreement to the county board of education, and an investigation shall be opened; *Provided,*
54 nothing in this provision should be construed as interfering with or limiting access to the Federal
55 Individuals with Disabilities Education Act, and regulatory Due Process and complaint procedures
56 available to students, families, and personnel.

57 (c) This requirement includes, but is not limited to, ~~teachers of music,~~ musical education,
58 art, driver education, health, foreign language, and other instruction offered.

59 (d) If the teacher provides a series of documentation within a 45-day grading period that
60 shows that the student is not in their least restrictive environment, to the point that his or her
61 placement does not ensure the student with exceptionalities makes appropriate progress toward
62 meeting the student's annual goals, the teacher may begin all available Federal and State process
63 and complaint procedures. The teacher may not be penalized in any way for advocating for his or
64 her student and the teacher may work with the family or guardian of the student to recommend
65 local advocates, share documentation and information, inform the guardians of his or her due
66 process rights, and may call for an IEP meeting to review the information gathered from
67 documentation and address the concerns to best adjust the IEP, as necessary, to best address the
68 student's special education needs.

§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
6 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 assistant teacher,
8 the district, upon the agreement of the teacher, may submit a waiver to the state board of

9 education. This waiver shall have the teachers signature acknowledging that although they are
10 over the limit, they recognize that this is a dire situation, and that they are entitled per
11 compensation per student per county funds.

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

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

§18-20-13. Special education teacher rights.

1 Special education teachers shall be afforded the protections set forth in §18-2A-1 et seq. of
2 this code.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

1 The definitions contained in §18-1-1 of this code apply to this chapter. In addition, the
2 following words used in this chapter and in any proceedings pursuant to this chapter have the
3 meanings ascribed to them unless the context clearly indicates a different meaning:

4 (a) "School personnel" means all personnel employed by a county board whether
5 employed on a regular full-time basis, an hourly basis or otherwise. "School personnel" is
6 comprised of two categories: Professional personnel and service personnel;

7 (b) "Professional person" or "professional personnel" means those persons or employees
8 who meet the certification requirements of the state, licensing requirements of the state, or both,
9 and includes a professional educator and other professional employee;

10 (c) "Professional educator" has the same meaning as "teacher" as defined in section one,
11 article one, chapter eighteen of this code. Professional educators are classified as follows:

12 (1) "Classroom teacher" means a professional educator who has a direct instructional-~~or~~
13 ~~counseling~~ relationship with students and who spends the majority of his or her time in this
14 capacity;

15 (2) "School counselor" means a certified school counselor who holds a master's degree in
16 school counseling from an accredited university and certification through the state board of
17 education and who is entitled to receive the same salary and benefits as a professional educator.

18 ~~(2)~~ (3) "Principal" means a professional educator who functions as an agent of the county
19 board and has responsibility for the supervision, management and control of a school or schools
20 within the guidelines established by the county board. The principal's major area of responsibility
21 is the general supervision of all the schools and all school activities involving students, teachers
22 and other school personnel;

23 ~~(3)~~ (4) "Supervisor" means a professional educator who is responsible for working
24 primarily in the field with professional and other personnel in instructional and other school
25 improvement. This category includes other appropriate titles or positions with duties that fit within
26 this definition; and

27 ~~(4)~~ (5) "Central office administrator" means a superintendent, associate superintendent,
28 assistant superintendent and other professional educators who are charged with administering
29 and supervising the whole or some assigned part of the total program of the countywide school
30 system. This category includes other appropriate titles or positions with duties that fit within this
31 definition;

32 (d) "Other professional employee" means a person from another profession who is
33 properly licensed and who is employed to serve the public schools. This definition includes a
34 registered professional nurse, licensed by the West Virginia Board of Examiners for Registered

35 Professional Nurses, who is employed by a county board and has completed either a two-year
36 (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program;

37 (e) "Service person" or "service personnel", whether singular or plural, means a
38 nonteaching school employee who is not included in the meaning of "teacher" as defined in §18-1-
39 1 of this code and who serves the school or schools as a whole, in a nonprofessional capacity,
40 including such areas as secretarial, custodial, maintenance, transportation, school lunch and
41 aides. Any reference to "service employee" or "service employees" in this chapter or chapter 18 of
42 this code means service person or service personnel as defined in this section;

43 (f) "Principals Academy" or "academy" means the academy created pursuant to §18A-3a-
44 2b of this code;

45 ~~(g) "Center for Professional Development" means the center created pursuant to §18A-3a-~~
46 ~~1 of this code;~~

47 (h) ~~(g)~~ "Job-sharing arrangement" means a formal, written agreement voluntarily entered
48 into by a county board with two or more of its employees who wish to divide between them the
49 duties and responsibilities of one authorized full-time position;

50 (i) ~~(h)~~ "Prospective employable professional person", whether singular or plural, means a
51 certified professional educator who:

52 (1) Has been recruited on a reserve list of a county board;

53 (2) Has been recruited at a job fair or as a result of contact made at a job fair;

54 (3) Has not obtained regular employee status through the job posting process provided in
55 §18A-4-7a of this code; and

56 (4) Has obtained a baccalaureate degree from an accredited institution of higher education
57 within the past year;

58 (j) ~~(i)~~ "Dangerous student" means a student who is substantially likely to cause serious
59 bodily injury to himself, herself or another individual within that student's educational environment,
60 which may include any alternative education environment, as evidenced by a pattern or series of

61 violent behavior exhibited by the student, and documented in writing by the school, with the
62 documentation provided to the student and parent or guardian at the time of any offense;

63 ~~(k)-(j)~~ "Alternative education" means an authorized departure from the regular school
64 program designed to provide educational and social development for students whose disruptive
65 behavior places them at risk of not succeeding in the traditional school structures and in adult life
66 without positive interventions; and

67 ~~(+)~~ (k)"Long-term substitute" means a substitute employee who fills a vacant position:

68 That the county superintendent expects to extend for at least thirty consecutive days, and
69 is either:

70 (A) Listed in the job posting as a long-term substitute position of over thirty days; or

71 (B) Listed in a job posting as a regular, full-time position and:

72 (i) Is not filled by a regular, full-time employee; and

73 (ii) Is filled by a substitute employee.

74 For the purposes of §5-16-2 of this code, long-term substitute does not include a retired
75 employee hired to fill the vacant position.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof; written notice bonus for teachers and professional personnel.

1 (a) Before entering upon their duties, all teachers shall execute a contract with their county
2 boards, which shall state the salary to be paid and shall be in the form prescribed by the state
3 superintendent. Each contract shall be signed by the teacher and by the president and secretary of
4 the county board and shall be filed, together with the certificate of the teacher, by the secretary of
5 the office of the county board. When necessary to facilitate the employment of employable
6 professional personnel and prospective and recent graduates of teacher education programs who
7 have not yet attained certification, the contract may be signed upon the condition that the

8 certificate is issued to the employee prior to the beginning of the employment term in which the
9 employee enters upon his or her duties.

10 (b) Each teacher's contract, under this section, shall be designated as a probationary or
11 continuing contract. A probationary teachers contract shall be for a term of not less than one nor
12 more than three years, one of which shall be for completion of a beginning teacher internship
13 pursuant to the provisions of section two-b, article three of this chapter, if applicable. If, after three
14 years of such employment, the teacher who holds a professional certificate, based on at least a
15 bachelor's degree, has met the qualifications for a bachelors degree and the county board enter
16 into a new contract of employment, it shall be a continuing contract, subject to the following:

17 (1) Any teacher with less than a bachelor's degree who holds a valid certificate and is
18 employed in a county beyond the three-year probationary period shall be granted continuing
19 contract status upon qualifying for the professional certificate based upon a bachelor's degree, if
20 the teacher becomes reemployed; and

21 (2) A teacher holding continuing contract status with one county shall be granted
22 continuing contract status with any other county upon completion of one year of acceptable
23 employment if the employment is during the next succeeding school year or immediately following
24 an approved leave of absence extending no more than one year.

25 (c) The continuing contract of any teacher shall remain in full force and effect except as
26 modified by mutual consent of the school board and the teacher, unless and until terminated,
27 subject to the following:

28 (1) A continuing contract may not be terminated except:

29 (A) By a majority vote of the full membership of the county board on or before May 1 of the
30 then current year, after written notice, served upon the teacher, return receipt requested, stating
31 cause or causes and an opportunity to be heard at a meeting of the board prior to the board's
32 action on the termination issue; or

33 (B) By written resignation of the teacher on or before May 1 to initiate termination of a
34 continuing contract;

35 (2) The termination shall take effect at the close of the school year in which the contract is
36 terminated;

37 (3) The contract may be terminated at any time by mutual consent of the school board and
38 the teacher;

39 (4) This section does not affect the powers of the school board to suspend or dismiss a
40 principal or teacher pursuant to section eight of this article;

41 (5) A continuing contract for any teacher holding a certificate valid for more than one year
42 and in full force and effect during the school year 1984-1985 shall remain in full force and effect;

43 (6) A continuing contract does not operate to prevent a teacher's dismissal based upon the
44 lack of need for the teacher's services pursuant to the provisions of law relating to the allocation to
45 teachers and pupil-teacher ratios. The written notification of teachers being considered for
46 dismissal for lack of need shall be limited to only those teachers whose consideration for dismissal
47 is based upon known or expected circumstances which will require dismissal for lack of need. An
48 employee who was not provided notice and an opportunity for a hearing pursuant to this
49 subsection may not be included on the list. In case of dismissal for lack of need, a dismissed
50 teacher shall be placed upon a preferred list in the order of their length of service with that board. A
51 teacher may not be employed by the board until each qualified teacher on the preferred list, in
52 order, has been offered the opportunity for reemployment in a position for which he or she is
53 qualified, not including a teacher who has accepted a teaching position elsewhere. The
54 reemployment shall be upon a teacher's preexisting continuing contract and has the same effect
55 as though the contract had been suspended during the time the teacher was not employed.

56 (d) In the assignment of position or duties of a teacher under a continuing contract, the
57 board may provide for released time of a teacher for any special professional or governmental
58 assignment without jeopardizing the contractual rights of the teacher or any other rights, privileges

59 or benefits under the provisions of this chapter. Released time shall be provided for any
60 professional educator while serving as a member of the Legislature during any duly constituted
61 session of that body and its interim and statutory committees and commissions without
62 jeopardizing his or her contractual rights or any other rights, privileges, benefits or accrual of
63 experience for placement on the state minimum salary schedule in the following school year under
64 the provisions of this chapter, board policy and law.

65 (e) A teacher is disqualified to teach in any public school in the state for the duration of the
66 next ensuing school year, if that teacher:

67 ~~(1) Fails to fulfill his or her contract with the board, unless prevented from doing so by~~
68 ~~personal illness or other just cause or unless released from his or her contract by the board, or~~

69 ~~(2) Violates~~ violates any lawful provision of his or her contract: *Provided*, That the marriage
70 of a teacher is not considered a failure to fulfill, or violation of, the contract.

71 The State Department of Education or board may hold all papers and credentials of the
72 teacher on file for a period of one year for the violation and shall report such disqualification status
73 in the National Association of State Directors of Teacher Education and Certification (NASDTEC)
74 database system.

75 (f) Any classroom teacher, as defined in section one, article one of this chapter, who
76 desires to resign employment with a county board or request a leave of absence, the resignation
77 or leave of absence to become effective on or before July 15 of the same year and after completion
78 of the employment term, may do so at any time during the school year by written notification of the
79 resignation or leave of absence and any notification received by a county board shall automatically
80 extend the teacher's public employee insurance coverage until August 31 of the same year.

81 (g) (1) A classroom teacher who gives written notice to the county board on or before
82 March 1 of the school year of his or her retirement from employment with the board at the
83 conclusion of the school year shall be paid \$500 from the early notification of retirement line item
84 established for the Department of Education for this purpose, subject to appropriation by the

85 Legislature. If the appropriations to the Department of Education for this purpose are insufficient to
86 compensate all applicable teachers, the Department of Education shall request a supplemental
87 appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are still
88 insufficient to compensate all applicable teachers, the priority of payment is for teachers who give
89 written notice the earliest. This payment may not be counted as part of the final average salary for
90 the purpose of calculating retirement.

91 (2) The position of a classroom teacher providing written notice of retirement pursuant to
92 this subsection may be considered vacant and the county board may immediately post the position
93 as an opening to be filled at the conclusion of the school year. If a teacher has been hired to fill the
94 position of a retiring classroom teacher prior to the start of the next school year, the retiring
95 classroom teacher is disqualified from continuing his or her employment in that position. However,
96 the retiring classroom teacher may be permitted to continue his or her employment in that position
97 and forfeit the early retirement notification payment if, after giving notice of retirement in
98 accordance with this subsection, he or she becomes subject to a significant unforeseen financial
99 hardship, including a hardship caused by the death or illness of an immediate family member or
100 loss of employment of a spouse. Other significant unforeseen financial hardships shall be
101 determined by the county superintendent on a case-by-case basis. This subsection does not
102 prohibit a county school board from eliminating the position of a retiring classroom teacher.

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 educational day of each school year, the
6 County Board professional staff of a school district shall adopt and provide to each classroom

17 others in the classroom; who threatens, abuses or otherwise intimidates or attempts to intimidate a
18 school employee or a student; who willfully disobeys a school employee; or who uses abusive or
19 profane language directed at a school employee. Any student excluded shall be placed under the
20 control of the principal of the school or a designee. The excluded student may be admitted to the
21 classroom or school bus only when the principal, or a designee, provides written certification to the
22 teacher that the student may be readmitted and specifies the specific type of disciplinary action, if
23 any, that was taken. If the principal finds that disciplinary action is warranted, he or she shall
24 provide written and, if possible, telephonic notice of the action to the parent(s), guardian(s), or
25 custodian(s). When a student is excluded from a classroom or a school bus two times in one
26 semester, and after exhausting all reasonable methods of classroom discipline provided in the
27 school discipline plan, the student may be readmitted to the classroom or the school bus only after
28 the principal, teacher and, if possible, the parent(s), guardian(s), or custodian(s) of the student
29 have held a conference to discuss the student's disruptive behavior patterns, and the teacher and
30 the principal agree on a course of discipline for the student and inform the parent(s), guardian(s),
31 or custodian(s) of the course of action. Thereafter, if the student's disruptive behavior persists,
32 upon the teacher's request, the principal may, to the extent feasible, transfer the student to another
33 setting. The Legislature finds that isolating students or placing them in alternative learning centers
34 may be the best setting for chronically disruptive students. The county board shall create more
35 alternative learning centers or expand its capacity for alternative placements, subject to funding, to
36 correct these students' behaviors so they can return to a regular classroom without engaging in
37 further 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 contracted 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) A teacher may remove a student in grades pre-k through 5 only under the following
54 circumstances:

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

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

66 (3) Not later than the third day of class after the day on which a student is removed from
67 class by the teacher under this section, or by the school principal or other appropriate
68 administrator under this section, the school discipline team shall schedule a conference including

69 the teacher who requested removal of the student, parent or the guardian of the student, and
70 principal. The student may not be returned to the regular classroom pending the conference.
71 Following the conference, and whether or not each requested person is in attendance after valid
72 attempts to require the persons attendance, the school discipline team shall take consideration of
73 the factors under this section and shall order the placement of the student for a period consistent
74 with the schoolwide discipline policy.

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

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

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

87 (g) (h) Each county board is solely responsible for the administration of proper discipline in
88 the public schools of the county and shall adopt policies consistent with the provisions of this
89 section to govern disciplinary actions. These policies shall encourage the use of alternatives to
90 discipline practices, provide for the training of school personnel in alternatives to discipline
91 practices, and provide for encouraging the involvement of parent(s), guardian(s) or custodian(s) in
92 the maintenance of school discipline. To promote a teaching and learning environment free from
93 substantial classroom disturbances, each county board shall ensure that each school implements
94 a tier system policy, with teacher input, to provide a framework for student behaviors and

95 punishments. The policy shall be clear and concise with specific guidelines and examples. The
96 principal shall support the teacher in the discipline of the students if proper cause and
97 documentation is provided following the schoolwide discipline policy. The teacher may not be
98 reprimanded if their actions are legal and within the structure of the county board's policy for
99 student behavior and punishment. The county board policies shall also include an appeal
100 procedure whereby a teacher may appeal to the county superintendent if a school principal
101 refuses to allow the exclusion of a student from the classroom or if a teacher believes the school
102 principal has prematurely ended the exclusion of a student from the classroom. The county boards
103 shall provide for the immediate incorporation and implementation in schools of a preventive
104 discipline program which may include the responsible student program and a student involvement
105 program, which may include the peer mediation program, devised by the West Virginia Board of
106 Education. Each county board may modify those programs to meet the particular needs of the
107 county. The county boards shall provide in-service training for teachers and principals relating to
108 assertive discipline procedures and conflict resolution. The county boards also may establish
109 cooperatives with private entities to provide middle educational programs, which may include
110 programs focusing on developing individual coping skills, conflict resolution, anger control, self-
111 esteem issues, stress management and decision making for students, and any other program
112 related to preventive discipline. Each teacher, professional personnel, and transportation
113 department shall receive a copy of this statute in addition to the local policy relating to the statute.

114 ~~(h)~~(i) For the purpose of this section:

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

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

122 (3) "Principal" means the principal, assistant principal, vice principal or the administrative
123 head of the school, or a professional personnel designee of the principal or the administrative
124 head of the school.

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

§18A-5-1c. Bill of Rights and Responsibilities for Students and School Personnel.

1 (a) The Legislature finds that:

2 (1) The mission of public schools is to prepare students for equal and responsible
3 citizenship and productive adulthood;

4 (2) Democratic citizenship and productive adulthood begin with standards of conduct in
5 schools;

6 (3) Schools should be safe havens for learning with high standards of conduct for students;
7 and

8 (4) Rights necessarily carry responsibilities.

9 (b) In recognition of the findings in this section, the following Bill of Rights and
10 Responsibilities for Students and School Personnel is established:

11 (1) The right to attend a school and ride a bus that is safe, orderly and drug free;

12 (2) The right to learn and work in a school that has clear discipline codes, as defined in
13 state, county, or school policy, with fair and consistently enforced consequences for misbehavior;

14 (3) The right to learn and work in a school that has alternative educational placements for
15 violent or chronically disruptive students;

16 (4) The right to be treated with courtesy and respect;

17 (5) The right to ~~a~~-attend a school and ride on a bus that is free from bullying;

18 (6) The right to support from school administrators when enforcing discipline policies;

19 (7) The right to support from parents, the community, public officials and businesses in
20 their efforts to uphold high standards of conduct; and

21 (8) The responsibility to adhere to the principles in this Bill of Rights and Responsibilities
22 for Students and School Personnel, and to behave in a manner that guarantees that other
23 students and school personnel enjoy the same rights.

24 (c) The rights of teachers as otherwise set forth in §18A-2A-1 et seq. of this code are
25 applicable for purposes of this section.

NOTE: The purpose of this bill generally relates to the rights of school counselors, special education teachers, and teachers. The bill defines the duties of school counselors. The bill ensures that school counselors are provided with the same classification as professional educators to be consistent with the code. The bill clarifies data to be provided. The bill provides that school counselors are afforded the protections of teachers as set forth in the Teachers Bill of Rights. The bill defines the special education student to instructor ratio, a waiver process, and compensation given to a teacher when the ratio is exceeded. The bill ensures that special education teachers are afforded the protections of teachers as set forth in the Teachers Bill of Rights. The bill provides for the creation of a Teachers Bill of Rights Educational Doctrine. The bill provides for supplemental duty calendar provisions. Finally, the bill clarifies the process for the removal of students.

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