

Strategic Legislative Priorities 2024

West Virginia School Board Association



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The West Virginia School Board Association, acting on behalf of its membership, has established an Executive Legislative Committee tasked with the responsibility of identifying strategic priorities for the forthcoming 2024 Legislative Session. In line with this objective, the Association respectfully requests the House of Delegates and Senate Education Committees dedicate thoughtful attention to proposed revisions to existing statute. Furthermore, the West Virginia School Board Association, if brought forth, supports passage of legislation introduced but did not reach passage during the Regular Session of the 2023 Legislature.

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Proposed Revisions to Current Statute

Revise the Provisions of West Virginia Code § 18-5-8b. School counselors in public schools.

Clarify the roll of school counselors in our public schools and define the level of services provided.

The American School Counseling Association (ASCA) Model is the national standard model for school counseling programs. West Virginia state code and policy requires school counselors to align practices and programs with the ASCA national model. The West Virginia School Counseling Model incorporates the updated ASCA national model with West Virginia specific state requirements. Nevertheless, there is an ongoing disconnect with best practice and expectations for school counselors and their duties. Enhancing transparency and compliance with said standards can be attained by incorporating additional definitions and safeguards into the state code.

** Draft legislation provided as an attachment.*

Revise the Provisions of West Virginia Code § 18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

Provide guardrails and supports for students deemed chronically absent.

Students are expected to maintain consistent attendance by being present for at least ninety percent (90%) of the total instructional days in a school year. The primary aim of Every Student Succeeds Act's student success measure related to attendance is to reduce the prevalence of chronically absent students, defined as those who are absent from school for more than 10% of instructional days. Statewide, the majority of school districts have been identified as falling short of meeting the prescribed standards for student attendance on the WV Balanced Scorecard. The Attendance Indicator is computed based on the complete student attendance records, encompassing both excused and unexcused absences.

** Draft legislation provided as an attachment.*

Revise the Provisions of West Virginia Code § 18A-5-1 Regarding the exclusion of students from classrooms.

Provide guardrails for students with disabilities and principal discretion when determining proper disciplinary action.

The current statute, as amended, makes no mention of superseding provisions of the federal Individuals with Disabilities Education Act that conflict with the statute's requirements. The federal law may condition and, in some instances, forbid the suspension of students with disabilities (in-school or out-of-school) and their placement in alternative learning centers where such action is based, as the statute contemplates, solely on a teacher's exclusion of a student from the classroom for three times in a month. Should the exclusion provisions of the statute not be expressly conditioned on compliance with IDEA, as is the Safe and Protective Schools Act? See West Virginia Code § 18A-5-1a(k),

For these reasons, legislation to clean up § 18A-5-1 would appear to be in order.

** Draft legislation provided as an attachment.*

Revise the Provisions of West Virginia Code § 18-20-11.

**Video cameras required in certain special education classrooms;
audio recording devices required in restroom of a self-contained classroom.**

Clarify which restrooms used by students from self-contained special education classrooms must be equipped with audio recording devices.

House Bill 3271, which took effect on June 7, 2023, amended West Virginia Code § 18-20-11. Until then, § 18-20-11 required county boards to install cameras in self-contained special education classrooms to monitor and record both video and audio from all areas of the classroom, “including, without limitation, a room attached to the self-contained classroom and used for other purposes.” An exception was made for restrooms, where no such cameras were permitted. The law expressly provided that the cameras “shall not monitor a restroom.”

House Bill 3271 modified that restroom rule of § 18-20-11 to require county boards to place audio, but not video, recording devices in “the restroom of the self-contained classroom.” Boards must in general retain, protect, and disclose the resulting recordings under the same rules that apply to the video/audio recordings made by the classroom cameras. Parents and legal guardians of students have a right under the legislation to opt out of the audio monitoring for their student.

Language in the amendment states that the restrooms in which the audio recording device is to be operated are “every restroom that is a part of a self-contained classroom that is part of that school.”

However, unlike the pre-existing provision of § 18-20-11 that extends the video and audio recording requirements into rooms other than restrooms “attached” to a self-contained special education classroom, the 2023 amendment does not make clear that the required audio recording devices must be installed in only those restrooms that are “attached” to a self-contained classroom.

As such, the bill arguably does not account for self-contained special education classrooms which are not equipped with bathrooms. In some West Virginia schools, students in self-contained classrooms must use bathrooms outside of the classroom, including bathrooms which may be used by other students, faculty and/or visitors. School districts have wondered whether they must install audio recording devices in those restrooms as well, or risk being accused in litigation of having violated their obligation to record audio in any restroom “of the self-contained classroom” students. On the other hand, installing audio recording devices in restrooms that are also used by a school’s general population, including students and adults, could present numerous logistical, privacy and cost issues.

A clarifying amendment to § 18-20-11 could resolve this concern by making clear that it is only in restrooms physically “attached” to self-contained special education classrooms that county boards must install the audio recording devices.

Revise the Provisions of West Virginia Code § 18-5-45.

School calendar.

Provide time prior to the opening of school for mandatory school personnel to receive training / professional development as dictated in state statute and state board of education policy.

The existing statute fails to adequately address the extensive volume of training requirements outlined in the state code. Every year, the legislature contemplates imposing further training mandates, placing a burden on school districts as they grapple with the challenges of allocating sufficient time and resources to fulfill these obligations.

Revise the Provisions of West Virginia Code § 6C-2-2.

Definitions. West Virginia Public Employees Grievance Procedure.

Repeal the provision of 2023 legislation that effectively prevents county superintendents of schools and their designees from hearing and deciding employee complaints at level one of the West Virginia public employees grievance procedure.

Superintendents and their designees are considered “chief administrators” under the public employee grievance statute. At Level One of the three-tiered grievance procedure, chief administrators oversee employees’ grievance conferences, preside over grievance hearings and render written decisions granting or denying relief sought by grievants. Although, outwardly, their role may appear to be that of a judge, it has been understood, and the Grievance Board and courts have agreed, that superintendents serving as chief administrators need not be impartial, neutral, or disinterested decision makers like judges in a courtroom. Many, if not most, employee grievances implicate recommendations and decisions by the superintendent. No one is in a better position than the superintendent to recognize and correct, at Level One, mistaken recommendations, and decisions, thereby addressing employees’ concerns at “the lowest level of the grievance procedure,” as the grievance laws encourage. *West Virginia Code § 6C-2-1 (c); West Virginia Code § 6C-2-2 (b); West Virginia Code § 6C-2-4 (a).*

Superintendents have long been prohibited by the West Virginia Ethics Act and West Virginia Code § 61-10-15 (the Pecuniary Interest Statute) from hearing and deciding grievances in which they have a personal financial conflict of interest, and those in which their own family members are involved. In those instances, superintendents exercise the option under the grievance procedure laws to designate someone else to process and decide grievances at Level One. *West Virginia Code § 6C-2-2 (b).*

Senate Bill 461 in 2023 imposed another set of limitations on superintendents and their designees at Level One of the grievance process. It states that chief administrators are governed by the West Virginia Ethics Commission’s Code of Conduct for Administrative Law Judges. *West Virginia Code § 6C-2-3 (s).*

Until now, the Administrative Law Judge Code of Conduct has, by its terms, applied only to officers and employees of state government who conduct hearings and issue decisions, typically as their fulltime job. It has not applied to county superintendents conducting Level One grievance proceedings. Yet Senate Bill 461 requires county school superintendents, as chief administrators, to now meet the standards of the Administrative Law Judge Code of Conduct, 158 CSR 13.

Among the standards governing Administrative Law Judges under the Code of Conduct is the requirement of section 4.3.d.1 of the Code that “an administrative law judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” Grievants and their representatives might understandably invoke this provision if a superintendent processes and decides a Level One grievance that is based on a recommendation that the superintendent himself or herself made to the school board, e.g., the posting and selection of a candidate to fill a vacant professional or service personnel position; the hiring of a substitute employee; the suspension or discharge of an employee for cause; the transfer, nonrenewal or release of an employee during “personnel season” to realign the workforce for the ensuing school year. Grievances based on those, and similar grounds alone constitute a large, if not the largest, portion of the grievances filed by school employees every year.

Moreover, if the superintendent’s designee is another school administrator in the same school system, that administrator might also, by virtue of their involvement or job duties, be unable to claim to be impartial and have no interest in the outcome of the grievance—rendering them unable to serve as designee at Level One. To comply with the Administrative Law Judge Code of Conduct, superintendents have had to secure Level One designees who are not employed by their same school boards, often at a cost.

One might expect grievants to assert in one of two ways a claim that a superintendent or a particular designee should not, under this new standard, have heard and decided their grievances at Level One. They may appeal the Level One decision to the West Virginia Public Employees Grievance Board, which has the power to reverse a Level One decision and award the relief sought by the grievant. Additionally, they may file a complaint with the West Virginia Ethics Commission's Committee on Standards of Conduct for Administrative Law Judges, seeking sanctions against the superintendent or designee for violating the Administrative Law Judge Code of Conduct. Sanctions can consist of a written admonishment, a cease-and-desist order, a fine not to exceed \$1000, and a recommendation to the school board that the superintendent or designee be removed from office or disqualified from serving as chief administrator at Level One of future grievances. West Virginia Code § 6C-2-4; 158 CSR 5.

Absent clarification by the Legislature, superintendents will understandably be skeptical about hearing and deciding employee grievances, a role in which they served well for 38 years from the institution of the grievance process by statute in 1985 until Senate Bill 461 took effect on June 9, 2023. As a result, school boards will face higher expenses to process grievances, persons hearing and deciding grievances will have less authority than superintendents would have to resolve grievances at Level One, and there is a risk that school boards will be saddled with well-intended but mistaken Level One decisions by persons unfamiliar with the school system – decisions with which school boards will have to live because employers cannot appeal Level One decisions to the Grievance Board or the courts.

New Legislation Establishing Student Access to Behavioral Therapy and/or Substance Abuse Treatment

Provide funding for the department of education to operate a boarding school for children who need aba-based therapies, cognitive behavior therapy, and/or substance abuse treatment.

Boarding schools for such therapies exist across the country. The best is said to be effective in addressing students' emotional and behavioral issues. Might the public school system establish and operate such a school in West Virginia? For example, if the campus of defunct Alderson Broaddus College is available for purchase, or if there is capacity at the Schools for the Deaf and Blind, might the West Virginia Department of Education operate such a school for the benefit of West Virginia students? Such a development would help to address student needs that may overwhelm or be beyond the capacity of county boards of education.

New Legislation Incentivizing a Retiring Teacher to Remain in Their Current Position

Provide legislation that would allow a retiring teacher to remain in their current position for an extended period of five years at their annual salary calculated at their degree level but the first-year experience level without affecting any of their monthly retirement benefits to which they are otherwise entitled.

At least a half-dozen states have passed or are considering legislation to entice teachers out of retirement or incentivizing them to remain in their current position. Like West Virginia, typically, states have policies that limit the amount retired educators can work or earn while collecting retirement benefits, but many are passing new laws lifting those restrictions in the face of shortages. In many cases, those teachers want to continue working, but they have no incentive to do so without reducing their pension wealth in the long term. Although veteran teachers are at the high end of the pay scale, there are diminishing returns to their retirement benefits after a certain point in their career, and it's not in their best financial interest to keep working past that point. This new legislation would allow a retired teacher to draw their retirement benefits on top of a base salary at their degree level. Retirees are limited to a five-year window but will not gain those additional years of service towards their retirement.

1

CHAPTER 18. EDUCATION.

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ARTICLE 5. COUNTY BOARD OF EDUCATION

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

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

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

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

7

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

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

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(f) School counselors shall be full-time professional personnel, shall spend at least 80 percent of work time in a direct counseling relationship with pupils, and shall devote no more than 20 percent of the workday to administrative activities: Provided, That such activities are counselor related.

10

(f) "Direct Services": Include in-person interactions between school counselors and students. Direct services include instruction (classroom/large groups, small groups, or individual), appraisal, advisement, personalized student planning, and counseling.

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(G) "Indirect Services" Include consultation, collaboration, and referral to support student success and to promote equity and access for all students. Indirect services include consultation, collaboration, and referrals.

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(H) School counselors shall be full-time professional personnel. , shall spend at least 80 percent of work time in a direct counseling relationship with pupils, and shall devote no more than 20 percent of the workday to administrative activities: Provided, That such activities are counselor related. Within the state approved multi-tiered framework, school counselors shall provide direct and indirect services for students at each tier to promote social/emotional, college and career, and academic success. School counselors shall spend at least 80% of work time in a direct counseling relationship with pupils, which includes both direct and indirect student services, as each type of service directly impacts the success of individual students. School counselors shall provide direct and indirect services at each tier to support academic, behavioral, and mental health needs. School counseling instruction shall include teaching the school counseling curriculum by incorporating student standards from the West Virginia College and Career Readiness Disposition and Standards for Student Success in Grades K-12 and the West Virginia Pre-K Standards to help all students maximize their potential by enhancing academic, college/career, and social/emotional development and improving achievement, attendance, and discipline outcomes.

13

(I) Indirect student services include consultation, collaboration, and referral. School counselors shall provide indirect student services to support student success and to promote equity and access for all students. While students benefit from indirect services, school counselors also work with parents, teachers, administrators, school staff, and community stakeholders to promote systemic change to address the needs of students (such as underachieving or underrepresented groups of students)

41 in the school. School counselors are expected to gather and share information about student developmental issues, problems,
42 and successes through indirect student services.

43 (J) School counselors shall spend no more than 20% of work time on program defining, managing, planning, data analysis
44 and assessing tasks. Consideration should be given to establishing a scheduled time for counselors to accomplish the tasks
45 detailed above. The planning and manage component of the comprehensive school counseling model encompasses planning
46 and activities the school counselor must implement to ensure the needs of all students are addressed through their school
47 counseling program.

48 (K) "Administrative Duties": The school counselor may spend a small portion of the 20% set-aside providing fair share
49 responsibilities if the percent does not exceed that of the other school staff in the building and the responsibilities do not require
50 the school counselor to take a disciplinary role. Fair-share responsibilities must be assigned proportional to other school level
51 staff as well as directly related to the roll of a school counselor. Consideration of such responsibilities should be flexible in
52 nature to not impede a counselor's ability to be responsive to students who are in need. Fair-share responsibilities do not
53 include administrative leadership rolls such as serving as the school Student Assistance Team, Individual Education Program,
54 and/or testing coordinator, etc.

55 (L) Each county board shall employee adequate personnel in each high school to perform essential clerical duties and
56 responsibilities within the counseling department at the direction of the school principal.

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

FISCAL NOTE: A fiscal note will be required in relation to section (g). There are approximately 112 high schools in the state requiring at a minimum the same number of Secretary II positions.

Total Estimated Cost: 112 Secondary High Schools x Estimated Salary and Fixed Costs in the Amount of \$40,000 = \$4,480,000

CHAPTER 18. EDUCATION.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

(a) The county attendance director and the assistants shall diligently promote regular school attendance. The director and assistants shall:

(1) Ascertain reasons for unexcused absences from school of students of compulsory school age and students who remain enrolled beyond the compulsory school age as defined under section one-a of this article;

(2) Take such steps as are, in their discretion, best calculated to encourage the attendance of students and to impart upon the parents and guardians, the importance of attendance and the seriousness of failing to do so;

(3) For the purposes of this article, the following definitions apply:

(A) "Excused absence" includes:

(i) Personal illness or injury of the student;

(ii) Personal illness or injury of the student's parent, guardian, custodian, or family member: Provided, That the excuse must provide a reasonable explanation for why the student's absence was necessary and caused by the illness or injury in the family;

(iii) Medical or dental appointment with written excuse from physician or dentist;

(iv) Chronic medical condition or disability that impacts attendance;

(v) Participation in home or hospital instruction due to an illness or injury or other extraordinary circumstance that warrants home or hospital confinement;

(vi) Calamity, such as a fire or flood;

(vii) Death in the family;

(viii) School-approved or county-approved curricular or extra-curricular activities;

(ix) Judicial obligation or court appearance involving the student;

(x) Military requirement for students enlisted or enlisting in the military;

(xi) Personal or academic circumstances approved by the principal; and

(xii) Such other situations as may be further determined by the county board: Provided, That absences of students with disabilities shall be in accordance with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in compliance therewith; and

(B) "Unexcused absence" means any absence not specifically included in the definition of "excused absence"; and

(C) "Chronic absenteeism" refers to any student who has or is on target to miss more than ten percent of the total

31 instructional days in a school year. More specifically, a chronically absent student misses two or more instructional days of
32 school per month or eighteen or more instructional days in a school year. Chronic absenteeism includes excused and
33 unexcused absences. It also includes unexcused absences as a result of a disciplinary action, such as out-of-school
34 suspension.

35 (4) All documentation relating to absences shall be provided to the school no later than three instructional days after
36 the first day the student returns to school.

37 (b) In the case of three total unexcused absences of a student during a school year, the attendance director, assistant,
38 or principal shall make meaningful contact with the parent, guardian, or custodian of the student to ascertain the reasons for
39 the unexcused absences and what measures the school may employ to assist the student in attending and not incurring any
40 additional unexcused absences.

41 (c) In the case of five total unexcused absences, the attendance director or assistant or principal shall again make
42 meaningful contact with the parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences
43 and what measures the school may employ to assist the student in attending school and not incurring any additional unexcused
44 absences.

45 (d) In the case of 10 total unexcused absences of a student during a school year, the attendance director or assistant
46 may make a complaint against the parent, guardian or custodian before a magistrate of the county. If it appears from the
47 complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it,
48 a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to
49 arrest persons charged with offenses against the state. More than one parent, guardian or custodian may be charged in a
50 complaint. Initial service of a summons or warrant issued pursuant to the provisions of this section shall be attempted within
51 ten calendar days of receipt of the summons or warrant and subsequent attempts at service shall continue until the summons
52 or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

53 (e) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as
54 authorized in §50-1-8 of this code, shall assign the case to a magistrate within 10 days of execution of the summons or warrant.
55 The hearing shall be held within 20 days of the assignment to the magistrate, subject to lawful continuance. The magistrate
56 shall provide to the accused at least 10 days" advance notice of the date, time and place of the hearing.

57 (f) When any doubt exists as to the age of a student absent from school, the attendance director and assistants have
58 authority to require a properly attested birth certificate or an affidavit from the parent, guardian or custodian of the student,
59 stating age of the student. In the performance of his or her duties, the county attendance director and assistants have authority
60 to take without warrant any student absent from school in violation of the provisions of this article and to place the student in
61 the school in which he or she is or should be enrolled.

62 (g) The county attendance director and assistants shall devote such time as is required by section three of this article
63 to the duties of attendance director in accordance with this section during the instructional term and at such other times as the
64 duties of an attendance director are required. All attendance directors and assistants hired for more than 200 days may be
65 assigned other duties determined by the superintendent during the period in excess of 200 days. The county attendance
66 director is responsible under direction of the county superintendent for efficiently administering school attendance in the
67 county.

68 (h) In addition to those duties directly relating to the administration of attendance, the county attendance director and
69 assistant directors also shall perform the following duties:

(1) Assist in the taking of the school census to see that it is taken at the time and in the manner provided by law;

(2) Confer with principals and teachers on the comparison of school census and enrollment for the detection of

(-) Survey with possible non-enrollees:

(3) Cooperate with existing state and federal agencies charged with enforcing child labor laws;

(4) Prepare a report for submission by the county superintendent to the State Superintendent of Schools on school attendance, at such times and in such detail as may be required. The state board shall promulgate a legislative rule pursuant to §29A-3B-1 et seq. of this code that set forth student absences that are excluded for accountability purposes. The absences that are excluded by rule shall include, but are not limited to, excused student absences, students not in attendance due to disciplinary measures and absent students for whom the attendance director has pursued judicial remedies to compel attendance to the extent of his or her authority. The attendance director shall file with the county superintendent and county board at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time:

(5) Promote attendance in the county by compiling data for schools and by furnishing suggestions and commendations for publication through school bulletins and the press, or in such manner as the county superintendent may elect;

(6) Participate in school teachers' conferences with parents and students;

(7) Assist in such other ways as the county superintendent may direct for improving school attendance;

(8) Make home visits of students who have excessive unexcused absences, as provided in subsection-a of this section, or if requested by the chief administrator, principal or assistant principal; and

(9) Serve as the liaison for homeless children and youth.

(i) Chronically Absent Students: Based on the multi-tiered system of supports (MTSS) framework, schools and districts should have systems in place for early identification of students chronically absent or who may be “at risk.” The local leadership team is encouraged to analyze student data to look for root causes of absenteeism and/or barriers to attendance or learning and then implement and monitor tiered interventions.

(1) Effective beginning with the 2024-2025 school year, county boards of education shall adopt or revise an existing policy to guide schools in addressing and improving student chronic absenteeism. In developing the policy, the board shall consult with the judge of the juvenile court of the county in which the district is located, with the parents, guardians, or other persons having care of the pupils attending school in the district, and with appropriate state and local agencies.

(2) The policy developed under this section shall include;

(1) The identification of members to serve on a chronically absent student's intervention team. The team may include classroom teachers and other supporting personnel such as a school psychologist, resource officer, nurse, counselor, social worker, community in school liaison, or representative of a public or nonprofit agencies designed to assist students and their families in reducing absences.

(2) Providing a truancy intervention plan for any student who is chronically absent from school, as defined in section (C), shall include;

(i) After thirty instructional days and thereafter, if the total numbers of absences of a student reaches the threshold as being chronically absent from school, the principal shall review the student's daily attendance record to include

107 documentation of excused and unexcused absences. If warranted, the principal shall assign the student to a chronic absence
108 intervention team, which should include the parent/guardian. The school shall provide the student's parent/guardian written
109 notice of the planning meeting. The principal shall instruct the chronic absence intervention team to develop the intervention
110 plan for the child notwithstanding the absence of the child's parent/guardian. Within five school days after the assignment of
111 a student to a chronic absence intervention team, the team shall develop and implement an intervention plan for the student
112 in an effort to reduce or eliminate further absences. The school shall provide the student's parent/guardian a copy of the
113 intervention plan. Each intervention plan shall vary based on the individual needs of the student, but the plan shall state that
114 the county attendance director or designee shall file a legal complaint not later than ten-days after the date the plan was
115 implemented, if the child has refused to participate in, or failed to make satisfactory progress on, the intervention plan.

116 (ii) Once a student is identified as chronically absent from school, has been assigned a chronic absence intervention
117 team, and an intervention plan has been implemented, further absences will require written verification for the reason of the
118 absence other than an excuse provided by the parent/guardian. This requirement shall remain in effect until such time the
119 student is no longer deemed chronically absent.

120 (iii) As part of the absence intervention plan described in division (i), the school district, in its discretion, may petition
121 the appropriate juvenile court and request to have a student informally enrolled in the county truancy diversion program.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. 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.

(a) The teacher shall stand in the place of the parent(s), guardian(s), or custodian(s) in exercising authority over the school and has control of all students enrolled in the school from the time they reach the school until they have returned to their respective homes, except where transportation of students is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the students while they are in transit to and from the school.

(b) Subject to the rules of the state Board of Education, the teacher shall exclude from the school any student known to have, or who is suspected of having, any infectious disease, or any student who has been exposed to any infectious disease and shall immediately notify the proper health officer or medical inspector of the exclusion. Any student so excluded may not be readmitted to the school until he or she has complied with all the requirements of the rules governing those cases or has presented a certificate of health signed by the medical inspector or other proper health officer.

(c) The teacher, may exclude from his or her classroom or school bus any student who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who behaves in a manner that obstructs the teaching or learning process of others in the classroom; who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a student; who willfully disobeys a school employee; or who uses abusive or profane language directed at a school employee. Any student excluded shall be placed under the control of the principal of the school or a designee. The excluded student may be admitted to the classroom or school bus only when the principal, or a designee, provides written certification to the teacher that the student may be readmitted and specifies the specific type of disciplinary action, if any, that was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of the action to the parent(s), guardian(s), or custodian(s). When a student is excluded from a classroom or a school bus two times in one semester, and after exhausting all reasonable methods of classroom discipline provided in the school discipline plan, the student may be readmitted to the classroom or the school bus only after the principal, teacher and, if possible, the parent(s), guardian(s), or custodian(s) of the student have held a conference to discuss the student's disruptive behavior patterns, and the teacher and the principal agree on a course of discipline for the student and inform the parent(s), guardian(s), or custodian(s) of the course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting. The Legislature finds that isolating students or placing them in alternative learning centers may be the best setting for chronically disruptive students. The county board shall create more alternative learning centers or expand its capacity for alternative placements, subject to funding, to correct these students' behaviors so they can return to a regular classroom without engaging in further disruptive behavior.

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

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

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

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

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

(C) If the student is removed from a classroom a total of three times in one month for one or more of the behaviors

46 set forth in this subsection, the student shall receive as determined by the principal an in-school suspension, an out-
47 of-school suspension, or may be considered for placement in an alternative learning center if one is available within the
48 school district.

49 (D) For purposes of this section, nothing herein may be construed to be in conflict with the federal provisions of
50 the Individuals with Disabilities Education Act, 20 U. S. C. §1400, et seq.

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

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

55 (g) Each county board is solely responsible for the administration of proper discipline in the public schools of the
56 county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions. These policies
57 shall encourage the use of alternatives to discipline practices, provide for the training of school personnel in alternatives
58 to discipline practices, and provide for encouraging the involvement of parent(s), guardian(s) or custodian(s) in the
59 maintenance of school discipline. To promote a teaching and learning environment free from substantial classroom
60 disturbances, each county board shall ensure that each school implements a tier system policy, with teacher input, to
61 provide a framework for student behaviors and punishments. The policy shall be clear and concise with specific guidelines
62 and examples. The principal shall support the teacher in the discipline of the students if proper cause and documentation
63 is provided following the schoolwide discipline policy. The teacher may not be reprimanded if their actions are legal and
64 within the structure of the county board's policy for student behavior and punishment. The county board policies shall also
65 include an appeal procedure whereby a teacher may appeal to the county superintendent if a school principal refuses to
66 allow the exclusion of a student from the classroom or if a teacher believes the school principal has prematurely ended the
67 exclusion of a student from the classroom. The county boards shall provide for the immediate incorporation and
68 implementation in schools of a preventive discipline program which may include the responsible student program and a
69 student involvement program, which may include the peer mediation program, devised by the West Virginia Board of
70 Education. Each county board may modify those programs to meet the particular needs of the county. The county boards
71 shall provide in-service training for teachers and principals relating to assertive discipline procedures and conflict
72 resolution. The county boards also may establish cooperatives with private entities to provide middle educational programs,
73 which may include programs focusing on developing individual coping skills, conflict resolution, anger control, self-esteem
74 issues, stress management and decision making for students, and any other program related to preventive discipline.

75 (h) For the purpose of this section:

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

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

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

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