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**It Promises to Be a Challenging
‘Personnel Season!’**

WEST VIRGINIA ASSOCIATION OF SCHOOL BUSINESS OFFICIALS FALL CONFERENCE

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Canaan Valley Resort

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Some Deadlines For County Board Personnel Actions (Always consult appropriate statutes for details)

If, before August 1, 2025, the reason for an employee's reduction in force or transfer previously approved in 2025 no longer exists as determined by the board, the board must, with certain exceptions, rescind the action under the rules of *W. Va. Code §§ 18A-4-7a(m)(6) or 18A-4-8b(k)*.

On or before September 1, 2025, the board must post at each school or working station current seniority lists of each service employee classification. *W. Va. Code § 18A-4-8g(f)*.

On or before September 30, 2025, if actual student enrollment in a grade level or program, unforeseen on or before May 1, 2025, allows the assignment of fewer professional or service employees to or within a school under certain pupil-teacher ratio, class size or caseload standards, the board may reassign the least senior certified or classified surplus personnel to another grade level or program in the same school, or to another school, if needed there to comply with any such standard. *W. Va. Code § 18A-2-7(e)*. (This is arguably a conservative version of the deadline. See the statute and Section 9 of State Board Policy 5000 for notice and hearing requirements that precede the vote and other details.)

On or before January 15, 2026, the board must post at each school or working station current seniority lists of each service employee classification. *W. Va. Code § 18A-4-8g(f)*.

On or before March 2, 2026, a classroom teacher may give written notice of retirement, to take effect at the end of the school year, so as to be paid the \$500 state bonus for early notification of retirement. *W. Va. Code § 18A-2-2(g)(1)*. This is also the deadline for other professionals, and for service employees, to give early written notice of retirement, to take effect at the end of the school year, in order to receive any county bonus for early notification of retirement. *W. Va. Code § 18A-2-5a*.

On or before April 1, 2026, the superintendent must provide written notice to professional and service employees who are being considered for transfer. *W. Va. Code § 18A-2-7(a)*. (See the statute for time within which any statements of reasons must then be given and any hearing requests must then be made.)

On or before May 1, 2026, a teacher or service employee may initiate termination of a continuing contract by written resignation, to take effect at the close of the school year. *W. Va. Code §§ 18A-2-2(c)(1)(B) or 18A-2-6*.

On or before May 1, 2026, after conducting any hearings requested by employees, the board, by majority of its full membership, may terminate the continuing contracts of professional or service employees, to take effect at the close of the school year (as in a reduction-in-force). *W. Va. Code § 18A-2-2(c)(1)(A) (professionals); W. Va. Code § 18A-2-6 (service employees)*. (See the statute for notice and hearing requirements that precede the vote.)

On or before May 1, 2026, after the board conducts any hearings requested by employees, the superintendent must furnish the board with a written list of teachers and other employees to be considered for transfer for the ensuing school year. *W. Va. Code § 18A-2-7(a),(b)*. (See the statute for requirement of subsequent notice to such employees.)

On or before May 1, 2026, the superintendent, at a board meeting, must provide the board with a written list of all probationary teachers and service personnel that the superintendent recommends to be rehired for the ensuing school year. The board must act upon the superintendent's recommendations at the same meeting. *W. Va. Code § 18A-2-8a*. (See the statute for requirement of subsequent notice to probationary employees not listed, and for provisions regarding subsequent hearings.)

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WORKFORCE REALIGNMENT

Workforce realignment during “personnel season” is arguably the most complex of the processes involving the personnel office. Chief among the procedures used to realign the regular employee workforce are employee transfers, contract terminations for lack of need, and contract non-renewals for lack of need.

- A transfer is board action assigning an employee to a different position of employment for the coming school year. Generally, a change in work site or place of employment is a transfer, as is assigning an employee to work in a different classification category or certification area.
- A contract termination for lack of need is board action to end an employee’s continuing contract as of June 30 and place their name on the preferred recall list.
- A contract non-renewal for lack of need is a board’s refusal to award a current probationary employee a contract for the coming year. The person’s employment expires on June 30 and their name is placed on the preferred recall list.

The Basic Process for Eliminating a Regular Professional Position for Lack of Need

1. Determine the position to be eliminated for the coming school year and identify the person now holding the position. Seniority need not be the deciding factor in identifying the position to be eliminated.
2. Determine whether the person can remain employed by taking the lateral job of the less and least senior employee holding a lateral job for the coming year. If they can, then transfer (bump) the employee into that job (and process the “bumpee” under steps 2-5 of this process).
3. If the person cannot remain employed by bumping laterally, then determine whether they can take the job of a less and least senior person holding a job for coming year in which the person was previously employed. If they can take that job, transfer (bump) the person into that job (and process the “bumpee” under steps 2-5 of this process).
4. If the person cannot bump into a job in which were previously employed, then determine whether they can be placed through the “last chance pool,” where they will be automatic applicant for professional vacancies known on or before March 1 to exist for the coming school year.
5. If the person does not receive a job for the coming year through the last chance pool, then terminate or non-renew their contract, placing their name on the preferred recall list.

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The Basic Process for Reducing a Regular Service Position for Lack of Need

1. Determine the position to be eliminated for the coming school year and identify the person now holding it. Seniority need not be the deciding factor in identifying the position to be eliminated.
2. If no less senior employee will hold a job for the coming year in the person's classification category, then terminate or non-renew their contract and place them on the preferred recall list.
3. Otherwise, place the person's name on the transfer list, release the last senior employee who has a job for the coming year in the classification, post and fill the position vacated by the least senior employee, and treat the person on the transfer list as an automatic applicant for this vacancy and, until the person is placed, for every subsequent posting of a vacancy in the classification.

Note: When a service person on transfer is multiclassified, or when the least senior employee who has a job in the classification for the coming year is multiclassified, the process can be "multi-complicated." Under the school laws, a multiclassified service employee is considered to be an employee of each separate area of their multiclassification. The employee may be released in one of the areas that is subject to a reduction in force, but has a right to remain an employee in the remaining classification title(s).

Eliminating Extracurricular Assignments for Lack of Need

Technically, the transfer process deadlines, and the transfer notice and hearing requirements, should be used to terminate a professional or service extracurricular contract at year's end for lack of need.

There is no "bumping" by which an employee whose extracurricular assignment is eliminated may assume someone else's extracurricular assignment. Nor do the names of affected employees go onto a preferred recall list. However, if an extracurricular *service* contract has been terminated and is reestablished in any succeeding school year, it must be offered to the employee who held the assignment at the time of its termination before it can be posted for application by others.

Rescissions

An employee's reduction-in-force termination or transfer for lack of need may be rescinded if, prior to the next August 1, the reason for that action no longer exists.

Eliminating Summer Jobs for Lack of Need

No special action is required to eliminate a summer professional or summer service position for lack of need. The position is simply not posted for the coming summer. However, a person who was employed in a summer *service* position during the previous summer must be given the option of retaining the position if the position exists during any succeeding summer.

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Other Tools for Realigning the Workforce

The personnel laws include additional tools for realigning the workforce, some of which require no action by the board and less formal procedures than above. These include administrative action to reassign some employees within their current classification or currently-utilized area of certification; adjustments to an employee's daily work schedule; filling or not filling vacancies for the coming school year; increasing or decreasing the number of annual contract days for employees whose current contract terms exceed 200 days; and reassigning some employees during the next year to satisfy class size and caseload standards under state law and State Board policy.

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REALIGNMENT PROCESSES

SUMMARY OF TRANSFER PROCEDURE

(See West Virginia Code §18A-2-7 for Further Detail)

1. On or before April 1, the superintendent must provide written notice to professional and service employees who are being considered for transfer or to be transferred.
2. Any employee who desires to protest such proposed transfer may request in writing a statement of the reasons for the proposed transfer, in which case:
 - a. The statement of reasons shall be delivered to the employee within ten calendar days of the receipt of the request.
 - b. Within ten days of the receipt of the statement of reasons, the employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education.
 - c. The requested hearing on the proposed transfer shall be held on or before May 1. At the hearing, the reasons for the proposed transfer must be shown.
3. At a meeting of the board on or before May 1, the superintendent shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing school year. All employees not so listed shall be considered as reassigned to the positions or jobs held at the time of this meeting. The list of those recommended for transfer shall be included in the minute record of such meeting.
4. Each employee so listed shall be notified by the superintendent in writing “**with written receipt notification documented by the superintendent,**” to such person’s last known address within ten days following the board meeting. The notice shall advise the employee that he/she has been recommended for transfer and subsequent assignment and the reasons therefor.
5. Only upon recommendation of the superintendent and by action of the board may an employee whose name is on the list of persons to be considered for transfer and subsequent assignment actually be transferred and assigned to a new position.

SUMMARY OF “LACK OF NEED” CONTRACT TERMINATION PROCEDURE

(See West Virginia Code §§ 18A-2-2 and 18A-2-6 for Details)

1. As a rule of thumb, by April 1, each affected employee shall first receive written notice by certified mail, return receipt requested, advising the employee that the superintendent intends to

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ask the board of education, before the first day of May, to terminate the employee's contract at the close of the school year. The notice must state the reasons for the superintendent's proposal and extend to the employee an opportunity to be heard at a meeting of the board prior to the board's action on the recommendation.

2. On or before May 1, the board of education must conduct a dismissal hearing for each affected employee who takes advantage of the opportunity to be heard.
3. An employee's contract may thereafter be terminated under this procedure only by a majority vote of the full membership of the board on or before May 1.

SUMMARY OF PROCEDURE FOR THE NON-REHIRING OF PROBATIONARY PERSONNEL (See West Virginia Code §18A-2-8a)

1. At a meeting of the board on or before May 1, the superintendent shall provide in writing to the board a list of all probationary employees that he/she recommends to be rehired for the next ensuing school year. The board shall act upon the superintendent's recommendations at that meeting.
2. Any probationary employee who is not rehired by the board at that meeting shall be notified in writing, by certified mail, return receipt requested, to such person's last known address within ten days following the board meeting, of their not having been rehired or not having been recommended for rehiring.
3. Within ten calendar days after receiving the written notice, any probationary employee may request a statement of the reasons for not having been rehired and may request a hearing before the board of education. Any such hearing shall be held at the next regularly scheduled board of education meeting or at a special meeting of the board called within 30 calendar days of the probationary employee's request for the hearing. At the hearing, the reasons for the non-rehiring must be shown.

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PERSONNEL SEASON PLANNING OUTLINE

This is a summary. Please consult applicable statutes and West Virginia Board of Education policies for specifics.

1. Ascertaining The Status Quo

- a) determine the number of professional and service positions funded through the state aid formula
- b) determine the number of professional and service personnel currently employed
- c) determine the number of certified administrators employed
- d) determine the number of administrative positions which cannot be funded through the state aid formula/reimbursement

2. Determining Projected Resources Based on Second Month Report

- a) the number of state-funded professional employees, including administrators, for the upcoming school year
- b) the number of state-funded service employees for the upcoming school year

3. Absolute Personnel Requirements

Although the personnel allocation decision process varies from county to county, most counties start with an inventory of positions that will be absolutely required by state and federal law. Such positions include:

- a) Full-time principals for each school with a net enrollment that equals or exceeds 170 students. W. Va. Code §18A-2-9.
- b) At least one full-time school counselor. W. Va. Code §18-5-18b.
- c) A full-time school nurse for each 1500 kindergarten through seventh grade students (or major fraction thereof), with a minimum of 1 full-time school nurse. W. Va. Code §18-5-22. Counties may contract for equivalent services with a public health department.
- d) A full-time Attendance Director in counties with a student population of more than 4000 students. A half-time Attendance Director in counties with a student population of 4000 or less. W. Va. Code §18-8-3.

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- e) A School Nutrition/Child Nutrition/Food Service Director. A full-time director is “strongly recommended.” West Virginia Board of Education Policy 4321.1.
- f) A sufficient number of classroom teachers to meet the minimum student-teacher ratios for grades K-6, contained in W. Va. Code §18-5-18a.
- g) A sufficient number of classroom teachers, ECCATS, and aides to comply with the Pre-K, K, first grade, second grade and third grade program requirements. West Virginia Code § 18-5-18a. West Virginia Board of Education Policy 2525.
- h) A sufficient number of professional and service personnel to meet the requirements of students’ IEPs and West Virginia Board of Education Policy 2419.
- i) Although no precise student/teacher ratios exist for secondary programs, a sufficient number of properly certified classroom teachers to permit students to attain the credits required by State Board Policy 2510. See *Donna McCoy v. Tucker County Board of Education*, Docket No. 92-47-154 (November 30, 1992).
- j) No minimum requirements exist with respect to any service personnel classification, except ECCATs and aides in certain elementary and special education programs. West Virginia Board of Education Policy 2510 and Policy 2419. But there must be sufficient service personnel to perform required services for students and facilities (e.g. transportation, food service, custodial, clerical).
- k) Consider all costs associated with the Superintendent’s and Treasurer/Chief School Business Official’s contracts.

4. Discretion

- a) Determine the number and type of positions that the school system is able and willing to fund through any remaining state aid and available local funds.
- b) Required positions and discretionary positions are typically combined into a local “staffing formula” that is followed in allocating professional and service staff to each school and other work site.

5. Methodology

- a) Staffing priorities may be set forth in county board policy, administrative regulation, or ad hoc written communications.
- b) Most local policies vest the principal with the authority to make recommendations based on an analysis of the curricular offerings/master schedule.

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- c) W. Va. Code § 18A-2-9 identifies principals as the instructional supervising authority. See *Burris v. Mason County Board of Education*, Docket No. 92-26-217, (November 10, 1992)(citing the principal's role in personnel decision making; upholding the exercise of discretion in eliminating German from the curriculum).
- d) Avoid deviating from past practice without good cause and a written explanation showing the reasons for the deviation; otherwise, such changes are susceptible to charges of favoritism or arbitrary and capricious decision making.
- e) In all cases, personnel actions should be grounded in sound educational reasoning.
- f) Personnel season policies, if any, should also include a statement to the effect that they are not all encompassing and that individual circumstances may require a recommendation that is not covered by the policy.

6. Board Awareness

- a) The board of education should be made aware of the conditions and criteria underlying anticipated personnel season actions. However, the board should not be presented with facts specific to any individual employee outside of a board meeting at which the employee was given the opportunity for a hearing.
- b) Well before personnel season, the Board's staffing and programmatic priorities should be discussed in general terms.
- c) The administration should strive to understand those priorities before crafting an in-depth personnel season plan.

7. Employee Awareness

- a) If employees understand the personnel season process and are confident that the administration applies the process in an evenhanded and fair manner to every employee, the number of nasty hearings should be significantly reduced.
- b) Open communications with employees about anticipated financial limitations, shrinking student population, programs with low enrollment, etc. may help employees appreciate the need for adjustments in the workforce during personnel season.
- c) Appropriate and knowledgeable personnel should make themselves available to answer employees' questions.
- d) Once you are confident in the basis for your proposed personnel season actions, you should be comfortable sharing that information with employee organization

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representatives. If the employee representatives are convinced that your personnel recommendations have been accurately and fairly formulated, they sometimes counsel employees to accept the proposed actions rather than fight them.

- e) Employee representatives can also help you discover errors in your data or planned terminations and transfers before it is too late to make changes.

8. The Lists - Professional Employees

The displaced employee list shows which employees, will no longer have their current positions. These employees will eventually be recommended to be transferred, terminated or non-renewed during personnel season. Start this list with the most senior affected employee.

The reserved jobs list identifies all vacancies in an established, existing or newly created position that, on or before March 1, is known to exist for the ensuing school year.

The transfer-into-a-specific-assignment list (aka, bumper list) contains the names of those employees who, by their seniority, are entitled to a specific different position next school year. Employees (bumpers) on this list transfer into specific assignments held by less senior employees (bumpees) as part of a reduction-in-force or similar process involving the elimination of a position.

The last chance pool list contains the names of employees who, but for the possibility of getting a job on the reserved job list, would be terminated for lack of need. These employees lack the seniority needed to displace any other employee. These employees must be considered automatic applicants for the vacancies on the reserved jobs list. Regular current employees may bid on reserved jobs as well. But, applications from non-school employees/outside for reserved jobs cannot be considered at all until all last chance pool employees and regular current employees who applied have been considered.

The list of all professional employees, which should probably be a spreadsheet, must accurately reflect the seniority, certification(s), and subject areas taught or assignments being fulfilled by all current professional employees. Ideally, this list will show the courses or grade levels taught by each employee. It is also important to determine if teachers are appropriately certified to teach the courses they are teaching. Refer to the WVEIS Course Codes For Scheduling.

The what-it-will-cost-if-the-board-rejects-the-superintendent's-recommendation list, aka "the cost list", shows the dollars and cents it will cost the board to reject the superintendent's recommended personnel action. Regardless of how well an administration plans and complies with the relevant policies and statutes when proposing personnel season actions to a board of education, those boards may be persuaded by a sympathetic employee

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to spare their job for one reason or another. When employees make those pleas, you should be ready to show the board an accurate price tag for rejecting the superintendent's recommendation. With that information, the board may objectively consider the relative value of leaving the employee in their current position in relation to its other budgetary needs and priorities. During these often emotional hearings, the Board should be reminded that the vast majority of employees did not come before them asking for an exception and that fairness demands they consider all of those employees' equally difficult circumstances when being asked to make an exception.

9. The Service Employee List

All service employees placed on the transfer list are necessarily going on the subsequent assignment list. That is, once they are placed in transfer limbo, assuming we have followed all of the other steps correctly, they will definitely be getting another job—their subsequent assignment. This is accomplished through automatic applicant bidding and regular bidding. However, one exception exists. The Berry Bump. Employees who hold contracts in excess of 200 days are entitled to bump into a position held by the least senior employee within classification at the same level in terms of contract days. If there are no less senior employees within their classification at the same contract day level and one or more contract days levels in excess of 200 exist (e.g, 210-day contracts, 215-day contracts, 220-day contracts, etc.), the employee is entitled to bump into a position held by a less senior employee within their classification at the next highest level of contract days in excess of 200.

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