

West Virginia Department of Education

**INFORMAL
GUIDELINES FOR
IMPLEMENTING PUBLIC
EDUCATION BILLS
ENACTED IN
REGULAR SESSION**

2013 GREEN BOOK



**WEST VIRGINIA BOARD OF EDUCATION
2012-2013**

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FOREWORD

The West Virginia Department of Education is pleased to prepare Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session 2013 as a document to assist educators and others in understanding and implementing education bills enacted by this year's Legislature.

This document should be placed with your most current copy of the School Laws of West Virginia as it contains new language/laws that must be reviewed in conjunction with the School Laws book.

For each of the acts included in this publication, the format is as follows: effective date, date signed by the Governor, code reference, title and major new provisions. As time constraints have not permitted an in-depth analysis of these bills from the regular session, it must be emphasized that the information provided in this document must not be considered as official interpretations of the State Superintendent of Schools. Formal interpretations to specific questions will be provided upon request.

The Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session 2013 will be of considerable value during the coming school year. Suggestions for improving this document as a service to the Department's clientele are always welcome. This document is also available online at <http://wvde.state.wv.us/legislature/2013greenbook.pdf>.

Please feel free to call or write if you need additional information regarding bills enacted during the 2013 regular session of the West Virginia Legislature.

A handwritten signature in black ink, appearing to read "James B. Phares". The signature is fluid and cursive, with a large initial "J" and "P".

James B. Phares, Ed.D.
State Superintendent of Schools

CODE CHANGES

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Senate Bill 80

Effective Date: July 1, 2013
Signed by Governor: April 17, 2013
Code Reference: Amends §18-5-32
Title: Including substitute teaching in job duties of certain professional educators employed by county boards

Major Provisions:

- Requires that all professional educators who are employed as central office administrators and/or supervisors or directors of instruction and other educational activities, and who are properly licensed, substitute teach on at least three instructional days each school year.
- This requirement does not apply to the county superintendent or those employed by county boards as other professional personnel, as defined in WVC §18A-1-1, who have never held a teaching or administrative certificate.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 80

(Senator Edgell)

[Passed April 9, 2013; to take effect July 1, 2013.]

AN ACT to amend and reenact §18-5-32 of the Code of West Virginia, 1931, as amended, relating to including substitute teaching in the job duties of certain professional educators employed by county boards of education in certain administrative and supervisory positions.

Be it enacted by the Legislature of West Virginia:

That §18-5-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-32. Assistant superintendents; directors and supervisors of instruction and other educational activities.

(a) The county board, upon the recommendation of the county superintendent, may employ an assistant whose term of employment ~~shall~~ may be not less than one nor more than four years: *Provided*, That his or her term ~~shall~~ may not extend beyond that of the incumbent county superintendent.

(b) The board ~~shall~~ may not employ more than one assistant for each two hundred teachers or major fraction thereof.

(c) The county board, upon the recommendation of the county superintendent, is authorized to employ general and special supervisors or directors of instruction and of other educational activities as may be considered necessary.

(d) The employment of the assistant superintendent shall be on a twelve-month basis. The period of employment for all others named herein shall be at the discretion of the county board.

(e) Rules for qualifications of assistant superintendents, and directors and supervisors of instruction and of other educational activities shall be fixed by the state board: *Provided*, That the qualifications required for any assistant superintendent ~~shall in no event~~ may not be higher than those required for the county superintendent: *Provided, however*, That the rules do not affect the status of any incumbent nor his or her right to succeed himself or herself in his or her assigned position.

(f) The county board ~~of education~~ is authorized to reimburse the employees for their necessary traveling expenses upon presentation of a monthly, itemized, sworn statement approved by the county superintendent.

(g) Any person employed under the foregoing provision of this section, provided he or she holds a valid teacher's certificate, shall be given continuing contract status as a teacher and shall hold that status unless dismissed for statutory reasons.

(h) The job duties of a professional educator employed under the provisions of this section, including a professional educator employed as a “supervisor” or “central office administrator” as defined in section one, article one, chapter eighteen-a of this code, shall include substitute teaching on at least three instructional days each school year: *Provided*, That the substitute teaching requirement of this subsection does not apply to the superintendent and those who have never held a teaching certificate or an administrative certificate.

~~(h)~~ (i) All acts or parts of acts inconsistent with this section are hereby repealed.

Senate Bill 336

Effective Date: July 12, 2013
Signed by Governor: May 1, 2013
Code Reference: Adds §18-2-25a
Title: Relating to interscholastic athletics concussions and head injuries

Major Provisions:

- Requires the West Virginia Secondary School Activities Commission (WVSSC) to promulgate rules pursuant to section twenty-five of this article that address concussions and head injuries in interscholastic athletes (means any athlete who is participating in interscholastic athletics at a high school or middle school that is a member of the West Virginia Secondary School Activities Commission).
- Authorizes the WVSSAC to provide guidelines and other pertinent information to inform and educate appropriate school administrators, coaches, interscholastic athletes and their parents or guardians of the nature and risk of concussion and head injury including the risks of continuing to play or practice after a concussion or head injury has occurred.
- Authorizes the WVSSAC to provide a concussion and head injury information sheet that shall be signed and returned by the interscholastic athlete and the athlete's parent or guardian on an annual basis before the interscholastic athlete begins practice or competition.
- Authorizes the WVSSAC to require each head coach of an interscholastic sport at a high school or middle school who is a member of the WVSSAC to complete a commission-approved concussion and head injury recognition and return-to-play protocol course annually.
- Authorizes the WVSSAC to require an interscholastic athlete who is suspected by a licensed health care professional (means a health care provided whose licensed scope of practice includes the ability to diagnose and treat an injury or disease) or by his or her head coach or athletic trainer of having or sustained a concussion or head injury in practice or game shall be removed from competition at that time.
- Authorizes the WVSSAC to require that an interscholastic athlete who has been removed from play or practice may not return to play or practice until the athlete is evaluated by a licensed health care professional trained in the evaluation and management of concussions and receives written clearance to return to play and practice from the licensed health care professional.
- Authorizes the WVSSAC to create a list of respective categories of licensed health care professionals who, if properly trained in the evaluation and management of concussions, are authorized to provide written clearance for the interscholastic athlete to return to play.
- Authorizes the WVSSAC to require that all member schools must submit a report to the WVSSAC within thirty days of an interscholastic athlete suffering or being suspected of suffering a concussion or head injury in a practice or game. The report must state whether an evaluation by a licensed health care professional

verified that a concussion or hear injury was actually suffered, whether the athlete received written clearance to return to play or practice and, if written clearance was given, the number of days between the incident and the actual return to play or practice. If written clearance to return to play is given after thirty days of the incident, a report update shall be submitted. The WVSSAC shall compile and submit the reports to the appropriate state and national organizations or agencies to analyze and make determinations on whether the rule should be amended or if equipment worn by interscholastic athlete needs to be changed.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

Senate Bill No. 336

(Senators Stollings, Wells, Plymale, Barnes, Beach,
Unger, Palumbo, Kessler (Mr. President) and Jenkins)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-25a, relating to establishing protocols and protections to limit and treat injury to youth athletes and students; making legislative findings with respect to concussions and athletic endeavors; defining certain terms; requiring certain rules; and setting forth certain minimum provisions of rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2-25a, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-25a. Management of concussions and head injuries in athletics at West Virginia Secondary School Activities Commission member high school or middle school.

(a) The Legislature makes the following findings:

(1) Concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities. The Centers for Disease Control and Prevention estimates that as many as 3.9 million sports-related and recreation-related concussions occur in the United States each year;

(2) A concussion is caused by a blow or motion to the head or body that causes the brain to move rapidly inside the skull. The risk of catastrophic injuries or death is significant when a concussion or head injury is not properly evaluated and managed;

(3) Concussions are a type of brain injury that can range from mild to severe and can disrupt the way the brain normally functions;

(4) Concussions can occur in any organized or unorganized sport or recreational activity and can result from a fall or from players colliding with each other or with obstacles;

(5) Concussions occur with or without loss of consciousness, but the vast majority occur without loss of consciousness;

(6) The interscholastic athlete who continues to play or 24 practice with a concussion or symptoms of head injury is especially vulnerable to greater injury and even death; and

(7) Even with generally recognized return-to-play-and- practice standards for concussion and head injury, some affected interscholastic athletes are prematurely returned to play or practice resulting in increased risk of physical injury or death to the athletes in the State of West Virginia.

(b) For the purposes of this section, “interscholastic athlete” means any athlete who is participating in interscholastic athletics at a high school or middle school that is a member of the West Virginia Secondary School Activities Commission. “Licensed health care professional” means a health care provider whose licensed scope of practice includes the ability to diagnose and treat an injury or disease.

(c) The West Virginia Secondary School Activities Commission shall promulgate rules pursuant to section twenty-five of this article that address concussions and head injuries in interscholastic athletes: *Provided*, That prior to state board approval and notwithstanding the exemption provided in section three, article one, chapter twenty-nine-a of this code, the state board shall submit the rule to the Legislative Oversight Commission on Education Accountability pursuant to section nine, article three-b of said code.

(d) The rules required by this section shall include, but are not limited to, the following:

(1) Guidelines and other pertinent information to inform and educate appropriate school administrators, coaches, interscholastic athletes and their parents or guardians of the nature and risk of concussion and head injury including the risks of continuing to play or practice after a concussion or head injury;

(2) A concussion and head injury information sheet that shall be signed and returned by the interscholastic athlete and the athlete’s parent or guardian on an annual basis before the interscholastic athlete begins practice or competition;

(3) A requirement that each head coach of an interscholastic sport at a high school or middle school who is a member of the West Virginia Secondary School Activities Commission complete a commission-approved concussion and head injury recognition and return-to-play protocol course annually;

(4) A requirement that an interscholastic athlete who is suspected by a licensed health care professional or by his or her head coach or athletic trainer of having sustained a concussion or head injury in a practice or game shall be removed from competition at that time;

(5) A requirement that an interscholastic athlete who has been removed from play or practice may not return to play or practice until the athlete is evaluated by a licensed health care professional trained in the evaluation and management of concussions and receives written clearance to return to play and practice from the licensed health care professional;

(6) A list of the respective categories of licensed health care professionals who, if properly trained in the evaluation and management of concussions, are authorized to provide written clearance for the interscholastic athlete to return to play; and

(7) A requirement that all member schools must submit a report to the West Virginia Secondary School Activities Commission within thirty days of an interscholastic athlete suffering or being suspected of suffering a concussion or head injury in a practice or game. The report must state whether an evaluation by a licensed health care professional verified that a concussion or head injury was actually suffered, whether the athlete received written clearance to return to play or practice and, if written clearance was given, the number of days between the incident and the actual return to play or practice. If written clearance to return to play is given after thirty days of the incident, a report update shall be submitted. The West Virginia Secondary School Activities Commission shall compile and submit the reports to the appropriate state and national organization or agencies to analyze and make determinations on whether the rule required by this section needs to be amended or if equipment worn by interscholastic athlete needs to be changed accordingly.

Senate Bill 355

Effective Date: July 12, 2013

Signed by Governor: April 29, 2013

Code Reference: Amends §21-5-4

Title: Relating to final wage payment to discharged employees

Major Provisions:

- Requires that all employers in the State, including county boards of education, pay the wages of any employee who has been discharged their wages in full no later than the next regular payday, or four business days, whichever comes first.
- Payment shall be made through the regular pay channels or by mail, if requested by the employee.
- "Business day" means any day other than a Saturday, Sunday, or any legal holiday as set forth in WVC §2-2-1.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 355

(Senators Kessler (Mr. President) And M. Hall,
By Request Of The Executive)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §21-5-4 of the Code of West Virginia, 1931, as amended, relating to the time final wages are required to be paid to discharged employees; authorizing payment by mail if requested by the employee; providing that employers pay an employee all wages he or she earned at the time of quitting if the employee gives written notice of his or her intention to quit at least one pay period before quitting; defining "business day"; and making other technical changes.

Be it enacted by the Legislature of West Virginia:

That §21-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-4. Cash orders; employees separated from payroll before paydays.

(a) In lieu of lawful money of the United States, any person, firm or corporation may compensate employees for services by cash order which may include checks or money orders on banks convenient to the place of employment where suitable arrangements have been made for the cashing of ~~such~~ the checks by employees for the full amount of wages.

(b) Whenever a person, firm or corporation discharges an employee, ~~such~~ the person, firm or corporation shall pay the employee's wages in full ~~seventy-two hours~~ no later than the next regular payday or four business days, whichever comes first. Payment shall be made through the regular pay channels or, if requested by the employee, by mail. For purposes of this section, "business day" means any day other than Saturday, Sunday or any legal holiday as set forth in section one, article two, chapter two of this code.

(c) Whenever an employee quits or resigns, the person, firm or corporation shall pay the employee's wages in full no later than the next regular payday. ~~Payment shall be made either~~ Payment shall be made either through the regular pay channels or ~~by mail~~, if requested by the employee, by mail ~~except that. However,~~ if the employee gives at least one pay period's written notice of intention to quit, the person, firm or corporation shall pay all wages earned by the employee at the time of quitting.

(d) When work of any employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the person, firm or corporation shall pay in full to ~~such~~ the employee not later than the next regular payday, either through the regular pay channels or by mail if requested by the employee, wages earned at the time of suspension or layoff.

(e) If a person, firm or corporation fails to pay an employee wages as required under this section, ~~such~~ the person, firm or corporation ~~shall~~, in addition to the amount which was unpaid when due, ~~be~~ is liable to the employee for three times that unpaid amount as liquidated damages. Every employee shall have ~~such~~ a lien and all other rights and remedies for the protection and enforcement of ~~such~~ his or her salary or wages, as he or she would have been entitled to had he or she rendered service therefor in the manner as

last employed; except that, for the purpose of ~~such~~ liquidated damages, ~~such~~ the failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon ~~such~~ the petition.

Senate Bill 359

Effective Date: June 20, 2013

Signed by Governor: April 10, 2013

Code Reference: Adds §18-2-39, §18-3-9b, §18A-3-1d §18C-4A-1, §18C-4A-2, §18C-4A-3

Amends §18-1-4, §18-2-24, §18-2E-5, §18-2I-1, §18-2I-2, §18-2I-3, §18-2I-4, §18-2I-5; §18-3-1, §18-3-12, §18-5-18, §18-5-44, §18-5-45, §18-5A-5, §18A-2-1, §18A-2-7, §18A-3A-1, §18A-3A-2, §18A-3A-3, §18A-4-2a, §18A-4-7a, §18A-4-8, §18A-4-8a, §18A-4-14, §18A-5-2, §18C-1-2, §18C-4-1, 18C-4-2, §18C-4-3; §18C-4-4

Repeals §18-2-23a, §18-2-32, §18-2E-5c, §18-2I-6, §18-2I-7, §18A-3A-2a, §18A-3A-6

Title: Relating general to reforming public education

Major Provisions:

- Requires the State Board of Education, the Higher Education Policy Commission and the Council for Community and Technical College Education to collaborate in formally adopting uniform and specific college- and career-readiness standards for English/language arts and math.
- Modifies provisions pertaining to the state annual performance measures for school and school system accreditation.
- Establishes clear state-level leadership of professional development; Modifies State Superintendent of Schools qualifications and removes his or her salary limit.
- Requires state superintendent to reduce the amount budgeted for personal services, related employee benefits and contractual expenditures related to employment by 5% in fiscal years 2014 and 2015.
- Increases the number of schools to be included in a special community development pilot program.
- Creates three new early childhood classroom assistant positions and requires kindergarten and early childhood aides to transition to one of the three new positions beginning July 1, 2014. Requires early childhood education programs to be made available five days a week for the full day.
- Provides for local control of the school calendar and requires that 180 days be actually provided.
- Allows reassignment of teachers when a vacancy was not foreseen before March 1 based on pupil-teacher ratio.
- Requires state board to conduct a study on alternative certification programs.
- Provides for the reimbursement of expenses for classroom teachers upon renewal of the National Board for Professional Teaching Standards certificate.
- Modifies process for filling vacancies in professional positions of employment

including the criteria to be considered.

- Modifies provisions pertaining to the length of planning periods and requires state board study on planning periods.
- Provides definitions, scholarships and loan assistance for teachers in critical need areas.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 359

(By Senators Kessler (Mr. President) and M. Hall,
By Request of the Executive)

[Passed March 22, 2013; in effect ninety days from passage.]

AN ACT to repeal §18-2-23a and §18-2-32 of the Code of West Virginia, 1931, as amended; to repeal §18-2E-5c of said code; to repeal §18-2I-6 and §18-2I-7 of said code; to repeal §18A-3A-2a and §18A-3A-6 of said code; to amend and reenact §18-1-4 of said code; to amend and reenact §18-2-24 of said code; to amend said code by adding thereto a new section, designated §18-2-39; to amend and reenact §18-2E-5 of said code; to amend and reenact §18-2I-1, §18-2I-2, §18-2I-3, §18-2I-4 and §18-2I-5 of said code; to amend and reenact §18-3-1 and §18-3-12 of said code; to amend said code by adding thereto a new section, designated §18-3-9b; to amend and reenact §18-5-18, §18-5-44 and §18-5-45 of said code; to amend and reenact §18-5A-5 of said code; to amend and reenact §18A-2-1 and §18A-2-7 of said code; to amend said code by adding thereto a new section, designated §18A-3-1d; to amend and reenact §18A-3A-1, §18A-3A-2 and §18A-3A-3 of said code; to amend and reenact §18A-4-2a, §18A-4-7a, §18A-4-8, §18A-4-8a and §18A-4-14 of said code; to amend and reenact §18A-5-2 of said code; to amend and reenact §18C-1-2 of said code; to amend and reenact §18C-4-1, §18C-4-2, §18C-4-3 and §18C-4-4 of said code; and to amend said code by adding thereto three new sections, designated §18C-4A-1, §18C-4A-2 and §18C-4A-3, all relating to transforming and improving public education; removing outdated language; requiring the State Board of Education, the Higher Education Policy Commission and the Council for Community and Technical College Education to collaborate in formally adopting uniform and specific college- and career-readiness standards for English/language arts and math; providing methods for determining whether students have met the college- and career-readiness standards; requiring that an explicit focus be embedded in each course on the development of English/language arts and math skills; requiring a twelfth-grade transitional course for both English/language arts and math for students not on track to be college ready; requiring professional development on teaching the college- and career-readiness standards to be included in the State Board's Master Plan for Professional Staff Development; requiring the state board to require all teacher preparation programs to include appropriate training for teaching adopted standards in at least grades eight through twelve; requiring the use of certain assessments, exams or tests for determining whether a student is to enroll in a remedial course; requiring accountability for increasing the percentage of students who meet the standards and for increasing the percentage of students who are making adequate progress toward meeting the standards; removing requirement applicable to annual county and school strategic improvement plans; modifying requirements for high-quality education standards for student, school and school system performance and processes; modifying requirements pertaining to a comprehensive statewide student assessment program; removing provisions relating to No Child Left Behind annual measures; modifying provisions pertaining to the state annual performance measures for school and school system accreditation; removing provisions pertaining to requiring the standards to include indicators of exemplary student, school and school system performance and progress; eliminating the Process for Improving Education Council; modifying component of system of education performance audits; expanding state board authority pertaining to the Office of Education Performance Audit's reporting formats; eliminating condition for on-site review; removing prohibition of certain duplicate reviews or inspections; removing provisions pertaining to persons who are to conduct an on-site review; removing list of areas for which the office may not review; modifying provisions pertaining to school accreditation; removing provision allowing a student to transfer from a low-performing school under certain conditions; professional development; establishing clear state-level leadership of professional development; providing findings on the importance of professional development; requiring State Board of Education to develop a master plan for professional development; requiring submission of plan to certain entities; requiring goals to be established and included in the master plan; requiring state

board rules; setting forth minimum components of the rule; requiring annual report on the statewide professional development plan; modifying language pertaining to the Strategic Staff Development Fund; modifying State Superintendent of Schools qualifications and removing his or her salary limit; requiring state superintendent to reduce the amount budgeted for personal services, related employee benefits and contractual expenditures related to employment in fiscal years 2014 and 2015; increasing the number of schools to be included in a special community development pilot program; modifying other provisions pertaining to the pilot program; requiring kindergarten and early childhood aides to transition to one of three new assistant teacher positions beginning July 1, 2014; exempting those eligible for retirement before July 1, 2020; requiring early childhood education programs to be made available five days a week for the full day; allowing program to be for fewer than five days per week and less than full day under certain circumstances; allowing parent to withdraw child for good cause; providing for local control of the school calendar; defining terms and establishing findings about the school calendar; requiring a 200-day employment term; limiting beginning and closing dates to forty-eight weeks; requiring one hundred eighty separate days of actual instruction are to be provided for students; requiring twenty noninstructional days; requiring school term to include out-of-calendar days that are to be used for instructional days in the event school is canceled; requiring county policy for adding minutes or days to school calendar for certain purpose; limiting noninstructional interruptions to instructional day; requiring state board or state superintendent approval of proposed county calendar; requiring public meetings for discussions of a school system's calendar; allowing the state board to grant a waiver to certain code sections that prevent a school system from meeting one hundred eighty instructional days; requiring state board rule to implement the calendar section provisions; modifying provisions pertaining to a process for a faculty senate to submit recommendations regarding employment to the principal; requiring state board to promulgate rule to implement the provisions relating to the process; removing language about faculty senates on instructional support and enhancement days; requiring the local board to provide at least four additional two-hour blocks of time during noninstructional days, with each block scheduled once at least every forty-five instructional days; prohibiting principals from recommending for employment certain individuals that are related to him or her; allowing reassignment of teachers when a vacancy was not foreseen before March 1 based on pupil-teacher ratio; requiring state board to conduct a study on alternative certification programs; providing for salary bonus for classroom teachers with a National Board for Professional Teaching Standards renewal certificate; providing for reimbursement of the renewal certification fee; removing language that limits the number of board-certified teachers who can receive reimbursement per year; modifying process for filling vacancies in professional positions of employment including the criteria to be considered; allowing a county board to determine the appropriate weight to apply to each criterion except when one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting; providing that for a classroom teaching position if the recommendation of the principal and resulting from the faculty senate process are the same and the superintendent concurs, the county board is required to appoint the applicant; requiring state board rule to implement and interpret certain employment provisions; allowing released employees to be hired for certain vacancies prior to the job being posted; allowing for multiple postings within a thirty-day period under certain conditions; allowing reassignment of a teacher within his or her school upon consent of teacher and county board; creating three new types of early childhood classroom assistant teacher positions; assigning a pay grade to the new positions; modifying provisions pertaining to the length of planning periods; requiring state board study on planning periods; clarifying that not all holidays will be counted as a day of the employment term and that pay per pay period cannot change as a result; providing that snow days are not counted as days of employment or days of instruction; providing definitions; scholarships and loan assistance for teachers in critical need areas; creating loan assistance program; determining subject and geographic areas of critical need; requiring legislative rules for program administration; revising eligibility criteria and specifying effective date; determining eligibility and awarding loan assistance; establishing criteria for inclusion in scholarship and loan assistance agreements; requiring payments to be made directly to a lending entity; requiring model contract agreements; specifying loan amount, limits and duration of loan assistance; requiring repayment under certain conditions; specifying excusal from repayment under certain conditions; and making technical corrections and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

That §18-2-23a and §18-2-32 of the Code of West Virginia, 1931, as amended, be repealed; that §18-2E-5c of said code be repealed; that §18-2I-6 and §18-2I-7 of said code be repealed; that §18A-3A-2a and

§18A-3A-6 of said code be repealed; that §18-1-4 of said code be amended and reenacted; that §18-2-24 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-2-39; that §18-2E-5 of said code be amended and reenacted; that §18-2I-1, §18-2I-2, §18-2I-3, §18-2I-4 and §18-2I-5 of said code be amended and reenacted; that §18-3-1 and §18-3-12 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-3-9b; that §18-5-18, §18-5-44 and §18-5-45 of said code be amended and reenacted; that §18-5A-5 of said code be amended and reenacted; that §18A-2-1 and §18A-2-7 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18A-3-1d; that §18A-3A-1, §18A-3A-2 and §18A-3A-3 of said code be amended and reenacted; that §18A-4-2a, §18A-4-7a, §18A-4-8, §18A-4-8a and §18A-4-14 of said code be amended and reenacted; that §18A-5-2 of said code be amended and reenacted; that §18C-1-2 of said code be amended and reenacted; that §18C-4-1, §18C-4-2, §18C-4-3 and §18C-4-4 of said code be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §18C-4A-1, §18C-4A-2 and §18C-4A-3, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.

§18-1-4. Vision 2020: An Education Blueprint for Two Thousand Twenty.

(a) This section, together with section one-a, article one, chapter eighteen-b of this code and article one-d of said chapter, shall be known as and may be cited as Vision 2020: An Education Blueprint for Two Thousand Twenty.

(b) For the purposes of this section:

(1) "Goals" means those long-term public purposes which are the desired end result and only may include those items listed in subsection (e) of this section;

(2) "Objectives" means the ends to be accomplished or attained within a specified period of time for the purpose of meeting the established goals; and

(3) "Strategies" means specific activities carried out by the public education system which are directed toward accomplishing specific objectives.

(c) The Legislature finds that:

(1) The measure of a thorough and efficient system of education is whether students graduate prepared to meet the challenges of the future as contributing members of society and that these challenges change, becoming ever more complex and involving a global context more than at any other time in the history of our nation;

(2) The state recently has embraced and is implementing the Partnership for 21st Century Skills model for teaching and learning including six key elements (core subjects, 21st Century content, learning and thinking skills, information and communications technology literacy, life skills and 21st Century assessments) to help better prepare students for the challenges of the 21st Century;

(3) Published national studies by several organizations routinely examine various elements of state education systems and selected underlying socioeconomic variables and rate and rank West Virginia and the other states, the District of Columbia and the territories based on the measurement systems and priorities established by the organizations, and these measurement systems and priorities change;

(4) While the state should take pride in studies that show West Virginia is among the leaders in several of its efforts and is making progress, its students often outperforming expectations based on typical indicators of the likelihood for student success, such as the income and education levels of their parents, it should

also recognize that the state must do even more to ensure that high school graduates are fully prepared for post-secondary education or gainful employment;

(5) Therefore, the purpose of this section is to provide for the establishment of a clear plan that includes goals, objectives, strategies, indicators and benchmarks to help guide the state's policymakers on the continuous development of the state's education system for the 21st Century.

(d) As part of Vision 2020: An Education Blueprint for Two Thousand Twenty, the state board shall establish a plan in accordance with the provisions of this section for submission to and consideration by the ~~Process for Improving Education Council pursuant to section five-c, article two-e of this chapter~~ Legislative Oversight Commission on Education Accountability. The plan shall include only the goals, objectives, strategies, indicators and benchmarks for public education set forth in this section and that meet the requirements of this section. To add clarity and avoid confusion, the goals for public education set forth in the plan pursuant to this section are the exclusive goals for public education. The plan shall include:

(1) The goals set forth in this section and no other goals;

(2) At least the objectives set forth in this section and specified periods of time for achieving those objectives and any other objectives that may be included in the plan;

(3) Strategies for achieving the specific objectives;

(4) Indicators for measuring progress toward the goals and objectives established in this section; and

(5) Benchmarks for determining when the goals and objectives have been achieved.

(e) The plan shall include the following list of exclusive goals for the public education system in West Virginia:

(1) Academic achievement according to national and international measures will exceed national and international averages. These national and international measures should include scores on assessments such as the National Assessment of Educational Progress (NAEP), the ACT, the SAT and the Programme for International Assessment (PISA);

(2) The public education system will prepare fully all students for post-secondary education or gainful employment;

(3) All working-age adults will be functionally literate;

(4) The public education system will maintain and promote the health and safety of all students and will develop and promote responsibility, citizenship and strong character in all students; and

(5) The public education system will provide equitable education opportunity to all students.

(f) The plan also shall include at least the following policy-oriented objectives:

(1) *Rigorous 21st Century curriculum and engaging instruction for all students.* – All students in West Virginia public schools should have access to and benefit from a rigorous 21st Century curriculum that develops proficiency in core subjects, 21st Century content, learning skills and technology tools. These students also should have that curriculum delivered through engaging, research-based instructional strategies that develop deep understanding and the ability to apply content to real-world situations;

(2) *A 21st Century accountability and accreditation system.* – The prekindergarten through twelve education system should have a public accrediting system that: (i) Holds local school districts accountable for the student outcomes the state values; and (ii) provides the public with understandable accountability data for judging the quality of local schools. The outcomes on which the system is based should be

rigorous and should align with national and international standards such as the National Assessment of Educational Progress (NAEP), the ACT, the SAT and the Programme for International Assessment (PISA). The broad standards established for these outcomes should include a focus on: (A) Mastery of basic skills by all students; (B) closing the achievement gap among student subgroups; and (C) high levels of proficiency in a wide range of desired 21st Century measures and processes. The system for determining school and district accreditation should include school and district self analysis and generate appropriate research-based strategies for improvement. It also should allow opportunities to create innovative approaches to instructional delivery and design. Thus, the system will incorporate processes for encouraging innovation, including streamlined applications for waivers to state board policy, financial support for successful initiatives and recognition of those practices that can be brought to a district or statewide scale. The primary goal of the accreditation system is to drive school improvement. This 21st Century accountability and accreditation system also should include the methods of addressing capacity set forth in section five, article two-e of this chapter;

(3) *A statewide balanced assessment process.* – State, district, school and classroom decisionmaking should be grounded in 21st Century balanced assessment processes that reflect national and international rigorous performance standards and examine student proficiency in 21st Century content, skills and technology tools. A balanced assessment system includes statewide summative assessments, local benchmark assessments and classroom assessments for learning;

(4) *A personnel allocation, licensure and funding process that aligns with the needs of 21st Century school systems and is supported by a quality coordinated professional development delivery system.* – Increased accountability demands, as well as the focus on 21st Century learning, require a reexamination of traditional approaches to personnel allocation, licensure and funding. Creating schools of the 21st Century requires new staffing roles and staffing patterns. It also requires ongoing professional development activities focused on enhancing student achievement and achieving specific goals of the school and district strategic plans. Thus, schools should have the ability to access, organize and deliver high quality embedded professional development that provides staff with in-depth sustained and supported learning. Effective school improvement should allow opportunity for staff to collectively learn, plan and implement curricular and instructional improvements on behalf of the students they serve;

(5) *School environments that promote safe, healthy and responsible behavior and provide an integrated system of student support services.* – Each school should create an environment focused on student learning and one where students know they are valued, respected and safe. Furthermore, the school should incorporate programs and processes that instill healthy, safe and responsible behaviors and prepare students for interactions with individuals of diverse racial, ethnic and social backgrounds. School and district processes should include a focus on developing ethical and responsible character, personal dispositions that promote personal wellness through planned daily physical activity and healthy eating habits consistent with high nutritional guidelines and multicultural experiences that develop an appreciation of and respect for diversity;

(6) *A leadership recruitment, development and support continuum.* – Quality schools and school systems of the 21st Century cannot be created without high-quality leaders. Thus, West Virginia should have an aligned leadership professional development continuum that attracts, develops and supports educational leadership at the classroom, school and district level. This leadership development continuum should focus on creating: (i) Learning-centered schools and school systems; (ii) collaborative processes for staff learning and continuous improvement; and (iii) accountability measures for student achievement;

(7) *Equitable access to 21st Century technology and education resources and school facilities conducive to 21st Century teaching and learning.* – A quality educational system of the 21st Century should have access to technology tools and processes that enhance effective and efficient operation. Administrators should have the digital resources to monitor student performance, manage a variety of data and communicate effectively. In the classroom, every teacher in every school should be provided with the instructional resources and educational technology necessary to deliver the West Virginia content standards and objectives. Schools of the 21st Century require facilities that accommodate changing technologies, 21st Century instructional processes and 21st Century staffing needs and patterns. These school facilities

should mirror the best in green construction and be environmentally and educationally responsive to the communities in which they are located;

(8) *Aligned public school with post-secondary and workplace readiness programs and standards.* – An educational system in the 21st Century should be seen as a continuum from the public school (prekindergarten through twelve) program through post-secondary education. In order to be successful in a global competitive marketplace, learning should be an ongoing, life-long experience. Thus, the public schools and the institutions of post-secondary education in West Virginia should create a system of common standards, expectations and accountability. Creating such an aligned system will enhance opportunities for success and assure a seamless educational process for West Virginia students; and

(9) *A universal prekindergarten system.* – A high-quality, universal prekindergarten system should be readily available to every eligible student. The system should promote oral language and preliteracy skills and reduce the deficit of these foundational skills through proactive, early intervention. Research indicates that universal prekindergarten systems improve graduation rates, reduce grade level retentions and reduce the number of special education placements. Therefore, local school systems should create the supports and provide the resources to assure a quality prekindergarten foundation is available to all eligible students.

(g) In addition to the policy-oriented objectives set forth in subsection (f) of this section, the plan established pursuant to this section also shall include at least the following performance-oriented objectives:

(1) All children entering the first grade will be ready for the first grade;

(2) The performance of students falling in the lowest quartile on national and international measures of student performance will improve by fifty percent;

(3) Ninety percent of ninth graders will graduate from high school;

(4) By 2012, the gap between the county with the lowest college-going rate and the state average as of the effective date of this act will decrease by fifty percent and the college-going rate of the state will equal the college-going rate of the member states of the Southern Regional Education Board; and

(5) By ~~2012~~ 2020, the gap between the county with the lowest college-going rate and the state average for school year 2012 will decrease by fifty percent and the college-going rate of the state will exceed the college-going rate of the member states of the Southern Regional Education Board by five percentage points.

ARTICLE 2. STATE BOARD OF EDUCATION.

~~§18-2-23a. Annual professional staff development goals established by State Board; coordination of professional development programs; program development, approval and evaluation.~~

~~(a) *Legislative intent.* – The intent of this section is:~~

~~(1) To provide for the coordination of professional development programs by the State Board;~~

~~(2) To promote high-quality instructional delivery and management practices for a thorough and efficient system of schools; and~~

~~(3) To ensure that the expertise and experience of state institutions of higher education with teacher preparation programs are included in developing and implementing professional development programs.~~

~~(b) *Goals.* – The State Board annually shall establish goals for professional staff development in the public schools of the state. As a first priority, the State Board shall require adequate and appropriate professional staff development to ensure high quality teaching that will enable students to achieve the content standards established for the required curriculum in the public schools.~~

~~The State Board shall submit the goals to the State Department of Education, the Center for Professional Development, the regional educational service agencies, the Higher Education Policy Commission and the Legislative Oversight Commission on Education Accountability on or before the fifteenth day of January each year.~~

~~The goals shall include measures by which the effectiveness of the professional staff development programs will be evaluated. The professional staff development goals shall include separate goals for teachers, principals and paraprofessional service personnel and may include separate goals for classroom aides and others in the public schools.~~

~~In establishing the goals, the State Board shall review reports that may indicate a need for professional staff development including, but not limited to, the report of the Center for Professional Development created in article three-a, chapter eighteen-a of this code, student test scores on the statewide student assessment program, the measures of student and school performance for accreditation purposes, school and school district report cards and its plans for the use of funds in the strategic staff development fund pursuant to section thirty-two, article two, chapter eighteen of this code.~~

~~(c) The Center for Professional Development shall design a proposed professional staff development program plan to achieve the goals of the State Board and shall submit the proposed plan to the State Board for approval as soon as possible following receipt of the State Board goals each year. In developing and implementing this plan, the Center first shall rely upon the available expertise and experience of state institutions of higher education before procuring advice, technical assistance or consulting services from sources outside the state.~~

~~The proposed plan shall include a strategy for evaluating the effectiveness of the professional staff development programs delivered under the plan and a cost estimate. The State Board shall review the proposed plan and return it to the Center for Professional Development noting whether the proposed plan is approved or is not approved, in whole or in part. If a proposed plan is not approved in whole, the State Board shall note its objections to the proposed plan or to the parts of the proposed plan not approved and may suggest improvements or specific modifications, additions or deletions to address more fully the goals or eliminate duplication. If the proposed plan is not wholly approved, the Center for Professional Development shall revise the plan to satisfy the objections of the State Board. State board approval is required prior to implementation of the professional staff development plan.~~

~~(d) The State Board approval of the proposed professional staff development plan shall establish a Master Plan for Professional Staff Development which shall be submitted by the State Board to the affected agencies and to the Legislative Oversight Commission on Education Accountability. The Master Plan shall include the State Board-approved plans for professional staff development by the State Department of Education, the Center for Professional Development, the state institutions of higher education and the regional educational service agencies to meet the professional staff development goals of the State Board. The Master Plan also shall include a plan for evaluating the effectiveness of the professional staff development delivered through the programs and a cost estimate.~~

~~The Master Plan shall serve as a guide for the delivery of coordinated professional staff development programs by the State Department of Education, the Center for Professional Development, the state institutions of higher education and the regional educational service agencies beginning on the first day of June in the year in which the Master Plan was approved through the thirtieth day of May in the following year. This section does not prohibit changes in the Master Plan, subject to State Board approval, to address staff development needs identified after the Master Plan was approved.~~

§18-2-24. Collaboration of state institutions of higher education having a teacher preparation program with the Center for Professional Development, state board and the regional education service agencies.

(a) For the purposes of this section, “teacher preparation institution” means a state institution of higher education with a teacher preparation program.

(b) The intent of this section is to establish a structure to enhance collaboration between the teacher preparation institutions, the Center for Professional Development, state board and the regional education service agencies in providing professional development.

(c) The Legislature finds that:

(1) There is insufficient collaboration of the teacher preparation institutions with the Center for Professional Development, state board and each of the regional education service agencies;

(2) More collaboration would prevent duplication of services and result in higher quality professional development;

(3) Creating a structure and assigning responsibility would promote more effective collaboration;

(4) The state's research and doctoral degree-granting public institutions of higher education, West Virginia University and Marshall University, have the most capacity to be important sources of research and expertise on professional development;

(5) West Virginia University and Marshall University are the only institutions in the state that offer course work leading to a doctoral degree in education administration;

(6) As the largest state institutions of higher education, West Virginia University and Marshall University have more capacity than any other institution in the state to handle the additional responsibilities assigned in this section;

(7) The coordination by West Virginia University and Marshall University of the efforts of other teacher preparation institutions to collaborate with the Center for Professional Development, state board and each of the regional education service agencies will provide points of accountability for the collaboration efforts of the other institutions; and

(8) The state board's authority over the regional education service agencies can be used to motivate the agencies to collaborate with the teacher preparation institutions in providing professional development and will serve as a point of accountability for the collaboration efforts of the agencies.

(d) West Virginia University and Marshall University shall collaborate with the Center for Professional Development in performing the center's duties. This collaboration shall include at least the following:

(1) Including the teacher preparation institutions in the proposed professional staff development program ~~plan goals~~ required by section three, article two-i of this chapter ~~to be submitted to the State Board by section twenty-three of this article~~ included in the master plan for professional development;

(2) Providing any available research-based expertise that would be helpful in the design of the proposed professional staff development program ~~plan~~ goals;

(3) Providing any available research-based expertise that would be helpful in the implementation of professional development programs; and

(4) Arranging for other state institutions of higher education having a teacher preparation program to assist the center when that assistance would be helpful.

(e) All teacher preparation institutions shall collaborate with the regional education service agency of the service area in which the institution is located at least to:

(1) Prevent unnecessary duplication of services;

(2) Assist in the implementation of the professional development programs of the regional education service agency; and

(3) Assist the regional education service agency in obtaining any available grants for professional development or to apply for any available grant with the agency collaboratively.

(f) Since no teacher preparation institution exists in the service area of Regional Education Service Agency IV, Marshall University shall collaborate with that agency for the purposes set forth in subdivision (e) of this section.

(g) In addition to the collaboration required by subsections (e) and (f) of this section of all teacher preparation institutions, West Virginia University and Marshall University shall:

(1) Coordinate the collaboration of each of the other teacher preparation institutions in their designated coordination area with the appropriate regional education service agency. This coordination at least includes ensuring that each of the other institutions are collaborating with the appropriate regional education service agency; and

(2) Collaborate with each of the other teacher preparation institutions in their designated coordination area. This collaboration at least includes providing assistance to the other institutions in providing professional development and in their collaboration with the appropriate regional education service agency.

(h) The designated coordination area of West Virginia University includes the service areas of Regional Education Service Agencies V, VI, VII and VIII. The designated coordination area of Marshall University includes the service areas of Regional Education Service Agencies I, II, III and IV.

(i) The state board shall ensure that each of the regional education service agencies is collaborating with the teacher preparation institution or institutions in its service area for the purposes set forth in subsection (e) of this section. Since Regional Education Service Agency IV does not have a teacher preparation institution in its service area, the state board shall ensure that it is collaborating with Marshall University for the purposes set forth in subsection (e) of this section.

(j) Before a regional education service agency, except for Regional Education Service Agency IV, obtains professional development related services or expertise from any teacher preparation institution outside of that agency's service area, the agency shall inform the ~~Center for Professional Development~~ state board. Before Regional Education Service Agency IV obtains professional development related services or expertise from any teacher preparation institution other than Marshall University, the agency shall inform the ~~Center~~ state board.

(k) The collaboration and coordination requirements of this section include collaborating and coordinating to provide professional development for at least teachers, principals and paraprofessionals.

~~§18-2-32. Strategic staff development fund.~~

~~(a) There is hereby created an account within the state board titled the strategic staff development fund. The allocation of balances which accrue in the general school fund shall be transferred to the strategic staff development fund each year when the balances become available. Any remaining funds transferred to the strategic staff development fund during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the transfer of funds from the general school fund for the next fiscal year.~~

~~(b) The money in the strategic staff development fund shall be used by the state board to provide staff development in schools, counties or both that the state board determines need additional resources. Additionally, the state board shall use a reasonable amount of the money from the strategic staff development fund to contract with an independent evaluator chosen by the state board to evaluate the effectiveness with which the money was used for staff development. The state board is required to report to~~

~~the legislative oversight commission on education accountability before the first day of December of each year:~~

~~(1) The amount of each expenditure;~~

~~(2) The purpose of each expenditure; and~~

~~(3) The effectiveness of the staff development resulting from each expenditure.~~

§18-2-39. College and career readiness initiative.

(a) The Legislature finds that:

(1) According to ACT, only twenty-five percent of ACT-tested high school graduates in the nation met college readiness benchmarks in English, reading, mathematics and science and only seventeen percent in West Virginia met the benchmarks in all four subjects;

(2) The post-secondary remediation rates of students entering post-secondary institutions directly out of high school indicate that a large percentage of students are not being adequately prepared at the elementary and secondary levels;

(3) This high level of post-secondary remediation is causing both students and the state to expend extra resources that would not have to be expended if the students were adequately prepared at the elementary and secondary levels;

(4) A strong foundation in English/language arts and math provides a basis for learning in all other subject areas and for on-the-job training; and

(5) A comparison of the percentages of students considered proficient in eighth grade reading and math by the state assessment and the National Assessment of Educational Progress indicate that the state assessment currently does not accurately reflect national standards.

(b) Before the 2014-2015 school year, the state board, the Higher Education Policy Commission and the Council for Community and Technical College Education shall collaborate in formally adopting uniform and specific college- and career-readiness standards for English/language arts and math. The standards shall be clearly linked to state content standards and based on skills and competencies rather than high school course titles. The standards shall allow for a determination of whether a student needs to enroll in a post-secondary remedial course. The state board shall develop a plan for gradually bringing the standards for a high school diploma and college and career readiness into uniformity, and report this plan to the Legislative Oversight Commission on Education Accountability not later than December 31, 2013.

(c) The results on the comprehensive statewide student assessment program in grade eleven in English/language arts and mathematics shall be used to determine whether a student has met the college- and career-readiness standards adopted pursuant to subsection (b) of this section. Beginning with the 2015-2016 school year, instead of using the comprehensive statewide student assessment program, the state board may develop and implement end-of-course exams in English/language arts and math courses it determines appropriate. These exams are designed for determining whether a student has met the college- and career-readiness standards. In order to allow for the enrollment in transitional courses in the twelfth grade if necessary pursuant to subsection (e) of this section, the courses, assessments and exams, as applicable, shall be administered before the twelfth grade.

(d) Under its authority granted in section one, article three, chapter eighteen-a of this code, the state board shall require all teacher preparation programs in the state to include appropriate training for teachers seeking to teach in at least any of grades eight through twelve with respect to teaching the adopted college- and career-readiness standards. This training shall focus on teaching the standards directly, through embedding the standards in other courses or both, as appropriate.

(e) The state board shall develop a twelfth-grade transitional course for both English/language arts and math for those students who are not on track to be college and career ready based on the assessment or exam, as applicable, required pursuant to subsection (c) of this section. The transitional courses shall be aligned with the standards adopted pursuant to subsection (b) of this section. The state board in collaboration with the West Virginia Higher Education Policy Commission and the Council for Community and Technical College Education shall use the American College Testing Program's Computerized Adaptive Placement Assessment and Support System (COMPASS) or other mutually agreed-upon assessment to determine whether a student has met the college- and career-readiness standards after completion of the transitional course.

(f) For all West Virginia public high school graduates who graduate during or after the 2016-2017 school year, all state institutions of higher education may use no factor other than the assessment, exam or test, as applicable, required pursuant to subsections (c) and (e) of this section to determine whether a student is to enroll in a remedial course or is to be placed in a college-level introductory course. Nothing in this subsection prohibits an institution from administering a diagnostic test to determine specific areas of weakness so that the specific weaknesses can be remediated rather than requiring a student to take an entire remedial course.

(g) The state board shall:

(1) Hold high schools and districts accountable for increasing the percentages of students who meet the college- and career-readiness standards as indicated by the assessments, exams or tests, as applicable, required pursuant to subsections (c) and (e) of this section. This accountability shall be achieved through the school and school system accreditation provisions set forth in section five, article two-e of this chapter;

(2) Align the comprehensive statewide student assessment for all grade levels in which the test is given with the college- and career-readiness standards adopted pursuant to subsection (b) of this section or develop other aligned tests at each grade level so that progress toward college and career readiness in English/language arts and math can be measured; and

(3) Hold all schools and districts accountable for helping students in earlier grade levels achieve scores on math and English/language arts tests that predict success in subsequent levels of related coursework. This accountability shall be achieved through the school and school system accreditation provisions set forth in section five, article two-e of this chapter;

(h) Except as otherwise specified, all provisions of this section become effective with the 2014-2015 school year.

(i) On or before December 31, 2013, the state board shall promulgate a legislative rule in accordance with article three-b, chapter twenty-nine-a of this code to implement the provisions of this section.

ARTICLE 2E. HIGH-QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. Process for improving education; education standards; statewide assessment program; accountability measures; Office of Education Performance Audits; school accreditation and school system approval; intervention to correct low performance.

(a) Legislative findings, purpose and intent. – The Legislature makes the following findings with respect to the process for improving education and its purpose and intent in the enactment of this section:

(1) The process for improving education includes four primary elements, these being:

(A) Standards which set forth the knowledge and skills that students should know and be able to perform as the result of a thorough and efficient education that prepares them for the twenty-first century, including measurable criteria to evaluate student performance and progress;

(B) Assessments of student performance and progress toward meeting the standards;

(C) A system of accountability for continuous improvement defined by high-quality standards for schools and school systems articulated by a rule promulgated by the state board and outlined in subsection (c) of this section that will build capacity in schools and districts to meet rigorous outcomes that assure student performance and progress toward obtaining the knowledge and skills intrinsic to a high-quality education rather than monitoring for compliance with specific laws and regulations; and

(D) A method for building the capacity and improving the efficiency of schools and school systems to improve student performance and progress;

(2) As the constitutional body charged with the general supervision of schools as provided by general law, the state board has the authority and the responsibility to establish the standards, assess the performance and progress of students against the standards, hold schools and school systems accountable and assist schools and school systems to build capacity and improve efficiency so that the standards are met, including, when necessary, seeking additional resources in consultation with the Legislature and the Governor;

(3) As the constitutional body charged with providing for a thorough and efficient system of schools, the Legislature has the authority and the responsibility to establish and be engaged constructively in the determination of the knowledge and skills that students should know and be able to do as the result of a thorough and efficient education. This determination is made by using the process for improving education to determine when school improvement is needed, by evaluating the results and the efficiency of the system of schools, by ensuring accountability and by providing for the necessary capacity and its efficient use;

(4) In consideration of these findings, the purpose of this section is to establish a process for improving education that includes the four primary elements as set forth in subdivision (1) of this subsection to provide assurances that the high-quality standards are, at a minimum, being met and that a thorough and efficient system of schools is being provided for all West Virginia public school students on an equal education opportunity basis; and

(5) The intent of the Legislature in enacting this section and section five-c of this article is to establish a process through which the Legislature, the Governor and the state board can work in the spirit of cooperation and collaboration intended in the process for improving education to consult and examine the performance and progress of students, schools and school systems and, when necessary, to consider alternative measures to ensure that all students continue to receive the thorough and efficient education to which they are entitled. However, nothing in this section requires any specific level of funding by the Legislature.

(b) *Electronic county and school strategic improvement plans.* – The state board shall promulgate a rule consistent with the provisions of this section and in accordance with article three-b, chapter twenty-nine-a of this code establishing an electronic county strategic improvement plan for each county board and an electronic school strategic improvement plan for each public school in this state. Each respective plan shall be a five-year plan that includes the mission and goals of the school or school system to improve student, school or school system performance and progress, as applicable. The strategic plan shall be revised annually in each area in which the school or system is below the standard on the annual performance measures. ~~The revised annual also shall identify any deficiency which is reported on the check lists identified in paragraph (C), subdivision (5) subsection (1) of this section including any deficit more than a casual deficit by the county board.~~ The plan shall be revised when required pursuant to this section to include each annual performance measure upon which the school or school system fails to meet the standard for performance and progress, the action to be taken to meet each measure, a separate time line and a date certain for meeting each measure, a cost estimate and, when applicable, the assistance to be provided by the department and other education agencies to improve student, school or school system performance and progress to meet the annual performance measure.

The department shall make available to all public schools through its website or the West Virginia Education Information System an electronic school strategic improvement plan boilerplate designed for use by all schools to develop an electronic school strategic improvement plan which incorporates all required aspects and satisfies all improvement plan requirements of the No Child Left Behind Act.

(c) *High-quality education standards and efficiency standards.* – In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt and periodically review and update high-quality education standards for student, school and school system performance and processes in the following areas:

- (1) Curriculum;
- (2) Workplace readiness skills;
- (3) Finance;
- (4) Transportation;
- (5) Special education;
- (6) Facilities;
- (7) Administrative practices;
- (8) Training of county board members and administrators;
- (9) Personnel qualifications;
- (10) Professional development and evaluation;
- (11) Student performance, ~~and~~ progress and attendance;
- (12) Professional personnel, including principals and central office administrators, and service personnel attendance;
- ~~(12)~~ (13) School and school system performance and progress;
- ~~(13)~~ (14) A code of conduct for students and employees;
- ~~(14)~~ (15) Indicators of efficiency; and
- ~~(15)~~ (16) Any other areas determined by the state board.

~~The standards, as applicable, shall incorporate the state's 21st Century Skills Initiative and shall assure that graduates are prepared for continuing post-secondary education, training and work and that schools and school systems are making progress toward achieving the education goals of the state.~~

(d) *Comprehensive statewide student assessment program.* – The state board shall ~~promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing~~ establish a comprehensive statewide student assessment program to assess student performance and progress in grades three through twelve. The assessment program is subject to the following:

- (1) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing the comprehensive statewide student assessment program;

(2) Prior to the 2014-2015 school year, the state board shall align the comprehensive statewide student assessment for all grade levels in which the test is given with the college-readiness standards adopted pursuant to section thirty-nine, article two of this chapter or develop other aligned tests to be required at each grade level so that progress toward college readiness in English/language arts and math can be measured;

(3) The state board may require that student proficiencies be measured through the ACT EXPLORE and the ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors;

(4) The state board may require that student proficiencies be measured through the West Virginia writing assessment at any of the grade levels four, seven and ten determined by the state board to be appropriate; ~~Provided, That, effective July 1, 2008, the state board may require that student proficiencies be measured through the West Virginia writing assessment at any of the grade levels four, seven and eleven determined by the state board to be appropriate. and~~

(5) The state board may provide through the statewide assessment program other optional testing or assessment instruments applicable to grade levels kindergarten through grade twelve which may be used by each school to promote student achievement ~~upon approval by the school curriculum team or the process for teacher collaboration to improve instruction and learning established by the faculty senate as provided in section six, article five-a of this chapter.~~ The state board annually shall annually publish and make available, electronically or otherwise, to school curriculum teams and teacher collaborative processes the optional testing and assessment instruments. ~~The failure of a school to use any optional testing and assessment may not be cited as a deficiency in any accreditation review of the school; nor may the exercise of its discretion, as provided in section six, article five-a of this chapter, in using the assessments and implementing the instructional strategies and programs that it determines best to promote student achievement at the school be cited as a deficiency in any accreditation review of the school or in the personnel evaluation of the principal. The use of assessment results are subject to the following:~~

(1) ~~The assessment results for grade levels three through eight and eleven are the only assessment results which may be used for determining whether any school or school system has made adequate yearly progress (AYP);~~

(2) ~~Only the assessment results in the subject areas of reading/language arts and mathematics may be used for determining whether a school or school system has made adequate yearly progress (AYP);~~

(3) ~~The results of the West Virginia writing assessment, the ACT EXPLORE assessments and the ACT PLAN assessments may not be used for determining whether a school or school system has made adequate yearly progress (AYP);~~

(4) ~~The results of testing or assessment instruments provided by the state board for optional use by schools and school systems to promote student achievement may not be used for determining whether a school or school system has made adequate yearly progress (AYP); and~~

(5) ~~All assessment provisions of the comprehensive statewide student assessment program in effect for the school year 2006-2007 shall remain in effect until replaced by the state board rule.~~

~~(c) Annual performance measures for Public Law 107-110, the Elementary and Secondary Education Act of 1965, as amended (No Child Left Behind Act of 2001). -- The standards shall include annual measures of student, school and school system performance and progress for the grade levels and the content areas defined by the act. The following annual measures of student, school and school system performance and progress shall be the only measures for determining whether adequately yearly progress under the No Child Left Behind Act has been achieved:~~

~~(1) The acquisition of student proficiencies as indicated by student performance and progress on the required accountability assessments at the grade levels and content areas as required by the act subject to the limitations set forth in subsection (d) of this section.~~

~~(2) The student participation rate in the uniform statewide assessment must be at least ninety-five percent or the average of the participation rate for the current and the preceding two years is ninety-five percent for the school, county and state;~~

~~(3) Only for schools that do not include grade twelve, the school attendance rate which shall be no less than ninety percent in attendance for the school, county and state. The following absences are excluded:~~

~~(A) Student absences excused in accordance with the state board rule promulgated pursuant to section four, article eight of this chapter;~~

~~(B) Students not in attendance due to disciplinary measures; and~~

~~(C) Absent students for whom the attendance director has pursued judicial remedies compelling attendance to the extent of his or her authority; and~~

~~(4) The high school graduation rate which shall be no less than eighty percent for the school, county and state; or if the high school graduation rate is less than eighty percent, the high school graduation rate shall be higher than the high school graduation rate of the preceding year as determined from information on the West Virginia Education Information System on August 15.~~

~~(f) (e) State annual performance measures for school and school system accreditation. –~~

~~The state board shall establish a system to assess and weigh annual performance measures for state accreditation of schools and school systems in a manner that gives credit or points such as an index to prevent any one measure alone from causing a school to achieve less than full accreditation status or a school system from achieving less than full approval status: *Provided*, That a school or school system that achieves adequate yearly progress is eligible for no less than full accreditation or approval status, as applicable, and the system established pursuant to this subsection applies only to schools and school systems that do not achieve adequate yearly progress.~~

~~The following types of measures, as may be appropriate at the various programmatic levels, may be approved by the state board for the school and school system accreditation:~~

~~(1) The acquisition of student proficiencies as indicated by student performance and progress on the uniform statewide assessment program at the grade levels as provided in subsection (d) of this section. The state board may approve providing bonus points or credits for students scoring at or above mastery and distinguished levels;~~

~~(2) Writing assessment results in grades tested;~~

~~(3) School attendance rates;~~

~~(4) Percentage of courses taught by highly qualified teachers;~~

~~(5) Percentage of students scoring at benchmarks on the currently tested ACT EXPLORE and ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors;~~

~~(6) Graduation rates;~~

~~(7) Job placement rates for vocational programs;~~

~~(8) Percent of students passing end-of-course career/technical tests;~~

~~(9) Percent of students not requiring college remediation classes; and~~

~~(10) Bonus points or credits for subgroup improvement, advanced placement percentages, dual credit completers and international baccalaureate completers.~~

The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code that establishes a system to assess and weigh annual performance measures for state accreditation of schools and school systems. The state board also may establish performance incentives for schools and school systems as part of the state accreditation system. On or before December 1, 2013, the state board shall report to the Governor and to the Legislative Oversight Commission on Education Accountability the proposed rule for establishing the measures and incentives of accreditation and the estimated cost therefore, if any. Thereafter, the state board shall provide an annual report to the Governor and to the Legislative Oversight Commission on Education Accountability on the impact and effectiveness of the accreditation system. The rule for school and school system accreditation proposed by the board may include, but is not limited to, the following measures:

(1) Student proficiency in English and language arts, math, science and other subjects determined by the board;

(2) Graduation and attendance rate;

(3) Students taking and passing AP tests;

(4) Students completing a career and technical education class;

(5) Closing achievement gaps within subgroups of a school's student population; and

(6) Students scoring at or above average attainment on SAT or ACT tests.

~~(g) Indicators of exemplary performance and progress. -- The standards shall include indicators of exemplary student, school and school system performance and progress. The indicators of exemplary student, school and school system performance and progress shall be used only as indicators for determining whether accredited and approved schools and school systems should be granted exemplary status. These indicators shall include, but are not limited to, the following:~~

~~(1) The percentage of graduates who declare their intent to enroll in college and other post-secondary education and training following high school graduation;~~

~~(2) The percentage of graduates who receive additional certification of their skills, competence and readiness for college, other post-secondary education or employment above the level required for graduation; and~~

~~(3) The percentage of students who successfully complete advanced placement, dual credit and honors classes.~~

~~(h) (f) Indicators of efficiency. -- In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt by rule and periodically review and update indicators of efficiency for use by the appropriate divisions within the department to ensure efficient management and use of resources in the public schools in the following areas:~~

~~(1) Curriculum delivery including, but not limited to, the use of distance learning;~~

~~(2) Transportation;~~

(3) Facilities;

(4) Administrative practices;

(5) Personnel;

(6) Use of regional educational service agency programs and services, including programs and services that may be established by their assigned regional educational service agency or other regional services that may be initiated between and among participating county boards; and

(7) Any other indicators as determined by the state board.

~~(j)~~ (g) *Assessment and accountability of school and school system performance and processes.* – In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall establish by rule a system of education performance audits which measures the quality of education and the preparation of students based on the annual measures of student, school and school system performance and progress. The system of education performance audits shall provide information to the state board, the Legislature and the Governor, ~~individually and collectively as the Process for Improving Education Council~~, upon which they may determine whether a thorough and efficient system of schools is being provided. The system of education performance audits shall include:

(1) The assessment of student, school and school system performance and progress based on the annual measures ~~set forth in subsection (d)~~ established pursuant to subsection (e) of this section;

(2) The evaluation of records, reports and other information collected by the ~~department~~ Office of Education Performance Audits upon which the quality of education and compliance with statutes, policies and standards may be determined;

(3) The review of school and school system electronic strategic improvement plans; and

(4) The on-site review of the processes in place in schools and school systems to enable school and school system performance and progress and compliance with the standards.

~~(j)~~ (h) *Uses of school and school system assessment information.* – The state board ~~and the Process for Improving Education Council established pursuant to section five-c of this article~~ shall use information from the system of education performance audits to assist ~~them~~ it in ensuring that a thorough and efficient system of schools is being provided and to improve student, school and school system performance and progress. Information from the system of education performance audits further shall be used by the state board for these purposes, including, but not limited to, the following:

(1) Determining school accreditation and school system approval status;

(2) Holding schools and school systems accountable for the efficient use of existing resources to meet or exceed the standards; and

(3) Targeting additional resources when necessary to improve performance and progress.

The state board shall make accreditation information available to the Legislature, the Governor, the general public and to any individual who requests the information, subject to the provisions of any act or rule restricting the release of information.

~~(k)~~ (i) *Early detection and intervention programs.* – Based on the assessment of student, school and school system performance and progress, the state board shall establish early detection and intervention programs using the available resources of the Department of Education, the regional educational service agencies, the Center for Professional Development and the Principals Academy, as appropriate, to assist underachieving schools and school systems to improve performance before conditions become so grave

as to warrant more substantive state intervention. Assistance shall include, but is not limited to, providing additional technical assistance and programmatic, professional staff development, providing monetary, staffing and other resources where appropriate. ~~and, if necessary, making appropriate recommendations to the Process for Improving Education Council.~~

~~(4)~~ (i) *Office of Education Performance Audits.* –

(1) To assist the state board ~~and the Process for Improving Education Council~~ in the operation of a system of education performance audits, the state board shall establish an Office of Education Performance Audits consistent with the provisions of this section. The Office of Education Performance Audits shall be operated under the direction of the state board independently of the functions and supervision of the State Department of Education and state superintendent. The Office of Education Performance Audits shall report directly to and be responsible to the state board ~~and the Process for Improving Education Council created in section five-c of this article~~ in carrying out its duties under the provisions of this section.

(2) The office shall be headed by a director who shall be appointed by the state board and who ~~shall serve~~ serves at the will and pleasure of the state board. The annual salary of the director shall be set by the state board and may not exceed eighty percent of the salary cap of the State Superintendent of Schools.

(3) The state board shall organize and sufficiently staff the office to fulfill the duties assigned to it by law and by the state board. Employees of the State Department of Education who are transferred to the Office of Education Performance Audits shall retain their benefits and seniority status with the Department of Education.

(4) Under the direction of the state board, the Office of Education Performance Audits shall receive from the West Virginia education information system staff research and analysis data on the performance and progress of students, schools and school systems, and shall receive assistance, as determined by the state board, from staff at the State Department of Education, the regional education service agencies, the Center for Professional Development, the Principals Academy and the School Building Authority to carry out the duties assigned to the office.

(5) In addition to other duties which may be assigned to it by the state board or by statute, the Office of Education Performance Audits also shall:

(A) Assure that all statewide assessments of student performance used as annual performance measures are secure as required in section one-a of this article;

(B) Administer all accountability measures as assigned by the state board, including, but not limited to, the following:

(i) Processes for the accreditation of schools and the approval of school systems; and

(ii) Recommendations to the state board on appropriate action, including, but not limited to, accreditation and approval action;

(C) Determine, in conjunction with the assessment and accountability processes, what capacity may be needed by schools and school systems to meet the standards established by the state board and recommend to the state board ~~and the Process for Improving Education Council~~ plans to establish those needed capacities;

(D) Determine, in conjunction with the assessment and accountability processes, whether statewide system deficiencies exist in the capacity of schools and school systems to meet the standards established by the state board, including the identification of trends and the need for continuing improvements in education, and report those deficiencies and trends to the state board ~~and the Process for Improving Education Council~~;

(E) Determine, in conjunction with the assessment and accountability processes, staff development needs of schools and school systems to meet the standards established by the state board and make recommendations to the state board, ~~the Process for Improving Education Council~~, the Center for Professional Development, the regional educational service agencies, the Higher Education Policy Commission and the county boards;

(F) Identify, in conjunction with the assessment and accountability processes, ~~exemplary schools and school systems and best practices that improve student, school and school system performance and make recommendations~~ communicate those to the state board and ~~the Process for Improving Education Council for recognizing and rewarding exemplary schools and school systems and promoting the use of best practices.~~ The state board shall provide information on best practices to county school systems; ~~and shall use information identified through the assessment and accountability processes to select schools of excellence and~~

(G) Develop reporting formats, such as check lists, which shall be used by the appropriate administrative personnel in schools and school systems to document compliance with ~~various of the~~ applicable laws, policies and process standards as considered appropriate and approved by the state board, ~~including which may include,~~ but is not limited to, the following:

(i) The use of a policy for the evaluation of all school personnel that meets the requirements of sections twelve and twelve-a, article two, chapter eighteen-a of this code;

(ii) The participation of students in appropriate physical assessments as determined by the state board, which assessment may not be used as a part of the assessment and accountability system;

(iii) The appropriate licensure of school personnel; and

(iv) ~~The school provides~~ appropriate provision of multicultural activities.

Information contained in the reporting formats is subject to examination during an on-site review to determine compliance with laws, policies and standards. Intentional and grossly negligent reporting of false information are grounds for dismissal of any employee.

~~(m)~~ (k) *On-site reviews.* –

(1) The system of education performance audits shall include on-site reviews of schools and school systems which shall be conducted only at the specific direction of the state board upon its determination that ~~the performance and progress of the school or school system are persistently below standard or that other~~ circumstances exist that warrant an on-site review. Any discussion by the state board of schools to be subject to an on-site review or dates for which on-site reviews will be conducted may be held in executive session and is not subject to the provisions of article nine-a, chapter six of this code relating to open governmental proceedings. An on-site review shall be conducted by the Office of Education Performance Audits of a school or school system for the purpose of ~~investigating the reasons for performance and progress that are persistently below standard and~~ making recommendations to the school and school system, as appropriate, and to the state board on such measures as it considers necessary. ~~to improve performance and progress to meet the standard~~ The investigation may include, but is not limited to, the following:

(A) Verifying data reported by the school or county board;

(B) Examining compliance with the laws and policies affecting student, school and school system performance and progress;

(C) Evaluating the effectiveness and implementation status of school and school system electronic strategic improvement plans;

(D) Investigating official complaints submitted to the state board that allege serious impairments in the quality of education in schools or school systems;

(E) Investigating official complaints submitted to the state board that allege that a school or county board is in violation of policies or laws under which schools and county boards operate; and

(F) Determining and reporting whether required reviews and inspections have been conducted by the appropriate agencies, including, but not limited to, the State Fire Marshal, the Health Department, the School Building Authority and the responsible divisions within the Department of Education, and whether noted deficiencies have been or are in the process of being corrected. ~~The Office of Education Performance Audits may not conduct a duplicate review or inspection of any compliance reviews or inspections conducted by the department or its agents or other duly authorized agencies of the state, nor may it mandate more stringent compliance measures.~~

(2) The Director of the Office of Education Performance Audits shall notify the county superintendent of schools five school days prior to commencing an on-site review of the county school system and shall notify both the county superintendent and the principal five school days before commencing an on-site review of an individual school: *Provided*, That the state board may direct the Office of Education Performance Audits to conduct an unannounced on-site review of a school or school system if the state board believes circumstances warrant an unannounced on-site review.

(3) The Office of Education Performance Audits shall conduct on-site reviews which are limited in scope to specific areas in which performance and progress are persistently below standard as determined by the state board unless specifically directed by the state board to conduct a review which covers additional areas.

~~(4) An on-site review of a school or school system shall include a person or persons from the Department of Education or a public education agency in the state who has expert knowledge and experience in the area or areas to be reviewed and who has been trained and designated by the state board to perform such functions. If the size of the school or school system and issues being reviewed necessitate the use of an on-site review team or teams, the person or persons designated by the state board shall advise and assist the director to appoint the team or teams. The person or persons designated by the state board shall be the team leaders.~~

~~The persons designated by the state board shall be responsible for completing the report on the findings and recommendations of the on-site review in their area of expertise. It is the intent of the Legislature that the persons designated by the state board participate in all on-site reviews that involve their area of expertise, to the extent practicable, so that the on-site review process will evaluate compliance with the standards in a uniform, consistent and expert manner.~~

~~(5)~~ (4) The Office of Education Performance Audits shall reimburse a county board for the costs of substitutes required to replace county board employees ~~while they are serving~~ who serve on a review team.

~~(6)~~ (5) At the conclusion of an on-site review of a school system, the director and team leaders shall hold an exit conference with the superintendent and shall provide an opportunity for principals to be present for at least the portion of the conference pertaining to their respective schools. In the case of an on-site review of a school, the exit conference shall be held with the principal and curriculum team of the school and the superintendent shall be provided the opportunity to be present. The purpose of the exit conference is to review the initial findings of the on-site review, clarify and correct any inaccuracies and allow the opportunity for dialogue between the reviewers and the school or school system to promote a better understanding of the findings.

~~(7)~~ (6) The Office of Education Performance Audits shall report the findings of an on-site review to the county superintendent and the principals whose schools were reviewed within thirty days following the conclusion of the on-site review. The Office of Education Performance Audits shall report the findings of the on-site review to the state board within forty-five days after the conclusion of the on-site review. ~~A copy~~

of the report shall be provided to the Process for Improving Education Council at its request. A school or county that believes one or more findings of a review are clearly inaccurate, incomplete or misleading, misrepresent or fail to reflect the true quality of education in the school or county or address issues unrelated to the health, safety and welfare of students and the quality of education, may appeal to the state board for removal of the findings. The state board shall establish a process for it to receive, review and act upon the appeals. The state board shall report to the Legislative Oversight Commission on Education Accountability during its July interim meetings, or as soon thereafter as practical, on each appeal during the preceding school year.

~~(8) (7) The Legislature finds that the accountability and oversight of the following some activities and programmatic areas in the public schools is are controlled through other mechanisms and agencies and that additional accountability and oversight are not only may be unnecessary, but counterproductive in distracting and impair necessary resources from for teaching and learning. Therefore, notwithstanding any other provision of this section to the contrary, the following activities and programmatic areas are not subject to review by the Office of Education Performance Audits: may rely on other agencies and mechanisms in its review of schools and school systems.~~

~~(A) Work-based learning;~~

~~(B) Use of advisory councils;~~

~~(C) Program accreditation and student credentials;~~

~~(D) Student transition plans;~~

~~(E) Graduate assessment form;~~

~~(F) Casual deficit;~~

~~(G) Accounting practices;~~

~~(H) Transportation services;~~

~~(I) Special education services;~~

~~(J) Safe, healthy and accessible facilities;~~

~~(K) Health services;~~

~~(L) Attendance director;~~

~~(M) Business/community partnerships;~~

~~(N) Pupil-teacher ratio/split grade classes;~~

~~(O) Local school improvement council, faculty senate, student assistance team and curriculum team;~~

~~(P) Planning and lunch periods;~~

~~(Q) Skill improvement program;~~

~~(R) Certificate of proficiency;~~

~~(S) Training of county board members;~~

~~(T) Excellence in job performance;~~

~~(U) Staff development; and~~

~~(V) Preventive discipline, character education and student and parental involvement.~~

~~(n) (l) School accreditation. – The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school one of the following approval levels: Exemplary accreditation status, distinction accreditation status, full accreditation status, temporary accreditation status, conditional accreditation status or low performing accreditation status.~~

~~(1) Full accreditation status shall be given to a school when the school's performance and progress meet or exceed the standards adopted by the state board pursuant to subsection (e) or (f), as applicable, of this section and it does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A school that meets or exceeds the performance and progress standards but has the other deficiencies shall remain on full accreditation status for the remainder of the accreditation period and shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.~~

~~(2) Temporary accreditation status shall be given to a school when the school's performance and progress are below the level required for full accreditation status. Whenever a school is given temporary accreditation status, the county board shall ensure that the school's electronic strategic improvement plan is revised in accordance with subsection (b) of this section to increase the performance and progress of the school to a full accreditation status level. The revised plan shall be submitted to the state board for approval.~~

~~(3) Conditional accreditation status shall be given to a school when the school's performance and progress are below the level required for full accreditation, but the school's electronic strategic improvement plan meets the following criteria:~~

~~(A) The plan has been revised to improve performance and progress on the standard or standards by a date or dates certain;~~

~~(B) The plan has been approved by the state board; and~~

~~(C) The school is meeting the objectives and time line specified in the revised plan.~~

~~(4) Exemplary accreditation status shall be given to a school when the school's performance and progress substantially exceed the standards adopted by the state board pursuant to subsections (f) and (g) of this section. The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code designated to establish standards of performance and progress to identify exemplary schools.~~

~~(5) Distinction accreditation status shall be given to a school when the school's performance and progress exceed the standards adopted by the state board. The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing standards of performance and progress to identify schools of distinction.~~

~~(6) Low performing accreditation status shall be given to a school whenever extraordinary circumstances exist as defined by the state board:~~

~~(A) These circumstances shall include, but are not limited to, any one or more of the following:~~

~~(i) The failure of a school on temporary accreditation status to obtain approval of its revised electronic school strategic improvement plan within a reasonable time period as defined by the state board;~~

~~(ii) The failure of a school on conditional accreditation status to meet the objectives and time line of its revised electronic school strategic improvement plan;~~

~~(iii) The failure of a school to meet a standard by the date specified in the revised plan; and~~

~~(iv) The results of the most recent statewide assessment in reading and math or other multiple measures as determined by the state board that identify the school as low performing at its programmatic level in three of the last five years.~~

~~(B) Whenever the state board determines that the quality of education in a school is low performing, the state board shall appoint a team of improvement consultants from the West Virginia Department of Education State System of Support to make recommendations for correction of the low performance. These recommendations shall be communicated to the county board and a process shall be established in conjunction with the State System of Support to correct the identified deficiencies. If progress in correcting the low performance as determined by the state board is not made within one year following the implementation of the measures adopted to correct the identified deficiencies or by a date certain established by the state board after at least one year of implementation, the state board shall place the county board on temporary approval status and provide consultation and assistance to the county board to assist it in the following areas:~~

~~(i) Improving personnel management;~~

~~(ii) Establishing more efficient financial management practices;~~

~~(iii) Improving instructional programs and rules; or~~

~~(iv) Making any other improvements that are necessary to correct the low performance.~~

~~(C) If the low performance is not corrected by a date certain as set by the state board:~~

~~(i) The state board shall appoint a monitor who shall be paid at county expense to cause improvements to be made at the school to bring it to full accreditation status within a reasonable time period as determined by the state board. The monitor's work location shall be at the school and the monitor shall work collaboratively with the principal. The monitor shall, at a minimum, report monthly to the state board on the measures being taken to improve the school's performance and the progress being made. The reports may include requests for additional assistance and recommendations required in the judgment of the monitor to improve the school's performance, including, but not limited to, the need for targeting resources strategically to eliminate deficiencies;~~

~~(ii) The state board may make a determination, in its sole judgment, that the improvements necessary to provide a thorough and efficient education to the students at the school cannot be made without additional targeted resources, in which case it shall establish a plan in consultation with the county board that includes targeted resources from sources under the control of the state board and the county board to accomplish the needed improvements. Nothing in this subsection shall be construed to allow a change in personnel at the school to improve school performance and progress, except as provided by law;~~

~~(iii) If the low performance is not corrected within one year after the appointment of a monitor, the state board may make a determination, in its sole judgment, that continuing a monitor arrangement is not sufficient to correct the low performance and may intervene in the operation of the school to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, establishing instructional programs, taking such direct action as may be necessary to correct the low performance, declaring the position of principal is vacant and assigning a principal for the school who shall serve at the will and pleasure of and, under the sole supervision of, the state board: *Provided*, That prior to declaring that the position of the principal is vacant, the state board must make a determination that all other resources needed to correct the low performance are present at the school.~~

(1) The state board shall establish levels of accreditation to be assigned to schools. The establishment of levels of accreditation and the levels shall be subject to the following:

(A) The levels will be designed to demonstrate school performance in all the areas outlined in this section and also those established by the state board;

(B) The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to establish the performance and standards required for a school to be assigned a particular level of accreditation; and

(C) The state board will establish the levels of accreditation in such a manner as to minimize the number of systems of school recognition, both state and federal, that are employed to recognize and accredit schools.

(2) The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school a level of accreditation as designated and determined by the state board.

(3) The state board, in its exercise of general supervision of the schools and school systems of West Virginia, may exercise any or all of the following powers and actions:

(A) To require a school to revise its electronic strategic plan;

(B) To define extraordinary circumstances under which the state board may intervene directly or indirectly in the operation of a school;

(C) To appoint monitors to work with the principal and staff of a school where extraordinary circumstances are found to exist, and to appoint monitors to assist the school principal after intervention in the operation of a school is completed;

(D) To direct a county board to target resources to assist a school where extraordinary circumstances are found to exist;

(E) To intervene directly in the operation of a school and declare the position of principal vacant and assign a principal for the school who will serve at the will and pleasure of the state board. If the principal who was removed elects not to remain an employee of the county board, then the principal assigned by the state board shall be paid by the county board. If the principal who was removed elects to remain an employee of the county board, then the following procedure applies:

~~(H)~~ (i) The principal assigned by the state board shall be paid by the state board until the next school term, at which time the principal assigned by the state board shall be paid by the county board;

~~(H)~~ (ii) The principal who was removed is eligible for all positions in the county, including teaching positions, for which the principal is certified, by either being placed on the transfer list in accordance with section seven, article two, chapter eighteen-a of this code, or by being placed on the preferred recall list in accordance with section seven-a, article four, chapter eighteen-a of this code; and

~~(H)~~ (iii) The principal who was removed shall be paid by the county board and may be assigned to administrative duties, without the county board being required to post that position until the end of the school term; and

(F) Such other powers and actions the state board determines necessary to fulfill its duties of general supervision of the schools and school systems of West Virginia.

~~(6)~~ (4) The county board ~~shall~~ may take no action nor refuse any action if the effect would be to impair further the school in which the state board has intervened.

~~(7) The state board may appoint a monitor pursuant to the provisions of this subsection to assist the school principal after intervention in the operation of a school is completed.~~

~~(e) *Transfers from low-performing schools.* -- Whenever a school is determined to be low performing and fails to improve its status within one year, following state intervention in the operation of the school to correct the low performance, any student attending the school may transfer once to the nearest fully accredited school in the county, subject to approval of the fully accredited school and at the expense of the school from which the student transferred.~~

~~(p)~~ (m) *School system approval.* – The state board annually shall review the information submitted for each school system from the system of education performance audits and issue one of the following approval levels to each county board: Full approval, temporary approval, conditional approval or nonapproval.

(1) Full approval shall be given to a county board whose schools have all been given full, temporary or conditional accreditation status and which does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A fully approved school system in which other deficiencies are discovered shall remain on full accreditation status for the remainder of the approval period and shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary approval shall be given to a county board whose education system is below the level required for full approval. Whenever a county board is given temporary approval status, the county board shall revise its electronic county strategic improvement plan in accordance with subsection (b) of this section to increase the performance and progress of the school system to a full approval status level. The revised plan shall be submitted to the state board for approval.

(3) Conditional approval shall be given to a county board whose education system is below the level required for full approval, but whose electronic county strategic improvement plan meets the following criteria:

~~(i)~~ (A) The plan has been revised in accordance with subsection (b) of this section;

~~(ii)~~ (B) The plan has been approved by the state board; and ~~(iii)~~

~~(iii)~~ (C) The county board is meeting the objectives and time line specified in the revised plan.

(4) Nonapproval status shall be given to a county board which fails to submit and gain approval for its electronic county strategic improvement plan or revised electronic county strategic improvement plan within a reasonable time period as defined by the state board or which fails to meet the objectives and time line of its revised electronic county strategic improvement plan or fails to achieve full approval by the date specified in the revised plan.

(A) The state board shall establish and adopt additional standards to identify school systems in which the program may be nonapproved and the state board may issue nonapproval status whenever extraordinary circumstances exist as defined by the state board.

(B) Whenever a county board has more than a casual deficit, as defined in section one, article one of this chapter, the county board shall submit a plan to the state board specifying the county board's strategy for eliminating the casual deficit. The state board either shall approve or reject the plan. If the plan is rejected, the state board shall communicate to the county board the reason or reasons for the rejection of the plan. The county board may resubmit the plan any number of times. However, any county board that fails to submit a plan and gain approval for the plan from the state board before the end of the fiscal year after a deficit greater than a casual deficit occurred or any county board which, in the opinion of the state board, fails to comply with an approved plan may be designated as having nonapproval status.

(C) Whenever nonapproval status is given to a school system, the state board shall declare a state of emergency in the school system and shall appoint a team of improvement consultants to make

recommendations within sixty days of appointment for correcting the emergency. When the state board approves the recommendations, they shall be communicated to the county board. If progress in correcting the emergency, as determined by the state board, is not made within six months from the time the county board receives the recommendations, the state board shall intervene in the operation of the school system to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, the following:

(i) Limiting the authority of the county superintendent and county board as to the expenditure of funds, the employment and dismissal of personnel, the establishment and operation of the school calendar, the establishment of instructional programs and rules and any other areas designated by the state board by rule, which may include delegating decision-making authority regarding these matters to the state superintendent;

(ii) Declaring that the office of the county superintendent is vacant;

(iii) Delegating to the state superintendent both the authority to conduct hearings on personnel matters and school closure or consolidation matters and, subsequently, to render the resulting decisions and the authority to appoint a designee for the limited purpose of conducting hearings while reserving to the state superintendent the authority to render the resulting decisions;

(iv) Functioning in lieu of the county board of education in a transfer, sale, purchase or other transaction regarding real property; and

(v) Taking any direct action necessary to correct the emergency including, but not limited to, the following:

(I) Delegating to the state superintendent the authority to replace administrators and principals in low performing schools and to transfer them into alternate professional positions within the county at his or her discretion; and

(II) Delegating to the state superintendent the authority to fill positions of administrators and principals with individuals determined by the state superintendent to be the most qualified for the positions. Any authority related to intervention in the operation of a county board granted under this paragraph is not subject to the provisions of article four, chapter eighteen-a of this code;

~~(q)~~ (n) Notwithstanding any other provision of this section, the state board may intervene immediately in the operation of the county school system with all the powers, duties and responsibilities contained in subsection ~~(p)~~ (m) of this section, if the state board finds the following:

(1) That the conditions precedent to intervention exist as provided in this section; and that delaying intervention for any period of time would not be in the best interests of the students of the county school system; or

(2) That the conditions precedent to intervention exist as provided in this section and that the state board had previously intervened in the operation of the same school system and had concluded that intervention within the preceding five years.

~~(r)~~ (o) *Capacity.* – The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of electronic school and school system strategic improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to improve student, school and school system performance. When deficiencies are detected through the assessment and accountability processes, the revision and approval of school and school system electronic strategic improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall work with the county board to develop or secure

the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the Governor.

The state board shall recommend to the appropriate body including, but not limited to, the ~~Process for Improving Education Council~~, Legislature, county boards, schools and communities methods for targeting resources strategically to eliminate deficiencies identified in the assessment and accountability processes. When making determinations on recommendations, the state board shall include, but is not limited to, the following methods:

- (1) Examining reports and electronic strategic improvement plans regarding the performance and progress of students, schools and school systems relative to the standards and identifying the areas in which improvement is needed;
- (2) Determining the areas of weakness and of ineffectiveness that appear to have contributed to the substandard performance and progress of students or the deficiencies of the school or school system and requiring the school or school system to work collaboratively with the West Virginia Department of Education State System of Support to correct the deficiencies;
- (3) Determining the areas of strength that appear to have contributed to exceptional student, school and school system performance and progress and promoting their emulation throughout the system;
- (4) Requesting technical assistance from the School Building Authority in assessing or designing comprehensive educational facilities plans;
- (5) Recommending priority funding from the School Building Authority based on identified needs;
- (6) Requesting special staff development programs from the Center for Professional Development, the Principals Academy, higher education, regional educational service agencies and county boards based on identified needs;
- (7) Submitting requests to the Legislature for appropriations to meet the identified needs for improving education;
- (8) Directing county boards to target their funds strategically toward alleviating deficiencies;
- (9) Ensuring that the need for facilities in counties with increased enrollment are appropriately reflected and recommended for funding;
- (10) Ensuring that the appropriate person or entity is held accountable for eliminating deficiencies; and
- (11) Ensuring that the needed capacity is available from the state and local level to assist the school or school system in achieving the standards and alleviating the deficiencies.

~~§18-2E-5c. Process for Improving Education Council established; membership; expenses; meetings; powers.~~

~~(a) *Process for Improving Education Council.* -- There is hereby established the Process for Improving Education Council for the purpose of providing opportunities for consultation among state policy leaders on the process for improving education, including, but not limited to, determination of the things that students should know and be able to do as the result of a thorough and efficient education, the performance and progress of students toward meeting the high quality standards established by the state board, adopting goals, objectives, strategies, indicators and benchmarks for public education and any further improvements necessary to increase the capacity of schools and school systems to deliver a thorough and efficient education.~~

~~(b) Council membership.--- The Legislative Oversight Commission on Education Accountability, together with the Governor, ex officio, or the Governor's designee, the Chancellor of the Higher Education Policy Commission, ex officio, or the chancellor's designee, the Chancellor for Community and Technical College Education, ex officio, or the chancellor's designee and the state superintendent comprise the Process for Improving Education Council. Ex officio members are entitled to vote. The Governor or the Governor's designee shall convene the council, as appropriate, and shall serve as chair. The council may meet at any time at the call of the Governor or the Governor's designee.~~

~~(c) Compensation.--- Members of the council shall serve without compensation, but shall be reimbursed as provided by law by their respective agencies for all reasonable and necessary expenses actually incurred in the performance of their official duties under this section upon presentation of an itemized sworn statement of their expenses.~~

~~(d) Powers of the council.---~~

The council has the following powers:

~~(1) To meet and consult with the state board, or its designees, and make recommendations on issues related to student, school and school system performance. The following steps are part of the consultation process:~~

~~(A) The state board shall notify each member of the council whenever the state board proposes to amend its rules on any of the following issues:~~

~~(i) High quality education standards and efficiency standards established pursuant to section five of this article;~~

~~(ii) Indicators of efficiency established pursuant to section five of this article; and~~

~~(iii) Assessment and accountability of school and school system performance and processes established pursuant to section five of this article.~~

~~(B) The notice to be given pursuant to paragraph (A) of this subdivision shall contain a summary and explanation of the proposed changes, including a draft of the proposal when available, and shall be sent at least fifteen days prior to filing the proposal with the Secretary of State for public comment.~~

~~(C) If the Governor, or the Governor's designee, believes it is necessary for the council to meet and consult with the state board, or its designees, on changes proposed to any of the issues outlined in subdivision (1) of this subsection, he or she may convene a meeting of the council.~~

~~(D) If both the President of the Senate and the Speaker of the House of Delegates believe it is necessary for the council to meet and consult with the state board, or its designees, they shall notify the Governor who shall convene a meeting of the council.~~

~~(E) If the chancellor, or the chancellor's designee believes that it is necessary for the council to meet and consult with the state board, or its designees, he or she may request the Governor to convene a meeting of the council.~~

~~(2) To require the state board, or its designees, to meet with the council to consult on issues that lie within the scope of the council's jurisdiction;~~

~~(3) To participate as observers in any on-site review of a school or school system conducted by the Office of Education Performance Audits; and~~

~~(4) To authorize any employee of the agencies represented by council members to participate as observers in any on-site review of a school or school system conducted by the Office of Education Performance Audits.~~

ARTICLE 2I. PROFESSIONAL DEVELOPMENT.

§18-2I-1. Legislative purpose.

~~The purpose of this article is to create the West Virginia professional staff development advisory council and eight regional professional staff development councils to advise and assist the state board with ensuring the coordination and quality of professional staff development and meet the goals for professional development established by the state board~~ establish clear state-level leadership for professional development for all West Virginia public school educators and administrators. As the state institution charged with the general supervision of the state school system, the state board shall institute a system for the coordination and delivery of high-quality professional development. The system shall clearly define the goals for professional development and delineate roles and responsibilities among the various state and regional professional development providers.

§18-2I-2. Legislative findings.

~~The Legislature finds that there is presently an inadequate and inefficient delivery of staff development programs for professional education in West Virginia. The Legislature further finds that the creation of a West Virginia staff development advisory council and regional staff development councils will assure the efficient delivery of high quality staff training programs and will further assure that duplication of efforts will be minimized. The Legislature further finds that the functions of the West Virginia staff development advisory council and regional staff development councils will assure that key personnel will be fully aware of identified needs and programmatic services, that all stakeholders will be appropriately involved in planning and implementing programs to meet requisite needs and that high quality staff development programs will be provided to public school educators of West Virginia in the most efficient manner.~~

The Legislature finds:

(1) That high-quality professional development is critical in supporting improved practice, assuring teacher quality and raising student achievement;

(2) That professional development is vital in the state's overall school improvement efforts;

(3) That the state board should assure the efficient delivery of high-quality professional development programs and assure that duplication of efforts be minimized and that all stakeholders are appropriately involved in the planning and implementing of programs to meet requisite needs and that high-quality professional development programs be provided to public school educators of West Virginia in the most efficient and cost effective manner; and

(4) It should be the goal that professional development occur outside of scheduled instructional time so student learning is not interrupted by the absence of their classroom teacher.

§18-2I-3. Creation of West Virginia professional staff development advisory council; members; and functions. Annual professional development master plan established by state board.

(a) There shall be a West Virginia professional staff development advisory council which shall consist of the following members:

(1) The chairpersons of each of the eight regional staff development councils established in section five of this article;

(2) The coordinators of each of the eight regional educational service agency staff development councils;

~~(3) The assistant superintendent for the division of instructional and student services of the state department of education;~~

~~(4) The secretary of education and the arts or his or her designee, who shall chair the council;~~

~~(5) The chancellor of the higher education policy commission or his or her designee;~~

~~(6) The executive director of the West Virginia center for professional development;~~

~~(7) The presidents, or their designees, of each of the two professional organizations or associations representing teachers in the state with the greatest number of teacher members.~~

~~(b) Any member of the advisory council may be reimbursed by the state board for the cost of reasonable and necessary expenses actually incurred in the performance of their duties under this article.~~

(a) The state board annually shall establish a master plan for professional development in the public schools of the state. As a first priority, the state board shall require adequate and appropriate professional development to ensure high-quality teaching that will support improved student achievement, enable students to meet the content standards established for the required curriculum in the public schools and to be prepared for college and careers.

(b) The state board annually shall submit the master plan to the State Department of Education, the Center for Professional Development, the regional educational service agencies, the Higher Education Policy Commission and the Legislative Oversight Commission on Education Accountability.

(c) The state board shall annually establish goals for professional development and include the goals in the master plan. In establishing the goals, the state board shall review reports that may indicate a need for professional staff development including, but not limited to, the report of the Center for Professional Development created in article three-a, chapter eighteen-a of this code, student test scores on the statewide student assessment program, the measures of student and school performance for accreditation purposes, school and school district report cards and the state board's plans for the use of funds in the Strategic Staff Development Fund pursuant to section five of this article.

(d) Pursuant to section thirty-nine, article two of this chapter the state board shall include in its Master Plan for Professional Staff Development:

(1) Professional development for teachers teaching the transitional courses on how to teach the adopted college- and career-readiness standards for English/language arts and math; and

(2) Appropriate professional development for other teachers in at least grades eight through twelve on how to teach the adopted college- and career-readiness standards in English/language arts and math directly, as embedded in other subject areas or both, as appropriate.

§18-2I-4. Functions of the West Virginia professional staff development advisory council. Coordination, development and evaluation of professional development programs.

The council shall advise and assist the state board in all phases of developing or amending the goals for professional staff development required by subsection (b) of this section. Advice and assistance shall include, but is not limited to, the following:

~~(a) Reporting to the state board on the professional staff development needs identified by the public schools within the respective regions;~~

~~(b) Recommending effective professional staff development programs to meet identified needs;~~

~~(c) Providing local input on the proposed goals and on the professional staff development plan proposed by the center for professional development pursuant to subsection (c) of this section;~~

~~(d) Communicating professional staff development information and findings to the regional and county staff development councils; and~~

~~(e) Advancing the coordination and quality of professional staff development programs in the public schools of West Virginia.~~

(a) On or before June 1, 2013, the state board shall promulgate an emergency rule in accordance with article three-b, chapter twenty-nine of this code to ensure the coordination, development and evaluation of high-quality professional development programs. On or before November 1, 2013, the state board shall promulgate a legislative rule for the same purpose. The rules shall include, but are not limited to, the following:

(1) Standards for quality professional development that all professional development providers shall use in designing, implementing and evaluating professional development that shall become part of the statewide professional development plan;

(2) Processes for assuring professional development resources are appropriately allocated to identified areas of need;

(3) Processes for approval by state board of all professional development plans/offerings;

(4) Processes for evaluating the effectiveness, efficiency, and impact of the professional development;

(5) Processes for ensuring all stakeholders, including affected classroom teachers, have a voice in the identification of needed professional development and various delivery models;

(6) Processes for collaboration among West Virginia Department of Education, Center for Professional Development, RESAs, county boards and classroom teachers; and

(7) Processes for ensuring that the expertise and experience of state institutions of higher education with teacher preparation programs are included in developing and implementing professional development programs.

(b) The state board approval of the proposed professional development plans/offerings shall establish a Master Plan for Professional Development which shall be submitted by the state board to the affected agencies and to the Legislative Oversight Commission on Education Accountability. The Master Plan shall include the state board-approved plans for professional development by the State Department of Education, the Center for Professional Development, the state institutions of higher education and the regional educational service agencies to meet the professional development goals of the state board.

(c) The state board shall submit a report on or before December 1 of each year on the effectiveness, efficiency and impact of the statewide professional development plan to the Legislative Oversight Commission on Education Accountability.

§18-2I-5. Creation of regional staff development councils; members; and functions. Strategic Staff Development Fund.

(a) There shall be a regional staff development council in each of the eight regional educational service agencies located within the state. Each regional staff development council shall consist of the following members:

(1) The chairperson of each of the county professional staff development councils located in each county contained in the applicable region;

~~(2) The county staff development coordinator from each of the counties located within the region: *Provided*, That if the county does not have a staff development coordinator, then the superintendent shall designate a person to serve on the regional staff development council;~~

~~(3) The regional educational service agencies staff development coordinator who shall serve as an ex officio member;~~

~~(4) The executive director of the regional educational service agencies who shall serve as an ex officio member;~~

~~(5) The designee of the chancellor of the university system of West Virginia who shall serve as an ex officio member; and~~

~~(6) The designee of the chancellor of the state college system of West Virginia who shall serve as an ex officio member.~~

~~(b) Any member of the regional staff development council may be reimbursed by his or her employing agency for the cost of reasonable and necessary expenses actually incurred in the performance of their duties under this article as determined by the employing agency.~~

(a) There is created an account within the state board titled the Strategic Staff Development Fund. The allocation of balances which accrue in the General School Fund shall be transferred to the Strategic Staff Development Fund each year when the balances become available. Any remaining funds transferred to the Strategic Staff Development Fund during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the transfer of funds from the General School Fund for the next fiscal year.

(b) The money in the Strategic Staff Development Fund shall be used by the state board to provide staff development in schools, counties or both that the state board determines need additional resources. The state board is required to report to the Legislative Oversight Commission on Education Accountability before December 1, annually, on the effectiveness of the staff development resulting from expenditures in this fund.

~~§18-2I-5. Creation of regional staff development councils; members; and functions.~~

~~(a) There shall be a regional staff development council in each of the eight regional educational service agencies located within the state. Each regional staff development council shall consist of the following members:~~

~~(1) The chairperson of each of the county professional staff development councils located in each county contained in the applicable region;~~

~~(2) The county staff development coordinator from each of the counties located within the region: *Provided*, That if the county does not have a staff development coordinator, then the superintendent shall designate a person to serve on the regional staff development council;~~

~~(3) The regional educational service agencies staff development coordinator who shall serve as an ex officio member;~~

~~(4) The executive director of the regional educational service agencies who shall serve as an ex officio member;~~

~~(5) The designee of the chancellor of the university system of West Virginia who shall serve as an ex officio member; and~~

~~(6) The designee of the chancellor of the state college system of West Virginia who shall serve as an ex officio member.~~

~~(b) Any member of the regional staff development council may be reimbursed by his or her employing agency for the cost of reasonable and necessary expenses actually incurred in the performance of their duties under this article as determined by the employing agency.~~

~~§18-2I-7. Limitations on funding of councils.~~

~~Nothing in this article may be construed to require any specific level of funding by the Legislature.~~

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-1. Appointment; qualifications; compensation; traveling expenses; office and residence; evaluation.

There shall be appointed by the state board a State Superintendent of Schools who serves at the will and pleasure of the state board. He or she shall be a person of good moral character, ~~of recognized ability as a school administrator, holding at least a~~ shall be able to perform the duties listed in this article and possess such other educational, administrative, experiential and other qualifications as determined by the State Board of Education. He or she shall hold at least a master's degree in educational administration, and shall ~~have had not less than five years of experience in public school work from a regionally accredited institution of higher education or equivalent degree as determined by the state board.~~ He or she shall receive an annual salary set by the state board, to be paid monthly: ~~Provided, That the annual salary may not exceed one hundred forty six thousand one hundred dollars: Provided, however, That after the thirtieth day of June, two thousand six, the annual salary may not exceed one hundred seventy five thousand dollars.~~ The state superintendent also shall receive necessary traveling expenses incident to the performance of his or her duties to be paid out of the General School Fund upon warrants of the State Auditor. The state superintendent shall have his or her office at the state Capitol. The state board shall report to the Legislative Oversight Commission on Education Accountability upon request concerning its progress during any hiring process for a state superintendent.

The state board annually shall evaluate the performance of the state superintendent and publicly announce the results of the evaluation.

§18-3-9b. Reduction in amount budgeted for personal services.

The state superintendent shall reduce the budgeted amount for personal services, related employee benefits and contractual expenditures related to employment by five percent in fiscal years 2014 and 2015. The reductions shall be taken department wide, excluding the school aid formula and institutionalized services to juveniles and adults, and other direct-service education expenditures.

§18-3-12. Special Community Development School Pilot Program.

(a) The state superintendent shall establish a Special Community Development School Pilot Program to be implemented in ~~one~~ a neighborhood of at least five public schools, which shall include at least one elementary and middle school, for the duration of five years. The neighborhood of public schools designated by the state superintendent for the pilot shall have significant enrollments of disadvantaged, minority and underachieving students. The designated neighborhood of public schools under the direction of the county board and county superintendent shall work in collaboration with higher education, community organizations, Center for Professional Development, local community leaders, affected classroom teachers, affected parents and the state board to develop and implement strategies that could be replicated in other public schools with significant enrollments of disadvantaged, minority and underachieving students to improve academic achievement. For purposes of this section "neighborhood" means an area of no more than seven square miles.

(b) Beginning in January, ~~2011~~ 2014, on or before the first day of the regular session of the Legislature, and each year thereafter, the state superintendent, county superintendent for the county in which the schools

are located and lead community-based organizations shall make a status report to the Legislative Oversight Commission on Education Accountability and to the state board. The report may include any recommendations based on the progress of the demonstration project that he or she considers either necessary for improving the operations of the demonstration project or prudent for improving student achievement in other public schools through replication of successful demonstration school programs.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18. Kindergarten programs.

(a) County boards shall provide kindergarten programs for all children who have attained the age of five prior to ~~the first day of~~ September 1, of the school year in which the pupil enters the kindergarten program and may, pursuant to the provisions of section forty-four, article five, chapter eighteen of this code, establish kindergarten programs designed for children below the age of five. The programs for children who shall have attained the age of five shall be full-day everyday programs.

(b) Persons employed as kindergarten teachers, as distinguished from paraprofessional personnel, shall be required to hold a certificate valid for teaching at the assigned level as prescribed by ~~regulations~~ rules established by the state board. The state board shall establish ~~and prescribe guidelines and criteria setting forth~~ the minimum requirements for all paraprofessional personnel employed in kindergarten programs established pursuant to the provisions of this section and no such paraprofessional personnel ~~shall~~ may be employed in any kindergarten program unless he or she meets ~~such~~ the minimum requirements. Beginning July 1, 2014, any person previously employed as an aide in a kindergarten program and who is employed in the same capacity on and after that date and any new person employed in that capacity in a kindergarten program on and after that date shall hold the position of either Early Childhood Classroom Assistant Teacher - Temporary Authorization, Early Childhood Classroom Assistant Teacher - Permanent Authorization or Early Childhood Classroom Assistant Teacher - Paraprofessional Certificate. Any person employed as an aide in a kindergarten program that is eligible for full retirement benefits before July 1, 2020, may remain employed as an aide in that position and may not be required to acquire licensure pursuant to this section.

(c) The state board with the advice of the state superintendent shall establish and prescribe guidelines and criteria relating to the establishment, operation and successful completion of kindergarten programs in accordance with the other provisions of this section. Guidelines and criteria so established and prescribed also are intended to serve for the establishment and operation of nonpublic kindergarten programs and shall be used for the evaluation and approval of ~~such those~~ such programs by the state superintendent, provided application for ~~such the~~ such the evaluation and approval is made in writing by proper authorities in control of ~~such the~~ such the programs. The state superintendent, annually, shall publish a list of nonpublic kindergarten programs, including Montessori kindergartens that have been approved in accordance with the provisions of this section. Montessori kindergartens established and operated in accordance with usual and customary practices for the use of the Montessori method which have teachers who have training or experience, regardless of additional certification, in the use of the Montessori method of instruction for kindergartens shall be considered to be approved.

(d) Pursuant to ~~such the~~ such the guidelines and criteria, and only pursuant to ~~such the~~ such the guidelines and criteria, the county boards may establish programs taking kindergarten to the homes of the children involved, using educational television, paraprofessional personnel in addition to and to supplement regularly certified teachers, mobile or permanent classrooms and other means developed to best carry kindergarten to the child in its home and enlist the aid and involvement of its parent or parents in presenting the program to the child; or may develop programs of a more formal kindergarten type, in existing school buildings, or both, as ~~such the~~ such the county board may determine, taking into consideration the cost, the terrain, the existing available facilities, the distances each child may be required to travel, the time each child may be required to be away from home, the child's health, the involvement of parents and ~~such~~ such other factors as each county board may find pertinent. ~~Such The~~ Such The determinations by any county board ~~shall be~~ are final and conclusive.

§18-5-44. Early childhood education programs.

(a) For the purposes of this section, “early childhood education” means programs for children who have attained the age of four prior to September 1 of the school year in which the pupil enters the program created in this section.

(b) *Findings.* –

(1) Among other positive outcomes, early childhood education programs have been determined to:

(A) Improve overall readiness when children enter school;

(B) Decrease behavioral problems;

(C) Improve student attendance;

(D) Increase scores on achievement tests;

(E) Decrease the percentage of students repeating a grade; and

(F) Decrease the number of students placed in special education programs;

(2) Quality early childhood education programs improve school performance and low-quality early childhood education programs may have negative effects, especially for at-risk children;

(3) West Virginia has the lowest percentage of its adult population twenty-five years of age or older with a bachelor’s degree and the education level of parents is a strong indicator of how their children will perform in school;

(4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty states in the percentage of school children eligible for free and reduced lunches and this percentage is a strong indicator of how the children will perform in school;

(5) For the school year 2008-2009, 13,135 students were enrolled in prekindergarten, a number equal to approximately sixty-three percent of the number of students enrolled in kindergarten;

(6) Excluding projected increases due to increases in enrollment in the early childhood education program, projections indicate that total student enrollment in West Virginia will decline by one percent, or by approximately 2704 students, by the school year 2012-2013;

(7) In part, because of the dynamics of the state aid formula, county boards will continue to enroll four-year old students to offset the declining enrollments;

(8) West Virginia has a comprehensive kindergarten program for five-year olds, but the program was established in a manner that resulted in unequal implementation among the counties which helped create deficit financial situations for several county boards;

(9) Expansion of current efforts to implement a comprehensive early childhood education program should avoid the problems encountered in kindergarten implementation;

(10) Because of the dynamics of the state aid formula, counties experiencing growth are at a disadvantage in implementing comprehensive early childhood education programs; and

(11) West Virginia citizens will benefit from the establishment of quality comprehensive early childhood education programs.

(c) Beginning no later than the school year 2012-2013, and continuing thereafter, county boards shall provide early childhood education programs for all children who have attained the age of four prior to

September 1 of the school year in which the pupil enters the early childhood education program. Beginning no later than the school year 2016-2017, and continuing thereafter, early childhood education programs that are full day and five days per week shall be available to all children meeting the age requirement set forth in the subsection.

(d) The program shall meet the following criteria:

(1) It shall be voluntary, except, upon enrollment, the provisions of section one, article eight of this chapter apply to an enrolled student, subject to subdivision (3) of this subsection; ~~and~~

(2) ~~It may be for fewer than five days per week and may be less than full day.~~ All children meeting the age requirement set forth in this section shall have the opportunity to enroll in a program that is full day and five days per week. The program may be for fewer than five days per week and may be less than full day based on family need if a sufficient number of families request such programs and the county board finds that such programs are in the best interest of the requesting families and students: *Provided*, That the ability of families to request programs that are fewer than five days a week or less than a full day does not relieve the county of the obligation to provide all resident children with the opportunity to enroll in a full-day program; and

(3) A parent of a child enrolled in an early education program may withdraw a child from that program for good cause by notifying the district. Good cause includes, but is not limited to, enrollment of the child in another program or the immaturity of the child. A child withdrawn under this section is not subject to the attendance provisions of this chapter until that child again enrolls in a public school in this state.

(e) Enrollment of students in Head Start, in any other program approved by the state superintendent as provided in subsection (k) of this section ~~shall~~ may be counted toward satisfying the requirement of subsection (c) of this section.

(f) For the purposes of implementation financing, all counties are encouraged to make use of funds from existing sources, including:

(1) Federal funds provided under the Elementary and Secondary Education Act pursuant to 20 U. S. C. §6301, *et seq.*;

(2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, *et seq.*;

(3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601, *et seq.*;

(4) Funds provided by the School Building Authority pursuant to article nine-d of this chapter;

(5) In the case of counties with declining enrollments, funds from the state aid formula above the amount indicated for the number of students actually enrolled in any school year; and

(6) Any other public or private funds.

(g) Each county board shall develop a plan for implementing the program required by this section. The plan shall include the following elements:

(1) An analysis of the demographics of the county related to early childhood education program implementation;

(2) An analysis of facility and personnel needs;

(3) Financial requirements for implementation and potential sources of funding to assist implementation;

(4) Details of how the county board will cooperate and collaborate with other early childhood education programs including, but not limited to, Head Start, to maximize federal and other sources of revenue;

(5) Specific time lines for implementation; and

(6) Any other items the state board may require by policy.

(h) A county board shall submit its plan to the Secretary of the Department of Health and Human Resources. The secretary shall approve the plan if the following conditions are met:

(1) The county board has maximized the use of federal and other available funds for early childhood programs;

(2) The county board has provided for the maximum implementation of Head Start programs and other public and private programs approved by the state superintendent pursuant to the terms of subsection (k) of this section; and

(3) If the Secretary of the Department of Health and Human Resources finds that the county board has not met one or more of the requirements of this subsection, but that the county board has acted in good faith and the failure to comply was not the primary fault of the county board, then the secretary shall approve the plan. Any denial by the secretary may be appealed to the circuit court of the county in which the county board is located.

(i) The county board shall submit its plan for approval to the state board. The state board shall approve the plan if the county board has complied substantially with the requirements of subsection (g) of this section and has obtained the approval required in subsection (h) of this section.

(j) Every county board shall submit its plan for reapproval by the Secretary of the Department of Health and Human Resources and by the state board at least every two years after the initial approval of the plan and until full implementation of the early childhood education program in the county. As part of the submission, the county board shall provide a detailed statement of the progress made in implementing its plan. The standards and procedures provided for the original approval of the plan apply to any reapproval.

(k) A county board may not increase the total number of students enrolled in the county in an early childhood program until its program is approved by the Secretary of the Department of Health and Human Resources and the state board.

(l) The state board annually may grant a county board a waiver for total or partial implementation if the state board finds that all of the following conditions exist:

(1) The county board is unable to comply either because:

(A) It does not have sufficient facilities available; or

(B) It does not and has not had available funds sufficient to implement the program;

(2) The county has not experienced a decline in enrollment at least equal to the total number of students to be enrolled; and

(3) Other agencies of government have not made sufficient funds or facilities available to assist in implementation.

Any county board seeking a waiver shall apply with the supporting data to meet the criteria for which they are eligible on or before March 25 for the following school year. The state superintendent shall grant or deny the requested waiver on or before April 15 of that same year.

(m) The provisions of subsections (b), (c) and (d), section eighteen of this article relating to kindergarten apply to early childhood education programs in the same manner in which they apply to kindergarten programs.

(n) Annually, the state board shall report to the Legislative Oversight Commission on Education Accountability on the progress of implementation of this section.

(o) Except as required by federal law or regulation, no county board may enroll students who will be less than four years of age prior to September 1 for the year they enter school.

(p) Neither the state board nor the state department may provide any funds to any county board for the purpose of implementing this section unless the county board has a plan approved pursuant to subsections (h), (i) and (j) of this section.

(q) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this section. The state board shall consult with the Secretary of the Department of Health and Human Resources in the preparation of the rule. The rule shall contain the following:

(1) Standards for curriculum;

(2) Standards for preparing students;

(3) Attendance requirements;

(4) Standards for personnel; and

(5) Any other terms necessary to implement the provisions of this section.

(r) The rule shall include the following elements relating to curriculum standards:

(1) A requirement that the curriculum be designed to address the developmental needs of four-year old children, consistent with prevailing research on how children learn;

(2) A requirement that the curriculum be designed to achieve long-range goals for the social, emotional, physical and academic development of young children;

(3) A method for including a broad range of content that is relevant, engaging and meaningful to young children;

(4) A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and instructional strategies to respond to differences in prior experience, maturation rates and learning styles that young children bring to the classroom;

(5) A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;

(6) A requirement that the curriculum meet the recognized standards of the relevant subject matter disciplines;

(7) A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;

(8) A requirement that the curriculum emphasize the development of thinking, reasoning, decisionmaking and problem-solving skills;

(9) A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and

(10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.

(s) The secretary and the state superintendent shall submit a report to the Legislative Oversight Commission on Education Accountability and the Joint Committee on Government and Finance which addresses, at a minimum, the following issues:

(1) A summary of the approved county plans for providing the early childhood education programs pursuant to this section;

(2) An analysis of the total cost to the state and county boards of implementing the plans;

(3) A separate analysis of the impact of the plans on counties with increasing enrollment; and

(4) An analysis of the effect of the programs on the maximization of the use of federal funds for early childhood programs.

The intent of this subsection is to enable the Legislature to proceed in a fiscally responsible manner, make any necessary program improvements based on reported information prior to implementation of the early childhood education programs.

(t) After the school year 2012-2013, on or before July 1 of each year, each county board shall report the following information to the Secretary of the Department of Health and Human Resources and the state superintendent:

(1) Documentation indicating the extent to which county boards are maximizing resources by using the existing capacity of community-based programs, including, but not limited to, Head Start and child care; and

(2) For those county boards that are including eligible children attending approved, contracted community-based programs in their net enrollment for the purposes of calculating state aid pursuant to article nine-a of this chapter, documentation that the county board is equitably distributing funding for all children regardless of setting.

§18-5-45. School calendar.

(a) As used in this section ~~the following terms have the following meanings:~~

(1) "Instructional day" means a day within the instructional term which meets the following criteria:

(A) Instruction is offered to students for at least the minimum amount of ~~time~~ hours provided by state board rule;

(B) Instructional time is used for instruction, and cocurricular activities; ~~and approved extracurricular activities and, pursuant to the provisions of subdivision twelve, subsection (b), section five, article five-a of this chapter, faculty senates; and~~

(C) ~~Such~~ Other criteria as the state board determines appropriate.

(2) ~~"Accrued instructional time" means instructional time accruing during the instructional term from time added to the instructional day beyond the time required by state board rule for an instructional day. Accrued instructional time may be accumulated and used in larger blocks of time during the school year for instructional or noninstructional activities as further defined by the state board.~~

~~(3) "Extracurricular activities" are activities under the supervision of the school such as athletics, noninstructional assemblies, social programs, entertainment and other similar activities as further defined by the state board.~~

~~(4) (2) "Cocurricular activities" are activities that are closely related to identifiable academic programs or areas of study that serve to complement academic curricula as further defined by the state board.~~

(b) *Findings.* –

(1) The primary purpose of the school system is to provide instruction for students.

(2) The school calendar, as defined in this section, is designed to define the school term both for employees and for instruction.

~~(3) The school calendar traditionally has provided shall provide for one hundred eighty actual separate instructional days of instruction but numerous circumstances have combined to cause the actual number of instructional days to be less than one hundred eighty.~~

~~(4) The quality and amount of instruction offered during the instructional term is affected by the extracurricular and cocurricular activities allowed to occur during scheduled instructional time.~~

~~(5) Within reasonable guidelines, the school calendar should be designed at least to guarantee that one hundred eighty actual days of instruction are possible.~~

(c) The county board shall provide a school term for its schools that contains the following:

(1) An employment term for teachers of no less than that excludes Saturdays and Sundays and consists of at least two hundred days, exclusive of Saturdays and Sundays; and which need not be successive. The beginning and closing dates of the employment term may not exceed forty-eight weeks;

(2) Within the employment term, an instructional term for students of no less than one hundred eighty separate instructional days, which shall include an icy conditions inclement weather and emergencies plan designed to guarantee an instructional term for students of no less than one hundred eighty separate instructional days;

(3) Within the employment term, noninstructional days shall total twenty and shall be comprised of the following:

(A) Seven paid holidays;

(B) Election day as specified in section two, article five, chapter eighteen-a of this code;

(C) Six days to be designated by the county board to be used by the employees outside the school environment, with at least four outside the school environment days scheduled to occur after the one hundred and thirtieth instructional day of the school calendar; and

(D) The remaining days to be designated by the county board for purposes to include, but not be limited to:

(i) Curriculum development;

(ii) Preparation for opening and closing school;

(iii) Professional development;

(iv) Teacher-pupil-parent conferences;

(v) Professional meetings;

(vi) Making up days when instruction was scheduled but not conducted; and

(vii) At least four two-hour blocks of time for faculty senate meetings with each two-hour block of time scheduled once at least every forty-five instructional days; and

(4) Scheduled out-of-calendar days that are to be used for instructional days in the event school is canceled for any reason.

~~(d) The instructional term for students shall include one instructional day in each of the months of October, December, February, April and June which is an instructional support and enhancement day scheduled by the board to include both instructional activities for students and professional activities for teachers to improve student instruction. Instructional support and enhancement days are subject to the following provisions: A county board of education shall develop a policy that requires additional minutes of instruction in the school day or additional days of instruction to recover time lost due to late arrivals and early dismissals.~~

~~(1) Two hours of the instructional support and enhancement day shall be used for instructional activities for students. The instructional activities for students are subject to the following provisions:~~

~~(A) The instructional activities for students require the direct supervision or involvement by teachers;~~

~~(B) The instructional activities for students shall be limited to two hours;~~

~~(C) The instructional activities for students shall be determined and scheduled at the local school level;~~

~~(D) The instructional activities for students may include, but are not limited to, both in-school and outside of school activities such as student mentoring, tutoring, counseling, student research and other projects or activities of an instructional nature, community service, career exploration, parent and teacher conferences, visits to the homes of students, college and financial aid workshops and college visits;~~

~~(E) To ensure that the students who attend are properly supervised, the instructional activities for students shall be arranged by appointment with the individual school through the principal, a teacher or other professional personnel at the school; and~~

~~(F) Each school shall establish a policy relating to the use of the two-hour block scheduled for instructional activities for students;~~

~~(2) The instructional support and enhancement day shall include a two-hour block of time for professional activities for teachers during which the faculty senate shall have the opportunity to meet;~~

~~(3) All time remaining in the school day after meeting the requirements of subdivisions (1) and (2) of this subsection, not including the duty-free lunch period, shall be used for other professional activities for teachers to improve student instruction which may include, but are not limited to, professional staff development, curriculum team meetings, individualized education plan meetings and other meetings between teachers, principals, aides and paraprofessionals to improve student instruction as determined and scheduled at the local school level;~~

~~(4) Notwithstanding any other provision of law or policy to the contrary, the presence of any specific number of students in attendance at the school for any specific period of time shall not be required on instructional support and enhancement days and the transportation of students to the school shall not be required;~~

~~(5) Instructional support and enhancement days are also a scheduled work day for all service personnel and shall be used for training or other tasks related to their job classification if their normal duties are not required; and~~

~~(6) Nothing in this section may be construed to require that the instructional activities for students, faculty senate meetings and other professional activities for teachers be scheduled in any certain order.~~

~~(e) The instructional term shall commence on a date selected by the county board and terminate on a date selected by the county board. If it is not possible to complete one hundred eighty separate instructional days with the current school calendar, the county board shall schedule instruction on any available noninstructional day, regardless of the purpose for which the day originally was scheduled, or an out-of-calendar day and the day will be used for instruction of students: *Provided*, That the provisions of this subsection do not apply to:~~

~~(A) Holidays;~~

~~(B) Election day;~~

~~(C) Saturdays and Sundays.~~

~~(f) Noninstructional days shall total twenty and shall be comprised of the following: The instructional term shall commence and terminate on a date selected by the county board.~~

~~(1) Seven holidays as specified in section two, article five, chapter eighteen-a of this code;~~

~~(2) Election day as specified in section two, article five, chapter eighteen-a of this code;~~

~~(3) Six days to be designated by the county board to be used by the employees outside the school environment; and~~

~~(4) Six days to be designated by the county board for any of the following purposes:~~

~~(A) Curriculum development;~~

~~(B) Preparation for opening and closing school;~~

~~(C) Professional development;~~

~~(D) Teacher-pupil-parent conferences;~~

~~(E) Professional meetings; and~~

~~(F) Making up days when instruction was scheduled but not conducted.~~

~~(g) Three of the days described in subdivision (4), subsection (f) of this section shall be scheduled prior to the commencement of the instructional term for the purposes of preparing for the opening of school and staff development. The state board may not schedule the primary statewide assessment program more than thirty days prior to the end of the instructional year unless the state board determines that the nature of the test mandates an earlier testing date.~~

~~(h) At least one of the days described in subdivision (4), subsection (f) of this section shall be scheduled after the termination of the instructional term for the purpose of preparing for the closing of school. The following applies to cocurricular activities:~~

~~(1) The state board shall determine what activities may be considered cocurricular;~~

~~(2) The state board shall determine the amount of instructional time that may be consumed by cocurricular activities; and~~

(3) Other requirements or restrictions the state board may provide in the rule required to be promulgated by this section.

(l) At least four of the days described in subdivision (3), subsection (f) of this section shall be scheduled after March 1. Extracurricular activities may not be used for instructional time.

(j) At least two of the days described in subdivision (4), subsection (f) of this section will be scheduled for professional development. The professional development conducted on these days will be consistent with the goals established by the state board pursuant to the provisions of section twenty-three-a, article two of this chapter. Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach.

(k) Subject to the provisions of subsection (h) of this section, all noninstructional days will be scheduled prior to the termination of the instructional term. Prior to implementing the school calendar, the county board shall secure approval of its proposed calendar from the state board or, if so designated by the state board, from the state superintendent.

(l) The state board may not schedule the primary statewide assessment program prior to May 15 of the instructional year unless the state board determines that the nature of the test mandates an earlier testing date. In formulation of a school's calendar, a county school board shall hold at least two public meetings that allow parents, teachers, teacher organizations, businesses and other interested parties within the county to discuss the school calendar. The public notice of the date, time and place of the public hearing must be published in a local newspaper of general circulation in the area as a Class II legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

(m) If, on or after March 1, the county board determines that it is not possible to complete one hundred eighty separate days of instruction, the county board shall schedule instruction on any available noninstructional day, regardless of the purpose for which the day originally was scheduled, and the day will be used for instruction, subject to the following: The county board may contract with all or part of the personnel for a longer term of employment.

(1) The noninstructional days scheduled for professional development shall be the last available noninstructional days to be rescheduled as instructional days;

(2) On or after March 1, the county board also may require additional minutes of instruction in the school day to make up for lost instructional days in excess of the days available through rescheduling and, if in its judgment it is reasonable and necessary to improve student performance, to avoid scheduling instruction on noninstructional days previously scheduled for professional development; and

(3) The provisions of this subsection do not apply to:

(1) Holidays; and

(2) Election day.

(n) The following applies to accrued instructional time: The minimum instructional term may be decreased by order of the state superintendent in any county declared a federal disaster area and where the event causing the declaration is substantially related to a reduction of instructional days.

(1) Except as provided in subsection (m) of this section, accrued instructional time may not be used to avoid one hundred eighty separate days of instruction;

(2) Accrued instructional time may not be used to lengthen the time provided in law for faculty senates;

(3) The use of accrued instructional time for extracurricular activities will be limited by the state board;

~~(4) Accrued instructional time may be used by schools and counties to provide additional time for professional staff development and continuing education as may be needed to improve student performance and meet the requirements of the federal mandates affecting elementary and secondary education. The amount of accrued instructional time used for this purpose may not exceed three instructional days; and~~

~~(5) Other requirements or restrictions the state board may provide in the rule required to be promulgated by this section.~~

~~(o) The following applies to cocurricular activities: Notwithstanding any provision of this code to the contrary, the state board may grant a waiver to a county board for its noncompliance with provisions of chapter eighteen, eighteen-a, eighteen-b and eighteen-c of this code to maintain compliance in reaching the mandatory one hundred eighty separate instructional days established in this section.~~

~~(1) The state board shall determine what activities may be considered cocurricular;~~

~~(2) The state board shall determine the amount of instructional time that may be consumed by cocurricular activities; and~~

~~(3) Other requirements or restrictions the state board may provide in the rule required to be promulgated by this section.~~

~~(p) The following applies to extracurricular activities: The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section.~~

~~(1) Except as provided by subdivision (3) of this subsection, extracurricular activities may not be scheduled during instructional time;~~

~~(2) The use of accrued instructional time for extracurricular activities will be limited by the state board; and~~

~~(3) The state board shall provide for the attendance by students of certain activities sanctioned by the Secondary School Activities Commission when those activities are related to statewide tournaments or playoffs or are programs required for Secondary School Activities Commission approval.~~

~~(q) Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach. The amendments to this section during the 2013 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2013, and the provisions of this section immediately prior to those amendments remain in effect until July 1, 2013.~~

~~(r) Nothing in this section prohibits establishing year-round schools in accordance with rules to be established by the state board.~~

~~(s) Prior to implementing the school calendar, the county board shall secure approval of its proposed calendar from the state board or, if so designated by the state board, from the state superintendent.~~

~~(t) The county board may contract with all or part of the personnel for a longer term.~~

~~(u) The minimum instructional term may be decreased by order of the state superintendent in any county declared a federal disaster area and where the event causing the declaration is substantially related to a reduction of instructional days.~~

~~(v) Where the employment term overlaps a teacher's or service personnel's participation in a summer institute or institution of higher education for the purpose of advancement or professional growth, the teacher or service personnel may substitute, with the approval of the county superintendent, the participation for up to five of the noninstructional days of the employment term.~~

~~(w) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section.~~

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

(a) There is established at every public school in this state a faculty senate which is comprised of all permanent, full-time professional educators employed at the school who shall all be voting members. Professional educators, as used in this section, means “professional educators” as defined in chapter eighteen-a of this code. A quorum of more than one half of the voting members of the faculty shall be present at any meeting of the faculty senate at which official business is conducted. Prior to the beginning of the instructional term each year, but within the employment term, the principal shall convene a meeting of the faculty senate to elect a chair, vice chair and secretary and discuss matters relevant to the beginning of the school year. The vice chair shall preside at meetings when the chair is absent. Meetings of the faculty senate shall be held during the times provided in accordance with subdivision (12), subsection (b) of this section as determined by the faculty senate. Emergency meetings may be held during noninstructional time at the call of the chair or a majority of the voting members by petition submitted to the chair and vice chair. An agenda of matters to be considered at a scheduled meeting of the faculty senate shall be available to the members at least two employment days prior to the meeting. For emergency meetings the agenda shall be available as soon as possible prior to the meeting. The chair of the faculty senate may appoint such committees as may be desirable to study and submit recommendations to the full faculty senate, but the acts of the faculty senate shall be voted upon by the full body.

(b) In addition to any other powers and duties conferred by law, or authorized by policies adopted by the state or county board of education or bylaws which may be adopted by the faculty senate not inconsistent with law, the powers and duties listed in this subsection are specifically reserved for the faculty senate. The intent of these provisions is neither to restrict nor to require the activities of every faculty senate to the enumerated items except as otherwise stated. Each faculty senate shall organize its activities as it ~~deems~~ considers most effective and efficient based on school size, departmental structure and other relevant factors.

(1) Each faculty senate shall control funds allocated to the school from legislative appropriations pursuant to section nine, article nine-a of this chapter. From ~~such those~~ funds, each classroom teacher and librarian shall be allotted \$100 for expenditure during the instructional year for academic materials, supplies or equipment which, in the judgment of the teacher or librarian, will assist him or her in providing instruction in his or her assigned academic subjects or shall be returned to the faculty senate: *Provided*, That nothing contained herein prohibits the funds from being used for programs and materials that, in the opinion of the teacher, enhance student behavior, increase academic achievement, improve self esteem and address the problems of students at risk. The remainder of funds shall be expended for academic materials, supplies or equipment in accordance with a budget approved by the faculty senate. Notwithstanding any other provisions of the law to the contrary, funds not expended in one school year are available for expenditure in the next school year: *Provided, however*, That the amount of county funds budgeted in a fiscal year may not be reduced throughout the year as a result of the faculty appropriations in the same fiscal year for such materials, supplies and equipment. Accounts shall be maintained of the allocations and expenditures of such funds for the purpose of financial audit. Academic materials, supplies or equipment shall be interpreted broadly, but does not include materials, supplies or equipment which will be used in or connected with interscholastic athletic events.

(2) A faculty senate may establish a process for members to interview ~~new prospective professional educators and paraprofessional employees at the school and submit recommendations regarding employment to the principal, who may also make independent recommendations, for submission to the county superintendent.~~ *Provided*, That such process shall be chaired by the school principal and must permit the timely employment of persons to perform necessary duties or otherwise obtain information regarding applicants for classroom teaching vacancies that will enable the faculty senate to submit recommendations regarding employment to the principal. To facilitate the establishment of a process that

is timely, effective, consistent among schools and counties, and designed to avoid litigation or grievance, the state board shall promulgate a rule pursuant to article three-b, chapter twenty-nine-a of this code to implement the provisions of this subdivision. The rule may include the following:

(A) A process or alternative processes that a faculty senate may adopt;

(B) If determined necessary, a requirement and procedure for training for principals and faculty senate members or their designees who may participate in interviews and provisions that may provide for the compensation based on the appropriate daily rate of a classroom teacher who directly participates in the training for periods beyond his or her individual contract;

(C) Time lines that will assure the timely completion of the recommendation or the forfeiture of the right to make a recommendation upon the failure to complete a recommendation within a reasonable time;

(D) The authorization of the faculty senate to delegate the process for making a recommendation to a committee of no less than three members of the faculty senate; and

(E) Such other provisions as the state board determines are necessary or beneficial for the process to be established by the faculty senate.

(3) A faculty senate may nominate teachers for recognition as outstanding teachers under state and local teacher recognition programs and other personnel at the school, including parents, for recognition under other appropriate recognition programs and may establish such programs for operation at the school.

(4) A faculty senate may submit recommendations to the principal regarding the assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

(5) A faculty senate may submit recommendations to the principal regarding establishment of the master curriculum schedule for the next ensuing school year.

(6) A faculty senate may establish a process for the review and comment on sabbatical leave requests submitted by employees at the school pursuant to section eleven, article two of this chapter.

(7) Each faculty senate shall elect three faculty representatives to the local school improvement council established pursuant to section two of this article.

(8) Each faculty senate may nominate a member for election to the county staff development council pursuant to section eight, article three, chapter eighteen-a of this code.

(9) Each faculty senate shall have an opportunity to make recommendations on the selection of faculty to serve as mentors for beginning teachers under beginning teacher internship programs at the school.

(10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations and any other funds made available to the faculty senate: *Provided*, That the faculty senate shall select a member who has the duty of maintaining a record of all funds received and expended by the faculty senate, which record shall be kept in the school office and is subject to normal auditing procedures.

(11) Any faculty senate may review the evaluation procedure as conducted in their school to ascertain whether the evaluations were conducted in accordance with the written system required pursuant to section twelve, article two, chapter eighteen-a of this code or pursuant to section two, article three-c, chapter eighteen-a of this code, as applicable, and the general intent of this Legislature regarding meaningful performance evaluations of school personnel. If a majority of members of the faculty senate determine that such evaluations were not so conducted, they shall submit a report in writing to the State Board of Education: *Provided*, That nothing herein creates any new right of access to or review of any individual's evaluations.

(12) A local board shall provide to each faculty senate a two-hour block of time for a faculty senate meeting on a day scheduled for the opening of school prior to the beginning of the instructional term, and a at least four additional two-hour blocks of time on each instructional support and enhancement day scheduled by the board for instructional activities for students and professional activities for teachers pursuant to section forty-five, article five of this chapter. A faculty senate may meet for an unlimited block of time per month during noninstructional days to discuss and plan strategies to improve student instruction and to conduct other faculty senate business during noninstructional days, with each two-hour block of time scheduled once at least every forty-five instructional days. A faculty senate may meet for an unlimited block of time during noninstructional days to discuss and plan strategies to improve student instruction and to conduct other faculty senate business. A faculty senate meeting scheduled on a noninstructional day shall be considered as part of the purpose for which the noninstructional day is scheduled. This time may be utilized used and determined at the local school level and includes, but is not limited to, faculty senate meetings.

(13) Each faculty senate shall develop a strategic plan to manage the integration of special needs students into the regular classroom at their respective schools and submit the strategic plan to the superintendent of the county board of ~~education~~ periodically pursuant to guidelines developed by the State Department of Education. Each faculty senate shall encourage the participation of local school improvement councils, parents and the community at large in developing the strategic plan for each school.

Each strategic plan developed by the faculty senate shall include at least: (A) A mission statement; (B) goals; (C) needs; (D) objectives and activities to implement plans relating to each goal; (E) work in progress to implement the strategic plan; (F) guidelines for placing additional staff into integrated classrooms to meet the needs of exceptional needs students without diminishing the services rendered to the other students in integrated classrooms; (G) guidelines for implementation of collaborative planning and instruction; and (H) training for all regular classroom teachers who serve students with exceptional needs in integrated classrooms.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-1. Employment in general.

(a) The employment of professional personnel shall be made by the board only upon nomination and recommendation of the superintendent, subject to the following:

(1) ~~Provided, That~~ The superintendent shall provide the principal at the school at which the professional educator or paraprofessional employee is to be employed an opportunity to interview all qualified applicants and make recommendations to the county superintendent regarding their employment; ;

(2) The principal may not recommend for employment an individual who is related to him or her as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister;

(3) ~~Provided, however, That~~ Nothing shall prohibit the timely employment of persons to perform necessary duties; ;

(4) In case the board refuses to employ any or all of the persons nominated, the superintendent shall nominate others and submit the same to the board at such time as the board may direct; ;

(5) All personnel so nominated and recommended for employment and for subsequent assignment shall meet the certification, licensing, training and other eligibility classifications as may be required by provisions of this chapter and by state board ~~regulation rule~~. In addition to any other information required, the application for any certification or licensing shall include the applicant's Social Security number.

(b) Professional personnel employed as deputy, associate or assistant superintendents by the board in offices, departments or divisions at locations other than a school and who are directly answerable to the superintendent shall serve at the will and pleasure of the superintendent and may be removed by the superintendent upon approval of the board. Such professional personnel shall retain seniority rights only in the area or areas in which they hold valid certification or licensure.

§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.

(a) The superintendent, subject only to approval of the board, may assign, transfer, promote, demote or suspend school personnel and recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before March 1 if he or she is being considered for transfer or to be transferred. Only those employees whose consideration for transfer or intended transfer is based upon known or expected circumstances which will require the transfer of employees shall be considered for transfer or intended for transfer and the notification shall be limited to only those employees. Any teacher or employee who desires to protest the proposed transfer may request in writing a statement of the reasons for the proposed transfer. The statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of the reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education. The hearing on the proposed transfer shall be held on or before April 15. At the hearing, the reasons for the proposed transfer must be shown.

(b) The superintendent at a meeting of the board on or before April 15 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. An employee who was not provided notice and an opportunity for a hearing pursuant to subsection (a) of this section may not be included on the list. All other teachers and 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 the meeting and all those so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to the persons' last known addresses within ten days following the board meeting, of their having been so recommended for transfer and subsequent assignment and the reasons therefor.

(c) The superintendent's authority to suspend school personnel shall be temporary only pending a hearing upon charges filed by the superintendent with the county board of education and the period of suspension may not exceed thirty days unless extended by order of the board.

(d) The provisions of this section respecting hearing upon notice of transfer is not applicable in emergency situations where the school building becomes damaged or destroyed through an unforeseeable act and which act necessitates a transfer of the school personnel because of the aforementioned condition of the building.

(e) Notwithstanding this section or any provision of this code, when actual student enrollment in a grade level or program, unforeseen before March 1 of the preceding school year, permits the assignment of fewer teachers or service personnel to or within a school under any pupil-teacher ratio, class size or caseload standard established in section eighteen-a, article five, chapter eighteen of this code or any policy of the state board, the superintendent, with board approval, may reassign the surplus personnel to another school or to another grade level or program within the school if needed there to comply with any such pupil-teacher ratio, class size or caseload standard.

(1) Before any reassignment may occur pursuant to this subsection, notice shall be provided to the employee and the employee shall be provided an opportunity to appear before the county board to state the reasons for his or her objections, if any, prior to the board voting on the reassignment.

(2) Except as otherwise provided in subdivision (1) of this subsection, the reassignment may be made without following the notice and hearing provisions of this section, and at any time during the school year when the conditions of this subsection are met: *Provided*, That the reassignment may not occur after the last day of the second school month.

(3) A professional employee reassigned under this subsection shall be the least senior of the surplus professional personnel who holds certification or licensure to perform the duties at the other school or at the grade level or program within the school.

(4) A service employee reassigned under this subsection shall be the least senior of the surplus personnel who holds the same classification or multiclassification needed to perform the duties at the other school or at the grade level or program within the same school.

(5) No school employee's annual contract term, compensation or benefits shall be changed as a result of a reassignment under this subsection.

ARTICLE 3. TRAINING; CERTIFICATION; LICENSING; PROFESSIONAL DEVELOPMENT.

§18A-3-1d. Study of alternative certification programs.

The state board shall conduct a study on alternative certification programs, including the effectiveness of the current methods of alternative certification, any improvements needed on current methods of alternative certification and potential additional methods of certification that would enhance the ability of the State of West Virginia to place effective teachers in areas of high need. "Areas of high need" means those subject areas, public schools or geographic areas of the state in which the state board determines that critical teacher shortages exist. The board shall report its findings and recommendations to the Legislative Oversight Commission on Education Accountability no later than December 31, 2013.

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-1. Center for Professional Development; intent and mission; Principals Academy curriculum and expenses; authorization to charge fees.

(a) Teaching is a profession that directly correlates to the social and economic well being of a society and its citizens. Superior teaching is essential to a well-educated and productive populace. Strong academic leadership provided by principals and administrators skilled in modern management principles is also essential. The intent of this article is to recognize the value of professional involvement by experienced educators, principals and administrators in building and maintaining a superior force of professional educators and to establish avenues for applying this involvement.

(b) The general mission of the center is to advance the quality of teaching and management in the schools of West Virginia through: (1) The implementation primarily of statewide training, professional staff development, including professional staff development for at least teachers, principals and paraprofessionals and technical assistance programs and practices as recommended by the state board to assure the highest quality of teaching and management; and (2) the provision of technical and other assistance and support to regional and local education agencies in identifying and providing high-quality professional staff development, including professional staff development for at least teachers, principals and paraprofessionals, and training programs and implementing best practices to meet their locally identified needs. The center also may implement local programs if the state board, in its Master Plan for Professional Staff Development established pursuant to ~~section twenty-three a~~, article two-i, chapter eighteen-a of this code, determines that there is a specific local need for the programs. Additionally, the center shall perform other duties assigned to it by law.

Nothing in this article ~~shall be construed to require~~ any specific level of funding by the Legislature.

(c) The Center for Professional Development Board is reconstituted, and all terms of members elected or appointed prior to the effective date of this section are expired. The center board shall consist of thirteen persons as follows:

(1) The Secretary of Education and the Arts, ex officio, and the state superintendent, ex officio, each of whom is:

(A) Entitled to vote; and

(B) A cochair of the board.

(2) Two members of the state board, elected by the state board;

(3) One person employed by West Virginia University and one person employed by Marshall University, both of whom are:

(A) Appointed by the president of the employing institution;

(B) Faculty in the teacher education section of the employing institution; and

(C) Knowledgeable in matters relevant to the issues addressed by the center;

(4) One regional education service agency executive director, elected by all of the regional education service agency executive directors;

(5) Three experienced educators, of whom one is a working classroom teacher, one is a school principal and one is a county administrator. All such educators are:

(A) Appointed by the Governor by and with the advice and consent of the Senate;

(B) Experienced educators who have achieved recognition for their superior knowledge, ability and performance in teaching or management, as applicable; and

(C) Knowledgeable in matters relevant to the issues addressed by the center; and

(6) Three citizens of the state who are:

(A) Knowledgeable in matters relevant to the issues addressed by the center, including, but not limited to, professional development and management principles; and

(B) Appointed by the Governor by and with the advice and consent of the Senate.

(C) Not more than two such members may be residents within the same congressional district.

(d) Each appointment and election is for a two-year term. Such members may serve no more than two consecutive two-year terms.

(1) The state board shall elect another member to fill the unexpired term of any person who vacates state board membership.

(2) The regional education service agency executive directors shall elect an executive director to fill the unexpired term of any executive director who ceases to be employed in that capacity.

(3) Of the initial members appointed by the Governor, three are appointed for one-year terms and three are appointed for two-year terms. Each successive appointment by the Governor is for a two-year term. The

Governor shall appoint a new member to fill the unexpired term of any vacancy in the appointed membership.

(4) The President of West Virginia University and Marshall University each appoints an employee to fill the unexpired term of any member who ceases to be employed by that institution.

(e) The Center for Professional Development Board shall meet at least quarterly and the appointed members shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of their official duties from funds appropriated or otherwise made available for those purposes upon submission of an itemized statement therefor.

(f) The position of executive director is abolished. The Governor shall appoint, by and with the advice and consent of the Senate, a chief executive officer with knowledge and experience in professional development and management principles. Any reference in this code to the Executive Director of the Center for Professional Development means the Chief Executive Officer. From appropriations to the Center for Professional Development, the center board sets the salary of the chief executive officer. The center board, upon the recommendation of the chief executive officer, may employ other staff necessary to carry out the mission and duties of the center. The chief executive officer serves at the will and pleasure of the Governor. Annually, the center board shall evaluate the chief executive officer, and shall report the results to the Governor. The duties of the chief executive officer include:

(1) Managing the daily operations of the center;

(2) Ensuring the implementation of the center's mission;

(3) Ensuring collaboration of the center with other professional development providers;

(4) Requesting from the Governor and the Legislature any resources or statutory changes that would help in enhancing the collaboration of all professional development providers in the state, in advancing the quality of professional development through any other means or both;

(5) Serving as the Chair of the Principals Standards Advisory Council created in section two-c, article three of this chapter and convening regular meetings of this council to effectuate its purposes; and

(6) Other duties as assigned by the Governor or the center board.

(g) When practicable, personnel employed by state higher education agencies and state, regional and county public education agencies shall be made available to the center to assist in the operation of projects of limited duration, subject to the provisions of section twenty-four, article two, chapter eighteen of this code.

(h) The center shall assist in the delivery of programs and activities pursuant to this article to meet statewide, and if needed as determined by the goals and Master Plan for Professional Staff Development established by the state board pursuant to ~~section twenty-three-a~~, article two-i, chapter eighteen-a of this code, the local professional development needs of paraprofessionals, teachers, principals and administrators and may contract with existing agencies or agencies created after the effective date of this section or others to provide training programs in the most efficient manner. Existing programs currently based in agencies of the state shall be continued in the agency of their origin unless the center establishes a compelling need to transfer or cancel the existing program. The center shall recommend to the Governor the transfer of funds to the providing agency, if needed, to provide programs approved by the center.

(i) The Center for Professional Development shall implement training and professional development programs for the Principals Academy based upon the minimum qualities, proficiencies and skills necessary for principals in accordance with the standards established by the state board pursuant to the terms of section two-c, article three of this chapter.

(j) In accordance with section two-c, article three of this chapter, the center ~~shall be~~ is responsible for paying reasonable and necessary expenses for persons attending the Principals Academy: *Provided*, That nothing in this section ~~shall be construed to~~ requires any specific level of funding by the Legislature.

(k) Persons attending the professional development offerings of the center and other courses and services offered by the Center for Professional Development, except the Principals Academy shall be assessed fees which shall be less than the full cost of attendance. There is hereby created in the State Treasury a special revenue account known as the "Center for Professional Development Fund". All moneys collected by the center shall be deposited in the fund for expenditure by the center board for the purposes specified in this section. Moneys remaining in the fund at the end of the fiscal year are subject to reappropriation by the Legislature.

(l) The center board shall make collaboration with the state board in providing professional development services in the following areas a priority:

(1) Services to those public schools selected by the state superintendent pursuant to section three-g, article two-e, chapter eighteen of this code; and

(2) Services in any specific subject matter area that the state board, the Legislature or both, determine is justified due to a need to increase student achievement in that area.

§18A-3A-2. Professional development project.

Subject to the provisions of ~~section twenty-three-a~~, article two-i, chapter eighteen-a of this code, through this project the Center for Professional Development shall:

(1) Identify, coordinate, arrange and otherwise assist in the delivery of professional development programs and activities that help professional educators acquire the knowledge, skills, attitudes, practices and other such pertinent complements considered essential for an individual to demonstrate appropriate performance as a professional person in the public schools of West Virginia. The basis for the performance shall be the laws, policies and regulations adopted for the public schools of West Virginia, and amendments thereto. The center also may permit and encourage school personnel such as classroom aides, higher education teacher education faculty and higher education faculty in programs such as articulated tech prep associate degree and other programs to participate in appropriate professional development programs and activities with public school professional educators;

(2) Identify, coordinate, arrange and otherwise assist in the delivery of professional development programs and activities that help principals and administrators acquire knowledge, skills, attitudes and practices in academic leadership and management principles for principals and administrators and such other pertinent complements considered essential for principals and administrators to demonstrate appropriate performance in the public schools of West Virginia. The basis for the performance shall be the laws, policies and regulations adopted for the public schools of West Virginia, and amendments thereto;

(3) Serve in a coordinating capacity to assure that the knowledge, skills, attitude and other pertinent complements of appropriate professional performance which evolve over time in the public school environment are appropriately reflected in the programs approved for the education of professional personnel, including, but not limited to, advising the teacher education programs of major statutory and policy changes in the public schools which affect the job performance requirements of professional educators, including principals and administrators;

(4) Provide for the routine updating of professional skills of professional educators, including principals and administrators, through in-service and other programs. The routine updating may be provided by the center through statewide or regional institutes which may require a registration fee;

(5) Provide for the routine education of all professional educators, including principals and administrators, and those service personnel having direct contact with students on warning signs and resources to assist in

suicide prevention under guidelines established by the state board. The education may be accomplished through self review of suicide prevention materials and resources approved by the state board. The provisions of this paragraph may be known and cited as the “Jason Flatt Act of 2012”;

(6) Provide consultation and assistance to county staff development councils established under the provisions of section eight, article three of this chapter in planning, designing, coordinating, arranging for and delivering professional development programs to meet the needs of the professional educators of their district. From legislative appropriations to the center, exclusive of the amounts required for the expenses of the principals academy, the center shall, unless otherwise directed by the Legislature, provide assistance in the delivery of programs and activities to meet the expressed needs of the school districts for professional development to help teachers, principals and administrators demonstrate appropriate performance based on the laws, policies and regulations adopted for the public schools of West Virginia; and

(7) Cooperate and coordinate with the institutions of higher education to provide professional staff development programs that satisfy some or all of the criteria necessary for currently certified professional educators to meet the requirements for an additional endorsement in an area of certification and for certification to teach in the middle school grades.

If the center is not able to reach agreement with the representatives of the institutions providing teacher education programs on which courses will be approved for credit toward additional endorsements, the state board may certify certain professional staff development courses to meet criteria required by the state board. This certification shall be done on a course-by-course basis.

~~§18A-3A-2a. Development training project.~~

~~Subject to the provisions of section twenty-three-a, article two, chapter eighteen of this code, through this project the center shall develop training in the area of developmental instruction with an emphasis in grades kindergarten through grade four.~~

§18A-3A-3. Professional personnel evaluation project.

Subject to the provisions of ~~section twenty-three-a~~, article two-~~i~~, chapter eighteen-~~a~~ of this code, through this project the center shall:

(1) Establish programs that provide education and training in evaluation skills to administrative personnel who will evaluate the employment performance of professional personnel pursuant to the provisions of section twelve, article two of this chapter; and

(2) Establish programs that provide instruction to classroom teachers who will serve as beginning teacher mentors in accordance with the provisions of section two-b, article three of this chapter.

~~§18A-3A-6. Attendance outside the employment term.~~

~~(a) A professional educator may not be required to attend the principals academy or any other program offered through the Center for Professional Development outside his or her employment term. A professional educator may attend the academy or other program outside his or her employment term by mutual agreement between the Center, the educator, and his or her employer.~~

~~(b) The provisions of this section expire on the first day of July, two thousand six.~~

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2a. State minimum salary bonus for classroom teachers with national board certification.

(a) The Legislature ~~hereby~~ finds and declares that the rigorous standards and processes for certification by the National Board for Professional Teaching Standards (NBPTS) helps to promote the quality of teaching

and learning. Therefore, classroom teachers in the public schools of West Virginia should be encouraged to achieve national board certification through a reimbursement of expenses and an additional salary bonus which reflects their additional certification, to be paid in accordance with the provisions of this section.

(b) (1) \$3,500 shall be paid annually to each classroom teacher who holds a valid certificate issued by the National Board of Professional Teaching Standards for the life of the certification, but in no event more than ten years for any one certification.

(2) \$3,500 shall be paid annually to each classroom teacher who holds a valid renewal certificate issued by the National Board of Professional Teaching Standards for the life of the renewal certificate, but in no event more than ten years for any one renewal certificate.

(c) The payments:

(1) Shall be in addition to any amounts prescribed in the applicable state minimum salary schedule;

(2) Shall be paid in equal monthly installments; and

(3) Shall be considered a part of the state minimum salaries for teachers.

(d) For initial certification, one half the certification fee shall be paid for reimbursement once to each teacher who enrolls in the program for the National Board for Professional Teaching Standards certification and one half the certification fee shall be paid for reimbursement once to each teacher who completes the National Board for Professional Teaching Standards certification. Completion shall be defined as the completion of ten scorable entries, as verified by the National Board for Professional Teaching Standards. Teachers who achieve National Board for Professional Teaching Standards certification may be reimbursed a maximum of \$600 for expenses actually incurred while obtaining the National Board for Professional Teaching Standards certification.

~~(e) The state board shall limit the number of teachers who receive the initial reimbursements of the certification fees set forth in subsection (d) to two hundred teachers annually. The state board shall establish selection criteria for the teachers by the legislative rule required pursuant to subsection (g) of this section. For renewal certification, each teacher who completes the National Board for Professional Teaching Standards certification renewal process shall be reimbursed for the renewal certification fee. Completion of the certification renewal process means the successful renewal of the ten-year certification as verified by the National Board for Professional Teaching Standards.~~

~~(f) Subject to the provisions of subsection (e) of this section, funding for reimbursement of the certification fee and expenses actually incurred while obtaining the National Board for Professional Teaching Standards certifications shall be administered by the state Department of Education from an appropriation established for that purpose by the Legislature. If funds appropriated by the Legislature to accomplish the purposes of this subsection are insufficient, the state department shall prorate the reimbursements for expenses and shall request of the Legislature, at its next regular session, funds sufficient to accomplish the purposes of this subsection, including needed retroactive payments. The state board shall establish selection criteria for the teachers by the legislative rule required pursuant to subsection (h) of this section.~~

~~(g) The state board shall promulgate legislative rules pursuant to article three-b, chapter twenty-nine-a of this code to implement the provisions of this section. Funding for reimbursement of the initial certification fee and expenses actually incurred while obtaining the National Board for Professional Teaching Standards certifications and funding for reimbursement of the renewal certification fee shall be administered by the State Department of Education from an appropriation established for that purpose by the Legislature. If funds appropriated by the Legislature to accomplish the purposes of this subsection are insufficient, the state department shall prorate the reimbursements for expenses and shall request of the Legislature, at its next regular session, funds sufficient to accomplish the purposes of this subsection, including needed retroactive payments.~~

(h) The state board shall promulgate legislative rules pursuant to article three-b, chapter twenty-nine-a of this code to implement the provisions of this section.

§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.

(a) A county board of education shall make decisions affecting the hiring of filling of vacancies in professional positions other than classroom teachers- of employment on the basis of the applicant with the highest qualifications: *Provided*, That the county superintendent shall be hired under separate criteria pursuant to section two, article four, chapter eighteen of this code.

(c) ~~(b) The county board shall make decisions affecting the hiring of new classroom teachers on the basis of the applicant with the highest qualifications. In judging qualifications for hiring employees pursuant to subsections (a) and (b) of this section the filling of vacancies of professional positions of employment, consideration shall be given to each of the following:~~

(1) Appropriate certification, licensure or both;

(2) Amount of experience relevant to the position; or, in the case of a classroom teaching position, the amount of teaching experience in the ~~subject~~ required certification area;

(3) The amount of course work, degree level or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) ~~Relevant specialized training~~ In the case of a classroom teaching position or the position of principal, certification by the National Board for Professional Teaching Standards;

(6) ~~Past performance evaluations conducted pursuant to section twelve, article two of this chapter; and Specialized training relevant to the performance of the duties of the job;~~

(7) ~~Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged. Past performance evaluations conducted pursuant to section twelve, article two of this chapter and section two, article three-c of this chapter or, in the case of a classroom teacher, past evaluations of the applicant's performance in the teaching profession;~~

(8) Seniority;

(9) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;

(10) In the case of a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and

(11) In the case of a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to the provisions of section five, article five-a, chapter eighteen of this code by the faculty senate of the school at which the employee will be performing a majority of his or her duties.

(c) In considering the filling of a vacancy pursuant to this section, a county board is entitled to determine the appropriate weight to apply to each of the criterion when assessing an applicant's qualifications: *Provided*, That if one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, each criterion under subsection (b) of this section shall be given equal weight except that the criterion in subdivisions (10) and (11) shall each be double weighted.

(d) If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make a decision affecting the filling of the position on the basis of the following criteria: For a classroom teaching position, if

the recommendations resulting from the operations of subdivisions (10) and (11), subsection (b) of this section are for the same applicant, and the superintendent concurs with that recommendation, then the other provisions of subsections (b) and (c) of this section do not apply and the county board shall appoint that applicant notwithstanding any other provision of this code to the contrary.

~~(1) Appropriate certification, licensure or both;~~

~~(2) Total amount of teaching experience;~~

~~(3) The existence of teaching experience in the required certification area;~~

~~(4) Degree level in the required certification area;~~

~~(5) Specialized training directly related to the performance of the job as stated in the job description;~~

~~(6) Receiving an overall rating of satisfactory in the previous two evaluations conducted pursuant to section twelve, article two of this chapter; and~~

~~(7) Seniority.~~

~~(e) In filling positions pursuant to subsection (d) of this section, consideration shall be given to each criterion with each criterion being given equal weight. If the applicant with the most seniority is not selected for the position, upon the request of the applicant a written statement of reasons shall be given to the applicant with suggestions for improving the applicant's qualifications. The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to implement and interpret the provisions of this section, including provisions that may provide for the compensation based on the appropriate daily rate of a classroom teacher who directly participates in making recommendations pursuant to this section for periods beyond his or her individual contract.~~

~~(f) With the exception of guidance counselors, the seniority of classroom teachers, as defined in section one, article one of this chapter shall be determined on the basis of the length of time the employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified, licensed or both. Recommendations made pursuant to subdivisions (10) and (11), subsection (b) of this section shall be made based on a determination as to which of the applicants is the highest qualified for the position: *Provided*, That nothing in this subsection shall require principals or faculty senates to assign any amount of weight to any factor in making a recommendation.~~

~~(f) (g) Upon completion of one hundred thirty-three days of employment in any one school year, substitute teachers, except retired teachers and other retired professional educators employed as substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. One hundred thirty-three days or more of said employment shall be prorated and shall vest as a fraction of the school year worked by the permanent, full-time teacher. With the exception of guidance counselors, the seniority of classroom teachers, as defined in section one, article one of this chapter, shall be determined on the basis of the length of time the employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified, licensed or both.~~

~~(g) (h) Guidance counselors and all other professional employees, as defined in section one, article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching area of professional employment on the basis of the length of time the employee has been employed by the county board of education in that area: *Provided*, That if an employee is certified as a classroom teacher, the employee accrues classroom teaching seniority for the time that that employee is employed in another professional area. For the purposes of accruing seniority under this paragraph, employment as principal, supervisor or central office administrator, as defined in section one, article one of this chapter, shall be considered one~~

area of employment. Upon completion of one hundred thirty-three days of employment in any one school year, substitute teachers, except retired teachers and other retired professional educators employed as substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. One hundred thirty-three days or more of said employment shall be prorated and shall vest as a fraction of the school year worked by the permanent, full-time teacher.

~~(h) (i) Employment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. A random selection system established by the employees and approved by the board shall be used to determine the priority if two or more employees accumulate identical seniority: *Provided*, That when two or more principals have accumulated identical seniority, decisions on reductions in force shall be based on qualifications. Guidance counselors and all other professional employees, as defined in section one, article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching area of professional employment on the basis of the length of time the employee has been employed by the county board of education in that area: *Provided*, That if an employee is certified as a classroom teacher, the employee accrues classroom teaching seniority for the time that that employee is employed in another professional area. For the purposes of accruing seniority under this paragraph, employment as principal, supervisor or central office administrator, as defined in section one, article one of this chapter, shall be considered one area of employment.~~

~~(i) (j) Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two, article two of this chapter. The provisions of this subsection are subject to the following: Employment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. A random selection system established by the employees and approved by the board shall be used to determine the priority if two or more employees accumulate identical seniority: *Provided*, That when two or more principals have accumulated identical seniority, decisions on reductions in force shall be based on qualifications.~~

~~(j) (k) Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two, article two of this chapter. The provisions of this subsection are subject to the following:~~

(1) All persons employed in a certification area to be reduced who are employed under a temporary permit shall be properly notified and released before a fully certified employee in such a position is subject to release;

~~(2) An employee subject to release shall be employed in any other professional position where the employee is certified and was previously employed or to any lateral area for which the employee is certified, licensed or both, if the employee's seniority is greater than the seniority of any other employee in that area of certification, licensure or both; Notwithstanding any provision of this code to the contrary, all employees subject to release shall be considered applicants for any vacancy in an established, existing or newly created position that, on or before February 15, is known to exist for the ensuing school year, and for which they are qualified, and, upon recommendation of the superintendent, the board shall appoint the successful applicant from among them before posting such vacancies for application by other persons;~~

~~(2) (3) An employee subject to release shall be employed in any other professional position where the employee is certified and was previously employed or to any lateral area for which the employee is certified, licensed or both, if the employee's seniority is greater than the seniority of any other employee in that area of certification, licensure or both;~~

~~(3) (4) If an employee subject to release holds certification, licensure or both in more than one lateral area and if the employee's seniority is greater than the seniority of any other employee in one or more of those areas of certification, licensure or both, the employee subject to release shall be employed in the~~

professional position held by the employee with the least seniority in any of those areas of certification, licensure or both; and

~~(4)~~ (5) If, prior to August 1⁷ of the year a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the released employee in writing of his or her right to be restored to his or her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and higher seniority, that person shall be placed in the position restored as a result of the reduction in force being rescinded.

~~(k)~~ (l) For the purpose of this article, all positions which meet the definition of "classroom teacher" as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions, the county board of education shall adopt a policy by October 31, 1993, and may modify the policy thereafter as necessary, which defines which positions shall be lateral positions. The board shall submit a copy of its policy to the state board within thirty days of adoption or any modification, and the state board shall compile a report and submit the report to the Legislative Oversight Commission on Education Accountability by December 31, 1993, and by that date in any succeeding year in which any county board submits a modification of its policy relating to lateral positions. In adopting the policy, the board shall give consideration to the rank of each position in terms of title; nature of responsibilities; salary level; certification, licensure or both; and days in the period of employment.

~~(j)~~ (m) After the twentieth day prior to the beginning of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that instructional term unless the person holding that position does not have valid certification. The provisions of this subsection are subject to the following:

(1) The person may apply for any posted, vacant positions with the successful applicant assuming the position at the beginning of the next instructional term;

(2) Professional personnel who have been on an approved leave of absence may fill these vacancies upon their return from the approved leave of absence;

(3) The county board, upon recommendation of the superintendent may fill a position before the next instructional term when it is determined to be in the best interest of the students. The county superintendent shall notify the state board of each transfer of a person employed in a professional position to another professional position after the twentieth day prior to the beginning of the instructional term;

(4) The provisions of this subsection do not apply to the filling of a position vacated because of resignation or retirement that became effective on or before the twentieth day prior to the beginning of the instructional term, but not posted until after that date; and

(5) The Legislature finds that it is not in the best interest of the students particularly in the elementary grades to have multiple teachers for any one grade level or course during the instructional term. It is the intent of the Legislature that the filling of positions through transfers of personnel from one professional position to another after the twentieth day prior to the beginning of the instructional term should be kept to a minimum.

~~(m)~~ (n) All professional personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification, licensure or both, the employee shall be recalled on the basis of seniority if no regular, full-time professional personnel, or those returning from leaves of absence with greater seniority, are qualified, apply for and accept the position.

~~(n)~~ (o) Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee, and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification, licensure or both.

~~(n)~~ (p) Openings in established, existing or newly created positions shall be processed as follows:

(1) Boards shall be required to post and date notices of each opening at least once. At their discretion, boards may post an opening for a position other than classroom teacher more than once in order to attract more qualified applicants. At their discretion, boards may post an opening for a classroom teacher one additional time after the first posting in order to attract more qualified applicants only if fewer than three individuals apply during the first posting ~~which shall be~~ subject to the following:

(A) ~~The notices~~ Each notice shall be posted in conspicuous working places for all professional personnel to observe for at least five working days;

(B) ~~The~~ At least one notice shall be posted within twenty working days of the position openings and shall include the job description;

(C) Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job;

(D) Postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply; and

(E) Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant;

(2) No vacancy shall be filled until after the five-day minimum posting period of the most recent posted notice of the vacancy;

(3) If one or more applicants under all the postings for a vacancy meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within thirty working days of the end of the first posting period;

(4) A position held by a teacher who is certified, licensed or both, who has been issued a permit for full-time employment and is working toward certification in the permit area shall not be subject to posting if the certificate is awarded within five years; and

(5) Nothing provided herein shall prevent the county board of education from eliminating a position due to lack of need.

~~(p)~~ (q) Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels for which they are certified without that position being posted: *Provided*, That the employee and the county board ~~of education~~ mutually agree to the reassignment.

~~(q)~~ (r) Reductions in classroom teaching positions in elementary schools shall be processed as follows:

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall be made on the basis of seniority with the least senior classroom teacher being recommended for transfer; and

(2) When a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior classroom teacher in the school without that position being posted: *Provided*, That the employee is certified, licensed or both and agrees to the reassignment.

~~(s)~~ (s) Any board failing to comply with the provisions of this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and reasonable attorney fees as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactive to the date of the violation and payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

~~(t)~~ (t) The county board shall compile, update annually on July 1 and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.

(u) Notwithstanding any other provision of this code to the contrary, upon recommendation of the principal and approval by the classroom teacher and county board, a classroom teacher assigned to the school may at any time be assigned to a new or existing classroom teacher position at the school without the position being posted.

(v) The amendments to this section during the 2013 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2013, and the provisions of this section immediately prior to those amendments remain in effect until July 1, 2013.

§18A-4-8. Employment term and class titles of service personnel; definitions.

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may not be less than ten months. A month is defined as twenty employment days. The county board may contract with all or part of these service personnel for a longer term. ~~The beginning and closing dates of the ten-month employment term may not exceed forty-three weeks.~~

(b) Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the two hundred-day minimum employment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred-day minimum employment term.

(d) A service person may not be required to report for work more than five days per week without his or her agreement, and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

(e) If a service person whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the service person shall be paid for at least one-half day of work for each day he or she reports for work. If the service person works more than three and one-half hours on any Saturday or Sunday, he or she shall be paid for at least a full day of work for each day.

(f) A custodian, aide, maintenance, office and school lunch service person required to work a daily work schedule that is interrupted shall be paid additional compensation in accordance with this subsection.

(1) A “maintenance person” means a person who holds a classification title other than in a custodial, aide, school lunch, office or transportation category as provided in section one, article one of this chapter.

(2) A service person’s schedule is considered to be interrupted if he or she does not work a continuous period in one day. Aides are not regarded as working an interrupted schedule when engaged exclusively in the duties of transporting students;

(3) The additional compensation provided ~~for~~ in this subsection:

(A) Is equal to at least one eighth of a service person’s total salary as provided by the state minimum pay scale and any county pay supplement; and

(B) Is payable entirely from county board funds.

(g) When there is a change in classification or when a service person meets the requirements of an advanced classification, his or her salary shall be made to comply with the requirements of this article and any county salary schedule in excess of the minimum requirements of this article, based upon the service person’s advanced classification and allowable years of employment.

(h) A service person’s contract, as provided in section five, article two of this chapter, shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and on any county salary schedule in excess of the minimum requirements of this article.

(i) The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article, are defined as follows:

(1) “Pay grade” means the monthly salary applicable to class titles of service personnel;

(2) “Years of employment” means the number of years which an employee classified as a service person has been employed by a county board in any position prior to or subsequent to the effective date of this section and includes service in the Armed Forces of the United States, if the employee was employed at the time of his or her induction. For the purpose of section eight-a of this article, years of employment is limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article;

(3) “Class title” means the name of the position or job held by a service person;

(4) “Accountant I” means a person employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;

(5) “Accountant II” means a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;

(6) “Accountant III” means a person employed in the county board office to manage and supervise accounts payable, payroll procedures, or both;

(7) “Accounts payable supervisor” means a person employed in the county board office who has primary responsibility for the accounts payable function and who either has completed twelve college hours of accounting courses from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(8) “Aide I” means a person selected and trained for a teacher-aide classification such as monitor aide, clerical aide, classroom aide or general aide;

(9) "Aide II" means a service person referred to in the "Aide I" classification who has completed a training program approved by the state board, or who holds a high school diploma or has received a general educational development certificate. Only a person classified in an Aide II class title may be employed as an aide in any special education program;

(10) "Aide III" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed six semester hours of college credit at an institution of higher education; or

(B) Is employed as an aide in a special education program and has one year's experience as an aide in special education;

(11) "Aide IV" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or

(B) Has completed fifteen hours of state board-approved college credit at a regionally accredited institution of higher education; and has successfully completed an in-service training program determined by the state board to be the equivalent of three hours of college credit;

(12) "Audiovisual technician" means a person employed to perform minor maintenance on audiovisual equipment, films and supplies and who fills requests for equipment;

(13) "Auditor" means a person employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;

(14) "Autism mentor" means a person who works with autistic students and who meets standards and experience to be determined by the state board. A person who has held or holds an aide title and becomes employed as an autism mentor shall hold a multiclassification status that includes both aide and autism mentor titles, in accordance with section eight-b of this article;

(15) "Braille or sign language specialist" means a person employed to provide braille and/or sign language assistance to students. A service person who has held or holds an aide title and becomes employed as a braille or sign language specialist shall hold a multiclassification status that includes both aide and braille or sign language specialist title, in accordance with section eight-b of this article;

(16) "Bus operator" means a person employed to operate school buses and other school transportation vehicles as provided by the state board;

(17) "Buyer" means a person employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs;

(18) "Cabinetmaker" means a person employed to construct cabinets, tables, bookcases and other furniture;

(19) "Cafeteria manager" means a person employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school;

(20) "Carpenter I" means a person classified as a carpenter's helper;

- (21) "Carpenter II" means a person classified as a journeyman carpenter;
- (22) "Chief mechanic" means a person employed to be responsible for directing activities which ensure that student transportation or other county board-owned vehicles are properly and safely maintained;
- (23) "Clerk I" means a person employed to perform clerical tasks;
- (24) "Clerk II" means a person employed to perform general clerical tasks, prepare reports and tabulations and operate office machines;
- (25) "Computer operator" means a qualified person employed to operate computers;
- (26) "Cook I" means a person employed as a cook's helper;
- (27) "Cook II" means a person employed to interpret menus and to prepare and serve meals in a food service program of a school. This definition includes a service person who has been employed as a "Cook I" for a period of four years;
- (28) "Cook III" means a person employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system;
- (29) "Crew leader" means a person employed to organize the work for a crew of maintenance employees to carry out assigned projects;
- (30) "Custodian I" means a person employed to keep buildings clean and free of refuse;
- (31) "Custodian II" means a person employed as a watchman or groundsman;
- (32) "Custodian III" means a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;
- (33) "Custodian IV" means a person employed as head custodians. In addition to providing services as defined in "custodian III," duties may include supervising other custodian personnel;
- (34) "Director or coordinator of services" means an employee of a county board who is assigned to direct a department or division.
- (A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title;
- (B) Professional personnel holding this class title may not be defined or classified as service personnel unless the professional person held a service personnel title under this section prior to holding the class title of "director or coordinator of services."
- (C) The director or coordinator of services shall be classified either as a professional person or a service person for state aid formula funding purposes;
- (D) Funding for the position of director or coordinator of services is based upon the employment status of the director or coordinator either as a professional person or a service person; and
- (E) A person employed under the class title "director or coordinator of services" may not be exclusively assigned to perform the duties ascribed to any other class title as defined in this subsection: *Provided*, That nothing in this paragraph prohibits a person in this position from being multiclassified;
- (35) "Draftsman" means a person employed to plan, design and produce detailed architectural/engineering drawings;

- (36) "Electrician I" means a person employed as an apprentice electrician helper or one who holds an electrician helper license issued by the State Fire Marshal;
- (37) "Electrician II" means a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the State Fire Marshal;
- (38) "Electronic technician I" means a person employed at the apprentice level to repair and maintain electronic equipment;
- (39) "Electronic technician II" means a person employed at the journeyman level to repair and maintain electronic equipment;
- (40) "Executive secretary" means a person employed as secretary to the county school superintendent or as a secretary who is assigned to a position characterized by significant administrative duties;
- (41) "Food services supervisor" means a qualified person who is not a professional person or professional educator as defined in section one, article one of this chapter. The food services supervisor is employed to manage and supervise a county school system's food service program. The duties include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;
- (42) "Foreman" means a skilled person employed to supervise personnel who work in the areas of repair and maintenance of school property and equipment;
- (43) "General maintenance" means a person employed as a helper to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system;
- (44) "Glazier" means a person employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;
- (45) "Graphic artist" means a person employed to prepare graphic illustrations;
- (46) "Groundsman" means a person employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings;
- (47) "Handyman" means a person employed to perform routine manual tasks in any operation of the county school system;
- (48) "Heating and air conditioning mechanic I" means a person employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment;
- (49) "Heating and air conditioning mechanic II" means a person employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment;
- (50) "Heavy equipment operator" means a person employed to operate heavy equipment;
- (51) "Inventory supervisor" means a person employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;
- (52) "Key punch operator" means a qualified person employed to operate key punch machines or verifying machines;
- (53) "Licensed practical nurse" means a nurse, licensed by the West Virginia Board of Examiners for Licensed Practical Nurses, employed to work in a public school under the supervision of a school nurse;

- (54) "Locksmith" means a person employed to repair and maintain locks and safes;
- (55) "Lubrication man" means a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;
- (56) "Machinist" means a person employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. A person holding this class title also should have the ability to work from blueprints and drawings;
- (57) "Mail clerk" means a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;
- (58) "Maintenance clerk" means a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;
- (59) "Mason" means a person employed to perform tasks connected with brick and block laying and carpentry tasks related to these activities;
- (60) "Mechanic" means a person employed to perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;
- (61) "Mechanic assistant" means a person employed as a mechanic apprentice and helper;
- (62) "Multiclassification" means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale shall be the higher pay grade of the class titles involved;
- (63) "Office equipment repairman I" means a person employed as an office equipment repairman apprentice or helper;
- (64) "Office equipment repairman II" means a person responsible for servicing and repairing all office machines and equipment. A person holding this class title is responsible for the purchase of parts necessary for the proper operation of a program of continuous maintenance and repair;
- (65) "Painter" means a person employed to perform duties painting, finishing and decorating wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;
- (66) "Paraprofessional" means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of students under the direction of a principal, a teacher or another designated professional educator.
- (A) A person employed on the effective date of this section in the position of an aide may not be subject to a reduction in force or transferred to create a vacancy for the employment of a paraprofessional;
- (B) A person who has held or holds an aide title and becomes employed as a paraprofessional shall hold a multiclassification status that includes both aide and paraprofessional titles in accordance with section eight-b of this article; and
- (C) When a service person who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

(67) "Payroll supervisor" means a person employed in the county board office who has primary responsibility for the payroll function and who either has completed twelve college hours of accounting from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(68) "Plumber I" means a person employed as an apprentice plumber and helper;

(69) "Plumber II" means a person employed as a journeyman plumber;

(70) "Printing operator" means a person employed to operate duplication equipment, and to cut, collate, staple, bind and shelve materials as required;

(71) "Printing supervisor" means a person employed to supervise the operation of a print shop;

(72) "Programmer" means a person employed to design and prepare programs for computer operation;

(73) "Roofing/sheet metal mechanic" means a person employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

(74) "Sanitation plant operator" means a person employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection;

(75) "School bus supervisor" means a qualified person:

(A) Employed to assist in selecting school bus operators and routing and scheduling school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promote good relationships with parents, students, bus operators and other employees; and

(B) Certified to operate a bus or previously certified to operate a bus;

(76) "Secretary I" means a person employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;

(77) "Secretary II" means a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes, stenotype, mechanical equipment or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. Nothing in this subdivision prevents a service person from holding or being elevated to a higher classification;

(78) "Secretary III" means a person assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities in purchasing and financial control or any person who has served for eight years in a position which meets the definition of "secretary II" or "secretary III";

(79) "Supervisor of maintenance" means a skilled person who is not a professional person or professional educator as defined in section one, article one of this chapter. The responsibilities include directing the upkeep of buildings and shops, and issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a county board;

(80) "Supervisor of transportation" means a qualified person employed to direct school transportation activities properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system. After July 1, 2010, all persons employed for the first time in a position with this classification title or in a multi-classification position that

includes this title shall have five years of experience working in the transportation department of a county board. Experience working in the transportation department shall consist of serving as a bus operator, bus aide, assistant mechanic, mechanic, chief mechanic or in a clerical position within the transportation department;

(81) "Switchboard operator-receptionist" means a person employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

(82) "Truck driver" means a person employed to operate light or heavy duty gasoline and diesel-powered vehicles;

(83) "Warehouse clerk" means a person employed to be responsible for receiving, storing, packing and shipping goods;

(84) "Watchman" means a person employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties;

(85) "Welder" means a person employed to provide acetylene or electric welding services for a school system; ~~and~~

(86) "WVEIS data entry and administrative clerk" means a person employed to work under the direction of a school principal to assist the school counselor or counselors in the performance of administrative duties, to perform data entry tasks on the West Virginia Education Information System, and to perform other administrative duties assigned by the principal;

(87) "Early Childhood Classroom Assistant Teacher - Temporary Authorization" means a person who does not possess minimum requirements for the permanent authorization requirements, but is enrolled in and pursuing requirements;

(88) "Early Childhood Classroom Assistant Teacher - Permanent Authorization" means a person who has completed the minimum requirements for a state-awarded certificate for early childhood classroom assistant teachers that meet or exceed the requirements for a child development associate. Equivalency for the West Virginia Department of Education will be determined as the child development associate or the West Virginia Apprenticeship for Child Development Specialists; and

(89) "Early Childhood Classroom Assistant Teacher - Paraprofessional Certificate" means a person who has completed permanent authorization requirements, as well as additional requirements comparable to current paraprofessional certificate.

(j) Notwithstanding any provision in this code to the contrary, and in addition to the compensation provided for service personnel in section eight-a of this article, each service person is entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to the employee's hours of employment or the methods or sources of compensation.

(k) A service person whose years of employment exceeds the number of years shown and provided under the state minimum pay scale set forth in section eight-a of this article may not be paid less than the amount shown for the maximum years of employment shown and provided in the classification in which he or she is employed.

(l) Each county board shall review each service person's job classification annually and shall reclassify all service persons as required by the job classifications. The state superintendent may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order a county board to correct immediately any improper classification matter and, with the assistance of the Attorney General, shall take any legal action necessary against any county board to enforce the order.

(m) Without his or her written consent, a service person may not be:

(1) Reclassified by class title; or

(2) Relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year; or for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

(n) Any county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.

(o) Notwithstanding any provision of this code to the contrary, a service person who holds a continuing contract in a specific job classification and who is physically unable to perform the job's duties as confirmed by a physician chosen by the employee, shall be given priority status over any employee not holding a continuing contract in filling other service personnel job vacancies if the service person is qualified as provided in section eight-e of this article.

(p) Any person employed in an aide position on the effective date of this section may not be transferred or subject to a reduction in force for the purpose of creating a vacancy for the employment of a licensed practical nurse.

(q) Without the written consent of the service person, a county board may not establish the beginning work station for a bus operator or transportation aide at any site other than a county board-owned facility with available parking. The workday of the bus operator or transportation aide commences at the bus at the designated beginning work station and ends when the employee is able to leave the bus at the designated beginning work station, unless he or she agrees otherwise in writing. The application or acceptance of a posted position may not be construed as the written consent referred to in this subsection.

(r) "[Itinerant status]" means a service person who does not have a fixed work site and may be involuntarily reassigned to another work site. A service person is considered to hold itinerant status if he or she has bid upon a position posted as itinerant or has agreed to accept this status. A county board may establish positions with itinerant status only within the aide and autism mentor classification categories and only when the job duties involve exceptional students. A service person with itinerant status may be assigned to a different work site upon written notice ten days prior to the reassignment without the consent of the employee and without posting the vacancy. A service person with itinerant status may be involuntarily reassigned no more than twice during the school year. At the conclusion of each school year, the county board shall post and fill, pursuant to section eight-b of this article, all positions that have been filled without posting by a service person with itinerant status. A service person who is assigned to a beginning and ending work site and travels at the expense of the county board to other work sites during the daily schedule, shall not be considered to hold itinerant status.

§18A-4-8a. Service personnel minimum monthly salaries.

(a) The minimum monthly pay for each service employee shall be as follows:

(1) Beginning July 1, 2011, and continuing thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one half the amount indicated in the State Minimum Pay Scale Pay Grade set forth in this subdivision.

STATE MINIMUM PAY SCALE PAY GRADE

Years Exp.	Pay Grade							
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>
0	1,627	1,648	1,689	1,741	1,793	1,855	1,886	1,958
1	1,659	1,680	1,721	1,773	1,825	1,887	1,918	1,990
2	1,691	1,712	1,753	1,805	1,857	1,919	1,950	2,022
3	1,723	1,744	1,785	1,837	1,889	1,951	1,982	2,054
4	1,755	1,776	1,817	1,869	1,921	1,983	2,014	2,087
5	1,787	1,808	1,849	1,901	1,953	2,015	2,046	2,119
6	1,819	1,840	1,882	1,933	1,985	2,047	2,078	2,151
7	1,852	1,872	1,914	1,965	2,017	2,079	2,110	2,183
8	1,884	1,904	1,946	1,997	2,049	2,111	2,142	2,215
9	1,916	1,936	1,978	2,030	2,081	2,143	2,174	2,247
10	1,948	1,969	2,010	2,062	2,113	2,176	2,207	2,279
11	1,980	2,001	2,042	2,094	2,145	2,208	2,239	2,311
12	2,012	2,033	2,074	2,126	2,178	2,240	2,271	2,343
13	2,044	2,065	2,106	2,158	2,210	2,272	2,303	2,375
14	2,076	2,097	2,138	2,190	2,242	2,304	2,335	2,407
15	2,108	2,129	2,170	2,222	2,274	2,336	2,367	2,439
16	2,140	2,161	2,202	2,254	2,306	2,368	2,399	2,472
17	2,172	2,193	2,235	2,286	2,338	2,400	2,431	2,504
18	2,204	2,225	2,267	2,318	2,370	2,432	2,463	2,536
19	2,237	2,257	2,299	2,350	2,402	2,464	2,495	2,568
20	2,269	2,289	2,331	2,383	2,434	2,496	2,527	2,601
21	2,301	2,321	2,363	2,415	2,466	2,528	2,559	2,634
22	2,333	2,354	2,395	2,447	2,498	2,561	2,593	2,666
23	2,365	2,386	2,427	2,479	2,531	2,594	2,625	2,699
24	2,397	2,418	2,459	2,511	2,563	2,627	2,658	2,732
25	2,429	2,450	2,491	2,543	2,596	2,659	2,691	2,764
26	2,461	2,482	2,523	2,576	2,629	2,692	2,723	2,797
27	2,493	2,514	2,555	2,608	2,661	2,724	2,756	2,829
28	2,525	2,546	2,588	2,641	2,694	2,757	2,789	2,863
29	2,557	2,579	2,621	2,673	2,726	2,790	2,821	2,896

30	2,591	2,611	2,654	2,706	2,759	2,822	2,854	2,928
31	2,623	2,644	2,687	2,739	2,792	2,855	2,887	2,961
32	2,656	2,676	2,719	2,772	2,824	2,888	2,919	2,994
33	2,689	2,709	2,752	2,805	2,857	2,920	2,953	3,026
34	2,721	2,743	2,785	2,838	2,890	2,954	2,986	3,059
35	2,754	2,775	2,817	2,870	2,923	2,987	3,018	3,092
36	2,787	2,808	2,850	2,903	2,956	3,019	3,051	3,124
37	2,819	2,841	2,883	2,936	2,989	3,052	3,083	3,157
38	2,852	2,873	2,915	2,968	3,021	3,084	3,116	3,190
39	2,885	2,906	2,948	3,001	3,054	3,117	3,149	3,222
40	2,917	2,939	2,980	3,033	3,087	3,150	3,181	3,256

(2) Each service employee shall receive the amount prescribed in the Minimum Pay Scale in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

CLASS TITLE	PAY GRADE
Accountant I	D
Accountant II	E
Accountant III	F
Accounts Payable Supervisor	G
Aide I	A
Aide II	B
Aide III	C
Aide IV	D
Audiovisual Technician.....	C
Auditor	G
Autism Mentor	F
Braille or Sign Language Specialist.....	E
Bus Operator	D
Buyer	F
Cabinetmaker	G
Cafeteria Manager.....	D
Carpenter I	E
Carpenter II	F
Chief Mechanic.....	G
Clerk I	B
Clerk II.....	C
Computer Operator	E
Cook I	A
Cook II	B
Cook III	C
Crew Leader	F
Custodian I	A
Custodian II	B
Custodian III	C
Custodian IV.....	D
Director or Coordinator of Services.....	H

Draftsman.....	D
<u>Early Childhood Classroom Assistant Teacher – Temporary Authorization</u>	<u>E</u>
<u>Early Childhood Classroom Assistant Teacher – Permanent Authorization</u>	<u>E</u>
<u>Early Childhood Classroom Assistant Teacher - Paraprofessional Certificate</u>	<u>E</u>
Electrician I.....	F
Electrician II.....	G
Electronic Technician I.....	F
Electronic Technician II.....	G
Executive Secretary.....	G
Food Services Supervisor.....	G
Foreman.....	G
General Maintenance.....	C
Glazier.....	D
Graphic Artist.....	D
Groundsman.....	B
Handyman.....	B
Heating and Air Conditioning Mechanic I.....	E
Heating and Air Conditioning Mechanic II.....	G
Heavy Equipment Operator.....	E
Inventory Supervisor.....	D
Key Punch Operator.....	B
Licensed Practical Nurse.....	F
Locksmith.....	G
Lubrication Man.....	C
Machinist.....	F
Mail Clerk.....	D
Maintenance Clerk.....	C
Mason.....	G
Mechanic.....	F
Mechanic Assistant.....	E
Office Equipment Repairman I.....	F
Office Equipment Repairman II.....	G
Painter.....	E
Paraprofessional.....	F
Payroll Supervisor.....	G
Plumber I.....	E
Plumber II.....	G
Printing Operator.....	B
Printing Supervisor.....	D
Programmer.....	H
Roofing/Sheet Metal Mechanic.....	F
Sanitation Plant Operator.....	G
School Bus Supervisor.....	E
Secretary I.....	D
Secretary II.....	E
Secretary III.....	F
Supervisor of Maintenance.....	H
Supervisor of Transportation.....	H
Switchboard Operator-Receptionist.....	D
Truck Driver.....	D
Warehouse Clerk.....	C
Watchman.....	B
Welder.....	F
WVEIS Data Entry and Administrative Clerk.....	B

(b) An additional \$12 per month shall be added to the minimum monthly pay of each service employee who holds a high school diploma or its equivalent.

(c) An additional \$11 per month also shall be added to the minimum monthly pay of each service employee for each of the following:

(1) A service employee who holds twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(2) A service employee who holds twenty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(3) A service employee who holds thirty-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(4) A service employee who holds forty-eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(5) A service employee who holds sixty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(6) A service employee who holds seventy-two college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service employee who holds eighty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service employee who holds ninety-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service employee who holds one hundred eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service employee who holds one hundred twenty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(d) An additional \$40 per month also shall be added to the minimum monthly pay of each service employee for each of the following:

(1) A service employee who holds an associate's degree;

(2) A service employee who holds a bachelor's degree;

(3) A service employee who holds a master's degree;

(4) A service employee who holds a doctorate degree.

(e) An additional \$11 per month shall be added to the minimum monthly pay of each service employee for each of the following:

(1) A service employee who holds a bachelor's degree plus fifteen college hours;

(2) A service employee who holds a master's degree plus fifteen college hours;

(3) A service employee who holds a master's degree plus thirty college hours;

(4) A service employee who holds a master's degree plus forty-five college hours; and

(5) A service employee who holds a master's degree plus sixty college hours.

(f) To meet the objective of salary equity among the counties, each service employee shall be paid an equity supplement, as set forth in section five of this article, of \$152 per month, subject to the provisions of that section. These payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to section five-b of this article; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service employee's daily shift of work is performed between the hours of six o'clock p. m. and five o'clock a. m. the following day, the employee shall be paid no less than an additional \$10 per month and one half of the pay shall be paid with local funds.

(h) Any service employee required to work on any legal school holiday shall be paid at a rate one and one-half times the employee's usual hourly rate.

(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid shall be paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(j) No service employee may have his or her daily work schedule changed during the school year without the employee's written consent and the employee's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(k) The minimum hourly rate of pay for extra duty assignments as defined in section eight-b of this article shall be no less than one seventh of the employee's daily total salary for each hour the employee is involved in performing the assignment and paid entirely from local funds: *Provided*, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be used if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time employees within that classification category of employment within that county: *Provided, however*, That the vote shall be by secret ballot if requested by a service person within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment shall be prorated accordingly. When performing extra duty assignments, employees who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the employee were employed on a full-day salary basis.

(l) The minimum pay for any service personnel employees engaged in the removal of asbestos material or related duties required for asbestos removal shall be their regular total daily rate of pay and no less than an additional \$3 per hour or no less than \$5 per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos-related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos related duties outside of the employee's regular employment county, the daily rate of pay shall be no less than the minimum amount as established in the employee's regular employment county for asbestos removal and an additional \$30 per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel employees may be used in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(m) For the purpose of qualifying for additional pay as provided in section eight, article five of this chapter, an aide shall be considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort or render service to a child or children when not under the direct supervision of a certified professional person within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds or wherever supervision is required. For purposes of this section, "under the direct supervision of a certified professional person" means that certified professional person is present, with and accompanying the aide.

§18A-4-14. Duty-free lunch and daily planning period for certain employees.

(4) (a) Notwithstanding the provisions of section seven, article two of this chapter, every teacher who is employed for a period of time more than one half the class periods of the regular school day and every service ~~personnel~~ person whose employment is for a period of more than three and one-half hours per day and whose pay is at least the amount indicated in the state minimum pay scale as set forth in section eight-a of this article shall be provided a daily lunch recess of not less than thirty consecutive minutes, and ~~such~~ the employee shall not be assigned any responsibilities during this recess. ~~Such~~ The recess shall be included in the number of hours worked, and no county shall increase the number of hours to be worked by an employee as a result of ~~such~~ the employee being granted a recess under the provisions of this section.

(2) (b) Every teacher who is regularly employed for a period of time more than one half the class periods of the regular school day shall be provided at least one planning period within each school instructional day to be used to complete necessary preparations for the instruction of pupils. ~~Such planning period shall be the length of the usual class period in the school to which such teacher is assigned, and shall be not less than thirty minutes.~~ No teacher shall may be assigned any responsibilities during this period, and no county shall increase the number of hours to be worked by a teacher as a result of such teacher being granted a planning period subsequent to the adoption of this section (March 13, 1982).

The duration of the planning period shall be in accordance with the following:

(1) For grades where the majority of the student instruction is delivered by only one teacher, the planning period shall be no less than forty minutes; and

(2) For grades where students take separate courses during at least four separate periods of instruction, most usually delivered by different teachers for each subject, the planning period shall be the length of the usual class period taught by the teacher, but no less than forty minutes. Principals, and assistant principals, where applicable, shall cooperate in carrying out the provisions of this subsection, including, but not limited to, assuming control of the class period or supervision of students during the time the teacher is engaged in the planning period. Substitute teachers may also be utilized to assist with classroom responsibilities under this subsection: *Provided*, That any substitute teacher who is employed to teach a minimum of two consecutive days in the same position shall be granted a planning period pursuant to this section.

(3) (c) Nothing in this section ~~shall be construed to prevent~~ any teacher from exchanging his or her lunch recess or a planning period or any service ~~personnel~~ person from exchanging his or her lunch recess for any compensation or benefit mutually agreed upon by the employee and the county superintendent of schools or his or her agent: *Provided*, That a teacher and the superintendent or his or her agent may not agree to terms which are different from those available to any other teacher granted rights under this section within the individual school or to terms which in any way discriminate among ~~such~~ those teachers within the individual school, and ~~that a service personnel person~~ granted rights under this section and the superintendent or his or her agent may not agree to terms which are different from those available to any other service personnel within the same classification category granted rights under this section within the individual school or to terms which in any way discriminate among ~~such~~ those service personnel within the same classification category within the individual school.

(d) The state board shall conduct a study on planning periods. The study shall include, but not be limited to, the appropriate length for planning periods at the various grade levels and for the different types of class

schedules. The board shall report its findings and recommendations to the Legislative Oversight Commission on Education Accountability no later than December 31, 2013.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-2. Holidays; closing of schools; time lost because of such; special Saturday classes.

~~(a) Schools shall not be kept open~~ be closed on any Saturdays ~~nor and~~ on the following days which are designated as legal school holidays ~~namely~~: Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King's birthday, Memorial Day and West Virginia Day. Schools also shall be closed on any day on which a primary election, general election or special election is held throughout the state or school district and on any day appointed and set apart by the president or the Governor as a holiday of special observance by the people of the state.

~~(b) When any such holiday falls within the employment term, it shall be considered as a day of the employment term and the full-time school personnel shall receive his or her pay for same.~~ When any of the above designated holidays, except a special election, falls on Saturday, the schools shall be closed on the preceding Friday. When any ~~such~~ designated holiday falls on Sunday, the schools shall be closed on the following Monday.

~~(c) Special classes may be conducted on Saturdays provided they are conducted on a voluntary basis, for pupils and by teachers and service personnel.~~ Saturday classes shall be conducted on a voluntary basis and that such teachers and service personnel shall be remunerated in ratio to the regularly contracted pay.

~~(d) Any school or schools may be closed by proper authorities on account of the prevalence of contagious disease, conditions of weather or any other calamitous cause over which the board has no control.~~

~~(1) Under any or all of the above provisions, the time lost by the closing of schools is~~ closings may not be counted as days of employment and may not be counted as meeting a part of the requirements of the minimum term of one hundred eighty days of instruction. A school employee's pay per pay period may not change as a result of a school closing not being counted as a day of employment, and the employee shall be paid the same amount during any pay period in which a school closing occurs that the employee would have been paid during the pay period if a school closing had not occurred.

~~(2) On such the day or days when a school or schools are closed, county boards of education may provide appropriate alternate work schedules for professional and service personnel affected by the closing of any school or schools under any or all of the above provisions of this subsection.~~ Professional and service personnel shall receive pay the same as if school were in session.

~~(3) Insofar as funds are available or can be made available during the school year, the board may extend the employment term for the purpose of making up time that might affect the instructional term.~~

~~(e) In addition to any other provisions of this chapter, the board is further is authorized to provide in its annual budget for meetings, workshops, vacation time or other holidays through extended employment of personnel at the same rate of pay.~~

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.

§18C-1-2. Definitions.

~~The Definitions for terms used in this chapter have the meanings ascribed to them in section two, article one, chapter eighteen-b of this code unless the context clearly indicates a different meaning otherwise, shall be the definitions provided in section two, article one, chapter eighteen-b of this code:~~

~~(a) The term "Board" or "governing board" in the singular or plural as used in this chapter shall be deemed to mean the senior administrator employed by the governing boards when a power or duty assigned to a governing board is delegated by it to the senior administrator means the vice chancellor for administration employed pursuant to section two, article four, chapter eighteen-b of this code when a power or duty assigned to a governing board is delegated by it to the senior administrator. In other instances as used in this chapter, "board" or "governing board" in the singular or plural means the Higher Education Policy Commission or the Council for Community and Technical College Education, as appropriate.~~

~~(b) "Senior administrator" means the vice chancellor for administration employed pursuant to section two, article four, chapter eighteen-b of this code.~~

ARTICLE 4. UNDERWOOD-SMITH TEACHER SCHOLARSHIP PROGRAM.

§18C-4-1. Scholarship and loan assistance fund created; purposes; funding.

~~(a) It is the purpose of this article and article four-a of this chapter to improve the quality of education in the public schools of West Virginia by encouraging and enabling ~~West Virginia resident~~ individuals who have demonstrated outstanding academic abilities to pursue teaching careers at the preschool, elementary, middle or secondary levels in the public schools of this state. In addition, of those individuals who have demonstrated outstanding academic abilities to pursue teaching careers, for scholarships initially awarded for the fall semester, ~~one thousand nine hundred ninety-eight~~ 2014, and thereafter, particular efforts ~~will~~ shall be made in the scholarship selection criteria and procedures to reflect the state's present and projected subject and geographic areas of critical need ~~teacher needs, including needs statewide and in different geographic areas and for teachers with education and training in specific disciplines.~~~~

~~(b) the higher education governing boards shall,~~ In consultation with the State Board of Education and the State Superintendent of Schools ~~the commission shall propose~~ promulgate reasonable legislative rules in accordance with the provisions of article three-a, chapter twenty-nine-a of this code. The rules shall provide for the administration of the Underwood-Smith Teacher Scholarship and Loan Assistance programs by the senior administrator vice chancellor for administration in furtherance of the purposes of this article and article four-a of this chapter, including, but not limited to, the following:

~~(1) Establishing scholarship selection criteria and procedures; renewal, compliance, noncompliance and repayment, deferral and excusal. In accordance with such rules the senior administrator shall establish appropriate guidelines for program operation.~~

(2) Establishing criteria and procedures for identifying subject areas, public schools or geographic areas in critical need of teachers;

(3) Awarding loan assistance, including establishing conditions under which partial awards may be granted for less than a full year of teaching in an area of critical need;

(4) Determining eligibility for loan assistance renewal;

(5) Establishing procedures ensuring that loan assistance funds are paid directly to the proper lending entity; and

(6) Establishing criteria for determining participant compliance or noncompliance with terms of the agreement and establishing procedures to address noncompliance including, but not limited to, repayment, deferral and excusal; and

(7) Developing model agreements.

~~(c) There is hereby created in the State Treasury a special revolving fund to be known as the Underwood-Smith Teacher Scholarship and Loan Assistance Fund to be administered by the senior administrator vice chancellor for administration solely for granting scholarships ~~to~~ and loan assistance to teachers and prospective teachers in accordance with this article and article four-a of this chapter. Any moneys which~~

may be appropriated by the Legislature, or received by the ~~senior administrator~~ vice chancellor for administration from other sources, for the purposes of this article ~~and article four-a of this chapter~~, shall be deposited in the fund. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year. Any moneys repaid to the ~~senior administrator~~ vice chancellor for administration by reason of default of a scholarship or loan assistance agreement under this article or article four-a of this chapter also shall be deposited in the fund. Fund balances shall be invested with the state's consolidated investment fund, and any and all interest earnings on these investments shall be used solely for the purposes for which moneys invested were appropriated or otherwise received.

(d) The ~~senior administrator~~ vice chancellor for administration may accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article ~~and article four-a of this chapter~~ and shall make a reasonable effort to encourage external support for the scholarship and loan assistance programs.

(e) For the purpose of encouraging support for the scholarship and loan assistance programs from private sources, the ~~senior administrator~~ vice chancellor for administration may set aside no more than half of the funds appropriated by the Legislature for Underwood-Smith Teacher Scholarships and Loan Assistance Awards to be used to match two state dollars to each private dollar from a nonstate source contributed on behalf of a specific institution of higher education in this state.

§18C-4-2. Selection criteria and procedures for awarding scholarships.

(a) The Governor shall designate ~~an existing scholarship selection agency or panel~~ the Higher Education Student Financial Aid Advisory Board created by section five, article one of this chapter to select the recipients of Underwood-Smith teacher scholarships who meet the eligibility criteria set forth in subsection (b) of this section. ~~If no such agency or panel exists, the governor shall appoint a scholarship selection panel for this purpose which shall consist of seven persons representative of public school administrators, teachers, including preschool teachers, and parents.~~

(b) Eligibility for an Underwood-Smith Teacher Scholarship award shall be limited to ~~West Virginia resident~~ students who meet the following criteria:

(1) Have graduated or are graduating from a West Virginia high school and rank in the top ten percent of their graduating class or the top ten percent statewide of those West Virginia students taking the ~~American college~~ ACT test;

(2) Have a cumulative grade point average of at least 3.25 on a possible scale of four after successfully completing two years of course work at an approved institution of higher education in West Virginia;

(3) Are public school aides or paraprofessionals as defined in section eight, article four, chapter eighteen-a of this code and who have a cumulative grade point average of at least 3.25 on a possible scale of four after successfully completing two years of course work at an approved institution of higher education in West Virginia; or

(4) Are graduate students at the master's degree level who have graduated or are graduating in the top ten percent of their college graduating class.

(c) In accordance with the rules of the commission, the vice chancellor for administration shall develop criteria and procedures for the selection of scholarship recipients. ~~The selection criteria shall that~~ reflect the purposes of this article and shall specify the areas in which particular efforts will be made in the selection of scholars as set forth in section one of this article. Selection procedures and criteria also may include, but ~~are not be~~ limited to, the grade point average of the applicant, involvement in extracurricular activities, financial need, current academic standing and an expression of interest in teaching as ~~expressed in~~ demonstrated by an essay written by the applicant. ~~Such~~ These criteria and procedures further may require the applicant to furnish letters of recommendation from teachers and others.

It is the intent of the Legislature that academic abilities be the primary criteria for selecting scholarship recipients: ~~Provided, that . However,~~ the qualified applicants with the highest academic abilities who intend to pursue teaching careers in areas of critical need and shortage ~~as determined by the state board of education pursuant to section one of this article~~ shall be given priority.

(d) In developing the selection criteria and procedures to be used by the ~~panel~~ Higher Education Student Financial Aid Advisory Board, the vice chancellor for administration shall solicit the views of public and private education agencies and institutions and other interested parties. Input from interested parties ~~These views:~~ (1) shall be solicited by means of written and published selection criteria and procedures in final form for implementation; and (2) may be solicited by means of public hearings on the present and projected teacher needs of the state or any other methods the vice chancellor for administration may determine to be appropriate to gather the information.

(e) The vice chancellor for administration shall make application forms for Underwood-Smith Teacher Scholarships available to public and private high schools in the state and in other locations convenient to applicants, parents and others, and shall make an effort to attract students from low-income backgrounds, ethnic or racial minority students, students with disabilities, and women or minority students who show interest in pursuing teaching careers in mathematics and science and who are underrepresented in those fields.

§18C-4-3. Scholarship agreement.

(a) Each recipient of an Underwood-Smith teacher scholarship shall enter into an agreement with the ~~senior administrator~~ vice chancellor for administration under which the recipient shall meet the following conditions:

(1) Provide the ~~board~~ commission with evidence of compliance with subsection (a), section four of this article;

(2) Within a ten-year period after completing the teacher education for which the scholarship was awarded; ~~and~~

(A) Teach full time under contract with a county board of education in a public education program in the state for a period of not ~~less~~ fewer than two years for each year for which a scholarship was received; or ~~teach full-time under contract with a county board of education in this state in a teacher shortage area as determined by the state board of education, in an exceptional children program in this state, in a school having less than average academic results, or in a school in an economically disadvantaged area of this state for not less than one year for each year for which a scholarship was received~~

(B) ~~(A)~~ Teach full time under contract for not less than one year for each year for which a scholarship was received with a county board of education in this state in a teacher shortage area pursuant to section one of this article, in an exceptional children program in this state, in a school having less than average academic results, or in a school in an economically disadvantaged area of this state; or

(C) ~~(B)~~ Within such the ten-year period, while seeking and unable to secure a full-time teaching position under contract with a county board of education which satisfies the conditions of paragraph (A) of this subdivision:

(i) Teach full-time in a private school, parochial or other school approved ~~under exemption (A) or (K)~~ for the instruction of students of compulsory school age pursuant to section one, article eight, chapter eighteen of this code; or

(ii) ~~(i)~~ Teach in a an institution of higher education institution in this state as defined in section two, article one, chapter eighteen-b of this code or in a post-secondary vocational education program in this state as defined in section two, article one, chapter eighteen-b of this code, for a period of not ~~less~~ fewer than two years for each year for which a scholarship was received; or

(iii) ~~(ii)~~ Perform alternative service or employment in this state pursuant to ~~guidelines adopted in accordance with the rules of the governing boards promulgated by the commission,~~ in federal, state, county or local supported programs with an educational component, including mental or physical health care, or with bona fide tax exempt charitable organizations dedicated to the above, for a period of not ~~less~~ fewer than two years for each year for which a scholarship was received.

Any teaching time accrued as a substitute teacher for a county board of education under paragraph (A) or (B) of this subdivision shall be credited pro rata in accordance with rules ~~of the governing boards promulgated by the commission;~~ or

(3) Repay all or part of an Underwood-Smith teacher scholarship received under this article plus interest and, if applicable, reasonable collection fees, in accordance with subsection ~~(c) (b)~~, section four of this article, except as provided in subsections ~~(c) and~~ (d) of ~~said~~ section four of this article.

(b) Scholarship agreements shall ~~fully~~ disclose fully the terms and conditions under which assistance under this article is provided and under which repayment may be required. The agreements shall include the following including:

(1) A description of the conditions and procedures to be established under section four of this article; and

(2) A description of the appeals procedure required to be established under section four of this article.

(c) Individuals who were awarded an Underwood-Smith teacher scholarship prior to the effective date of this section may apply the provisions of paragraph (A), ~~or~~ (B) or (C), subdivision (2), subsection (a) of this section to teaching or other service performed by them after July 1, 1997.

§18C-4-4. Renewal conditions; noncompliance; deferral; excusal.

(a) The recipient of an Underwood-Smith Teacher Scholarship is eligible for scholarship renewal only during ~~such those periods that~~ when the recipient ~~is~~ meets the following conditions:

(1) Is enrolled as a full-time student in an accredited institution of higher education in this state;

(2) Is pursuing a course of study leading to teacher certification at the preschool, elementary, middle or secondary level in this state;

(3) Is maintaining satisfactory progress as determined by the institution of higher education the recipient is attending; and

(4) Is complying with such other standards as the ~~board~~ commission may establish by rule.

(b) Recipients found to be in noncompliance with the agreement entered into under section three of this article shall be required to repay the amount of the scholarship awards received, plus interest, and, where applicable, reasonable collection fees, on a schedule and at a rate of interest prescribed in the program guidelines. ~~Such~~ Guidelines also shall ~~also~~ provide for proration of the amount to be repaid by a recipient who teaches for part of the period required under subsection (a), section three of this article and for appeal procedures under which a recipient may appeal any determination of noncompliance.

(c) A recipient ~~shall is not be considered~~ in violation of the agreement entered into under section three of this article during any period in which the recipient is meeting any of the following conditions:

(1) Pursuing a full-time course of study at an accredited institution of higher education;

(2) Serving, not in excess of four years, as a member of the armed services of the United States;

(3) Seeking and unable to find full-time employment in accordance with paragraph (A), subdivision (2), subsection (a), section three of this article and is fulfilling any of the alternatives specified in paragraph (B) or (C) of ~~said that~~ subdivision; ~~or~~

(4) Satisfying the provisions of additional repayment exemptions that may be prescribed by the ~~boards~~ commission by rule; or

(5) Failing to comply with the terms of the agreement due to death or permanent or temporary disability as established by sworn affidavit of a qualified physician.

~~(d) (e) A recipient shall be excused from repayment of a teacher scholarship received under this article if the recipient dies or becomes permanently and totally disabled as established by sworn affidavit of a qualified physician. The rules adopted by the governing boards~~ commission may provide guidelines under which the ~~senior administrator~~ vice chancellor for administration may, ~~if extenuating circumstances exist,~~ if extenuating circumstances exist, extend the period for fulfilling the obligation to fifteen years.

ARTICLE 4A. UNDERWOOD-SMITH TEACHER LOAN ASSISTANCE PROGRAM.

§18C-4A-1. Selection criteria and procedures for loan assistance.

(a) The Governor shall designate the Higher Education Student Financial Aid Advisory Board created by section five, article one of this chapter to select recipients to receive Underwood-Smith Teacher Loan Assistance Awards.

(b) The advisory board shall make decisions regarding loan assistance pursuant to section one, article four of this chapter and the following criteria:

(A) Eligibility for an award is limited to a teacher who has earned a teaching degree and is certified to teach a subject area of critical need in the public schools of West Virginia. A certified teacher in a subject area of critical need who is enrolled in an advanced in-field degree course or who has earned an advanced in-field degree may apply for an award to be paid toward current education loans;

(B) To be eligible for a loan award, a teacher shall agree to teach, or shall currently be teaching, a subject area of critical need in a state school or geographic area of the state identified as an area of critical need pursuant to section one, article four of this chapter.

(c) In accordance with the rule promulgated pursuant to section one, article four of this chapter, the vice chancellor for administration shall develop criteria and procedures for the administration of the loan program.

(d) The vice chancellor for administration shall make available program application forms to public and private schools in the state via the commission and the State Department of Education's websites and in other locations convenient to potential applicants.

§18C-4A-2. Loan assistance agreement.

(a) Before receiving an award, each eligible teacher shall enter into an agreement with the vice chancellor for administration and shall meet the following criteria:

(1) Provide the commission with evidence of compliance with subsection (b), section four, article four of this chapter;

(2) Teach in a subject area or geographic area of critical need full time under contract with a county board for a period of two school years for each year for which loan assistance is received pursuant to this article. The vice chancellor for administration may grant a partial award to an eligible recipient whose contract term is for less than a full school year pursuant to criteria established by commission rule.

(3) Acknowledge that an award is to be paid to the recipient's educational loan institution, not directly to the recipient, only after the commission determines that the recipient has complied with all terms of the agreement; and

(4) Repay all or part of an award received pursuant to this article if the award is not paid to the educational loan institution or if the recipient does not comply with the other terms of the agreement.

(b) Each loan agreement shall disclose fully the terms and conditions under which an award may be granted pursuant to this article and under which repayment may be required. The agreement also is subject to and shall include the terms and conditions established by section five, article four of this chapter.

§18C-4A-3. Amount and duration of loan assistance; limits.

(a) Each award recipient is eligible to receive loan assistance of up to \$2,000 annually subject to limits set forth in subsection (b) of this section:

(1) If the recipient has taught math or science for a full school year under contract with a county board in a school or geographic area of critical need; and

(2) If the recipient otherwise has complied with the terms of the agreement and with applicable provisions of this article and article four of this chapter, and any rules promulgated pursuant thereto.

(b) The recipient is eligible for renewal of loan assistance only during the periods when the recipient is under contract with a county board to teach in a subject area of critical need in a school or geographic area of critical need, and complies with other criteria and conditions established by rule, except that a teacher who is teaching under a contract in a position that no longer meets the definition of critical need under rules established in accordance with section one, article four of this chapter is eligible for renewal of loan assistance until the teacher leaves his or her current position.

(c) No recipient may receive loan assistance pursuant to this article which accumulates in excess of \$15,000.

Senate Bill 421

Effective Date: July 4, 2013

Signed by Governor: April 17, 2013

Code Reference: Amends §61-7-11a

Title: Exempting certain school mascot from prohibition of firearms possession on school grounds

Major Provisions:

- Provides an exemption for the official mascot of Parkersburg South High School, commonly known as "The Patriot," to carry a musket on school grounds when the mascot is acting in his or her official capacity. This is the same exemption that is granted to the West Virginia University Mountaineer.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 421

(Senators Nohe, Boley, Carmichael And Walters)

[Passed April 5, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating to providing an exemption for the official mascot of Parkersburg South High School, commonly known as the Patriot, which would allow the mascot to carry a musket on school grounds when the mascot is acting in his or her official capacity.

Be it enacted by the Legislature of West Virginia:

That §61-7-11a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and in offices of family law master.

(a) The Legislature hereby finds that the safety and welfare of the citizens of this state are inextricably dependent upon assurances of safety for children attending, and the persons employed by, schools in this state and for ~~those~~ persons employed ~~with~~ by the judicial department of this state. It is for the purpose of providing assurances of safety ~~therefore~~, that subsections (b), (g) and (h) of this section are enacted as a reasonable regulation of the manner in which citizens may exercise the rights accorded to them pursuant to section twenty-two, article three of the Constitution of the State of West Virginia.

(b) (1) It ~~shall be~~ is unlawful for ~~any a~~ person to possess ~~any a~~ firearm or ~~any~~ other deadly weapon on ~~any a~~ school bus as defined in section one, article one, chapter seventeen-a of this code, or in or on ~~any a~~ public or private primary or secondary education building, structure, facility or grounds ~~thereof~~, including ~~any a~~ vocational education building, structure, facility or grounds ~~thereof~~ where secondary vocational education programs are conducted or at ~~any a~~ school-sponsored function.

(2) This subsection ~~shall~~ does not apply to:

(A) A law-enforcement officer acting in his or her official capacity;

(B) A person specifically authorized by the board of education of the county or principal of the school where the property is located to conduct programs with valid educational purposes;

(C) A person who, as otherwise permitted by the provisions of this article, possesses an unloaded firearm or deadly weapon in a motor vehicle, or leaves an unloaded firearm or deadly weapon in a locked motor vehicle;

(D) Programs or raffles conducted with the approval of the county board of education or school which include the display of unloaded firearms; ~~or~~

(E) The official mascot of West Virginia University, commonly known as the Mountaineer, acting in his or her official capacity; or -

(F) The official mascot of Parkersburg South High School, commonly known as the Patriot, acting in his or her official capacity.

(3) A person violating this subsection ~~shall be~~ is guilty of a felony, and, upon conviction thereof, shall be imprisoned in a ~~penitentiary of this state~~ state correctional facility for a definite term of years of not less than two years nor more than ten years, or fined not more than \$5,000, or both.

(c) It ~~shall be~~ is the duty of the principal of each school subject to the authority of the State Board of Education to report ~~any a~~ a violation of subsection (b) of this section discovered by ~~such the~~ the principal to the State Superintendent of Schools within seventy-two hours after ~~such the~~ the violation occurs. The State Board of Education shall keep and maintain ~~such these~~ these reports and may prescribe rules establishing policy and procedures for the making and delivery of the ~~same reports~~ reports as required by this subsection. In addition, it ~~shall be~~ is the duty of the principal of each school subject to the authority of the State Board of Education to report ~~any a~~ a violation of subsection (b) of this section discovered by ~~such the~~ the principal to the appropriate local office of the Division of Public Safety within seventy-two hours after ~~such the~~ the violation occurs.

(d) In addition to the methods of disposition provided by article five, chapter forty-nine of this code, ~~any a~~ a court which adjudicates a person who is fourteen years of age or older as delinquent for a violation of subsection (b) of this section may, in its discretion, order the Division of Motor Vehicles to suspend ~~any a~~ a driver's license or instruction permit issued to ~~such the~~ the person for ~~such a~~ a period of time as the court ~~considers~~ may deem appropriate, ~~such suspension, however,~~ not to extend beyond ~~such the~~ the person's nineteenth birthday; ~~or,~~ Where ~~such the~~ the person has not been issued a driver's license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny ~~such the~~ the person's application for a license or permit for ~~the same for such a~~ a period of time as the court ~~may deem~~ considers appropriate, ~~such denial, however,~~ not to extend beyond ~~such the~~ the person's nineteenth birthday. A ~~any~~ suspension ordered by the court pursuant to this subsection ~~shall be~~ is effective upon the date of entry of ~~such the~~ the order. Where the court orders the suspension of a driver's license or instruction permit pursuant to this subsection, the court shall confiscate any driver's license or instruction permit in the adjudicated person's possession and forward ~~the same~~ the same to the Division of Motor Vehicles.

(e) (1) If a person eighteen years of age or older is convicted of violating subsection (b) of this section, and if the person does not act to appeal ~~such the~~ the conviction within the time periods described in subdivision (2) of this subsection, ~~such the~~ the person's license or privilege to operate a motor vehicle in this state shall be revoked in accordance with the provisions of this section.

(2) The clerk of the court in which the person is convicted as described in subdivision (1) of this subsection shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward ~~such the~~ the transcript when the person convicted has not requested an appeal within twenty days of the sentencing for ~~such the~~ the conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward ~~such a~~ a transcript of the judgment of conviction when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was entered.

(3) If, upon examination of the transcript of the judgment of conviction, the commissioner ~~shall~~ determines that the person was convicted as described in subdivision (1) of this subsection, the commissioner shall make and enter an order revoking ~~such the~~ the person's license or privilege to operate a motor vehicle in this state for a period of one year; or, in the event the person is a student enrolled in a secondary school, for a period of one year or until the person's twentieth birthday, whichever is the greater period. The order shall contain the reasons for the revocation and the revocation period. The order of suspension shall advise the person that because of the receipt of the court's transcript, a presumption exists that the person named in the order of suspension is the same person named in the transcript. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of section two, article five-a, chapter seventeen-c of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. Such The request for hearing shall be made within ten days after receipt of a copy of the order of suspension.

The sole purpose of this hearing ~~shall be~~ is for the person requesting the hearing to present evidence that he or she is not the person named in the notice. ~~If in the event~~ the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner's order resulting from the hearing.

(4) For the purposes of this subsection, a person is convicted when such person enters a plea of guilty or is found guilty by a court or jury.

(f) (1) It ~~shall be~~ is unlawful for ~~any a~~ any a parent(s), guardian(s) or custodian(s) of a person less than eighteen years of age who knows that ~~said the~~ person is in violation of subsection (b) of this section or has reasonable cause to believe that ~~said the~~ person's violation of ~~said~~ subsection (b) is imminent, to fail to immediately report his or her ~~such~~ knowledge or belief to the appropriate school or law-enforcement officials.

(2) ~~Any A~~ A person violating this subsection ~~shall be~~ is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year, or both.

(g) (1) It ~~shall be~~ is unlawful for ~~any a~~ any a person to possess ~~any a~~ a firearm or ~~any other~~ any other deadly weapon on the premises ~~which houses of~~ of a court of law, ~~or in the offices of a~~ including family law ~~master courts~~ courts.

(2) This subsection ~~shall~~ does not apply to:

(A) A law-enforcement officer acting in his or her official capacity; and

(B) A person exempted from the provisions of this subsection by order of record entered by a court with jurisdiction over ~~such the~~ the premises or offices.

(3) ~~Any A~~ A person violating this subsection ~~shall be~~ is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year, or both.

(h) (1) It ~~shall be~~ is unlawful for ~~any a~~ any a person to possess a firearm or ~~any other~~ any other deadly weapon on the premises ~~which houses of~~ of a court of law, ~~or in the offices of a~~ including family law ~~master courts~~ courts, with the intent to commit a crime.

(2) ~~Any A~~ A person violating this subsection ~~shall be~~ is guilty of a felony, and, upon conviction thereof, shall be imprisoned in ~~the penitentiary of this state~~ a state correctional facility for a definite term of years of not less than two years nor more than ten years, or fined not more than \$5,000, or both.

(i) Nothing in this section may be construed to be in conflict with the provisions of federal law.

Senate Bill 430

Effective Date: July 7, 2013

Signed by Governor: April 18, 2013

Code Reference: Amends §18-7B-2
Adds §18-7B-21

Title: Defining "employment term" in Teachers' Defined Contribution Retirement System

Major Provisions:

- Adds the definition of "employment term", which means employment for at least ten months in any plan year with a month being defined as twenty employment days.
- Requires the Consolidated Public Retirement Board (CPRB) to correct any errors in retirement contributions or benefits and specifies that if the correction occurs after retirement, the retirement board is to adjust the payment of the benefit in an amount computed by the board to which the retirant was correctly entitled to receive.
- Specifies "Underpayments" that:
 - o For any change or error made by an employer that results in an underpayment to the retirement system, the error may be corrected by the member or retirant remitting the required employee contribution and the existing employer remitting the required employer contribution.
 - o Interest is to accumulate in accordance with the CPRB's Legislative Rule 162 CSR 7, and that any accumulated interest due as a result of an employer error is the responsibility of the participating public employer.
- Specifies for "Overpayments" that:
 - o For any error by an employer that results in an overpayment of the employer's contributions to the retirement system, the CPRB is to credit the employer with the amount, to be offset against the employer's future liability for employer contributions to the retirement system.
 - o For any error by an employer that results in an overpayment of the employee's contributions to the retirement system, the CPRB has sole authority for determining the means of return, offset or credit to or for the benefit of the employee or the amounts overpaid.
 - o The CBRB, in its full and complete discretion, may require the employer to pay the employee the amount of the wages, with the board crediting the employer with an amount to offset against its future contributions to the retirement system.

- The wages paid an employee for any overpayments are not considered compensation for any purposes under Chapter 18, Article 7B of the Code.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 430

(Senators Jenkins and McCabe)

[Passed April 8, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §18-7B-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18-7B-21, all relating to the Teachers' Defined Contribution Retirement System; adding a definition of employment term; and providing for correction of errors by participating public employers and the Consolidated Public Retirement Board.

Be it enacted by the Legislature of West Virginia:

That §18-7B-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18-7B-21, all to read as follows:

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(1) "Annual addition" means, for purposes of the limitations under Section 415(c) of the Internal Revenue Code, the sum credited to a member's account for any limitation year of: (A) Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cashouts or contributions as described in Section 415(k)(3) of the Internal Revenue Code, rollover contributions and picked-up employee contributions to a defined benefit plan shall not be treated as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1;

(2) "Annuity account" or "annuity" means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends or other accumulations credited on behalf of the member;

(3) "Compensation" means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions: *Provided*, That annual compensation for determining contributions during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code: *Provided, however*, That solely for purposes of applying the limitations of Section 415 of the Internal Revenue Code to any annual addition, "compensation-shall have" has the meaning given it in subsection (d), section thirteen of this article;

(4) "Consolidated board" or "board" means the Consolidated Public Retirement Board created and established pursuant to article ten-d, chapter five of this code;

(5) "Defined contribution system" or "system" means the Teachers' Defined Contribution Retirement System created and established by this article;

(6) "Employer" means the agency of and within the State of West Virginia which has employed or employs a member;

(7) “Employer contribution” means an amount deposited into the member’s individual annuity account on a periodic basis coinciding with the employee’s regular pay period by an employer from its own funds;

(8) “Employment term” means employment for at least ten months in any plan year with a month being defined as twenty employment days;

(9) ~~(8)~~ “Existing employer” means any employer who employed or employs a member of the ~~existing retirement~~ system;

(10) ~~(9)~~ “Existing retirement system” means the State Teachers Retirement System established in article seven-a of this chapter;

(11) ~~(10)~~ “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended;

(12) ~~(11)~~ “Member” or “employee” means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher’s certificate; (F) members of the research, extension, administrative or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education or the State Department of Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education or the State Board of Education; (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; and (M) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the Teachers’ Defined Contribution Retirement System established by this article;

(13) ~~(12)~~ “Member contribution” means an amount reduced from the employee’s regular pay periods, and deposited into the member’s individual annuity account within the Teachers’ Defined Contribution Retirement System;

(14) ~~(13)~~ “Permanent, total disability” means a mental or physical incapacity requiring absence from employment service for at least six months: *Provided*, That the incapacity is shown by an examination by a physician or physicians selected by the board: *Provided, however*, That for employees hired on or after July 1, 2005, “permanent, total disability” means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than twelve months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness;

(15) ~~(14)~~ “Plan year” means the twelve-month period commencing on July 1 of any designated year and ending on the following June 30;

(16) ~~(15)~~ “Public schools” means all publicly supported schools, including normal schools, colleges and universities in this state;

(17) ~~(16)~~ “Regularly employed for full-time service” means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay;

(18) ~~(17)~~ "Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age seventy and one-half years; or (B) the calendar year in which the member retires or otherwise ceases employment with a participating employer after having attained the age of seventy and one-half years;

(19) ~~(18)~~ "Retirement" means a member's withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement;

(20) ~~(19)~~ "Year of employment service" means employment for at least ten months, with a month being defined as twenty employment days: *Provided*, That no more than one year of service may be accumulated in any twelve-month period.

§18-7B-21. Correction of errors; underpayments; overpayments.

(a) General rule. – If any change or employer error in the records of any existing employer or the retirement system results in a member, retirant or beneficiary receiving from the system more or less than he or she would have been entitled to receive had the records been correct, the board shall correct the error. If correction of the error occurs after retirement, the board shall adjust the payment of the benefit in an amount computed by the board to which the retirant was correctly entitled.

(b) Underpayments. – Any error resulting in an underpayment to the retirement system of required contributions may be corrected by the member or retirant remitting the required employee contribution and the existing employer remitting the required employer contribution. Interest accumulates in accordance with the board's Rule, Refund, Reinstatement, Retroactive Service, Loan and Employer Error Interest Factors, 162 CSR 7, and any accumulating interest owed on the employee and employer contributions resulting from an employer error is the responsibility of the participating public employer. The existing employer may remit total payment and the employee may reimburse the existing employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment of required contributions to the retirement system will result in increased payments to a retirant, including increases to payments already made, any adjustments may be made only after the board receives full payment of all required employee and employer contributions, including interest.

(c) Overpayments. – (1) When mistaken or excess employer contributions, including any overpayments, have been made to the retirement system by an existing employer, due to error or other reason, the board shall credit the existing employer with an amount computed by the board, to be offset against the existing employer's future liability for employer contributions to the system.

(2) When mistaken or excess employee contributions, including any overpayments, have been made to the retirement system, due to error or other reason, the board has sole authority for determining the means of return, offset or credit to or for the benefit of the employee of the amounts, and may use any means authorized or permitted under the provisions of Section 401(a), et seq., of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the existing employer to pay the employee the amounts as wages, with the board crediting the existing employer with an amount to offset against its future contributions to the plan: *Provided*, That the wages paid to the employee are not considered compensation for any purposes under this article.

Senate Bill 431

Effective Date: April 8, 2013
Signed by Governor: April 18, 2013
Code Reference: Adds §5-10D-11
Title: Relating to public employer liability for delinquent retirement contributions

Major Provisions:

- Specifies that any amount due the Consolidated Public Retirement Board (CPRB) by a participating public employer in excess of sixty days, including employee contributions, employer contributions, or any fees, charges or costs, is a debt owed the CPRB, enforceable by a lien on all assets of the participating public employer, or its transferee, successor or assignee within the State. The lien attaches to all assets of a participating public employer within the state, on the date that any amount owed to the CPRB is due.
- If a participating public employer fails to pay an amount owed to the CPRB for a period of more than sixty days, the CPRB may enforce the lien against the participating public employer by instituting an action in the Circuit Court of Kanawha County.
- In the event that the CPRB institutes an action against a participating public employer to enforce a lien, the CPRB is entitled to recover not only the amounts discussed above that are due, but all fees and costs incurred by the CPRB during the pendency of the action, including, without limitation, accrued interest, expert witness costs, filing fees, deposition costs and reasonable attorney fees.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 431

(Senators Jenkins and McCabe)

[Passed April 8, 2013; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10D-11, relating to the liability of a participating public employer and its successor to pay delinquent retirement contributions, delinquency fees and related costs; and providing for enforcement and collection of the costs by the Consolidated Public Retirement Board.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-10D-11, to read as follows:

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-11. Liability of participating public employer for delinquent retirement contributions; liability of participating public employer's successor for delinquent retirement contributions; lien for delinquent contributions; collection by suit.

(a) A participating public employer of a public retirement system administered pursuant to this article that fails, for a period of sixty days, to pay: (i) An employee retirement contribution; (ii) an employer retirement contribution; (iii) a delinquency fee; (iv) any other fees, charges or costs related to the public retirement system; or (v) any combination of subdivisions (i) through (iv) of this subsection, is liable for the amount pursuant to this article.

(b) If a participating public employer of a public retirement system administered pursuant to this article: (i) Sells all or substantially all of its stock or assets; (ii) merges with another entity; (iii) dissolves its business; or (iv) participates, voluntarily or involuntarily, in an event which causes its business to terminate, all unpaid employee retirement contributions, employer retirement contributions, delinquency fees and other fees, charges, or costs related to the public retirement system shall be paid within thirty days of the date of applicable event identified in subdivision (i) through (iv) of this subsection.

(c) A transferee, successor or assignee of a participating public employer of a public retirement system administered pursuant to this article is liable for the payment of all employee retirement contributions, employer retirement contributions, delinquency fees and other fees, charges or costs related to the public retirement system, if the participating public employer does not pay those amounts as provided in subsection (b) of this section.

(d) All amounts due to the Consolidated Public Retirement Board from a participating public employer under this article is a debt owed to the Consolidated Public Retirement Board enforceable by a lien on all assets of a participating public employer, or its transferee, successor or assignee within this state. The lien attaches to all assets of a participating public employer within this state, or all assets of its transferee, successor or assignee on the date that any amount owed to the Consolidated Public Retirement Board is due. If a participating public employer, or its transferee, successor or assignee fails to pay an amount owed to the Consolidated Public Retirement Board under this article for a period of more than sixty days, the Consolidated Public Retirement Board may enforce the lien against the participating public employer, or its transferee, successor or assignee by instituting an action in the Circuit Court of Kanawha County. In the

event that the Consolidated Public Retirement Board institutes an action against a participating public employer, or its transferee, successor or assignee to enforce a lien, the Consolidated Public Retirement Board is entitled to recover the amounts identified in subsection (a) of this section and in addition to those amounts, is entitled to recover all fees and costs incurred by the Consolidated Public Retirement Board during the pendency of the action, including, without limitation, accrued interest, expert witness costs, filing fees, deposition costs and reasonable attorney fees.

(e) If a section, subsection, subdivision, provision, clause or phrase of this article or its application to any person or circumstance is held unconstitutional or invalid, the unconstitutionality or invalidity does not affect other sections, subsections, subdivisions, provisions, clauses or phrases or applications of the article, and to this end each and every section, subsection, subdivision, provision, clause and phrase of this article are declared to be severable. The Legislature declares that it would have enacted the remaining sections, subsections, subdivisions, provisions, clauses and phrases of this article even if it had known that any sections, subsections, subdivisions, provisions, clauses and phrases of this article would be declared to be unconstitutional or invalid, and that it would have enacted this article even if it had known that its application to any person or circumstance would be held to be unconstitutional or invalid.

Senate Bill 663

Effective Date: April 13, 2013

Signed by Governor: May 3, 2013

Code Reference: Adds §18-5D-1, §18-5D-2, §18-5D-3 and §18-5D-4

Repeals §18-5-37

Title: Creating WV Feed to Achieve Act

Major Provisions:

- Requires each county board of education to establish and operate school nutrition programs under which, at a minimum, a nutritious breakfast and lunch are made available to all students enrolled in the schools of the county in accordance with the State Board of Education standards.
- Requires that the provisions of the Feed to Achieve Act be implemented beginning with the 2015 school year.
- Specifies the Feed to Achieve initiative will be phased in for all elementary schools as sufficient funds become available.
- Requires all schools to adopt a delivery system approved by the state Office of Child Nutrition that ensures all students are given an adequate opportunity to eat breakfast. These approved systems shall include Grab-And-Go Breakfasts, Breakfast in the Classroom or Breakfast after First Period.
- Requires each county board of education to collaborate with the state Office of Child Nutrition to develop strategies and methods to increase the percentage of children participating in the school breakfast and lunch nutrition programs.
- Requires the Department of Education and each county board of education establish a nonprofit foundation or fund to provide supplemental or matching funds to increase participation in the nutrition programs in the Feed to Achieve Initiative.
- Requires that expenditures, by the state or county foundations, from the funds be used for provision of food to students through any of the programs or initiatives approved by the Office of Child Nutrition, including the following programs: School Breakfast Program, National School Lunch Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, the Child and Adult Care Food Program, the farm to school initiative, and community gardens. Expenditures may also be made for meal delivery programs, transportation of students for summer food service programs and initiatives developed with the Department of Health and Human Resources and public-private partnerships to provide outreach and nutritional meals when students are not in school.
- Requires the Department of Education and county boards of education to form or expand existing partnerships with the federal and state departments of agriculture, Department of Health and Human Resources, local master gardeners, county extension agents or other experts in the field of agriculture or gardening to develop community gardens, farm to school programs and other such programs that teach students how to grow and produce healthy food and

provide healthy food to the students.

ENROLLED

Senate Bill No. 663

(By Senators Unger, Edgell, Cookman, Laird, Miller, Palumbo, Plymale, Prezioso, Stollings, M. Hall
And Barnes)

[Passed April 13, 2013; in effect from passage.]

AN ACT to repeal §18-5-37 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §18-5D-1, §18-5D-2, §18-5D-3 and §18-5D-4, all relating to improving the nutrition, physical activity and health of West Virginia's children; creating the West Virginia Feed to Achieve Act; providing legislative findings and intent; encouraging adoption of comprehensive policies and programs; phasing in implementation of the West Virginia Feed to Achieve Act; making nutritious breakfast and lunch be made available to all students; promoting delivery systems, strategies and methods to maximize participation by students; providing for record keeping and reporting; authorizing continuation or termination of nutrition programs under certain conditions; providing that classroom teachers may not be required to operate a breakfast program as part of their regular duties; establishing restricted use funds or nonprofit foundations to provide moneys for school nutrition programs; providing for acceptance of private contributions; authorizing expenditures of private funds to draw down maximum federal funds for child nutrition; authorizing certain expenditures; prohibiting use of private funds for administrative or personnel expenses; authorizing partnerships with federal and state agencies and public and private organizations to expand options for providing healthy, nutritious food to children; encouraging healthy food initiatives such as community gardens and to-school programs; and requiring an annual audit of the private funds.

Be it enacted by the Legislature of West Virginia:

That §18-5-37 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new article, designated §18-5D-1, §18-5D-2, §18-5D-3 and §18-5D-4, all to read as follows:

§18-5-37. School breakfast programs.

~~Beginning the school year one thousand nine hundred eighty one -- eighty two, and continuing thereafter, each county board of education shall establish and operate a school breakfast program under which a nutritious breakfast shall be made available to all pupils enrolled in the schools of the county in accord with standards of the state department of education. Such standards shall include guide lines for determining the eligibility of pupils for paid breakfasts, free breakfasts and reduced price breakfasts: **Provided**, That nothing herein contained shall prohibit any school from providing free breakfasts to all its pupils if revenues received from such programs exceed the costs of such programs: **Provided, however**, That a particular school which because of compelling circumstances is not able to provide a satisfactory school breakfast program may apply to the state superintendent of schools for a waiver. Upon application the state superintendent of schools shall give notice and the opportunity to be heard to the parents and school and shall review the specific reasons for the waiver request and if the state superintendent determines that a particular school is, because of compelling circumstances, not able to provide a satisfactory school breakfast program, it may be granted a waiver not to exceed two years except upon reapplication: **Provided further**, That if at any time federal financial appropriations to this state for school breakfast programs are terminated, county boards of education are hereby authorized but not required to continue such programs at their own expense.~~

~~The state superintendent of schools shall annually report to the Legislature on the first day of the regular session the schools exempted for that school term under the provisions of this section and shall state the reasons for such exemptions: **Provided**, That classroom teachers shall not be required to participate in the operation of the school breakfast program as part of their regular duties.~~

ARTICLE 5D. West Virginia Feed to Achieve Act.

§18-5D-1. Short title.

This act shall be known and may be cited as the West Virginia Feed to Achieve Act.

§18-5D-2. Legislative findings; intent.

(a) The Legislature finds and declares that:

(1) Every child in school needs to have nutritious meals in order to achieve his or her potential. Providing the best schools and teachers alone does not ensure a child is mentally present and able to learn. A growing body of research establishes that a hungry child is less able to process the information provided and is less likely to be attentive to the lessons being taught.

(2) President Harry S. Truman began the national school lunch program in 1946 as a measure of national security to safeguard the health and well-being of the nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food. Last year in West Virginia, 32.3 million school lunches were served to students in public schools.

(3) Research shows that healthy eating, proper nutrition and regular physical activity result in students who have:

(A) Increased standardized achievement test scores;

(B) improved attendance;

(C) reduced tardiness;

(D) improved academic, behavioral and emotional functioning; and

(E) improved nutrition, and for many students, the nutritious breakfast at school is essential.

(4) Schools that provide universal breakfast programs also report:

(A) Decreases in discipline and psychological problems;

(B) decreases in visits to school nurses;

(C) decreases in tardiness;

(D) increases in student attentiveness;

(E) increases in attendance; and

(F) improved learning environments, and these positive attributes are furthered through comprehensive healthy schools policies that include quality nutrition, integrating physical activity during the school day, and teaching children about the importance of embracing a healthy active lifestyle.

(5) An effective school breakfast program is not an interruption of the school day; it is an integral and vital part of the school day.

(6) The participation rate for the school breakfast program varies greatly among our counties. Those counties which have made a determined effort to increase participation by offering programs to best meet student needs, such as Grab-And-Go Breakfasts, providing Breakfast in the Classroom or providing Breakfast After First Period, are feeding significantly higher percentages of their students.

(7) The West Virginia Center on Budget and Policy reports that in 2011 more than 25 percent of the children in West Virginia lived in homes with a household income below the federal poverty line, which is \$23,050 for a family of four. About 50 percent of West Virginia children live in homes with a household income below twice the federal poverty level, \$46,100 for a family of four, which is approximately the level of the Work Force West Virginia self-sufficiency standard.

(8) The majority of students from families below the self-sufficiency standard are currently not eating breakfast at school. On the average school day during the 2011-2012 school year, less than half of the West Virginia students eligible for a federally funded free breakfast actually received one. On that same average day, only about one third of the students eligible to receive a reduced price breakfast actually received one.

(9) In order to maximize each child's potential to learn and develop, the Legislature, schools and communities must partner to provide the most basic support for learning: nutritious meals.

(10) In order to maximize student participation in school nutrition programs and to reduce the secondary adverse impacts of poverty, it is important that schools provide 67 nutritious meals without a risk to students of being stigmatized as poor.

(11) High rates of childhood hunger and childhood obesity occur simultaneously because children are not receiving healthy, nutritious food. According to the Data Resource Center for Child and Adolescent Health and others, in 2008 West Virginia ranked 44 in overall prevalence of childhood obesity, with 35.5 percent of children considered either overweight or obese.

(12) According to the 2008 Pediatric Nutrition Surveillance System, which assesses weight status of children from low-income families participating in the Women Infants and Children program, 28.3 percent of low income children age 2-5 are overweight or obese in West Virginia.

(13) The Food Research and Action Center has found that providing a balanced school breakfast may protect against childhood obesity. School breakfast participation, particularly when combined with comprehensive efforts that include regular physical activity and promote healthy eating habits, is associated with a lower body mass index, a lower probability of being overweight and a lower probability of obesity, all of which help prevent a range of chronic diseases including Type II Diabetes, high blood cholesterol, high blood pressure, heart disease and stroke.

(14) Participation in federally funded meals in child care, preschool, school, or summer settings is associated with a lower body mass index among young, low income children.

(15) Private and nonprofit sectors have shown a willingness to commit significant resources to addressing hunger in America, leveraging federal programs and enlisting their employees, customers and clients to improve the availability and accessibility of affordable, healthy food for those in need of assistance.

(16) Public schools in this state and others are adopting a continuum of policies to implement low cost, effective programs that include physical activity, physical education, proper nutrition and the promotion of healthy eating habits, along with involvement by school staff, families and communities, and a variety of resources to assist schools in adopting and implementing these programs are easily accessible on the internet and through the Office of Healthy Schools in the West Virginia Department of Education.

(b) In order to maximize the economies of scale and to access all available federal funds to support our school nutrition programs, the Feed to Achieve initiative directs schools to make available and to promote the federally approved and subsidized meals to all pre-kindergarten through twelfth grade students, to

make them readily available and to consider reducing or eliminating the cost to students if sufficient funds become available.

(c) The Legislature intends to provide a framework for the State Board of Education and the county boards of education to provide, as effectively and as efficiently as possible, a minimum of two nutritious meals each school day to all students.

(d) The Legislature intends for the state and county boards of education to enter into public-private partnerships to eventually provide free nutritious meals for all pre- kindergarten through twelfth grade school children in West Virginia.

(e) The Legislature encourages county boards to examine the options available for comprehensive policies and programs to improve student health and promote academic achievement and to establish a comprehensive policy on healthy schools that best meets the needs of their student population.

(f) It is not the intention of the Legislature to allow or encourage parents to abdicate their parental responsibility related to providing healthy, nutritious meals for their children. However, it is the intent of the Legislature that no child be denied nutritious meals.

(g) It is the intent of the Legislature that healthy nutritious school lunches be made available to all students in a manner which maximizes participation and minimizes stigma attached to participating low income students.

§18-5D-3. School nutrition programs.

(a) Each county board of education shall establish and operate school nutrition programs under which, at a minimum, a nutritious breakfast and lunch are made effectively available to all students enrolled in the schools of the county in accordance with the State Board of Education standards. The standards shall include guidelines for determining the eligibility of students for paid, free and reduced meals. The standards shall also establish procedures and guidelines for the Feed to Achieve initiative to allow for the provision of healthy, nutritious meals to all elementary school students, without cost to students, where schools find it practical to do so.

(b) The Feed to Achieve initiative will be phased in for all elementary schools as sufficient funds become available, through donations, contributions and payments made by individuals, communities, businesses, organizations and parents or guardians on behalf of students. Nothing in this article prohibits any school from providing free meals to all of its students.

(c) Each county board of education shall:

(1) Require all schools to adopt a delivery system approved by the state Office of Child Nutrition, no later than the 2015 school year, that ensures all students are given an adequate opportunity to eat breakfast. These approved systems shall include, but are not limited to, Grab-And-Go Breakfasts, Breakfast In The Classroom or Breakfast After First Period; and

(2) Collaborate with the state Office of Child Nutrition to develop strategies and methods to increase the percentage of children participating in the school breakfast and lunch nutrition programs.

(d) In addition to other statistics, the county boards of education, in consultation with the state Office of Child Nutrition, shall determine the number of children in each school who are participating in each meal offered by the school; the number of children who are not eating each meal offered by the school; and the total daily attendance.

(e) The state Office of Child Nutrition shall report to the Joint Committee on Government and Finance, the Select Committee on Children and Poverty and the Legislative Oversight Commission on Education Accountability on or before December 31, 2015, and each year thereafter, on the impacts of the Feed to Achieve Act and any recommendations for legislation.

(f) County boards of education may utilize the nonprofit funds or foundations established in section four of this article or other available funds to offset the costs of providing free meals, after school and summer nutrition programs to elementary students.

(g) If at any time federal financial appropriations to this state for school nutrition programs are terminated, county boards of education are hereby authorized, but not required, to continue the programs at their own expense.

(h) Classroom teachers may not be required to participate in the operation of the school breakfast program as part of their regular duties.

§18-5D-4. Creating public-private partnerships; creating nonprofit foundation or fund; audit.

(a) The Department of Education and each county board of education shall promptly establish a fund that is restricted solely for the receipt and expenditure of gifts, grants and bequests for the purposes of this article and may establish in lieu thereof a nonprofit foundation for this purpose. The purpose of the fund or nonprofit foundation is to provide supplemental or matching funds to increase participation in the nutrition programs in the Feed to Achieve initiative set forth in subsection (c) of this section. The Department of Education shall utilize its fund or nonprofit foundation to assist county boards of education in counties whose fund or foundation lacks sufficient business, industry and individual contributors to fund the Feed to Achieve nutrition programs.

(b) Financial support for the fund or foundation may come from either public or private gifts, grants, contributions, bequests and endowments.

(c) Expenditures from the state or county funds or by the foundations shall be used for provision of food to students through any of the programs or initiatives approved by the Office of Child Nutrition, including the following programs: School Breakfast Program, National School Lunch Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, the Child and Adult Care Food Program, the farm-to-school initiative and community gardens. Expenditures may also be made for initiatives developed with the Department of Health and Human Resources and public-private partnerships to provide outreach and nutritional meals when students are not in school.

(d) No administrative expenses or personnel expenses for any of the state departments implementing this act, the State Board of Education, any county board of education, school or program may be paid from the funds or by the foundations.

(e) Individuals or businesses that contribute to the funds or foundations may specify schools or nutrition programs for which the contribution is to be used.

(f) The Department of Education and county boards of education may establish public-private partnerships to enhance current or advance additional nutrition programs that provide nutritious food for children to take home for weekend meals.

(g) The Department of Education and county boards of education shall form or expand existing partnerships with the federal and state departments of agriculture, Department of Health and Human Resources, local master gardeners, county extension agents or other experts in the field of agriculture or gardening to develop community gardens, farm to school programs and other such programs that teach students how to grow and produce healthy food and provide healthy food to the students.

(h) The Department of Education shall collaborate with the Department of Health and Human Resources to develop effective strategies and programs such as after school nutrition outreach and programs that improve the healthy lifestyle of all students in pre-kindergarten through twelfth grade. The Department of Health and Human Resources may propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate any programs so developed.

(i) All moneys contributed to a fund or foundation established pursuant to this section and all expenditures made therefrom shall be audited as part of the annual independent audit of the State Board of Education and the county boards of education.

House Bill 2357

Effective Date: July 12, 2013
Signed by Governor: May 1, 2013
Code Reference: Adds §49-5-13g and §61-8C-3b
Title: Relating to sexting by minors

Major Provisions:

- Prohibits juveniles from manufacturing, possessing and distributing nude or partially nude images of minors.
- Provides that violations to be considered an act of juvenile delinquency.
- Authorizes the development of an educational diversion program as part of pre-petition diversion and informal resolution in advance of a filed petition; as part of a required counseling plan; or as part of an improvement period in advance of adjudication.
- Allows for court discretion as to whether an adjudicated juvenile should be required to register as a sex offender.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2357

(By Delegates Poore, Marshall, Moore, Hamilton, Miley,
Longstreth, Caputo, Manchin and Ellem)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-5-13g; and to amend said code by adding thereto a new section, designated §61-8C-3b, all relating to relating to juvenile proceedings; proscribing juveniles from manufacturing, possessing and distributing nude or partially nude images of minors; declaring a violation to be an act of juvenile delinquency and providing for the punishment thereof; authorizing the development of an educational diversion program for minors engaged in delinquent offenses associated with sexting and related offenses; delineation of sexting and associated offenses; providing for the establishment of a specialized diversion program by the West Virginia Supreme Court of Appeals for sexting by minors and associated offenses; suggested scope and topics to be included in such specialized diversion program; providing for the participation in the diversion program as a part of a pre-petition diversion and informal resolution in advance of a filed petition, as part of a required counseling plan, or as part of an improvement period requirement established in advance of adjudication; consideration of successful completion of specialized diversion program on first offense and subsequent offenses; and allowing for court discretion as to whether adjudicated juvenile should be required to register as a sex offender as a result of adjudication as status offender for sexting and related offenses.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §49-5-13g; and that said code be amended by adding thereto a new section, designated §61-8C-3b, all to read as follows:

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13g. Sexting educational diversion program.

(a) Before a juvenile petition is filed for activity proscribed by article eight-a or eight-c, chapter sixty-one of this code, or after probable cause has been found to believe a juvenile has committed a violation thereof, but before an adjudicatory hearing on the petition, the court or a prosecuting attorney may direct or allow a minor who engaged in such activity to participate in an educational diversion program which meets the requirements of subsection (b) of this section. The prosecutor or court may refer the minor to the educational diversion program, as part of a pre-petition diversion and informal resolution pursuant to the provisions of section two-a of this article; as part of counseling provided pursuant to the provisions of sections three or three-a of this article; or as part of the requirements of an improvement period to be satisfied in advance of an adjudicatory hearing pursuant to the provisions of section nine of this article.

(b) The West Virginia Supreme Court of Appeals may develop an educational diversion program for minors who are accused of activity proscribed by the provisions of article eight-a or eight-c, chapter sixty-one of this code. As a part of any specialized educational diversion program so developed, the following issues and topics should be included:

(1) The legal consequences of and penalties for sharing sexually suggestive or explicit materials, including applicable federal and state statutes;

(2) The nonlegal consequences of sharing sexually suggestive or explicit materials including, but not limited to, the effect on relationships, loss of educational and employment opportunities, and being barred or removed from school programs and extracurricular activities;

(3) How the unique characteristics of cyberspace and the Internet, including searchability, replicability and an infinite audience, can produce long-term and unforeseen consequences for sharing sexually suggestive or explicit materials; and

(4) The connection between bullying and cyber-bullying and minors sharing sexually suggestive or explicit materials.

(c) Once a specialized educational diversion program is established by the West Virginia Supreme Court of Appeals consistent with the provisions of this section, the minor's successful completion of the educational diversion program shall be duly considered by the prosecutor or the court in their respective decisions to either abstain from filing the juvenile petition or to dismiss the juvenile petition, as follows:

(1) If the minor has not previously been judicially determined to be delinquent, and the minor's activities represent a first offense for a violation of section three-b, article eight-c, chapter sixty-one of this code, the minor shall not be subject to the requirements of said section, as long as he or she successfully completes the educational diversion program; and

(2) If the minor commits a second or subsequent violation of article eight-a or eight-c, chapter sixty-one of this code, the minor's successful completion of the educational diversion program may be considered as a factor to be considered by the prosecutor and court in deciding to not file a petition or to dismiss a petition, upon successful completion of an improvement plan established by the court.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

§61-8C-3b. Prohibiting juveniles from manufacturing, possessing and distributing nude or partially nude images of minors; creating exemptions; declaring a violation to be an act of juvenile delinquency; and providing for the punishment thereof.

(a) Any minor who intentionally possesses, creates, produces, distributes, presents, transmits, posts, exchanges, or otherwise disseminates a visual portrayal of another minor posing in an inappropriate sexual manner or who distributes, presents, transmits, posts, exchanges or otherwise disseminates a visual portrayal of himself or herself posing in an inappropriate sexual manner shall be guilty of an act of delinquency and upon adjudication disposition may be made by the circuit court pursuant to the provisions of article five, chapter forty-nine of this code.

(b) As used in this section:

(1) "Posing in an inappropriate sexual manner" means exhibition of a bare female breast, female or male genitalia, pubic or rectal areas of a minor for purposes of sexual titillation.

(2) "Visual portrayal" means:

(A) A photograph;

(B) A motion picture;

(C) A digital image;

(D) A digital video recording; or

(E) Any other mechanical or electronic recording process or device that can preserve, for later viewing, a visual image of a person that includes, but is not limited to, computers, cellphones, personal digital assistance and other digital storage or transmitting devices;

(c) It shall be an affirmative defense to an alleged violation of this section that a minor charged with possession of the prohibited visual depiction did neither solicit its receipt nor distribute, transmit or present it to another person by any means.

(d) Notwithstanding the provisions of article twelve, chapter fifteen of this code, an adjudication of delinquency under the provisions of this section shall not subject the minor to the requirements of said article and chapter.

House Bill 2470

Effective Date: July 1, 2013

Signed by Governor: April 30, 2013

Code Reference: Amends §18-20-2, §18-2-4, §18A-4-8 and §18A-4-8a

Title: Relating to sign support specialist or an educational sign language interpreter in the education of exceptional children

Major Provisions:

- Separates the Class title of “Braille or Sign Language Specialist” into two Class titles: Braille Specialist and Sign Support Specialist. A sign support specialist may be assigned to a student with an exceptionality other than deaf or hard of hearing if it is determined the student needs signs to support his or her communication. A sign support specialist may be assigned to a student who is deaf or hard of hearing only if an educational sign language interpreter I or II is not available, and the sign support specialist is executing a professional development plan while seeking certification as an education sign language interpreter. After two years the sign support specialist may remain in the assignment only if an educational sign language interpreter remains unavailable and approval is granted by WVDE.
- Provides that the cost of certification renewal and satisfying the requirements of the West Virginia Registry of Interpreters is paid in full by the employer. This includes the cost of testing, training or continuing education to advance from sign support specialist to educational sign language interpreter I or II or from educational sign language interpreter I to II.
- Renames the paraprofessional certificates “Educational Interpreter- Initial” and “Educational Interpreter-Permanent” to “Educational Sign Language Interpreter I and II”, respectively. The educational sign language interpreter II pay grade changes from F to G.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2470

(By Delegate Poling, M.)

[Passed April 13, 2013; in effect July 1, 2013.]

AN ACT to amend and reenact §18-20-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-2-4 of said code; and to amend and reenact §18A-4-8 and §18A-4-8a of said code, all relating to school service personnel classification, compensation, duties, requirements and training; establishing certain service personnel classification titles and setting their wages; specifying employment requirements and duties for certain classifications titles; modifying certain service personnel classification titles; and establishing conditions for employer payment of and continuing education credit accrual for certain certification acquisition.

Be it enacted by the Legislature of West Virginia:

That §18-20-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-2-4 of said code be amended and reenacted; and that §18A-4-8 and §18A-4-8a of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-2. Providing suitable educational facilities, equipment and services.

(a) Each county board shall provide suitable educational facilities, special equipment and special services that are necessary. Special services include provisions and procedures for finding and enumerating exceptional children of each type, diagnosis by appropriate specialists who will certify the child's need and eligibility for special education and make recommendations for treatment and prosthesis as may alleviate the disability, special teaching by qualified and specially trained teachers, transportation, lunches and remedial therapeutic services. Qualifications of teachers and therapists shall be in accordance with standards prescribed or approved by the state board.

(b) A county board may provide for educating resident exceptional children by contracting with other counties or other educational agencies which maintain special education facilities. Fiscal matters shall follow policies approved by the state board.

(c) The county board shall provide a four-clock-hour program of training for any teacher aide employed to assist teachers in providing services to exceptional children under this article prior to the assignment. The program shall consist of training in areas specifically related to the education of exceptional children, pursuant to rules of the state board. The training shall occur during normal working hours and an opportunity to be trained shall be provided to a service person prior to filling a vacancy in accordance with the provisions of section eight-b, article four, chapter eighteen-a of this code.

(d) The county board annually shall make available during normal working hours to all regularly employed teachers' aides twelve hours of training that satisfies the continuing education requirements for the aides regarding:

(1) Providing services to children who have displayed violent behavior or have demonstrated the potential for violent behavior; and

(2) Providing services to children diagnosed as autistic or with autism spectrum disorder. This training shall be structured to permit the employee to qualify as an autism mentor after a minimum of four years of training. The county board shall:

(A) Notify in writing all teachers' aides of the location, date and time when training will be offered for qualification as an autism mentor; and

(B) Reimburse any regularly employed or substitute teacher's aide who elects to attend this training for one half of the cost of the tuition.

(e) For any student whose individualized education plan (IEP) or education plan established pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, requires the services of a sign support specialist or an educational sign language interpreter I or II:

(1) Any educational sign language interpreter I or II assigned to assist that student is a related service provider member of the education team who participates in IEP meetings and works with the team to implement the IEP;

(2) A sign support specialist may be assigned to a student with an exceptionality other than deaf or hard of hearing if it is determined that the student needs signs to support his or her expressive communication; and

(3) A sign support specialist may be assigned to a student who is deaf or hard of hearing in lieu of an interpreter only if an educational sign language interpreter I or II is unavailable, and the sign support specialist is executing a professional development plan while actively seeking certification as an educational sign language interpreter I or II. After two years the sign support specialist may remain in the assignment only if an educational sign language interpreter I or II remains unavailable, and with an approved waiver by the West Virginia Department of Education. An employee in this situation is entitled to full payment of the costs of certification acquisition or renewal pursuant to the certification renewal provisions of section four, article two, chapter eighteen-a of this code.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-4. Commercial driver's license for school personnel; intrastate waiver for bus operators diagnosed with diabetes mellitus requiring insulin; reimbursement of electrician's and commercial driver's license when required, and educational sign language interpreter certification.

(a) If a commercial driver's license is required as a condition of employment for any school employee or qualified applicant who becomes an employee by a county board of education, the cost shall be ~~is~~ paid in full by the ~~employer~~ county board.

~~It is unlawful for any~~ A county board of education ~~to~~ may not require any employee or applicant who becomes an employee of the board to pay the cost of acquiring a commercial driver's license as a condition of employment.

(b) The Division of Motor Vehicles shall accept the West Virginia Department of Education physical and psychomotor test result forms in lieu of the Division of Motor Vehicles vision report form.

(c) A school bus operator who is currently employed by a county board of education or who is otherwise subject to state board rules governing school bus operators and who is diagnosed with diabetes mellitus requiring insulin is not ineligible for employment as a school bus operator because of the diagnosis if the operator is issued a passenger endorsement for his or her commercial driver license through the intrastate waiver program pertaining to diabetes of the West Virginia Division of Motor Vehicles, subject to the following:

(1) A copy of the information required to be submitted to the Division of Motor Vehicles for waiver application and proof of passenger endorsement under the waiver program is submitted to his or her employer; and

(2) The operator remains in compliance with the stipulations of and grounds for eligibility for the intrastate waiver.

(d) If a county board of education requires of any employee who is employed as an electrician any license renewal when the employee is exempt from renewing the license pursuant to section three, article three-b, chapter twenty-nine of this code, the cost of ~~such the~~ license renewal ~~shall be~~ is paid in full by the county board of education.

(e) The cost of certification renewal and satisfying the requirements of the West Virginia Registry of Interpreters is paid in full by the employer for any service person who is:

(1) Employed as an educational sign language interpreter I or II and is required to complete any testing, training or continuing education in order to renew or maintain certification at that level;

(2) Employed as an educational sign language interpreter I and is required to complete any testing, training or continuing education to advance to an educational sign language interpreter II; or

(3) Employed as a sign support specialist and is required to complete any testing, training or continuing education in order to advance to an educational sign language interpreter I or II.

(f) For any service person required to hold certification as a condition of employment, any time devoted to acquiring or maintaining the certification, including instructional time and training, constitutes hours of continuing education for purposes of meeting the annual continuing education requirements in state board policy.

(g) Compliance with or failure to comply by a health care provider licensed and authorized pursuant to chapter thirty of this code, with the reporting requirements of the Division of Motor Vehicles regarding the provisions of subsection (c) of this section does not constitute negligence, nor may compliance or noncompliance with the requirements of this section be admissible as evidence of negligence in any civil or criminal action.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may not be less than ten months. A month is defined as twenty employment days. The county board may contract with all or part of these service personnel for a longer term. ~~The beginning and closing dates of the ten-month employment term may not exceed forty-three weeks.~~

(b) Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the two hundred-day minimum employment term ~~shall be~~ are paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred-day minimum employment term.

(d) A service person may not be required to report for work more than five days per week without his or her agreement, and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

(e) If a service person whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the service person ~~shall be~~ is paid for at least one-half day of work for each day he or she reports for work. If the service person works more than three and one-half hours on any Saturday or Sunday, he or she is paid for at least a full day of work for each day.

(f) A custodian, aide, maintenance, office and school lunch service person required to work a daily work schedule that is interrupted ~~shall be~~ is paid additional compensation in accordance with this subsection.

(1) A maintenance person means a person who holds a classification title other than in a custodial, aide, school lunch, office or transportation category as provided in section one, article one of this chapter.

(2) A service person's schedule is considered to be interrupted if he or she does not work a continuous period in one day. Aides are not regarded as working an interrupted schedule when engaged exclusively in the duties of transporting students;

(3) The additional compensation provided ~~for~~ in this subsection:

(A) Is equal to at least one eighth of a service person's total salary as provided by the state minimum pay scale and any county pay supplement; and

(B) Is payable entirely from county board funds.

(g) When there is a change in classification or when a service person meets the requirements of an advanced classification, his or her salary shall be made to comply with the requirements of this article and any county salary schedule in excess of the minimum requirements of this article, based upon the service person's advanced classification and allowable years of employment.

(h) A service person's contract, as provided in section five, article two of this chapter, shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and on any county salary schedule in excess of the minimum requirements of this article.

(i) The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article, are defined as follows:

(1) "Pay grade" means the monthly salary applicable to class titles of service personnel;

(2) "Years of employment" means the number of years which an employee classified as a service person has been employed by a county board in any position prior to or subsequent to the effective date of this section and includes service in the Armed Forces of the United States, if the employee was employed at the time of his or her induction. For the purpose of section eight-a of this article, years of employment is limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article;

(3) "Class title" means the name of the position or job held by a service person;

(4) "Accountant I" means a person employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;

(5) "Accountant II" means a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;

(6) "Accountant III" means a person employed in the county board office to manage and supervise accounts payable, payroll procedures, or both;

(7) "Accounts payable supervisor" means a person employed in the county board office who has primary responsibility for the accounts payable function and who either has completed twelve college hours of

accounting courses from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(8) "Aide I" means a person selected and trained for a teacher-aide classification such as monitor aide, clerical aide, classroom aide or general aide;

(9) "Aide II" means a service person referred to in the "Aide I" classification who has completed a training program approved by the state board, or who holds a high school diploma or has received a general educational development certificate. Only a person classified in an Aide II class title may be employed as an aide in any special education program;

(10) "Aide III" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed six semester hours of college credit at an institution of higher education; or

(B) Is employed as an aide in a special education program and has one year's experience as an aide in special education;

(11) "Aide IV" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed eighteen hours of State Board-approved college credit at a regionally accredited institution of higher education, or

(B) Has completed fifteen hours of State Board-approved college credit at a regionally accredited institution of higher education; and has successfully completed an in-service training program determined by the State Board to be the equivalent of three hours of college credit;

(12) "Audiovisual technician" means a person employed to perform minor maintenance on audiovisual equipment, films, and supplies and who fills requests for equipment;

(13) "Auditor" means a person employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;

(14) "Autism mentor" means a person who works with autistic students and who meets standards and experience to be determined by the State Board. A person who has held or holds an aide title and becomes employed as an autism mentor shall hold a multiclassification status that includes both aide and autism mentor titles, in accordance with section eight-b of this article;

(15) "Braille or sign language specialist" means a person employed to provide braille and/or sign language assistance to students. A service person who has held or holds an aide title and becomes employed as a braille or sign language specialist shall hold a multiclassification status that includes both aide and braille or sign language specialist title, in accordance with section eight-b of this article;

(16) "Bus operator" means a person employed to operate school buses and other school transportation vehicles as provided by the state board;

(17) "Buyer" means a person employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs;

(18) "Cabinetmaker" means a person employed to construct cabinets, tables, bookcases and other furniture;

(19) "Cafeteria manager" means a person employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school;

(20) "Carpenter I" means a person classified as a carpenter's helper;

(21) "Carpenter II" means a person classified as a journeyman carpenter;

(22) "Chief mechanic" means a person employed to be responsible for directing activities which ensure that student transportation or other county board-owned vehicles are properly and safely maintained;

(23) "Clerk I" means a person employed to perform clerical tasks,

(24) "Clerk II" means a person employed to perform general clerical tasks, prepare reports and tabulations, and operate office machines;

(25) "Computer operator" means a qualified person employed to operate computers;

(26) "Cook I" means a person employed as a cook's helper;

(27) "Cook II" means a person employed to interpret menus and to prepare and serve meals in a food service program of a school. This definition includes a service person who has been employed as a "Cook I" for a period of four years;

(28) "Cook III" means a person employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system;

(29) "Crew leader" means a person employed to organize the work for a crew of maintenance employees to carry out assigned projects;

(30) "Custodian I" means a person employed to keep buildings clean and free of refuse;

(31) "Custodian II" means a person employed as a watchman or groundsman;

(32) "Custodian III" means a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;

(33) "Custodian IV" means a person employed as a head custodians. In addition to providing services as defined in "Custodian III" duties may include supervising other custodian personnel;

(34) "Director or coordinator of services" means an employee of a county board who is assigned to direct a department or division.

(A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title;

(B) Professional personnel holding this class title may not be defined or classified as service personnel unless the professional person held a service personnel title under this section prior to holding the class title of "director or coordinator of services;"

(C) The director or coordinator of services ~~shall be~~ is classified either as a professional person or a service person for state aid formula funding purposes;

(D) Funding for the position of director or coordinator of services is based upon the employment status of the director or coordinator either as a professional person or a service person; and

(E) A person employed under the class title “director or coordinator of services” may not be exclusively assigned to perform the duties ascribed to any other class title as defined in this subsection: *Provided*, That nothing in this paragraph prohibits a person in this position from being multiclassified;

(35) “Draftsman” means a person employed to plan, design and produce detailed architectural/engineering drawings;

(36) “Early Childhood Classroom Assistant Teacher - Temporary Authorization” means a person who does not possess minimum requirements for the permanent authorization requirements, but is enrolled in and pursuing requirements;

(37) “Early Childhood Classroom Assistant Teacher - Permanent Authorization” means a person who has completed the minimum requirements for a state-awarded certificate for early childhood classroom assistant teachers that meet or exceed the requirements for a child development associate. Equivalency for the West Virginia Department of Education will be determined as the child development associate or the West Virginia Apprenticeship for Child Development Specialists;

(38) “Early Childhood Classroom Assistant Teacher - Paraprofessional Certificate” means a person who has completed permanent authorization requirements, as well as additional requirements comparable to current paraprofessional certificate;

(39) “Educational Sign Language Interpreter I” means a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing, and who holds the Initial Paraprofessional Certificate – Educational Interpreter pursuant to state board policy;

(40) “Educational Sign Language Interpreter II” means a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing, and who holds the Permanent Paraprofessional Certificate – Educational Interpreter pursuant to state board policy;

(41) ~~(36)~~ “Electrician I” means a person employed as an apprentice electrician helper or one who holds an electrician helper license issued by the State Fire Marshal;

(42) ~~(37)~~ “Electrician II” means a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the State Fire Marshal;

(43) ~~(38)~~ “Electronic technician I” means a person employed at the apprentice level to repair and maintain electronic equipment;

(44) ~~(39)~~ “Electronic technician II” means a person employed at the journeyman level to repair and maintain electronic equipment;

(45) ~~(40)~~ “Executive secretary” means a person employed as secretary to the county school superintendent or as a secretary who is assigned to a position characterized by significant administrative duties;

(46) ~~(41)~~ “Food services supervisor” means a qualified person who is not a professional person or professional educator as defined in section one, article one of this chapter. The food services supervisor is employed to manage and supervise a county school system’s food service program. The duties include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;

(47) ~~(42)~~ “Foreman” means a skilled person employed to supervise personnel who work in the areas of repair and maintenance of school property and equipment;

(48) ~~(43)~~ “General maintenance” means a person employed as a helper to skilled maintenance employees, and to perform minor repairs to equipment and buildings of a county school system;

(49) ~~(44)~~ "Glazier" means a person employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;

(50) ~~(45)~~ "Graphic artist" means a person employed to prepare graphic illustrations;

(51) ~~(46)~~ "Groundsman" means a person employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings;

(52) ~~(47)~~ "Handyman" means a person employed to perform routine manual tasks in any operation of the county school system;

(53) ~~(48)~~ "Heating and air conditioning mechanic I" means a person employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(54) ~~(49)~~ "Heating and air conditioning mechanic II" means a person employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(55) ~~(50)~~ "Heavy equipment operator" means a person employed to operate heavy equipment;

(56) ~~(51)~~ "Inventory supervisor" means a person employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;

(57) ~~(52)~~ "Key punch operator" means a qualified person employed to operate key punch machines or verifying machines;

(58) ~~(53)~~ "Licensed practical nurse" means a nurse, licensed by the West Virginia Board of Examiners for Licensed Practical Nurses, employed to work in a public school under the supervision of a school nurse;

(59) ~~(54)~~ "Locksmith" means a person employed to repair and maintain locks and safes;

(60) ~~(55)~~ "Lubrication man" means a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;

(61) ~~(56)~~ "Machinist" means a person employed to perform machinist tasks which include the ability to operate a lathe, planer, ~~shaper~~, shader, threading machine and wheel press. A person holding this class title also should have the ability to work from blueprints and drawings;

(62) ~~(57)~~ "Mail clerk" means a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

(63) ~~(58)~~ "Maintenance clerk" means a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

(64) ~~(59)~~ "Mason" means a person employed to perform tasks connected with brick and block laying and carpentry tasks related to these activities;

(65) ~~(60)~~ "Mechanic" means a person employed to perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

(66) ~~(61)~~ "Mechanic assistant" means a person employed as a mechanic apprentice and helper;

(67) ~~(62)~~ "Multiclassification" means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale shall be ~~is~~ the higher pay grade of the class titles involved;

(68) ~~(63)~~ "Office equipment repairman I" means a person employed as an office equipment repairman apprentice or helper;

(69) ~~(64)~~ "Office equipment repairman II" means a person responsible for servicing and repairing all office machines and equipment. A person holding this class title is responsible for the purchase of parts necessary for the proper operation of a program of continuous maintenance and repair;

(70) ~~(65)~~ "Painter" means a person employed to perform duties painting, finishing and decorating wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

(71) ~~(66)~~ "Paraprofessional" means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of students under the direction of a principal, a teacher or another designated professional educator.

(A) A person employed on the effective date of this section in the position of an aide may not be subject to a reduction in force or transferred to create a vacancy for the employment of a paraprofessional;

(B) A person who has held or holds an aide title and becomes employed as a paraprofessional shall hold a multiclassification status that includes both aide and paraprofessional titles in accordance with section eight-b of this article; and

(C) When a service person who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

(72) ~~(67)~~ "Payroll supervisor" means a person employed in the county board office who has primary responsibility for the payroll function and who either has completed twelve college hours of accounting from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(73) ~~(68)~~ "Plumber I" means a person employed as an apprentice plumber and helper;

(74) ~~(69)~~ "Plumber II" means a person employed as a journeyman plumber;

(75) ~~(70)~~ "Printing operator" means a person employed to operate duplication equipment, and to cut, collate, staple, bind and shelve materials as required;

(76) ~~(71)~~ "Printing supervisor" means a person employed to supervise the operation of a print shop;

(77) ~~(72)~~ "Programmer" means a person employed to design and prepare programs for computer operation;

(78) ~~(73)~~ "Roofing/sheet metal mechanic" means a person employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

(79) ~~(74)~~ "Sanitation plant operator" means a person employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection;

(80) ~~(75)~~ "School bus supervisor" means a qualified person:

(A) Employed to assist in selecting school bus operators and routing and scheduling school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promote good relationships with parents, students, bus operators and other employees; and

(B) Certified to operate a bus or previously certified to operate a bus;

(81) ~~(76)~~ "Secretary I" means a person employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;

(82) ~~(77)~~ "Secretary II" means a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational, or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes; stenotype, mechanical equipment or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. Nothing in this subdivision prevents a service person from holding or being elevated to a higher classification;

(83) ~~(78)~~ "Secretary III" means a person assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities in purchasing and financial control or any person who has served for eight years in a position which meets the definition of "secretary II" or "secretary III";

(84) "Sign Support Specialist" means a person employed to provide sign supported speech assistance to students who are able to access environments through audition. A person who has held or holds an aide title and becomes employed as a sign support specialist shall hold a multi-classification status that includes both aide and sign support specialist titles, in accordance with section eight-b of this article.

(85) ~~(79)~~ "Supervisor of maintenance" means a skilled person who is not a professional person or professional educator as defined in section one, article one of this chapter. The responsibilities include directing the upkeep of buildings and shops, and issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a county board;

(86) ~~(80)~~ "Supervisor of transportation" means a qualified person employed to direct school transportation activities properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system. After July 1, 2010, all persons employed for the first time in a position with this classification title or in a multi-classification position that includes this title shall have five years of experience working in the transportation department of a county board. Experience working in the transportation department ~~shall~~ consists of serving as a bus operator, bus aide, assistant mechanic, mechanic, chief mechanic or in a clerical position within the transportation department;

~~(87) (81)~~ "Switchboard operator-receptionist" means a person employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

~~(88) (82)~~ "Truck driver" means a person employed to operate light or heavy duty gasoline and diesel-powered vehicles;

~~(89) (83)~~ "Warehouse clerk" means a person employed to be responsible for receiving, storing, packing and shipping goods;

~~(90) (84)~~ "Watchman" means a person employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties;

(91) ~~(85)~~ "Welder" means a person employed to provide acetylene or electric welding services for a school system; and

(92) ~~(86)~~ "WVEIS data entry and administrative clerk" means a person employed to work under the direction of a school principal to assist the school counselor or counselors in the performance of administrative duties, to perform data entry tasks on the West Virginia Education Information System, and to perform other administrative duties assigned by the principal.

(j) Notwithstanding any provision in this code to the contrary, and in addition to the compensation provided for service personnel in section eight-a of this article, each service person is entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to the employee's hours of employment or the methods or sources of compensation.

(k) A service person whose years of employment exceeds the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he or she is employed.

(l) Each county board shall review each service person's job classification annually and shall reclassify all service persons as required by the job classifications. The state superintendent may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order a county board to correct immediately any improper classification matter and, with the assistance of the Attorney General, shall take any legal action necessary against any county board to enforce the order.

(m) Without his or her written consent, a service person may not be:

(1) Reclassified by class title; or

(2) Relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year; or for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

(n) Any county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.

(o) Notwithstanding any provision of this code to the contrary, a service person who holds a continuing contract in a specific job classification and who is physically unable to perform the job's duties as confirmed by a physician chosen by the employee, shall be given priority status over any employee not holding a continuing contract in filling other service personnel job vacancies if the service person is qualified as provided in section eight-e of this article.

(p) Any person employed in an aide position on the effective date of this section may not be transferred or subject to a reduction in force for the purpose of creating a vacancy for the employment of a licensed practical nurse.

(q) Without the written consent of the service person, a county board may not establish the beginning work station for a bus operator or transportation aide at any site other than a county board-owned facility with available parking. The workday of the bus operator or transportation aide commences at the bus at the designated beginning work station and ends when the employee is able to leave the bus at the designated beginning work station, unless he or she agrees otherwise in writing. The application or acceptance of a posted position may not be construed as the written consent referred to in this subsection.

(r) Itinerant status means a service person who does not have a fixed work site and may be involuntarily reassigned to another work site. A service person is considered to hold itinerant status if he or she has bid

upon a position posted as itinerant or has agreed to accept this status. A county board may establish positions with itinerant status only within the aide and autism mentor classification categories and only when the job duties involve exceptional students. A service person with itinerant status may be assigned to a different work site upon written notice ten days prior to the reassignment without the consent of the employee and without posting the vacancy. A service person with itinerant status may be involuntarily reassigned no more than twice during the school year. At the conclusion of each school year, the county board shall post and fill, pursuant to section eight-b of this article, all positions that have been filled without posting by a service person with itinerant status. A service person who is assigned to a beginning and ending work site and travels at the expense of the county board to other work sites during the daily schedule, shall is not be considered to hold itinerant status.

(s) Any service person holding a classification title on June 30, 2013, that is removed from the classification schedule pursuant to amendment and reenactment of this section in the year 2013, has his or her employment contract revised as follows:

(1) Any service person holding the Braille or Sign Language Specialist classification title has that classification title renamed on his or her employment contract as either Braille Specialist or Sign Support Specialist. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Braille or Sign Language Specialist classification prior to July 1, 2013, continues to be credited as seniority earned in the Braille Specialist or Sign Support Specialist classification;

(2) Any service person holding the Paraprofessional classification title and holding the Initial Paraprofessional Certificate – Educational Interpreter has the title Educational Sign Language Interpreter I added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the Educational Sign Language Interpreter I classification; and

(3) Any service person holding the Paraprofessional classification title and holding the Permanent Paraprofessional Certificate – Educational Interpreter has the title Educational Sign Language Interpreter II added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the Educational Sign Language Interpreter II classification;

§18A-4-8a. Service personnel minimum monthly salaries.

(a) The minimum monthly pay for each service employee shall be as follows:

(1) Beginning July 1, 2011, and continuing thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one half the amount indicated in the State Minimum Pay Scale Pay Grade set forth in this subdivision.

STATE MINIMUM PAY SCALE PAY GRADE

YearsExp.	Pay Grade							
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>
0	1,627	1,648	1,689	1,741	1,793	1,855	1,886	1,958
1	1,659	1,680	1,721	1,773	1,825	1,887	1,918	1,990
2	1,691	1,712	1,753	1,805	1,857	1,919	1,950	2,022
3	1,723	1,744	1,785	1,837	1,889	1,951	1,982	2,054
4	1,755	1,776	1,817	1,869	1,921	1,983	2,014	2,087
5	1,787	1,808	1,849	1,901	1,953	2,015	2,046	2,119
6	1,819	1,840	1,882	1,933	1,985	2,047	2,078	2,151
7	1,852	1,872	1,914	1,965	2,017	2,079	2,110	2,183
8	1,884	1,904	1,946	1,997	2,049	2,111	2,142	2,215
9	1,916	1,936	1,978	2,030	2,081	2,143	2,174	2,247
10	1,948	1,969	2,010	2,062	2,113	2,176	2,207	2,279
11	1,980	2,001	2,042	2,094	2,145	2,208	2,239	2,311
12	2,012	2,033	2,074	2,126	2,178	2,240	2,271	2,343
13	2,044	2,065	2,106	2,158	2,210	2,272	2,303	2,375
14	2,076	2,097	2,138	2,190	2,242	2,304	2,335	2,407
15	2,108	2,129	2,170	2,222	2,274	2,336	2,367	2,439
16	2,140	2,161	2,202	2,254	2,306	2,368	2,399	2,472
17	2,172	2,193	2,235	2,286	2,338	2,400	2,431	2,504
18	2,204	2,225	2,267	2,318	2,370	2,432	2,463	2,536
19	2,237	2,257	2,299	2,350	2,402	2,464	2,495	2,568

20	2,269	2,289	2,331	2,383	2,434	2,496	2,527	2,601
21	2,301	2,321	2,363	2,415	2,466	2,528	2,559	2,634
22	2,333	2,354	2,395	2,447	2,498	2,561	2,593	2,666
23	2,365	2,386	2,427	2,479	2,531	2,594	2,625	2,699
24	2,397	2,418	2,459	2,511	2,563	2,627	2,658	2,732
25	2,429	2,450	2,491	2,543	2,596	2,659	2,691	2,764
26	2,461	2,482	2,523	2,576	2,629	2,692	2,723	2,797
27	2,493	2,514	2,555	2,608	2,661	2,724	2,756	2,829
28	2,525	2,546	2,588	2,641	2,694	2,757	2,789	2,863
29	2,557	2,579	2,621	2,673	2,726	2,790	2,821	2,896
30	2,591	2,611	2,654	2,706	2,759	2,822	2,854	2,928
31	2,623	2,644	2,687	2,739	2,792	2,855	2,887	2,961
32	2,656	2,676	2,719	2,772	2,824	2,888	2,919	2,994
33	2,689	2,709	2,752	2,805	2,857	2,920	2,953	3,026
34	2,721	2,743	2,785	2,838	2,890	2,954	2,986	3,059
35	2,754	2,775	2,817	2,870	2,923	2,987	3,018	3,092
36	2,787	2,808	2,850	2,903	2,956	3,019	3,051	3,124
37	2,819	2,841	2,883	2,936	2,989	3,052	3,083	3,157
38	2,852	2,873	2,915	2,968	3,021	3,084	3,116	3,190
39	2,885	2,906	2,948	3,001	3,054	3,117	3,149	3,222
40	2,917	2,939	2,980	3,033	3,087	3,150	3,181	3,256

(2) Each service employee shall receive the amount prescribed in the Minimum Pay Scale in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

CLASS TITLE	PAY GRADE
Accountant I	D
Accountant II	E

Accountant III	F
Accounts Payable Supervisor	G
Aide I	A
Aide II	B
Aide III	C
Aide IV	D
Audiovisual Technician.....	C
Auditor	G
Autism Mentor	F
Braille Specialist	E
Bus Operator	D
Buyer	F
Cabinetmaker.....	G
Cafeteria Manager.....	D
Carpenter I	E
Carpenter II	F
Chief Mechanic.....	G
Clerk I	B
Clerk II.....	C
Computer Operator	E
Cook I	A
Cook II	B
Cook III	C
Crew Leader.....	F
Custodian I	A
Custodian II	B
Custodian III	C
Custodian IV.....	D
Director or Coordinator of Services.....	H
Draftsman.....	D
Early Childhood Classroom Assistant Teacher - Temporary Authorization.....	E
Early Childhood Classroom Assistant Teacher - Permanent Authorization.....	E
Early Childhood Classroom Assistant Teacher - Paraprofessional Certificate	F
Educational Sign Language Interpreter I	F
Educational Sign Language Interpreter II.....	G
Electrician I.....	F
Electrician II.....	G
Electronic Technician I	F
Electronic Technician II	G
Executive Secretary	G
Food Services Supervisor	G
Foreman	G
General Maintenance	C
Glazier	D
Graphic Artist.....	D
Groundsman	B
Handyman	B
Heating and Air Conditioning Mechanic I	E
Heating and Air Conditioning Mechanic II	G
Heavy Equipment Operator.....	E
Inventory Supervisor.....	D
Key Punch Operator.....	B
Licensed Practical Nurse.....	F

Locksmith	G
Lubrication Man	C
Machinist	F
Mail Clerk	D
Maintenance Clerk	C
Mason.....	G
Mechanic	F
Mechanic Assistant	E
Office Equipment Repairman I.....	F
Office Equipment Repairman II.....	G
Painter	E
Paraprofessional	F
Payroll Supervisor	G
Plumber I.....	E
Plumber II.....	G
Printing Operator	B
Printing Supervisor	D
Programmer	H
Roofing/Sheet Metal Mechanic	F
Sanitation Plant Operator	G
School Bus Supervisor	E
Secretary I.....	D
Secretary II.....	E
Secretary III.....	F
Sign Support Specialist	E
Supervisor of Maintenance.....	H
Supervisor of Transportation.....	H
Switchboard Operator-Receptionist	D
Truck Driver.....	D
Warehouse Clerk	C
Watchman	B
Welder.....	F
WVEIS Data Entry and Administrative Clerk.....	B

(b) An additional \$12 per month is added to the minimum monthly pay of each service ~~employee~~ person who holds a high school diploma or its equivalent.

(c) An additional \$11 per month also is added to the minimum monthly pay of each service ~~employee~~ person for each of the following:

(1) A service ~~employee~~ person who holds twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(2) A service ~~employee~~ person who holds twenty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(3) A service ~~employee~~ person who holds thirty-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(4) A service ~~employee~~ person who holds forty-eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(5) A service employee who holds sixty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(6) A service ~~employee~~ person who holds seventy-two college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service ~~employee~~ person who holds eighty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service ~~employee~~ person who holds ninety-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service ~~employee~~ person who holds one hundred eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service ~~employee~~ person who holds one hundred twenty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(d) An additional \$40 per month also ~~shall be~~ is added to the minimum monthly pay of each service ~~employee~~ person for each of the following:

(1) A service ~~employee~~ person who holds an associate's degree;

(2) A service ~~employee~~ person who holds a bachelor's degree;

(3) A service ~~employee~~ person who holds a master's degree;

(4) A service ~~employee~~ person who holds a doctorate degree.

(e) An additional \$11 per month ~~shall be~~ is added to the minimum monthly pay of each service ~~employee~~ person for each of the following:

(1) A service ~~employee~~ person who holds a bachelor's degree plus fifteen college hours;

(2) A service ~~employee~~ person who holds a master's degree plus fifteen college hours;

(3) A service ~~employee~~ person who holds a master's degree plus thirty college hours;

(4) A service ~~employee~~ person who holds a master's degree plus forty-five college hours; and

(5) A service ~~employee~~ person who holds a master's degree plus sixty college hours.

(f) To meet the objective of salary equity among the counties, each service person ~~shall be~~ is paid an equity supplement, as set forth in section five of this article, of \$152 per month, subject to the provisions of that section. These payments: (i) ~~shall be~~ Are in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to section five-b of this article; (ii) ~~shall be~~ is paid in equal monthly installments; and (iii) ~~shall be~~ is considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service ~~employee's~~ person's daily shift of work is performed between the hours of six o'clock p. m. and five o'clock a. m. the following day, the employee ~~shall be~~ is paid no less than an additional \$10 per month and one half of the pay ~~shall be~~ is paid with local funds.

(h) Any service ~~employee~~ person required to work on any legal school holiday ~~shall be~~ is paid at a rate one and one-half times the person's usual hourly rate.

(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid ~~shall be~~ is paid for the additional hours or fraction of

the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(j) ~~No A service employee person not~~ may have his or her daily work schedule changed during the school year without the employee's written consent and the ~~employee's person's~~ required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(k) The minimum hourly rate of pay for extra duty assignments as defined in section eight-b of this article ~~shall be is~~ no less than one seventh of the ~~employee's person's~~ daily total salary for each hour the ~~employee person~~ is involved in performing the assignment and paid entirely from local funds: *Provided*, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be used if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time ~~employees persons~~ within that classification category of employment within that county: *Provided, however*, That the vote ~~shall be is~~ by secret ballot if requested by a service person within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment is prorated accordingly. When performing extra duty assignments, ~~employees persons~~ who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the ~~employee person~~ were employed on a full-day salary basis.

(l) The minimum pay for any service personnel ~~employees~~ engaged in the removal of asbestos material or related duties required for asbestos removal ~~shall be is~~ their regular total daily rate of pay and no less than an additional \$3 per hour or no less than \$5 per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos-related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos related duties outside of the employee's regular employment county, the daily rate of pay ~~shall be is~~ no less than the minimum amount as established in the employee's regular employment county for asbestos removal and an additional \$30 per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel ~~employees~~ may be used in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(m) For the purpose of qualifying for additional pay as provided in section eight, article five of this chapter, an aide ~~shall be is~~ considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort or render service to a child or children when not under the direct supervision of a certified professional person within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds or wherever supervision is required. For purposes of this section, "under the direct supervision of a certified professional person" means that certified professional person is present, with and accompanying the aide.

House Bill 2531

Effective Date: April 13, 2013

Signed by Governor: May 3, 2013

Code Reference: Amends §30-32-1, §30-32-2, §30-32-3, §30-32-4, §30-32-5, §30-32-6, §30-32-7, §30-32-8, §30-32-9, §30-32-10, §30-32-11, §30-32-12, §30-32-13, §30-32-14, §30-32-15, §30-32-16, §30-32-17, §30-32-18, §30-32-19, §30-32-20, §30-32-21

Adds §30-32-22 and §30-32-23

Title: Relating to the practice of speech-language pathology and audiology

Major Provisions:

- Authorizes the Board of Examiners of Speech-language Pathology and Audiology to license speech-language pathologists and audiologists working in WV and describes provisions required for obtaining and renewal of licensure.
- Requires any person practicing speech-language pathology or audiology in the state to be licensed by the Board of Examiners of Speech-language Pathology (with the exception of speech language pathologists and audiologists practicing in the public schools).
- Authorizes the registration of speech-language pathology or audiology assistants with the Board of Examiners of Speech-language Pathology and Audiology and provides supervision requirements (with the exception of those working in the public schools).
- Requires the Legislative Auditor to present a report to the Joint Standing Committee on Government Organization on the requirements for speech-language pathologists, audiologists and assistants to practice in public schools on or before December 1, 2014.
- Authorizes telepractice in the state by licensed speech-language pathologist and provides conditions and requirements.
- Provides exemptions including persons licensed under any other law of this state and practicing the profession and performing services for which he or she is licensed.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2531

(By Delegates Morgan, Stephens, Paxton, Hartman, Ferns, Howell, Folk, Smith, R., Faircloth, Arvon and Nelson, J.)

[Passed April 13, 2013; in effect from passage.]

AN ACT to amend and reenact §30-32-1, §30-32-2, §30-32-3, §30-32-4, §30-32-5, §30-32-6, §30-32-7, §30-32-8, §30-32-9, §30-32-10, §30-32-11, §30-32-12, §30-32-13, §30-32-14, §30-32-15, §30-32-16, §30-32-17, §30-32-18, §30-32-19, §30-32-20 and §30-32-21 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §30-32-22 and §30-32-23, all relating to the Board of Examiners of Speech-language Pathology and Audiology; setting forth unlawful acts; providing exemptions; specifying applicability of other law; providing definitions; continuing the Board of Examiners for Speech-Language Pathology and Audiology; specifying qualifications of board members; providing terms and conditions of board members' service; providing for election of board officers; providing for compensation and expense reimbursement of board members; setting forth powers and duties of the board; providing rule-making authority; continuing the board of Examiners for Speech-Language Pathology and Audiology Fund; providing qualifications for practicing speech-language pathology or audiology; providing for provisional licenses to practice while attaining required postgraduate professional experience; providing for waiver of requirements for persons who hold a license from another state with substantially equivalent standards; providing for practice pending disposition of application; providing scopes of practice for speech-language pathology and audiology; requiring speech-language pathology assistants and audiology assistants to register with the board; providing registration and supervision requirements for speech-language pathology assistants and audiology assistants; authorizing telepractice; providing conditions and requirements for telepractice; providing for renewal of licenses and registrations; providing for renewal of lapsed licenses and registrations; providing for the suspension, revocation and refusal to renew licenses and registrations; providing for the reinstatement of revoked licenses and registrations; authorizing actions to enjoin violations; providing for the investigation of complaints; setting forth complaint procedures and hearing procedures; establishing grounds for disciplinary actions; providing for rights of appeal and judicial review; providing that a single act is sufficient to justify disciplinary action; providing for criminal proceedings; providing for criminal penalties; and requiring the Legislative Auditor to present a report to the Joint Standing Committee on Government Organization on the requirements for Speech-Language Pathologists, Audiologists and Assistants to practice in public schools.

Be it enacted by the Legislature of West Virginia:

That §30-32-1, §30-32-2, §30-32-3, §30-32-4, §30-32-5, §30-32-6, §30-32-7, §30-32-8, §30-32-9, §30-32-10, §30-32-11, §30-32-12, §30-32-13, §30-32-14, §30-32-15, §30-32-16, §30-32-17, §30-32-18, §30-32-19, §30-32-20, and §30-32-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto two new sections, designated §30-32-22 and §30-32-23, all to read as follows:

ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

§30-32-1. ~~Purpose and legislative intent.~~ Unlawful acts; criminal penalties.

~~It is hereby declared to be a policy of this state that the practice of speech-language pathology and audiology is a privilege granted to qualified persons and that, in order to safeguard the public health, safety and welfare, protect the public from being misled by incompetent, unscrupulous and unauthorized persons,~~

~~and protect the public from unprofessional conduct by qualified speech-language pathologists and audiologists, it is necessary to provide regulatory authority over persons offering speech-language pathology and audiology services as designated in this article.~~

(a) It is unlawful for any person to practice or offer to practice speech-language pathology or audiology in this state, or advertise or use any title or description tending to convey the impression that the person is a speech-language pathologist or audiologist unless the person has been licensed under the provisions of this article, and the license has not expired, been suspended or revoked.

(b) As of July 1, 2014, it is unlawful for any person to practice or represent that he or she is qualified to practice as a speech-language pathology assistant or an audiology assistant unless the person has registered with the West Virginia Board of Examiners for Speech-Language Pathology and Audiology under the provisions of this article, and the registration has not expired, been suspended or revoked.

(c) It is unlawful for any business entity, except through a licensee, to render any service or engage in any activity which if rendered or engaged in by an individual, would constitute the practices licensed under the provisions of this article.

(d) Any person violating any provision of subsections (a), (b) or (c) of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 or confined in jail not more than six months, or both.

§30-32-2. Definitions. Exemptions.

~~For the purpose of this article, the terms defined shall not include persons employed or contracted by the West Virginia Board of Education, a county board of education, or a Regional Education Service Agency:~~

~~(a) "Audiologist" means any person who engages in the practice of audiology and who meets the qualifications set forth in this article. A person represents himself or herself to be an audiologist when he or she holds out to the public by any means, or by any service or function he or she performs, directly or indirectly, or by using the terms "audiology," "audiologist," "audiometry," "audiometrist," "audiological," "audiometrics," "hearing therapy," "hearing therapist," "hearing clinic," "hearing clinician," "hearing center," "hearing aid audiologist," or any variation, synonym, coinage or whatever expresses, employs, or implies these terms, names or functions.~~

~~(b) "Audiology" means the application of principles, methods, and procedures related to hearing and the disorders of hearing and to related language and speech disorders. Disorders means and includes any and all conditions, whether of organic or nonorganic origin, peripheral or central, that impede the normal process of human communication including, but not limited to, disorders of auditory sensitivity, acuity, function or processing.~~

~~(c) "Audiology assistant," or any variation, synonym, or coinage of the term, means an individual who meets minimum qualifications established by the board, which are less than those established by this article as necessary for licensing as an audiologist; who does not act independently; and who works under the direction and supervision of an audiologist licensed under this article.~~

~~(d) "Board" means the West Virginia board of examiners for speech-language pathology and audiology.~~

~~(e) "Instruction" means: (1) Providing speech-language pathology or audiology services or teaching in infant/toddler, preschool, elementary or secondary school programs except for services provided by those persons employed or contracted by the West Virginia board of education, a county board of education or a regional education service agency; or (2) teaching students in institutions of higher education.~~

~~(f) "Person" means and includes any individual, partnership, trust, association, corporation or other like organization, or any combination thereof, except that only individuals can be licensed under this article.~~

(g) "Practice of audiology" means: (1) Facilitating the conservation of auditory system function, developing and implementing environmental and occupational hearing conservation programs; (2) screening, identifying, assessing and interpreting, preventing and rehabilitating peripheral and central auditory system dysfunctions; (3) providing and interpreting behavioral and (electro) physiological measurements of auditory functions; (4) providing vestibular assessment and balance system rehabilitation; (5) providing neurophysiologic intraoperative monitoring; (6) selecting, fitting and dispensing of amplification, assistive listening and alerting devices and providing training in their use; (7) evaluating candidacy, fitting and providing training in the use of implantable devices; and (8) providing aural rehabilitation and related counseling services to hearing impaired individuals and their families. In accordance with rules promulgated by the board, the practice of audiology may include screening of speech-language and other factors affecting communication function for the purposes of an audiologic evaluation and/or initial identification of individuals with other communication disorders.

(h) "Practice of speech-language pathology" means: (1) screening, identifying, assessing and interpreting, diagnosing, preventing, and rehabilitating disorders of speech (e.g., articulation, fluency, and language); (2) screening, identifying, assessing and interpreting, evaluating and rehabilitating disorders of oral-pharyngeal function (e.g., dysphagia) voice and related disorders; (3) screening, identifying, assessing and interpreting, diagnosing and rehabilitating cognitive/communication disorders; (4) assessing, selecting and developing augmentative and alternative communication systems and providing training in their use; (5) providing aural rehabilitation and related counseling services to hearing impaired individuals and their families; and (6) enhancing speech-language proficiency and communication effectiveness (e.g., accent reduction). In accordance with rules promulgated by the board, the practice of speech-language pathology may include screening of hearing and other factors affecting communication function for the purposes of a speech-language evaluation and/or initial identification of individuals with other communication disorders.

(i) "Research" means a systematic investigation designed to develop or contribute to generalizable knowledge about human communication, human communication disorders, and/or evaluation or treatment strategies. Activities meeting this definition constitute research: Provided, That as used above and for the purposes of this article, research does not include activities that take place under the auspices of a recognized institutional review board which reviews, approves, and monitors proposals and activities involving human subjects to ensure that the rights and welfare of such subjects are protected.

(j) "Speech-language pathologist" means any person who engages in the practice of speech-language pathology and who meets the qualifications set forth in this article. A person represents himself or herself to be a speech-language pathologist when he or she holds out to the public by any means, or by any service or function he or she performs, directly or indirectly, or by using the terms "speech therapy," "speech therapist," "speech correction," "speech correctionist," "speech clinic," "speech clinician," "language pathology," "language pathologist," "voice therapy," "voice therapist," "voice pathology," "voice pathologist," "logopedics," "logopedist," "communicology," "communicologist," "aphasiology," "aphasiologist," "phoniatriest," or any variation, synonym, coinage or whatever expresses, employs, or implies these terms, names or functions.

(k) "Speech-language pathology" means the application of principles, methods, and procedures related to the development and disorders of human communication. Disorders are defined to include any and all conditions, whether of organic or nonorganic origin, that impede the normal process of human communication including, but not limited to, disorders and related disorders of speech, articulation, fluency, voice, verbal and written language, auditory comprehension, cognition/communication, and oral, pharyngeal and/or laryngeal sensorimotor competencies.

(l) "Speech-language pathology assistant," or any variation, synonym, or coinage of the term means an individual who meets minimum qualifications established by the board, which are less than those established by this article as necessary for licensing as a speech-language pathologist; who does not act independently; and who works under the direction and supervision of a speech-language pathologist licensed under this article.

Nothing in this article prevents or restricts:

(1) Any person licensed or registered under any other law of this state from practicing the profession and performing services for which he or she is licensed or registered;

(2) A licensed physician or surgeon while engaging in the profession for which he or she is licensed;

(3) A trained individual providing hearing testing or balance system assessment under the direct supervision of a licensed physician or surgeon;

(4) A person credentialed by this state as a teacher of the deaf;

(5) The activities and services of persons pursuing a course of study leading to a degree in speech-language pathology or audiology at a college or university, if:

(A) These activities and services constitute a part of a planned course of study at that institution;

(B) They are designated by a title such as intern, trainee, student or other title clearly indicating the status appropriate to their level of education; and

(C) They work under the supervision of a person licensed by this state to practice speech-language pathology or audiology;

(6) The activities of persons who are nonresidents of this state from engaging in the practice of speech-language pathology or audiology if the activities of the persons do not exceed five days in any calendar year and they:

(A) Meet the qualifications of this article;

(B) Register with the board in accordance with procedures specified by the board; and

(C) Abide by the standards of professional conduct;

(7) The practice of a licensed hearing aid dealer engaged solely in the practice of dealing in or fitting of hearing aids; or

(8) The activity of an occupational hearing conservationist engaged in hearing testing as part of a hearing conservation program in compliance with regulations of the Occupational Safety and Health Administration.

§30-32-3. Speech-language pathology and audiology assistants. General provisions.

~~(a) Speech-language pathologists and audiologists supervising speech-language pathology and audiology assistants shall:~~

~~(1) Register with the board the name of each assistant working under their supervision;~~

~~(2) Be responsible for the performance of the assistant and for all services provided by the assistant, consistent with the board's designated standards and requirements; and~~

~~(3) Ensure that persons receiving services from an assistant receive prior written notification that services are to be provided by an assistant.~~

~~(b) The board shall establish rules to define the role of the speech-language pathology or audiology assistant, including, but not limited to:~~

~~(1) The supervisory responsibilities of the licensee;~~

~~(2) The ratio of assistants to licensees;~~

- (3) ~~The scope of duties and restrictions of assistants' responsibilities;~~
- (4) ~~The frequency, duration and documentation of direct, on-site supervision;~~
- (5) ~~The quantity and content of preservice and inservice instruction; and~~
- (6) ~~The procedures for renewing the registration of assistants and terminating their duties.~~

The practices licensed under the provisions of this article and the West Virginia Board of Examiners for Speech-Language Pathology and Audiology are subject to the provisions of article one of this chapter, the provisions of this article and any rules promulgated hereunder.

§30-32-4. Persons and practices affected. Definitions.

~~The board shall grant licensure in either speech-language pathology or audiology independently. A person may be licensed in both areas if he or she meets the respective qualifications. Except as otherwise provided in this article, effective the first day of October, one thousand nine hundred ninety-two, no person shall practice speech-language pathology or audiology or represent himself or herself as a speech-language pathologist or audiologist in this state, unless such person is licensed in accordance with the laws of this state. A person licensed under this article as an audiologist shall not be required to obtain a license under the provisions of article twenty-six of this chapter.~~

The following terms have the following meanings:

- (1) "Applicant" means a person applying for a license required by this article.
- (2) "Assistant" means a registered speech-language pathology assistant or a registered audiology assistant.
- (3) "Audiologist" means a person who engages in the practice of audiology and is licensed pursuant to the provisions of this article.
- (4) "Audiology" means the application of principles, methods, and procedures related to hearing and the disorders of hearing and to related language and speech disorders.
- (5) "Audiology assistant" means a person registered with the board who practices under the supervision of an licensed audiologist.
- (6) "Audiology disorders" means any and all conditions, whether of organic or nonorganic origin, peripheral or central, that impede the normal process of human communication including, but not limited to, disorders of auditory sensitivity, acuity, function or processing.
- (7) "Board" means the West Virginia Board of Speech-Language Pathology and Audiology.
- (8) "Business entity" means any firm, partnership, association, company, corporation, limited partnership, limited liability company or other entity.
- (9) "Direct supervision" means the actual physical presence of a supervising licensed speech-language pathologist or supervising licensed audiologist in the room where treatment is provided by an assistant.
- (10) "General supervision" means initial direction and periodic inspection of the activities of an assistant by the supervising licensed speech-language pathologist or supervising licensed audiologist, who is physically present in the building where treatment is provided and is quickly and easily available.
- (11) "Initial supervision training" means training required of supervising licensed speech-language pathologists and supervising licensed audiologists before providing supervision of assistants.

(12) "Instruction" means:

(A) Providing speech-language pathology or audiology services in infant/toddler, preschool, elementary or secondary school programs; or

(B) Teaching students in institutions of higher education.

(13) "License" means a license issued pursuant to the provisions of this article.

(14) "Licensee" means a person who is licensed pursuant to the provisions of this article.

(15) "Provisional license" means a license issued pursuant to the provisions of this article.

(16) "Registrant" means an assistant who is registered pursuant to the provisions of this article.

(17) "Registration" means a registration issued pursuant to the provisions of this article.

(18) "Speech-language pathologist" means any person who engages in the practice of speech-language pathology and who is licensed pursuant to the provisions of this article.

(19) "Speech-language pathology" means the application of principles, methods and procedures related to the development, disorders and effectiveness of human communication and related functions.

(20) "Speech-language pathology assistant" means a person registered with the board who practices under the supervision of a licensed speech-language pathologist.

(21) "Speech-language pathology disorders" means conditions, whether of organic or nonorganic origin, that impede the normal process of human communication including, but not limited to, disorders and related disorders of speech, articulation, fluency, voice, verbal and written language, Auditory comprehension, cognition/communication, and oral, pharyngeal and/or laryngeal sensorimotor competencies.

(22) "Telepractice" means the application of telecommunication technology to deliver speech-language pathology or audiology services through real time interaction from one site to another for assessment, intervention or consultation in a manner sufficient to ensure patient confidentiality.

§30-32-5. Persons and practices not affected. Board of Examiners for Speech-language Pathology and Audiology.

Nothing in this article shall be construed as preventing or restricting:

~~(a) A person licensed or registered by this state in another profession from practicing the profession for which he or she is licensed or registered, so long as they do not hold themselves out to the public as possessing a license issued pursuant to this article or use a title set forth in section two of this article;~~

~~(b) A physician or surgeon licensed by this state while engaging in the profession for which they are licensed;~~

~~(c) Hearing testing or balance system assessment by trained individuals under the direct supervision of a licensed physician or surgeon, so long as such individuals do not hold themselves out to the public as possessing a license issued pursuant to this article or use a title set forth in section two of this article;~~

~~(d) A person employed or contracted with the West Virginia Board of Education, a county board of education, or a Regional Education Service Agency;~~

- ~~(e) A person duly credentialed by this state as a teacher of the deaf;~~
- ~~(f) The activities and services of persons pursuing a course of study leading to a degree in speech-language pathology or audiology at a college or university, if:~~
- ~~(1) These activities and services constitute a part of a planned course of study at that institution;~~
 - ~~(2) Such persons are designated by a title such as intern, trainee, student, or by other such title clearly indicating the status appropriate to their level of education; and~~
 - ~~(3) Such persons work under the supervision of a person licensed by this state to practice speech-language pathology or audiology.~~
- ~~(g) The activities of persons who are nonresidents of this state from engaging in the practice of speech-language pathology or audiology if the activities of such persons do not exceed five days in any calendar year and such persons:~~
- ~~(1) Meet the qualifications of this article;~~
 - ~~(2) Register with the board in accordance with procedures specified in its rules and regulations; and~~
 - ~~(3) Agree to abide by the standards of professional conduct contained in this article and rules promulgated by the board.~~
- ~~(h) The practices and procedures of qualified licensed hearing aid dealers engaged solely in the practice of dealing in or fitting of hearing aids under article twenty-six of this chapter; and~~
- ~~(i) Occupational hearing conservationists engaged in hearing testing as part of a hearing conservation program in compliance with regulations of the Occupational Safety and Health Administration.~~
- (a) The West Virginia Board of Examiners for Speech-Language Pathology and Audiology is continued. The members of the board in office on July 1, 2013 may, unless sooner removed, continue to serve until their respective terms expire or until their successors have been appointed and qualified.
- (b) The board consists of the following members appointed by the Governor by and with the advice and consent of the Senate:
- (1) Two persons who are licensed speech-language pathologists;
 - (2) Two persons who are licensed audiologists; and
 - (3) One citizen member who is not licensed or registered under this article.
- (c) The terms are for three years. No member may serve for more than two consecutive terms.
- (d) Each licensed member of the board, at the time of his or her appointment, must have held a license in this state for at least three years.
- (e) Each member of the board must be a resident of this state during the appointment term.
- (f) No board member may serve as an officer of the West Virginia Speech Language and Hearing Association concurrently with his or her service on the board.
- (g) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant.

(h) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(i) A licensed member of the board immediately and automatically forfeits membership to the board if his or her license or registration to practice is suspended or revoked.

(j) A member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident of this state.

(k) The board shall elect annually one of its members as chairperson and one of its members as secretary-treasurer who shall serve at the will and pleasure of the board.

(l) Each member of the board is entitled to receive compensation and expense reimbursement in accordance with article one of this chapter.

(m) A majority of the members of the board constitutes a quorum.

(n) The board shall hold at least one annual meeting. Other meetings shall be held at the call of the chairperson or upon the written request of four members, at the time and place as designated in the call or request.

(o) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

(p) Board members are immune from civil liability for the performance of their official duties so long as they act in good faith.

§30-32-6. Exemption for civil liability. Powers and duties of the board.

~~While serving on any peer review committee, any speech-language pathologist or audiologist shall not be liable for civil damages as a result of his or her decisions, findings or recommendations in connection with his or her duties on such committees, except for decisions, findings or recommendations which are arbitrary or capricious.~~

(a) The board has all the powers and duties set forth in this article, by legislative rule, in article one of this chapter and elsewhere in law.

(b) The board shall:

(1) Hold meetings and conduct hearings;

(2) Establish requirements for licenses and registrations;

(3) Establish procedures for submitting, approving and rejecting applications for licenses and registrations;

(4) Determine the qualifications of any applicant for a license or registration;

(5) Communicate disciplinary actions to relevant state and federal authorities, the American Speech-Language-Hearing Association, the West Virginia Speech-Language and Hearing Association and other applicable authorities when public safety is at risk;

(6) Maintain an office and hire, discharge, establish the job requirements and fix the compensation of employees and contracted employees necessary to enforce the provisions of this article;

(7) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;

- (8) Conduct disciplinary hearings of persons regulated by the board;
- (9) Determine disciplinary action and issue orders;
- (10) Institute appropriate legal action for the enforcement of the provisions of this article;
- (11) Maintain an accurate registry of names and addresses of all persons regulated by the board;
- (12) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;
- (13) Issue, renew, combine, deny, suspend, revoke or reinstate licenses and registrations pursuant to the provisions of this article;
- (14) Establish a fee schedule;
- (15) Take all actions necessary and proper to effectuate the purposes of this article; and
- (16) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article.

(c) The board may:

- (1) Approve and contract with third parties to administer the examinations required under the provisions of this article;
- (2) Sue and be sued in its official name as an agency of this state;
- (3) Confer with the Attorney General or his or her assistants in connection with legal matters and questions; and
- (4) Perform random audits of continuing education, supervision records and documentation of licensure and registration requirements to determine compliance with this article.

§30-32-7. Board of examiners for speech-language pathology and audiology. Rulemaking.

~~(a) There is hereby created a state board to be known and designated as the "West Virginia Board of Examiners for Speech-Language Pathology and Audiology" which shall consist of five members appointed by the governor, with the advice and consent of the Senate. All members shall be residents of this state and have been residents of this state for at least two years prior to their appointments. The board shall be representative of various geographical regions of the state and of various employment settings.~~

~~(b) Two of the members shall be speech-language pathologists who are currently practicing speech-language pathology or who have had three years experience practicing speech-language pathology, and who hold active and valid licensure for the practice of speech-language pathology in this state, except for the first speech-language pathologists appointed who shall meet the eligibility requirements for licensure as specified in this article. Two of the members shall be audiologists who are currently practicing audiology or who have had three years experience practicing audiology, and who hold active and valid licensure for the practice of audiology in this state, except for the first audiologists appointed who shall meet the eligibility requirements for licensure as specified in this article. The fifth member shall be a lay person who is not associated with or financially interested in the practice or business of speech-language pathology or audiology nor a member of an allied or related profession or occupation.~~

~~(c) Within thirty days from the effective date of this article, the governor shall appoint the professional members of the first board from a list of names of at least seven speech-language pathologists and seven~~

~~audiologists submitted by the state speech-language hearing association or from recommendations submitted by interested organizations or persons in the state. Each subsequent appointment of professional members may be made from recommendations submitted by the state speech-language hearing association which may submit at least three names for each available position or from recommendations submitted by other interested organizations or persons in the state. No member of the board shall at the same time serve in an elected, appointed, or employed position in any state-level organization representing speech-language pathologists and audiologists, or both, which presents or may present a conflict of interest.~~

~~(d) Of the members first appointed, one of the audiologists and one of the speech-language pathologists shall serve for terms expiring the thirtieth day of June one thousand nine hundred ninety-five, and the other of each of the professions shall serve for terms expiring the thirtieth day of June, one thousand nine hundred ninety-four, and the lay member shall serve for a term expiring the thirtieth day of June, one thousand nine hundred ninety-three. All subsequent appointments shall be for three years. Members shall serve until the expiration of the term for which they have been appointed or until their successors have been appointed and qualified. In the event of a vacancy in the office of a member of the board other than by expiration of a term, the governor shall appoint a qualified person to fill the vacancy for the unexpired term. No member may serve more than two consecutive three year terms.~~

(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Standards and requirements for licenses and registrations;

(2) Requirements, qualifications and designation of third parties to establish educational requirements and to prepare and/or administer examinations and reexaminations;

(3) Procedures for the issuance and renewal of a license, registration and provisional license;

(4) A fee schedule;

(5) Continuing education and competency requirements for licensees and registrants;

(6) Establishment of competency standards;

(7) The procedures for denying, suspending, revoking, reinstating or limiting the practice of a licensee or registrant;

(8) Requirements for reinstatement of revoked licenses and registrations;

(9) Guidelines for telepractice;

(10) Rules to define the role of the speech-language pathology assistant or audiology assistant, including, but not limited to:

(A) The supervision requirements of licensees;

(B) The ratio of assistants to licensees;

(C) The scope of duties and restrictions of responsibilities of assistants;

(D) The frequency, duration and documentation of supervision required under the provisions of this article; and

(E) The quantity and content of pre-service and in-service instruction.

(11) Professional conduct and ethical standards of practice; and

(12) Any other rules necessary to effectuate the provisions of this article.

(b) The board may promulgate emergency rules in accordance with section fifteen, article three, chapter twenty-nine-a of this code to establish requirements and procedures for telepractice in accordance with the provisions of this article, including the scope of duties and restrictions of assistants in telepractice.

(c) All rules in effect on January 1, 2013 shall remain in effect until they are amended or repealed, and references to provisions of former enactments of this article are interpreted to mean provisions of this article.

§30-32-8. Meetings of the board. Funds.

~~The board shall meet during the first month of each calendar or fiscal year to select a chairperson and to conduct other appropriate business, and shall hold at least one additional meeting before the end of each calendar or fiscal year. Additional meetings may be held at the call of the chairperson. Three members of the board shall constitute a quorum to do business, including at least one speech-language pathologist and one audiologist.~~

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the "Board of Examiners for Speech-Language Pathology and Audiology Fund", which is continued. The fund is used by the board for the administration of this article. Except as may be provided in article one of this chapter, the board retains the amount in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(b) Any amount received as fines, imposed pursuant to this article, shall be deposited into the General Revenue Fund of the State Treasury.

§30-32-9. Compensation. Qualifications for licensure as a speech-language pathologist.

~~Members of the board shall receive a per diem of fifty dollars for each day actually engaged in the performance of the duties of the office, and shall also receive reimbursement for reasonable and necessary expenses actually incurred in the performance of their duties: Provided, That a majority of the board shall approve such compensation.~~

(a) To be eligible for licensure by the board as a speech-language pathologist, the applicant shall:

(1) Make application to the board, upon a form prescribed by the board;

(2) Pay to the board an application fee as established by the board;

(3) Possess at least a master's degree or equivalent in speech-language pathology from an educational institution approved by the board which consists of coursework approved by the board and delineated in legislative rule;

(4) Complete supervised clinical practicum experiences from an educational institution or its cooperating programs, the content of which shall be approved by the board and delineated in the rules;

(5) Complete a postgraduate professional experience as approved by the board and described in legislative rule;

(6) Pass the national examination in speech-language pathology; and

(7) Pass a jurisprudence examination developed by the board.

(b) Subject to the renewal requirements set forth in section seventeen of this article, a license issued by the board under prior enactments of this article shall for all purposes be considered a license issued under this article.

§30-32-10. Powers and duties of the board. Qualifications for licensure as an audiologist.

~~(a) The board shall:~~

~~(1) Administer, coordinate and enforce the provisions of this article, establish licensure fees, evaluate the qualifications of applicants, supervise the examination of applicants, register speech-language pathology and audiology assistants and issue and renew licenses;~~

~~(2) Investigate allegations of violations of this article and impose penalties if such violations of this article have occurred;~~

~~(3) Promulgate reasonable rules, in accordance with chapter twenty-nine-a of this code, including, but not limited to, rules that delineate qualifications for licensure; specify requirements for the renewal of licensure; set forth procedures for registering speech-language pathology and audiology assistants; and establish standards of professional conduct. Following their adoption, the rules shall govern and control the professional conduct of every person who holds a license to practice speech-language pathology or audiology or who is registered as a speech-language pathology and audiology assistant in this state;~~

~~(4) Have available the names of persons currently licensed and registered under the provision of this article;~~

~~(5) Employ such personnel as determined by its needs and budget;~~

~~(6) Request legal advice and assistance, as needed, from the attorney general;~~

~~(7) Enter into such contracts as necessary to carry out its responsibilities under this article;~~

~~(8) Hire legal counsel, if necessary;~~

~~(9) Establish a budget;~~

~~(10) Maintain reports of its operations and finances;~~

~~(11) Adopt an official seal (or seals) by which it shall authenticate its proceedings, copies of proceedings, records, acts of the board and licenses; and~~

~~(12) Communicate disciplinary actions to relevant state and federal authorities and to other state speech-language pathology and audiology licensing authorities.~~

~~(b) The conferral or enumeration of specific powers elsewhere in this article shall not be construed as a limitation of the general functions conferred by this section.~~

~~(c) No member of the board shall be liable to civil action for any act performed in good faith in the performance of his or her duties as prescribed by law.~~

(a) To be eligible for licensure by the board as an audiologist, the applicant shall:

(1) Make application to the board, upon a form prescribed by the board;

(2) Pay to the board an application fee as established by the board;

(3) Possess at least a master's degree or equivalent in audiology from an educational institution approved by the board which consists of coursework approved by the board and delineated in legislative rule;

(4) Complete supervised clinical practicum experiences from an educational institution or its cooperating programs, the content of which shall be approved by the board and delineated in the rules;

(5) Complete a postgraduate professional experience as approved by the board and described in legislative rule;

(6) Pass the national examination in audiology; and

(7) Pass a jurisprudence examination developed by the board.

(b) Subject to the renewal requirements set forth in section seventeen of this article, a license issued by the board under prior enactments of this article shall for all purposes be considered a license issued under this article.

§30-32-11. Funds. Provisional licenses.

~~All fees and other moneys received by the board, including civil penalties imposed and collected pursuant to the provisions of section seventeen of this article, shall be deposited in a separate account in the state treasury. Expenditures for the purposes set forth in the article are not authorized from collections but are to be made only in accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code.~~

~~Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.~~

(a) The board may issue a provisional license to an applicant who is in the process of obtaining postgraduate professional experience and who:

(1) Meets the academic, practicum, and examination requirements of this article;

(2) Submits an application to the board, upon a form prescribed by the board, including a plan for the content of the postgraduate professional experience; and

(3) Pays the fee.

(b) A provisional licensee may practice speech-language pathology or audiology under the general supervision of a licensed speech pathologist or audiologist only in the professional field for which the provisional license was issued.

(c) The provisional license shall be valid for a term of one year and may be renewed.

§30-32-12. Qualifications for license. Waiver of requirements; practice pending disposition of application.

To be eligible for licensure by the board as a speech-language pathologist or audiologist, the applicant shall:

(a) Make application to the board, upon such a form prescribed by the board;

(b) Pay to the board the appropriate application fee;

(c) Possess at least a master's degree or equivalent in speech-language pathology or audiology from an educational institution approved by the board which consists of coursework approved by the board and delineated in the rules;

(d) Complete supervised clinical practicum experiences from an educational institution or its cooperating programs the content of which shall be approved by the board and delineated in the rules;

(e) Complete a postgraduate professional experience as approved by the board and described in the rules; and

(f) Pass the national examination in speech-language pathology or audiology which is approved by the American speech-language-hearing association.

(a) The board shall waive the national examination requirements in speech-language pathology and/or audiology for an applicant who either:

(1) Presents proof of current licensure in a state that has standards that are substantially equivalent to those of this state; or

(2) Holds a certificate of clinical competence in speech-language pathology or audiology from the American Speech-Language-Hearing Association in the professional field for which they seek licensure.

(b) An applicant who holds current licensure from another state with substantially equivalent standards or who holds the certificate of clinical competence from the American Speech-Language-Hearing Association may practice speech-language pathology or audiology in this state, pending the board's disposition of the application, if the applicant:

(1) Is practicing in the professional field in which the licensure or certificate of clinical competence was granted; and

(2) Has filed an application with the board and paid the appropriate application fee.

§30-32-13. Waiver for requirements. Scope of practice for speech-language pathology.

~~(a) The board may waive the practicum and professional experience requirements for applicants who:~~

~~(1) Provide proof of employment in the practice of speech-language pathology or audiology in this state for at least two out of the last five years immediately preceding the effective date of this article;~~

~~(2) Pass an examination, if requested by the board;~~

~~(3) Apply for a license in speech-language pathology or audiology within one year after the effective date of this article; and~~

~~(4) Possess at least a master's degree or equivalent in speech-language pathology or audiology from an educational institution approved by the board which consists of coursework approved by the board and delineated in the rules.~~

~~(b) The board shall waive the examination requirement for applicants who either:~~

~~(1) Present proof of current licensure in a state that has standards that are at least equivalent to those of this state; or~~

~~(2) Hold a certificate of clinical competence in speech-language pathology or audiology from the American speech-language-hearing association in the area for which they are applying for licensure.~~

~~(c) A person who holds current licensure from another state with equivalent standards or who holds the certificate of clinical competence from the American speech-language-hearing association may practice speech-language pathology or audiology in this state, pending board disposition of their applications, if he or she:~~

~~(1) Is practicing in the area, speech-language pathology or audiology, in which the licensure or certificate of clinical competence was granted; and~~

~~(2) Has filed an application with the board and paid the appropriate application fee.~~

The scope of practice for speech-language pathology includes:

(1) Prevention, screening, consultation, assessment and diagnosis, treatment, intervention, management, counseling and follow-up services for disorders of speech (i.e., articulation, fluency, resonance and voice), language (i.e., phonology, morphology, syntax, preliteracy and language-based skills), swallowing or other upper aerodigestive functions;

(2) Cognitive aspects of communication (i.e., attention, memory, problem solving);

(3) Establishing augmentative and alternative communication techniques and strategies, including developing, selecting and prescribing of systems and devices (e.g., speech generating devices) and providing training in their use;

(4) Providing services to individuals with hearing loss and their families (e.g., Auditory training, speech reading, speech and language intervention secondary to hearing loss);

(5) Screening hearing of individuals who can participate in conventional puretone air conduction methods and screening middle ear pathology through screening tympanometry for the purpose of referral for further evaluation: *Provided*, That judgments and descriptive statements about the results of the screenings are limited to pass/fail determinations;

(6) Using instrumentation (e.g., videofluoroscopy) to observe, collect data and measure parameters of communication and swallowing as directed by a licensed physician; and

(7) Selecting, fitting and establishing effective use of prosthetic/adaptive devices for communication, swallowing or other upper aerodigestive functions.

§30-32-14. Provisional license. Scope of practice for audiology.

~~(a) The board shall issue a provisional license to an applicant who:~~

~~(1) Except for the postgraduate professional experience, meets the academic, practicum, and examination requirements of this article;~~

~~(2) Submits an application to the board, upon such a form prescribed by the board, including a plan for the content of the postgraduate professional experience; and~~

~~(3) Pays to the board the appropriate application fee for a provisional license.~~

~~(b) The purpose of a provisional license is to permit an individual to practice speech-language pathology or audiology while completing the postgraduate professional experience as required by this article. A person holding a provisional license is authorized to practice speech-language pathology or audiology only while working under the supervision of a person fully licensed by this state in accordance with this article.~~

~~(c) The term for provisional licenses and the conditions for their renewal are to be determined by the board and delineated in its rules and regulations.~~

(a) The scope of practice for audiology includes:

(1) Facilitating the conservation of Auditory system function, developing and implementing environmental and occupational hearing conservation programs;

(2) Screening, identifying, assessing and interpreting, preventing and rehabilitating peripheral and central Auditory system disorders;

(3) Providing and interpreting behavioral and electro- physiological measurements of Auditory and vestibular functions;

(4) Selecting, fitting, programming and dispensing of amplification, assistive listening and alerting devices and programming and other systems (e.g., implantative devices) and providing training in their use;

(5) Providing audiologic and aural rehabilitation and related counseling services to individuals with hearing impairments and their families;

(6) Providing vestibular rehabilitation;

(7) Cerumen removal; and

(8) Screening of speech-language and other factors affecting communication disorders: *Provided*, That judgments and descriptive statements about the results of the screenings are limited to pass/fail determinations.

(b) A person licensed under this article as an audiologist is not required to obtain a license under the provisions of article twenty-six of this chapter.

§30-32-15. License renewal. Speech-language pathology and audiology assistants; supervision requirements.

~~(a) Licenses issued under this article shall expire every two years;~~

~~(b) Every person licensed under this bill shall:~~

~~(1) Pay an amount established by the board by legislative rule in order for his or her license to be renewed;~~

~~(2) Submit an application for renewal on a form prescribed by the board;~~

~~(3) Meet any other requirements the board establishes as conditions for license renewal; and~~

~~(4) Engage in continuing education activities, as set forth in legislative rule, whose content is directly related to the professional growth and development of speech-language pathologists and audiologists. The following are examples of ways in which these hours may be obtained:~~

~~(i) Short courses, mini-seminars and teleconferences of the American speech-language-hearing association;~~

~~(ii) Educational sessions of the West Virginia speech-language-hearing association;~~

~~(iii) Educational sessions provided within the licensee's work setting; or~~

~~(iv) Any other activities approved by the board.~~

~~(c) Licensees are granted a grace period of thirty days after the expiration of their licenses in which to renew retroactively as long as they otherwise are entitled to have their licenses renewed and pay to the board the renewal fee and any late fee set by the board.~~

~~(d) A suspended license is subject to expiration and may be renewed as provided in this article, but such renewal shall not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other conduct or activity in violation of the order of judgment by which the license was suspended.~~

~~(e) A license revoked on disciplinary grounds is subject to expiration as provided in this article, but it may not be renewed. If such license is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee that shall equal the renewal fee in effect on the last regular renewal date immediately preceding the date of reinstatement, plus any late fee set by the board by legislative rule.~~

(a) Commencing July 1, 2014, speech-language pathology assistants and audiology assistants shall register with the board and shall:

(1) Possess a minimum of an associate's degree from an institution or technical training program with a program of study designed to prepare the student to be a speech language pathology or audiology assistant;

(2) Work only under the supervision of a licensee licensed in the professional field in which the assistant is working; and

(3) Meet all requirements set by the board.

(b) Licensees who supervise assistants shall:

(1) Report to the board the name and field of practice of each assistant working under the licensee's supervision;

(2) Complete initial supervision training prior to accepting an assistant for supervision and upgrade supervision training as required by the board;

(3) Document preservice training and credentials of the assistant;

(4) Provide direct supervision of the first three hours of treatment by the assistant for each patient or client, followed by a minimum of one direct observation for each subsequent two week period and document the direct observation;

(5) Provide general supervision and be responsible for the extent, kind and quality of service provided by the assistant and for all services provided by the assistant;

(6) Ensure that persons receiving services from an assistant receive prior written notification that services are to be provided, in whole or in part, by an assistant; and

(7) Meet all other requirements set by the board.

§30-32-16. Reinstatement of expired license. Telepractice services.

~~(a) A person who fails to renew his or her license by the end of the thirty-day grace period may have the license reinstated if he or she:~~

~~(1) Submits an application for reinstatement to the board within five years after the expiration date of the license;~~

~~(2) Meets requirements established by the board as conditions for license renewal; and~~

~~(3) Pays to the board a reinstatement fee equal to the renewal fee in effect on the last regular renewal date immediately preceding the date of reinstatement, and any late fee set by rules of the board.~~

~~(b) A person who fails to renew his or her license within five years after the expiration date may not have the license renewed, and the license may not be restored, reissued, or reinstated thereafter, although such person may apply for and obtain a new license if he or she meets the requirements of this article and pays to the board the appropriate fee or fees.~~

(a) Licensed speech-language pathologists and audiologists may provide services in this state by telepractice.

(b) Speech-language pathologists and audiologists providing services by telepractice shall deliver services consistent with the quality of services delivered in person, and shall:

(1) Acquire written informed consent from the student, patient or client before the services are provided;

(2) Maintain the confidentiality of the student, patient or client as required by law;

(3) Provide documentation of the delivery of services;

(4) Train assistants before allowing them to assist in the delivery of service by telepractice, and document the training and delivery of service by the assistants; and

(5) Meet any other requirements set by the board.

§30-32-17. Disciplinary actions. Renewal of license or registration; renewal of lapsed license or registration; suspension, revocation and refusal to renew; reinstatement of revoked license or registration.

~~(a) The board may impose any of the following disciplinary actions in those instances in which an applicant for a license or a licensee has been guilty of conduct which has endangered, or is likely to endanger the health, welfare or safety of the public:~~

~~(1) Refuse to issue or renew a license;~~

~~(2) Issue a letter of reprimand or concern;~~

~~(3) Require restitution of fees;~~

~~(4) Impose probationary conditions;~~

~~(5) Impose a civil penalty not to exceed five hundred dollars; or~~

~~(6) Suspend or revoke a license.~~

~~(b) The board may take disciplinary actions for conduct that may result from but not necessarily be limited to:~~

~~(1) Fraudulently or deceptively obtaining or attempting to obtain a license or a provisional license for the applicant, licensee, holder or for another;~~

~~(2) Fraudulently or deceptively using a license or provisional license;~~

~~(3) Altering a license or provisional license;~~

- ~~(4) Aiding or abetting unlicensed practice; and~~
- ~~(5) Committing fraud or deceit in the practice of speech-language pathology or audiology, including, but not limited to:~~
- ~~(i) Willfully making or filing a false report or record in the practice of speech-language pathology or audiology;~~
 - ~~(ii) Submitting a false statement to collect a fee; or~~
 - ~~(iii) Obtaining a fee through fraud or misrepresentation.~~
- ~~(6) Using or promoting or causing the use of any misleading, deceiving, improbable or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation;~~
- ~~(7) Falsely representing the use or availability of services or advice of a physician;~~
- ~~(8) Misrepresenting the applicant, licensee or holder by using the word "doctor" or any similar word, abbreviation or symbol if the use is not accurate or if the degree was not obtained from a regionally accredited institution;~~
- ~~(9) Committing any act of dishonorable, immoral or unprofessional conduct while engaging in the practice of speech-language pathology or audiology;~~
- ~~(10) Engaging in illegal, incompetent or habitually negligent practice;~~
- ~~(11) Providing professional services while:~~
- ~~(i) Mentally incompetent;~~
 - ~~(ii) Under the influence of alcohol;~~
 - ~~(iii) Using any narcotic or controlled dangerous substance or other drug that is in excess of therapeutic amounts or without valid medical indication; or~~
 - ~~(iv) Having a serious contagious disease.~~
- ~~(12) Providing services or promoting the sale of devices, appliances or products to a person who cannot reasonably be expected to benefit from such services, devices, appliances or products;~~
- ~~(13) Violating any provision of this article, or any lawful order given, or rule adopted by the board;~~
- ~~(14) Being convicted of or pleading guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside; or~~
- ~~(15) Being disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section.~~
- (a) Licenses, except provisional licenses, and registrations may be renewed biennially, upon documentation of required continuing education and payment of a renewal fee.
- (b) A license or registration which has lapsed may be renewed within one year of its expiration date in the manner set by the board.

(c) A license or registration which has lapsed for more than one year but fewer than five years may be reinstated, upon documentation of continuing education credits earned during the lapsed period equal to the credits required for renewal and payment of a reinstatement fee.

(d) A license or registration which has lapsed for more than five years may not be reinstated. A new license or registration may be issued to an applicant who complies with the requirements relating to the issuance of an original license or registration in effect at the time of the application.

(e) The board may suspend, revoke or refuse to renew a license or registration for any reason which would justify the denial of an original application for licensure or registration.

(f) The board may consider the reinstatement of a license or registration which has been revoked upon a showing that the applicant can resume practicing with reasonable skill and safety.

§30-32-18. Procedure for hearing. Actions to enjoin violations.

~~(a) Whenever the board shall deny an application for any original or renewal license of any kind under this article or shall suspend or revoke any such license it shall make and enter an order to that effect and serve a copy thereof on the applicant or licensee, as the case may be, by certified mail, return receipt requested. Such order shall state the grounds for the action taken and shall require that any license suspended or revoked thereby shall be returned to the board by the holder within twenty days after receipt of the copy of the order.~~

~~(b) Any person adversely affected by any such order shall be entitled to a hearing thereon as to all issues not excluded from the definition of "contested case" as set forth in article one, chapter twenty-nine-a of this code if, within twenty days after receipt of a copy thereof, he or she filed with the board a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license or denying an application for a renewal of license. The board may require the person demanding such hearing to give reasonable security for the costs thereof, and, if such person does not substantially prevail at such hearing, such costs shall be assessed against the person and may be collected by a civil action or other proper remedy.~~

~~(c) Upon receipt of a written demand for a hearing, the board shall set a time and place thereof not less than ten nor more than thirty days thereafter. The person demanding the hearing may be granted one continuance as a matter of right and further continuances for good cause shown.~~

~~(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing, and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of the article were set forth in this subsection.~~

~~(e) Any such hearing shall be conducted by a quorum of the board. For the purpose of conducting any such hearing any member of the board may issue subpoenas and subpoenas duces tecum which shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five, chapter twenty-nine-a of this code, and all of the provisions of such section dealing with subpoenas and subpoenas duces tecum shall apply to those issued for the purpose of a hearing hereunder.~~

~~(f) At any such hearing the person who demanded the same may represent himself or herself or be represented by an attorney admitted to practice law in this state. Upon request of the board, it shall be represented at any such hearing by the attorney general or his assistants without additional compensation.~~

~~(g) After any such hearing and consideration of all of the testimony, evidence and record in the case, the board shall render its decision in writing, accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and the person's attorney of record, if any.~~

~~(h) The decision of the board shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with this article.~~

(a) If the board obtains information that any person has engaged in, is engaging in or is about to engage in any act which constitutes or will constitute a violation of the provisions of this article, the rules promulgated pursuant to this article, or a final order or decision of the board, it may issue a notice to the person to cease and desist in engaging in the act and/or apply to the circuit court in the county of the alleged violation for an order enjoining the act.

(b) The circuit courts of this state may issue a temporary injunction pending a decision on the merits, and may issue a permanent injunction based upon its findings in the case.

(c) The judgment of the circuit court on an application permitted by the provisions of this section is final unless reversed, vacated or modified on appeal to the West Virginia Supreme Court of Appeals.

§30-32-19. Judicial review; appeal to supreme court of appeals; legal counsel. Complaints; investigations; due process procedure; grounds for disciplinary action.

~~Any person adversely affected by a decision of the board rendered after a hearing held in accordance with the provisions of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if they were set forth in this section.~~

~~The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of article six, chapter twenty-nine-a of this code.~~

~~Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.~~

(a) The board may upon its own motion based upon credible information, and shall, upon the written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules of the board.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee or registrant.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee or registrant has violated any provision of this article.

(d) Upon a finding that probable cause exists that the licensee or registrant has violated any provision of this article or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license or registration or the imposition of sanctions against the licensee or registrant.

(e) Any member of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the license or registration of, impose probationary conditions upon or take disciplinary action against, any licensee or registrant for any of the following reasons once a violation has been proven by a preponderance of the evidence:

- (1) Obtaining a license or registration by fraud, misrepresentation or concealment of material facts;
 - (2) Being convicted of a felony or misdemeanor crime of moral turpitude;
 - (3) Being guilty of unprofessional conduct as defined by legislative rule of the board;
 - (4) Violating provisions of this article, rule or a lawful order of the board;
 - (5) Providing substandard care due to a deliberate or negligent act or failure to act regardless of whether actual injury to a patient or client is established;
 - (6) As an assistant, exceeding the authority to perform components of service selected and delegated by the supervising speech-language pathologist or audiologist regardless of whether actual injury to a patient is established;
 - (7) Knowingly delegating responsibilities to an individual who does not have the knowledge, skills or abilities to perform those responsibilities;
 - (8) As a licensee, failing to provide appropriate supervision to a speech-language pathology assistant or audiology assistant in accordance with this article and legislative rules of the board;
 - (9) Practicing when competent services to recipients may not be provided due to physical or mental impairment;
 - (10) Having had a speech-language pathologist or audiologist license or assistant registration revoked or suspended, other disciplinary action taken, or an application for licensure or registration refused, revoked or suspended by the proper authorities of another jurisdiction;
 - (11) Engaging in sexual misconduct which includes:
 - (A) Initiating or soliciting sexual relationships, whether consensual or nonconsensual, while a professional relationship exists between the licensee or registrant and a patient or client; or
 - (B) Making sexual advances, requesting sexual favors or engaging in physical contact of a sexual nature with a patient or client;
 - (12) Aiding or abetting a person who is not licensed or registered in this state and who directly or indirectly performs activities requiring a license or registration;
 - (13) Abandoning or neglecting a patient or client in need of immediate professional care without making reasonable arrangements for the continuation of care; or
 - (14) Engaging in any act which has endangered or is likely to endanger the health, welfare or safety of the public.
- (h) Disciplinary action may include:
- (1) Reprimand;
 - (2) Probation;
 - (3) Administrative fine, not to exceed \$1,000 per day per violation;
 - (4) Mandatory attendance at continuing education seminars or other training;
 - (5) Practicing under supervision or other restriction;

(6) Requiring the licensee or registrant to report to the board for periodic interviews for a specified period of time;

(7) Denial, suspension, revocation or nonrenewal of license or registration; or

(8) Other disciplinary action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.

§30-32-20. Actions to enjoin violations. Procedures for hearing; right of appeal.

~~Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article, any reasonable rule or regulation promulgated hereunder or any final decision of the board, the board may apply in the name of the state to the circuit court of the county in which the violation or violations or any part thereof has occurred, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under other provisions of this article.~~

~~Upon application by the board, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the reasonable rules promulgated hereunder and all orders and final decisions of the board. The court may issued a temporary injunction in any case pending a decision on the merits of any application filed.~~

~~The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.~~

~~The board shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings in the circuit court by the prosecuting attorney of the several counties as well, all without additional compensation.~~

(a) Notice and hearing requirements are governed by the provisions of article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, the administrative law judge shall prepare a proposed written order at the conclusion of a hearing containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee or registrant has violated any provision of this article or the board's rules, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.

§30-32-21. Penalties. Judicial review.

~~Any person who violates this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than six months, or both.~~

Any licensee or registrant adversely affected by a decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article six, chapter twenty-nine-a of this code.

§30-32-22. Single act evidence of practice.

In any action brought or in any proceeding initiated under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.

§30-32-23. Severability. Required update of review of Legislative Auditor.

~~If any provision of this article or the application thereof to any person or circumstance shall be held invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.~~

On or before December 1, 2014, the Legislative Auditor shall update the Sunrise Report of January 2013 on the requirements for speech-language pathologists, audiologists and assistants to practice in public schools, and present the report to the Joint Standing Committee on Government Organization, with recommendations.

House Bill 2716

Effective Date: July 12, 2013
Signed by Governor: May 1, 2013
Code Reference: Amends §5-22-1
Title: Relating to the West Virginia Fairness in Competitive Bidding Act

Major Provisions:

- Adds the definition of "State spending unit", which means a department, agency or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.
- Reduces the threshold of the value of a government construction contract from \$500,000 to \$250,000 on which the apparent low bidder is required to submit a list of all subcontractors who will perform more than \$25,000 of work on the project including labor and materials.
- Clarifies that only the subcontractors who will perform more than \$25,000 of work to complete the project need to be reported on the subcontractor list.
- Changes the state agency to which the information must be provided from the Department of Administration, Division of Purchasing, to the state spending unit.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2716

(By Delegate(s) Diserio, Walker, Ferro, Skinner, Barill, Swartzmiller, Nelson, E., Ellem, Storch, Marcum And White)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Fairness in Competitive Bidding Act; defining "state spending units"; lowering the threshold amount from \$500,000 to \$250,000 for triggering a low bidder's duty to submit a list of subcontractors on state spending unit contracts; and to further modify reporting for the subcontractor list.

Be it enacted by the Legislature of West Virginia:

That §5-22-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to lowest qualified responsible bidder; procedures to be followed in awarding government construction projects; penalties for violation of procedures and requirements debarment; exceptions.

(a) This section and the requirements set forth in this section may be referred to as the West Virginia Fairness In Competitive Bidding Act.

(b) As used in this section:

(1) "Lowest qualified responsible bidder" means the bidder that bids the lowest price and that meets, as a minimum, all the following requirements in connection with the bidder's response to the bid solicitation. The bidder must certify that it:

(A) Is ready, able and willing to timely furnish the labor and materials required to complete the contract;

(B) Is in compliance with all applicable laws of the State of West Virginia; and

(C) Has supplied a valid bid bond or other surety authorized or approved by the contracting public entity.

(2) "The state and its subdivisions" means the State of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities and all county boards of education.

(3) "State spending unit" means a department, agency or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

(c) The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding \$25,000 in total cost: ~~Provided, That,~~ A vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, inclusive, article three, chapter five-a of this code may not bid on or be awarded a contract under this section. All bids submitted pursuant

to this chapter shall include a valid bid bond or other surety as approved by the State of West Virginia or its subdivisions.

(d) Following the solicitation of bids, the construction contract shall be awarded to the lowest qualified responsible bidder who shall furnish a sufficient performance and payment bond. The state and its subdivisions may reject all bids and solicit new bids on the project.

(e) The apparent low bidder on a contract valued at more than \$250,000 for the construction, alteration, decoration, painting or improvement of a new or existing building or structure with ~~The Department of Administration, Division of Purchasing~~ valued at \$500,000 a state spending unit shall submit a list of all subcontractors who will perform more than \$25,000 of work on the project including labor and materials; ~~Provided, That,~~ This section does not apply to other construction projects such as highway, mine reclamation, water or sewer projects. The list shall include the names of the bidders and the license numbers as required by article eleven, chapter twenty-one of this code. This information shall be provided to the ~~Division of Purchasing~~ state spending unit within one business day of the opening of bids for review prior to the awarding of a construction contract. If no subcontractors who will perform more than \$25,000 of work are to be used to complete the project it will be ~~se~~ noted on the subcontractor list. Failure to submit the subcontractor list within one business day after the deadline for submitting bids shall result in disqualification of the bid.

(f) Written approval must be obtained from ~~the Division of Purchasing~~ state spending unit before any subcontractor substitution is permitted. Substitutions are not permitted unless:

(1) The subcontractor listed in the original bid has filed for bankruptcy;

(2) The ~~Division of Purchasing~~ state spending unit refuses to approve a subcontractor in the original bid because the subcontractor is under a debarment pursuant to section thirty-three-d, article three, chapter five-a of this code or a suspension under section thirty-two, article three, chapter five-a of this code; or

(3) The contractor certifies in writing that the subcontractor listed in the original bill fails, is unable or refuses to perform ~~his~~ the subcontract.

(g) ~~(h)~~ The ~~amendments to this section made during the 2012 regular session of the Legislature shall expire one year from the effective date of the amendments absent further action of the Legislature~~ contracting public entity may not award the contract to a bidder which fails to meet the minimum requirements set out in this section. As to ~~any a~~ prospective low bidder which the contracting public entity determines not to have met ~~any one~~ or more of the requirements of this section or other requirements as determined by the public entity in the written bid solicitation, prior to the time a contract award is made, the contracting public entity shall document in writing and in reasonable detail the basis for the determination and shall place the writing in the bid file. After the award of a bid under this section, the bid file of the contracting public agency and all bids submitted in response to the bid solicitation shall be open and available for public inspection.

(h) ~~(i)~~ Any A public official or other person who individually or together with others knowingly makes an award of a contract under this section in violation of the procedures and requirements of this section is subject to the penalties set forth in section twenty-nine, article three, chapter five-a of the Code of West Virginia.

(i) ~~(j)~~ No officer or employee of this state or of a public agency, public authority, public corporation or other public entity and no person acting or purporting to act on behalf of ~~such an~~ officer or employee or public entity shall require that ~~any a~~ performance bond, payment bond or surety bond required or permitted by this section be obtained from ~~any a~~ particular surety company, agent, broker or producer.

(j) ~~(k)~~ All bids shall be open in accordance with the provisions of section two of this article, except design-build projects which are governed by article twenty-two-a of this chapter and are exempt from these provisions.

(k) ~~(4)~~ Nothing in this section ~~shall apply~~ applies to:

(1) Work performed on construction or repair projects by regular full-time employees of the state or its subdivisions;

(2) Prevent students enrolled in vocational educational schools from being utilized in construction or repair projects when the use is a part of the student's training program;

(3) Emergency repairs to building components and systems. For the purpose of this subdivision, the term emergency repairs means repairs that if not made immediately will seriously impair the use of building components and systems or cause danger to ~~these~~ persons using the building components and systems; and

(4) ~~Any~~ A situation where the state or subdivision thereof reaches an agreement with volunteers, or a volunteer group, ~~whereby~~ in which the governmental body will provide construction or repair materials, architectural, engineering, technical or ~~any~~ other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body.

House Bill 2727

Effective Date: July 1, 2013
Signed by Governor: May 1, 2013
Code Reference: Amends §18-9A-7 and §18-9A-8a
Title: Public School Support Program Allowance for Student Transportation and RESAs

Major Provisions:

- Restricts the type of alternative fuel for which a county board is entitled to receive the additional allowance of 10% of student transportation costs to only compressed natural gas (CNG).
- Specifies that the county boards that were receiving the 10% additional allowance during the 2012-13 year for using bio-diesel as an alternative fuel are to continue to receive the full 10% allowance for the 2013-14 year, and that the allowance is to be reduced by two and one-half (2 ½) percent per year for four consecutive years, beginning with the 2014-15 year.
- Reduces the maximum state aid allowance for the Regional Education Service Agencies (RESAs) to \$3,690,750, a seven and one-half (7.5) percent reduction.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2727

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)
[By Request of the Executive]

[Passed April 13, 2013; in effect July 1, 2013.]

AN ACT to amend and reenact §18-9A-7 and §18-9A-8a of the code of West Virginia, 1931, as amended, all relating to the school aid formula; adjusting the foundation school program allowance for transportation costs by limiting the ten percent additional percentage allowance for alternative fuel vehicles to school buses using compressed natural gas; providing for phased-in elimination of the additional percentage for bio-diesel as an alternative fuel; and adjusting the foundation allowance by reducing the maximum allocation for regional education service agencies (RESA).

Be it enacted by the Legislature of West Virginia:

That §18-9A-7 and §18-9A-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-7. Foundation allowance for transportation cost.

(a) The allowance in the foundation school program for each county for transportation shall be the sum of the following computations:

(1) A percentage of the transportation costs incurred by the county for maintenance, operation and related costs exclusive of all salaries, including the costs incurred for contracted transportation services and public utility transportation, as follows:

(A) For each high-density county, eighty-seven and one-half percent;

(B) For each medium-density county, ninety percent;

(C) For each low-density county, ninety-two and one-half percent;

(D) For each sparse-density county, ninety-five percent;

(E) For any county for the transportation cost for maintenance, operation and related costs, exclusive of all salaries, for transporting students to and from classes at a multicounty vocational center, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional ten percent; and

(F) For any county for that portion of its school bus system that uses as an alternative fuel such as compressed natural gas or other acceptable alternative fuel, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional ten percent: Provided, That for any county using receiving an additional ten percent for that portion of their bus system using bio-diesel as an alternative fuel during the school year 2012-2013, bio-diesel shall continue to qualify as an alternative fuel under this paragraph to the extent that the additional percentage applicable to that portion of the bus system using bio-diesel shall be decreased by two and one-half percent per year for four

consecutive school years beginning in school year 2014-2015: *Provided, however,* That any county using an alternative fuel and qualifying for the additional allowance under this subdivision shall submit a plan regarding the intended future use of alternatively fueled school buses;

(2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation;

(3) An amount equal to eight and one-third percent of the current replacement value of the bus fleet within each county as determined by the state board. The amount shall only be used for the replacement of buses. Buses purchased after July 1, 1999, that are driven one hundred eighty thousand miles, regardless of year model, will be subject to the replacement value of eight and one-third percent as determined by the state board. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the State Superintendent for funding for an additional bus or buses. The State Superintendent shall make a decision regarding each application based upon an analysis of the individual school district's net enrollment history and transportation needs: *Provided,* That the superintendent shall not consider any application which fails to document that the county has applied for federal funding for additional buses. If the State Superintendent finds that a need exists, a request for funding shall be included in the budget request submitted by the state board for the upcoming fiscal year; and

(4) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving the aid within each county.

(b) The total state share for this purpose shall be the sum of the county shares: *Provided,* That no county shall receive an allowance which is greater than one-third above the computed state average allowance per transportation mile multiplied by the total transportation mileage in the county exclusive of the allowance for the purchase of additional buses.

(c) One half of one percent of the transportation allowance distributed to each county shall be for the purpose of trips related to academic classroom curriculum and not related to any extracurricular activity. Any remaining funds credited to a county for the purpose of trips related to academic classroom curriculum during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the appropriation for the next fiscal year. The state board may request a county to document the use of funds for trips related to academic classroom curriculum if the board determines that it is necessary.

~~(d) The amendments made to this section during the two thousand eight regular session of the Legislature are intended to be temporary while the transportation issue is further studied during the two thousand eight-two thousand nine interim period.~~

§18-9A-8a. Foundation allowance for regional education service agencies.

For the fiscal year beginning on July 1, 2006, and for each fiscal year thereafter, the foundation allowance for regional education service agencies shall be equal to sixty-three one-hundredths percent of the allocation for professional educators as determined in section four of this article, but not more than ~~3,990,000~~ \$3,690,750. The allowance shall be distributed to the regional education service agencies in accordance with rules adopted by the state board. The allowance for regional education service agencies shall be excluded from the computation of total basic state aid as provided in section twelve of this article.

Senate Bill 2729

Effective Date: July 8, 2013
Signed by Governor: April 22, 2013
Code Reference: Adds §18-5-22c
Title: Relating to Epinephrine Auto-Injectors

Major Provisions:

- Allows schools to voluntarily maintain and use stock epinephrine auto-injectors for students and staff who have not been diagnosed with severe allergic reactions (anaphylactic shock) to allergens.
- Provides for administration of an auto-injector by a school nurse or other trained and authorized nonmedical school personnel for emergency care or treatment of undiagnosed students or staff under a standing physicians order for anaphylactic reactions.
- Allows students who self-inject to use the school supply of epinephrine auto-injectors.
- Provides immunity from liability for school nurses and trained and authorized nonmedical school personnel.
- Provides immunity for counties adopting or choosing NOT to adopt such policy.
- Allows county school boards to participate in free or discounted manufacturer sponsored pharmaceutical programs to obtain epinephrine auto-injectors. Mylan Pharmaceutical currently has a program to provide up-to four EpiPens to each school in West Virginia for FREE.
- Provides for data collection and reporting requirements from county boards of education on incidents of anaphylactic reactions resulting in the administration of school maintained epinephrine auto-injectors in their county during the school year.
- Requires the State Superintendent of Schools to prepare and present an annual report to the Joint Committee on Government and Finance by December 31 of each year.
- Sets forth the WV State Board of Education as the rule-making authority to effectuate the provisions of the bill after consulting with the State Health Officer.

ENROLLED

H. B. 2729

(By Delegates Perry, Perdue, Boggs, Miley, M. Poling, Poore, Fleischauer, Marshall, Armstead, Ellington and Pasdon)

[Passed April 9, 2013; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-22c, relating to epinephrine auto-injectors; allowing schools to voluntarily maintain and use epinephrine auto-injectors; providing for the administration of an auto-injector by a school nurse or other trained and authorized nonmedical school personnel for emergency care or treatment of anaphylactic reactions; allowing the issuance of standing orders and protocols by physicians to schools to obtain epinephrine auto-injectors; setting forth notice requirements; allowing students who self-inject to use the school supply of epinephrine auto-injectors; setting forth immunity from liability for school nurses and trained and authorized nonmedical school personnel; allowing county school boards to participate in free or discounted manufacturer sponsored pharmaceutical programs to obtain epinephrine auto-injectors; providing for data collection and reporting requirements; and setting forth rule-making authority to effectuate the provisions of the section.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5-22c, to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-22c. Providing for the maintenance and use of epinephrine auto-injectors; administration of injections; notice; indemnity from liability; rules.

(a) A public, private, parochial or denominational school located within this state may possess and maintain at the school a supply of epinephrine auto-injectors for use in emergency medical care or treatment for an anaphylactic reaction. A prior diagnosis for a student or school personnel requiring the use of epinephrine auto-injectors is not necessary to permit the school to stock epinephrine auto-injectors. Epinephrine auto-injectors shall be maintained by the school in a secure location which is only accessible by medical personnel and authorized nonmedical personnel and not by students.

(b) An allopathic physician licensed to practice pursuant to the provisions of article three, chapter thirty of this code or an osteopathic physician licensed to practice pursuant to the provisions of article fourteen, chapter thirty of this code may prescribe within the course of his or her professional practice standing orders and protocols for use when necessary by a school which wishes to maintain epinephrine auto-injector pursuant to the provisions of this section.

(c) A school nurse, as set forth in section twenty-two of this article, is authorized to administer an epinephrine auto-injector to a student or school personnel during regular school hours or at a school function when the school nurse medically believes the individual is experiencing an anaphylactic reaction. A school nurse may use the school supply of epinephrine auto-injectors for a student or school personnel authorized to self-administer that meet the requirements of a prescription on file with the school.

(d) Nonmedical school personnel who have been trained in the administration of an epinephrine auto-injector and who have been designated and authorized by the school to administer the epinephrine auto-injector are authorized to administer an epinephrine auto-injector to a student or school personnel during regular school hours or at a school function when the authorized and designated nonmedical school personnel reasonably believes, based upon their training, that the individual is experiencing an anaphylactic reaction. Nonmedical school personnel may use the school supply of epinephrine auto-injectors for a

student or school personnel authorized to self-administer that meet the requirements of a prescription on file with the school.

(e) Prior notice to the parents of a student of the administration of the epinephrine auto-injector is not required. Immediately following the administration of the epinephrine auto-injector, the school shall provide notice to the parent of a student who received an auto-injection.

(f) A school nurse or trained and authorized nonmedical school personnel who administer an epinephrine auto-injection to a student or to school personnel as provided in this section is immune from liability for any civil action arising out of an act or omission resulting from the administration of the epinephrine auto-injection unless the act or omission was the result of the school nurse or trained and authorized nonmedical school personnel's gross negligence or willful misconduct.

(g) For the purposes of this section, all county boards of education may participate in free or discounted drug programs from pharmaceutical manufacturers to provide epinephrine auto-injectors to schools in their counties who choose to stock auto-injectors.

(h) All county boards of education are required to collect and compile aggregate data on incidents of anaphylactic reactions resulting in the administration of school maintained epinephrine auto-injectors in their county during a school year and forward the data to State Superintendent of Schools. The State Superintendent of Schools shall prepare an annual report to be presented to the Joint Committee on Government and Finance as set forth in article three, chapter four of this code, by December 31 of each year.

(i) The State Board of Education, as defined in article two of this chapter, shall consult with the State Health Officer, as defined in section four, article three, chapter thirty of this code, and promulgate rules necessary to effectuate the provisions of this section in accordance with the provisions of article three-b, chapter twenty-nine-a of this code. The rules shall provide, at a minimum, for:

(1) The criteria for selection and minimum requirements of nonmedical school personnel who may administer epinephrine auto-injectors following the necessary training;

(2) The training requirements necessary for nonmedical school personnel to be authorized to administer an epinephrine auto-injection;

(3) Training on anaphylaxis and allergy awareness for food service workers in the school system, if easily available locally;

(4) Storage requirements for maintaining the epinephrine auto-injectors within the schools;

(5) Comprehensive notice requirements to the parents of a student who was administered a school maintained epinephrine auto-injection including who administered the injection, the rationale for administering the injection, the approximate time of the injection and any other necessary elements to make the students' parents fully aware of the circumstances surrounding the administration of the injection;

(6) Any and all necessary documentation to be kept and maintained regarding receipt, inventory, storage and usage of all epinephrine auto-injectors;

(7) Detailed reporting requirements for county boards of education on incidents of use of school maintained epinephrine auto-injectors during a school year; and

(8) Any other requirements necessary to fully implement this section.

Senate Bill 2747

Effective Date: July 12, 2013
Signed by Governor: May 2, 2013
Code Reference: Amends §6-9A-2 and §6-9A-3
Title: Relating to open governmental proceedings

Major Provisions:

- Adds the definitions of emergency, regular and special meetings.
- Defines “emergency meeting” as any meeting called for the purpose of addressing an unexpected event which requires immediate attention because it poses:
 - o An imminent threat to public health or safety;
 - o An imminent threat of damage to public or personal property; or
 - o An imminent potential material financial loss or other imminent potential substantial harm to a public agency.
- Defines “regular meeting” as a meeting at which the regular business of the public is conducted.
- Defines “special meeting” as a meeting of a governing body other than a regular meeting or an emergency meeting.
- Requires each governing body of the executive branch of the state to electronically file a notice of each meeting with the Secretary of State and changes the publication notice from the state register to the Secretary of State’s website.
- Specifies that the notice of a regular or special meeting must be filed in a manner to allow each notice to appear on the Secretary’s website at least five business days prior to the date of the meeting.
- Stipulates that when calculating the number of days, the day of the meeting is not to be counted, and if the notice is filed anytime other than during the Secretary of State’s regular business hours, the date of filing will be considered the next business day.
- Specifies that the governing body of a state executive branch agency shall electronically file a notice for an emergency meeting with the Secretary of State as soon as practicable prior to the meeting.
- Requires all other governing bodies to file a notice for an emergency meeting as soon as practicable prior to the meeting in a manner that is consistent with Article 9A of Chapter 6 of the Code and the opinions of the Ethics Commission Committee on Open Governmental Meetings.
- Clarifies that, in the event of an emergency, any governing body may call an emergency meeting.

ENROLLED

H. B. 2747

(By Delegates Morgan, Stephens, Caputo and Craig)

[Passed April 13, 2013; in effect ninety days from pasasge.]

AN ACT to amend and reenact §6-9A-2 and §6-9A-3 of the Code of West Virginia, 1931, as amended, all relating to Open Governmental Proceedings; defining terms; clarifying existing notice requirements; requiring agencies to electronically file public meeting notices with the Secretary of State for publication on Secretary of State's website; eliminating the requirement that state agency meeting notices be filed in the State Register; specifying that agency rules on filing notices comply with the Open Governmental Proceedings Act and Ethics Commission Committee on Open Governmental Meetings opinions; and providing procedural rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §6-9A-2 and §6-9A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

§6-9A-2. Definitions.

As used in this article:

(1) "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order, ordinance or measure on which a vote of the governing body is required at any meeting at which a quorum is present.

(2) "Emergency meeting" means any meeting called for the purpose of addressing an unexpected event which requires immediate attention because it poses:

(A) A threat to public health or safety;

(B) A threat of damage to public or personal property; or

(C) A potential material financial loss or other potential substantial harm to a public agency.

~~(2)~~ (3) "Executive session" means any meeting or part of a meeting of a governing body which is closed to the public.

~~(3)~~ (4) "Governing body" means the members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration, the membership of a governing body consists of two or more members; for the purposes of this article, a governing body of the Legislature is any standing, select or special committee, except the commission on special investigations, as determined by the rules of the respective houses of the Legislature.

~~(4)~~ (5) "Meeting" means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means. The term meeting does not include:

(A) Any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or Court of Claims proceeding;

(B) Any on-site inspection of any project or program;

(C) Any political party caucus;

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action; or

(E) Discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting.

~~(5)~~ (6) "Official action" means action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held.

~~(6)~~ (7) "Public agency" means any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing, authorized by law to exercise some portion of executive or legislative power. The term "public agency" does not include courts created by article eight of the West Virginia Constitution or the system of family law masters created by article four, chapter forty-eight-a of this code.

~~(7)~~ (8) "Quorum" means the gathering of a simple majority of the constituent membership of a governing body, unless applicable law provides for varying the required ratio.

(9) "Regular meeting" means a meeting at which the regular business of the public is conducted.

(10) "Special meeting" means a meeting of a governing body other than a regular meeting or an emergency meeting.

§6-9A-3. Proceedings to be open; public notice of meetings.

(a) Except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four of this article, all meetings of any governing body shall be open to the public.

(b) Any governing body may make and enforce reasonable rules for attendance and presentation at any meeting where there is not room enough for all members of the public who wish to attend.

(c) This article does not prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised: *Provided*, That persons who desire to address the governing body may not be required to register to address the body more than fifteen minutes prior to time the scheduled meeting is to commence.

(d) Each governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media. ~~except in the event of an emergency requiring immediate official action.~~

(e) Each governing body of the executive branch of the state shall electronically file a notice of ~~any~~ each meeting with the Secretary of State for publication ~~in the state register~~ on the Secretary of State's website.

(1) Each notice shall state the date, time, place and purpose of the meeting.

(2) Each notice of a special meeting or a regular meeting shall be filed in a manner to allow each notice to appear in the state register on the Secretary of State's website at least five calendar days prior to the date of the meeting.

(3) When calculating the days, the day of the meeting is not to be counted. If a meeting notice is filed anytime other than during the Secretary of State's regular business hours, the date of filing will be considered the next business day.

(f) The Secretary of State shall retain copies of all notices filed for ten years.

(g) The Secretary of State may promulgate procedural rules governing the electronic filing of meeting notices.

(h) In the event of an emergency requiring immediate official action, any governing body of the executive branch of the state may file an emergency meeting notice at any time prior to the meeting. a governing body may call an emergency meeting.

(1) The governing body of a state executive branch agency shall electronically file a notice for an emergency meeting with the Secretary of State, as soon as practicable prior to the meeting. Any other governing body shall file a notice for an emergency meeting in a manner which is consistent with this article and the Ethics Commission Committee on Open Governmental Meeting's opinions issued pursuant to the authority of section ten of this article, as soon as practicable prior to the meeting.

(2) The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency.

(i) Upon petition by any adversely affected party any court of competent jurisdiction may invalidate any action taken at any meeting for which notice did not comply with the requirements of this section.

House Bill 2764

Effective Date: July 12, 2013
Signed by Governor: May 1, 2013
Code Reference: Amends §18-8-4
Title: Relating to compulsory school attendance

Major Provisions:

- Authorizes the county attendance director **and the assistants** to promote regular school attendance by ascertaining reasons for inexcusable absences from compulsory school age students.
- Authorizes the county attendance director **and the assistants** to serve written notice to the parent, guardian or custodian for the student that the attendance of the student at school is required and that within ten days of receipt of the notice the parent, guardian, or custodian, accompanied by the student, shall report in person to the school the student attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the inexcusable absences of the student.
- Specifies that should the parent, guardian or custodian for the student not comply with the written notice to conference the county attendance director **and the assistants** are authorized to make complaint against the parent, guardian or custodian before a magistrate of the county.
- Authorizes the county attendance director **and the assistants** to require a properly attested birth certificate or an affidavit from the parent, guardian or custodian of the student when doubt exists as to the age of a student absent from school.
- Specifies that all attendance directors **and assistants** have authority to take without warrant any student absent from school in violation of the provision of this article and to place student in the school in which he or she is or should be enrolled.
- Specifies that all attendance directors **and assistants** hired for more than two hundred days may be assigned other duties determined by the superintendent during the period in excess of two hundred days.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2764

(By Delegate(s) Lawrence, M. Poling and Stowers)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §18-8-4 of the code of West Virginia, 1931, as amended, relating to compulsory school attendance; and extending the authority and duties of attendance directors to assistant attendance directors.

Be it enacted by the Legislature of West Virginia:

That §18-8-4 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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 inexcusable 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; and

(2) Take such steps as are, in their discretion, best calculated to ~~correct attitudes of parents and students which result in absences from school even though not clearly in violation of law~~ 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.

(b) In the case of five total unexcused absences of a student during a school year, the attendance director or assistant shall:

(4) Serve written notice to the parent, guardian or custodian of the student that the attendance of the student at school is required and that within ten days of receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report in person to the school the student attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the inexcusable absences of the student; and if the parent, guardian or custodian does not comply with the provisions of this article, then the attendance director or assistant shall make complaint against the parent, guardian or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, 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 arrest persons charged with offenses against the state. More than one parent, guardian or custodian may be charged in a complaint. Initial service of a summons or warrant issued pursuant to the provisions of this section shall be attempted within ten calendar days of receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

(c) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in section eight, article one, chapter fifty of this code, shall assign the case to a magistrate within ten days of execution of the summons or warrant. The hearing shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least ten days' advance notice of the date, time and place of the hearing.

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

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

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

(1) Assist in directing 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 possible nonenrollees;

(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 article three-b, chapter twenty-nine-a of this code that sets forth student absences that are excluded for accountability purposes. The absences that are excluded by the rule include, but are not be 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 recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;

(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 above, or if requested by the chief administrator, principal or assistant principal; and

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

H.B. 2780

Effective Date: July 12, 2013

Signed by Governor: May 1, 2013

Code Reference: Amends §49-5D-3 and §49-5D-3c

Title: Relating to Multidisciplinary Team Meetings for Juveniles committed to the custody of the West Virginia Division of Juvenile Services

Major Provisions:

- Requires multidisciplinary teams be convened quarterly to discuss children in the custody of the Division of Juvenile Service.
- Provides that in cases where a child has been detained for more than sixty (60) days without an active service plan, the director of the facility may call a multidisciplinary team meeting to discuss the child.
- Requires that members be notified that he or she may participate electronically for multidisciplinary team meetings.

ENROLLED

H. B. 2780

(By Delegate(s) Miley, Skinner, Poore, Manchin,
Hunt And Barill)

[By Request of the Supreme Court of Appeals]

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §49-5D-3 and §49-5D-3c of the Code of West Virginia, 1931, as amended, all relating generally to multidisciplinary team meetings for juveniles committed to the custody of the West Virginia Division of Juvenile Services; requiring such meetings be held quarterly; authorizing the directors of detention centers to call such meetings in certain circumstances; requiring assessments be provided in all cases to the court and team members; and requiring that team members be notified that he or she may participate in team meetings electronically.

Be it enacted by the Legislature of West Virginia:

That §49-5D-3 and §49-5D-3c of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-3. Multidisciplinary treatment planning process.

(a) (1) A multidisciplinary treatment planning process for cases initiated pursuant to articles five and six of this chapter shall be established within each county of the state, either separately or in conjunction with a contiguous county, by the secretary of the department with advice and assistance from the prosecutor's advisory council as set forth in section four, article four, chapter seven of this code. The Division of Juvenile Services shall establish a similar treatment planning process for delinquency cases in which the juvenile has been committed to its custody, including those cases in which the juvenile has been committed for examination and diagnosis.

(2) The provisions of this section do not require a multidisciplinary team meeting to be held prior to temporarily placing a child or juvenile out-of-home under exigent circumstances or upon a court order placing a juvenile in a facility operated by the Division of Juvenile Services.

(b) The case manager in the Department of Health and Human Resources for the child, family or juvenile or the case manager in the Division of Juvenile Services for a juvenile shall convene a treatment team in each case when it is required pursuant to this article.

Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement with appropriate relatives then with foster care homes, facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

Any person authorized by the provisions of this chapter to convene a multidisciplinary team meeting may seek and receive an order of the circuit court setting such meeting and directing attendance. Members of the multidisciplinary team may participate in team meetings by telephone or video conferencing: *Provided*, That the provisions of this subsection do not prevent the respective agencies from designating a person

other than the case manager as a facilitator for treatment team meetings: Provided however, That written notice shall be provided to all team members of the availability to participate by videoconferencing.

(c) The treatment team shall coordinate its activities and membership with local family resource networks and coordinate with other local and regional child and family service planning committees to assure the efficient planning and delivery of child and family services on a local and regional level.

(d) The multidisciplinary treatment team shall be afforded access to information in the possession of the Department of Health and Human Resources, Division of Juvenile Services, law-enforcement agencies and other state, county and local agencies; and the agencies shall cooperate in the sharing of information, as may be provided in sections three(d) and six, article five-d and section one, article seven, all of chapter forty-nine, and any other relevant provision of law. Any multidisciplinary team member who acquires confidential information shall not disclose such information except as permitted by the provisions of this code or court rules.

§49-5D-3c. Multidisciplinary treatment process for status offenders or delinquents.

(a) (1) When a juvenile is adjudicated as a status offender pursuant to section eleven-d, article five of this chapter, the Department of Health and Human Resources shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile.

(2) When a juvenile is adjudicated as a delinquent or has been granted an improvement period pursuant to section nine, article five of this chapter, the court, either upon its own motion or motion of a party, may require the Department of Health and Human Resources to convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. A referral to the Department of Health and Human Resources to convene a multidisciplinary treatment team and to conduct such an assessment shall be made when the court is considering placing the juvenile in the department's custody or placing the juvenile out-of-home at the department's expense pursuant to section thirteen, article five of this chapter. In any delinquency proceeding in which the court requires the Department of Health and Human Resources to convene a multidisciplinary treatment team, the probation officer shall notify the department at least fifteen working days before the court proceeding in order to allow the department sufficient time to convene and develop an individualized service plan for the juvenile.

(3) When a juvenile has been adjudicated and committed to the custody of the Director of the Division of Juvenile Services, including those cases in which the juvenile has been committed for examination and diagnosis, the Division of Juvenile Services shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile, which shall be provided in writing to the court and team members. In cases where the juvenile is committed as a post-sentence disposition to the custody of the Division of Juvenile Services, the plan shall be reviewed quarterly by the multidisciplinary treatment team. Where a juvenile has been detained in a facility operated by the Division of Juvenile Services without an active service plan for more than sixty days, the director of the facility may call a multidisciplinary team meeting to review the case and discuss the status of the service plan.

(4) (A) The rules of juvenile procedure shall govern the procedure for obtaining an assessment of a juvenile, preparing an individualized service plan and submitting the plan and assessment to the court.

(B) In juvenile proceedings conducted pursuant to article five of this chapter, the treatment team shall consist of the juvenile, the juvenile's case manager in the Department of Health and Human Resources or the Division of Juvenile Services, the juvenile's parent or parents, guardian or guardians or custodial relatives, the juvenile's attorney, any attorney representing a member of the treatment team, the prosecuting attorney or his or her designee, an appropriate school official and any other person or agency representative who may assist in providing recommendations for the particular needs of the juvenile and family, including domestic violence service providers. In delinquency proceedings, the probation officer shall be a member of a treatment team. When appropriate, the juvenile case manager in the Department of Health and Human Resources and the Division of Juvenile Services shall cooperate in conducting multidisciplinary treatment team meetings when it is in the juvenile's best interest.

(C) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement at facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(D) The multidisciplinary treatment team shall submit written reports to the court as required by applicable law or by the court, shall meet with the court at least every three months, as long as the juvenile remains in the legal or physical custody of the state, and shall be available for status conferences and hearings as required by the court.

(E) In any case in which a juvenile has been placed out of his or her home except for a temporary placement in a shelter or detention center, the multidisciplinary treatment team shall cooperate with the state agency in whose custody the juvenile is placed to develop an after-care plan. The rules of juvenile procedure and section twenty, article five, chapter forty-nine of the code shall govern the development of an after-care plan for a juvenile, the submission of the plan to the court and any objection to the after-care plan.

(F) If a juvenile respondent admits the underlying allegations of the case initiated pursuant to article five, chapter forty-nine of this code in the multidisciplinary treatment planning process, his or her statements shall not be used in any juvenile or criminal proceedings against the juvenile, except for perjury or false swearing.

H.B. 2800

Effective Date: July 1, 2013

Signed by Governor: April 19, 2013

Code Reference: Amends 18-7A-3, §18-7A-14, §18-7A-17, §18-7A-23, §18-7A-25 and §18-7A-26

Title: Relating to the Teachers' Retirement System

Major Provisions:

- Specifies that gross salary shall be allocated and reported in the fiscal year in which the work is performed.
- Adds "nonteacher" to the definition of present member and adds definitions for "retirant" and "retirement board".
- Deletes the executive director of the retirement board as being a member of the Teachers' Retirement System.
- Adds a completely new section for addressing the correction of errors, with the provisions being practically identical to the requirements passed in Senate Bill 430 for the Teachers' Defined Contribution (TDC) Retirement System.
- Requires the Consolidated Public Retirement Board (CPRB) to correct any errors in retirement contributions or benefits and specifies that if the correction occurs after retirement, as far as practicable, the retirement board is to adjust the payment of the benefit in a manner that is actuarial equivalent to the benefit to which the retirant was correctly entitled to receive.
- Specifies for "Underpayments" that:
 - o Any change or error made by an employer that results in an underpayment to the retirement system, the error may be corrected by the member or retirant remitting the required employee contribution and the existing employer remitting the required employer contribution.
 - o Interest is to accumulate in accordance with the CPRB's Legislative Rule 162 CSR 7, and that any accumulated interest due as a result of an employer error is the responsibility of the participating public employer.
- Specifies for "Overpayments" that:
 - o Any error by an employer that results in an overpayment of the employer's contributions to the retirement system, the CPRB is to credit the employer with the amount, to be offset against the employer's future liability for employer contributions to the retirement system.
 - o Any error by an employer that results in an overpayment of the employee's contributions to the retirement system, the CPRB has sole authority for determining the means of return, offset or credit to or for the benefit of the employee or the amounts overpaid.

- The CBRB, in its full and complete discretion, may require the employer to pay the employee the amount of the wages, with the board crediting the employer with an amount to offset against its future contributions to the retirement system.
 - The wages paid an employee for any overpayments are not considered compensation for any purposes under Chapter 18, Article 7B of the Code.
 - Earnings or interest shall not be returned, offset, or credited under any of the means used by the CPRB for returning mistaken or excess member contributions, including any overpayments, to the member.
- Restricts military service credit to those who were honorably discharged from active duty.
 - Revises the calculation for purchasing service credit for employment by the federal government, or a state or territory of the United States, or as a teacher employed by a parochial school located within the state and fully accredited by West Virginia Department of Education, to 12% of the member's gross salary earned during the first full year of current employment.
 - Revises the benefits to be paid to a refund beneficiary upon the death of a contributor prior to retirement.
 - Specifies that on or after July 1, 2013, any person who becomes a new member of the Teachers' Retirement System must have five or more years of actual contributory service in order to qualify for retirement.
 - Specifies that disability benefits will begin the first day of the month following the latter of: (1) six months of absence caused by said disability; (2) date of written report by a physician selected by the retirement board stating member is mentally or physically incapacitated for service and that disability is total and likely to be permanent; and (3) termination of employment.

ENROLLED

H. B. 2800

(By Delegates Pethel, Jones, Craig, Canterbury,
Kump, Lynch and Stowers)

[Passed April 2, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §18-7A-3, §18-7A-14, §18-7A-17, §18-7A-23, §18-7A-25 and §18-7A-26 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §18-7A-14c, all relating to the Teachers' Retirement System; specifying the time period in which a participating public employer allocates and reports gross salary to the retirement board; including nonteachers within the definition of present member; defining retire and retirement; modifying the definition of teacher member; providing for the correction of errors; requiring nonteachers to file a statement with the retirement board detailing the length of service being claimed for retirement credit; requiring that members granted prior service credit for qualified military service shall have been honorably discharged from active duty; providing for purchasing out of state service credit for members who transferred from the Teachers' Defined Contribution Retirement System; providing that a nonteaching member shall not be considered absent from service while serving as an officer with a statewide professional teaching association; requiring that members make written request to the retirement board to receive credit for service previously credited by the Public Employees Retirement System; providing that all interest paid or transferred on service credit from the Public Employees Retirement System be deposited in the reserve fund; providing that an inactive member may elect to receive an annuity at age sixty; providing that the sole primary beneficiary of a member is eligible for an annuity if the contributor was fifty years old with twenty-five years service; providing that a refund beneficiary shall receive the contributor's accumulated contributions up to the plan year of contributor's death; providing that a refund beneficiary shall be paid the Teachers' Defined Contribution Retirement System member contributions transferred plus the vested portion of employer contributions and any earnings; providing that an actively contributing member who is at least sixty years of age is eligible for an annuity; providing that any member who has thirty years of total service in the state as a nonteaching member is eligible for an annuity; specifying that anyone who becomes a new member on or after July 1, 2013, shall have five or more years of actual contributory service to qualify for retirement; providing that a nonteaching member who is fifty- five years of age and has served thirty years in the state is eligible for an annuity; providing that a nonteaching member is eligible for disability benefits; providing for the computation of a member's annuity; and providing for the commencement date of disability annuity benefits.

Be it enacted by the Legislature of West Virginia:

That §18-7A-3, §18-7A-14, §18-7A-17, §18-7A-23, §18-7A-25 and §18-7A-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that said code be amended by adding thereto a new section, designated §18-7A-14c, all to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

As used in this article, unless the context clearly requires a different meaning:

- (1) "Accumulated contributions" means all deposits and all deductions from the gross salary of a contributor plus regular interest.
- (2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member.

(3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(4) "Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.

(5) "Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last fifteen fiscal years of total service credit, including military service as provided in this article, or if total service is less than fifteen years, the average annual salary for the period on which contributions were made: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code.

(6) "Beneficiary" means the recipient of annuity payments made under the retirement system.

(7) "Contributor" means a member of the retirement system who has an account in the teachers accumulation fund.

(8) "Deposit" means a voluntary payment to his or her account by a member.

(9) "Employer" means the agency of and within the state which has employed or employs a member.

(10) "Employer error" means an omission, misrepresentation or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

(11) "Employment term" means employment for at least ten months, a month being defined as twenty employment days.

(12) "Gross salary" means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the work was done. Gross salary also includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member's rights to employment or wages, with all retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary does not include lump sum payments for bonuses, early retirement incentives, severance pay or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

(14) "Member" means any person who has accumulated contributions standing to his or her credit in the state Teachers Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to section thirteen of this article.

(15) "Members of the administrative staff of the public schools" means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

(16) "Members of the extension staff of the public schools" means every agricultural agent, boys' and girls' club agent and every member of the agricultural extension staff whose work is not primarily stenographic, clerical or secretarial.

(17) "New entrant" means a teacher who is not a present teacher.

(18) "Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; or (E) a governing board, as defined in section two, article one, chapter eighteen-b of this code: *Provided*, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

(19) "Plan year" means the twelve-month period commencing on July 1 and ending the following June 30 of any designated year.

(20) "Present member" means a present teacher or nonteacher who is a member of the retirement system.

(21) "Present teacher" means any person who was a teacher within the thirty-five years beginning July 1, 1934, and whose membership in the retirement system is currently active.

(22) "Prior service" means all service as a teacher completed prior to July 1, 1941, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

(23) "Public schools" means all publicly supported schools, including colleges and universities in this state.

(24) "Refund beneficiary" means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

(25) ~~(26)~~ "Regular interest" means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7. ~~"Refund Interest" means interest compounded, according to the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.~~

(26) ~~(27)~~ "Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

(27) ~~(28)~~ "Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age seventy and one-half years; or (B) the calendar year in which the member retires or ceases covered employment under the system after having attained the age of seventy and one-half years.

(28) "Retirant" means any member who commences an annuity payable by the retirement system.

(29) "Retirement board" means the Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.

(30) ~~(29)~~ "Retirement system" means the state Teachers Retirement System established by this article.

(31) ~~(30)~~ "Teacher member" means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) ~~(G)~~ members of

the research, extension, administrative or library staffs of the public schools; ~~the executive director of the retirement board;~~ (G) ~~(H)~~ the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) ~~(I)~~ employees of the State Board of Education who are performing services of an educational nature; (I) ~~(J)~~ any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education or the State Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (J) ~~(K)~~ all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections, the Division of Health or the Division of Human Services; (K) ~~(L)~~ an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; and (L) ~~(M)~~ any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the State Teachers Retirement System provided in this article.

(32) ~~(34)~~ "Total service" means all service as a teacher or nonteacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

Age in excess of seventy years shall be considered to be seventy years.

§18-7A-14. Contributions by members; contributions by employers; correction of errors; forfeitures.

(a) At the end of each month every member of the retirement system shall contribute six percent of that member's monthly gross salary to the retirement board: *Provided*, That any member employed by a state institution of higher education shall contribute on the member's full earnable compensation, unless otherwise provided in section fourteen-a of this article. The sums are due the state Teachers Retirement System at the end of each calendar month in arrears and shall be paid not later than fifteen days following the end of the calendar month. Each remittance shall be accompanied by a detailed summary of the sums withheld from the compensation of each member for that month on forms, either paper or electronic, provided by the State Teachers Retirement System for that purpose.

(b) Annually, the contributions of each member shall be credited to the member's account in the State Teachers Retirement System Fund. The contributions shall be deducted from the salaries of the members as prescribed in this section and every member shall be considered to have given consent to the deductions. No deductions, however, shall be made from the earnable compensation of any member who retired because of age or service and then resumed service unless as provided in section thirteen-a of this article.

(c) The aggregate of employer contributions, due and payable under this article, shall equal annually the total deductions from the gross salary of members required by this section. Beginning July 1, 1994, the rate shall be seven and one-half percent; beginning on July 1, 1995, the rate shall be nine percent; beginning on July 1, 1996, the rate shall be ten and one-half percent; beginning on July 1, 1997, the rate shall be twelve percent; beginning on July 1, 1998, the rate shall be thirteen and one-half percent; and beginning on July 1, 1999, and thereafter, the rate shall be fifteen percent: *Provided*, That the rate shall be seven and one-half percent for any individual who becomes a member of the State Teachers Retirement System for the first time on or after July 1, 2005, or any individual who becomes a member of the State Teachers Retirement System as a result of the voluntary transfer contemplated in article seven-d of this chapter.

(d) Payment by an employer to a member of the sum specified in the employment contract minus the amount of the employee's deductions shall be considered to be a full discharge of the employer's contractual obligation as to earnable compensation.

(e) Each contributor shall file with the retirement board or with the employer to be forwarded to the retirement board an enrollment form showing the contributor's date of birth and other data needed by the retirement board.

(f) ~~(g)~~ Notwithstanding any other provisions of this article, forfeitures under the retirement system shall not be applied to increase the benefits any member would otherwise receive under the retirement system. If any change or employer error in the records of any participating public employer or the retirement system results in any member receiving from the system more or less than he or she would have been entitled to receive had the records been correct, the board shall correct the error, and as far as is practicable shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the member was correctly entitled shall be paid. Any employer error resulting in an underpayment to the retirement system may be corrected by the member remitting the required employee contribution and the participating public employer remitting the required employer contribution. Interest shall accumulate in accordance with the legislative rule, Retirement Board Reinstatement Interest, 162 CSR 7, and any accumulating interest owed on the employee and employer contributions resulting from the employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred.

§18-7A-14c. Correction of errors; underpayments; overpayments.

(a) General rule: If any change or employer error in the records of any employer or the retirement system results in any member, retirant or beneficiary receiving from the plan more or less than he or she would have been entitled to receive had the records been correct, the retirement board shall correct the error. If correction of the error occurs after the effective retirement date of a retirant, and as far as is practicable, the retirement board shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the retirant was correctly entitled shall be paid.

(b) Underpayments: Any error resulting in an underpayment to the retirement system of required contributions may be corrected by the member or retirant remitting the required member contribution and the employer remitting the required employer contribution. Interest shall accumulate in accordance with the Legislative Rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and employer error interest factors and any accumulating interest owed on the member and employer contributions resulting from an employer error shall be the responsibility of the employer. The employer may remit total payment and the member reimburse the employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment of required contributions to the retirement system will result in increased payments to a retirant, including increases to payments already made, any adjustments shall be made only after the retirement board receives full payment of all required member and employer contributions, including interest.

(c) Overpayments: (1) When mistaken or excess employer contributions, including any overpayments, have been made to the retirement system by an employer, due to error or other reason, the retirement board shall credit the employer with an amount equal to the erroneous contributions, to be offset against the employer's future liability for employer contributions to the retirement system. Earnings or interest shall not be credited to the employer.

(2) When mistaken or excess member contributions, including any overpayments, have been made to the retirement system, due to error or other reason, the retirement board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the member of the amounts, and may use any means authorized or permitted under the provisions of Section 401(a), et seq. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the retirement board may require the employer to pay the member the amounts as wages, with the retirement board crediting the employer with a corresponding amount to offset against its future contributions to the retirement system: *Provided*, That the wages paid to the member shall not be considered compensation for any purposes under this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the retirement board for returning mistaken or excess member contributions, including any overpayments, to a member.

§18-7A-17. Statement and computation of teachers' service; qualified military service.

(a) Under rules adopted by the retirement board, each teacher and nonteaching member shall file a detailed statement of his or her length of service as a teacher or nonteacher for which he or she claims credit. The Retirement Board shall determine what part of a year is the equivalent of a year of service. In computing the service, however, it shall credit no period of more than a month's duration during which a member was absent without pay, nor shall it credit for more than one year of service performed in any calendar year.

(b) For the purpose of this article, the retirement board shall grant prior service credit to ~~new entrants and other~~ members of the retirement system who were honorably discharged from active duty for service in any of the Armed Forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For purposes of this section, "Armed Forces" includes Women's Army Corps, women's appointed volunteers for emergency service, Army Nurse Corps, SPARS, Women's Reserve and other similar units officially parts of the military service of the United States. The military service is considered equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as a teacher for his or her first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The Retirement Board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code. No military service credit may be used in more than one retirement system administered by the Consolidated Public Retirement Board.

(c) For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of that state or territory, the retirement board shall grant credit to the member: *Provided*, That the member shall pay to the system ~~double the amount he or she contributed~~ twelve percent of that member's gross salary earned during the first full year of current employment whether a member of the Teachers' Retirement System or the Teachers' Defined Contribution Retirement System, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service credit granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in West Virginia. Any ~~transfer purchase~~ of out-of-state service, as provided in this article, shall not be used to establish eligibility for a retirement allowance and the retirement board shall grant credit for the ~~transferred~~ purchased service as additional service only: *Provided, however*, That a ~~transfer purchase~~ of out-of-state service is prohibited if the service is used to obtain a retirement benefit from another retirement system: *Provided further*, That salaries paid to members for service prior to entrance into the retirement system shall not be used to compute the average final salary of the member under the retirement system.

~~(d) (e) Service credit for members or retired members shall not be denied on the basis of minimum income rules promulgated by the teachers retirement board: *Provided*, That the member or retired member shall pay to the system the amount he or she would have contributed during the year or years of public school service for which credit was denied as a result of the minimum income rules of the Teachers Retirement Board. No members shall be considered absent from service while serving as a member or employee of the Legislature of the State of West Virginia during any duly constituted session of that body or while serving as an elected member of a county commission during any duly constituted session of that body.~~

~~(e) (f) No members shall be considered absent from service as a teacher or nonteacher while serving as an officer with a statewide professional teaching association, or who has served in that capacity, and no ~~retired teacher~~ retirant, who served in that capacity while a member, shall be considered to have been absent from service as a teacher by reason of that service: *Provided*, That the period of service credit granted for that service shall not exceed ten years: *Provided, however*, That a member or ~~retired teacher~~ retirant who is serving or has served as an officer of a statewide professional teaching association shall make deposits to~~

the Teachers Retirement ~~Board~~ System, for the time of any absence, in an amount double the amount which he or she would have contributed in his or her regular assignment for a like period of time.

(f) ~~(g)~~ The Teachers Retirement System shall grant service credit to any former or present member of the West Virginia Public Employees Retirement System who has been a contributing member of the Teachers' Retirement System for more than three years, for service previously credited by the Public Employees Retirement System upon his or her written request and: (1) Shall require the transfer of the member's Public Employees Retirement System accumulated contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn from the Public Employees Retirement System, plus interest at a rate to be determined by the retirement board, compounded annually from the date of withdrawal to the date of payment, any time prior to the member's effective retirement date; *Provided*, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the Public Employees Retirement System ~~plus interest at a rate to be determined by the Board compounded annually from the date of withdrawal to the date of payment~~. The All interest paid or transferred shall be deposited in the reserve fund.

(g) ~~(h)~~ For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia Department of Education, the retirement board shall grant credit to the member: *Provided*, That the member shall pay to the system ~~double the amount contributed~~ twelve percent of that member's gross salary earned during the first full year of current employment whether a member of the Teachers' Retirement System or the Teachers' Defined Contribution Retirement System, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in the West Virginia public school system. Any transfer of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and ~~the retirement~~ board shall grant credit for the transfer as additional service only: *Provided, however*, That a transfer of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system.

(h) ~~(i)~~ Active members who previously worked in CETA (Comprehensive Employment and Training Act) may receive service credit for time served in that capacity: *Provided*, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within one hundred twenty days following the termination of the member's CETA employment; (2) the retirement board must receive evidence that establishes to a reasonable degree of certainty as determined by the retirement board that the member previously worked in CETA; and (3) the member shall pay to the retirement board an amount equal to the employer and employee contribution plus interest at the amount set by the retirement board for the amount of service credit sought pursuant to this subsection: *Provided, however*, That the maximum service credit that may be obtained under the provisions of this subsection is two years: *Provided further*, That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by March 31, 2003: *And provided further*, That the retirement board shall exercise due diligence to notify affected employees of the provisions of this subsection.

(i) ~~(j)~~ If a member is not eligible for prior service credit or pension as provided in this article, then his or her prior service shall not be considered a part of his or her total service.

(j) ~~(k)~~ A member who withdrew from membership may regain his or her former membership rights as specified in section thirteen of this article only in case he or she has served two years since his or her last withdrawal.

(k) ~~(l)~~ Subject to the provisions of subsections (a) through (l), inclusive, of this section, the retirement board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue

prior service certificates to all persons eligible for the certificates under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed forty years.

(l) ~~(m)~~ Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit: *Provided*, That the retirement board may not require any additional contributions from that member in order for the retirement board to credit him or her with the contributing service credit earned while discharging official legislative duties: *Provided, however*, That nothing in this section may be construed to relieve the employer from making the employer contribution at the member's regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of June 1, 2000: *Provided further*, That any member to which the provisions of this subsection apply may elect to pay to the retirement board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature. The periods of time upon which the member paid his or her contribution shall then be included for purposes of determining his or her final average salary as well as for determining years of service: *And provided further*, That a member using the provisions of this subsection is not required to pay interest on any contributions he or she may decide to make.

(m) ~~(n)~~ The Teachers Retirement ~~Board~~ System shall grant service credit to any former member of the State Police Death, Disability and Retirement System who has been a contributing member for more than three years, for service previously credited by the State Police Death, Disability and Retirement System; and: (1) Shall require the transfer of the member's contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn any time prior to the member's retirement: *Provided*, That the member shall add to the amounts transferred or repaid under this paragraph an amount which is sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the State Police Death, Disability and Retirement System plus interest at a rate to be determined by the retirement board compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

§18-7A-23. Withdrawal and death benefits.

(a) Benefits upon withdrawal from service prior to retirement under the provisions of this article shall be as follows:

(1) A contributor who withdraws from service for any cause other than death, disability or retirement shall, upon application, be paid his or her accumulated contributions up to the end of the fiscal year preceding the year in which application is made, after offset of any outstanding loan balance, plus accrued loan interest, pursuant to section thirty-four of this article, but in no event shall interest be paid beyond the end of five years following the year in which the last contribution was made: *Provided*, That the contributor, at the time of application, is then no longer under contract, verbal or otherwise, to serve as a teacher; or

(2) If the ~~contributor~~ inactive member has completed twenty years of total service, he or she may elect to receive at ~~retirement age~~ age sixty an annuity which shall be computed as provided in this article: *Provided*, That if the ~~contributor~~ inactive member has completed at least five, but fewer than twenty, years of total service in this state, he or she may elect to receive at age sixty-two an annuity which shall be computed as provided in this article. The ~~contributor~~ inactive member must notify the retirement board in writing concerning the election. If the ~~contributor~~ inactive member has completed fewer than five years of service in this state, he or she shall be subject to the provisions as outlined in subdivision (1) of this subsection.

(b) Benefits upon the death of a contributor prior to retirement under the provisions of this article shall be paid as follows:

(1) If the contributor was at least fifty years old and if his or her total service as a teacher or nonteaching member was at least twenty-five years at the time of his or her death, then the surviving spouse of the deceased, provided the spouse is designated as the sole primary refund beneficiary, is eligible for an annuity computed as though the deceased were actually a ~~retired teacher~~ retirant at the time of death and had selected a survivorship option which pays the spouse the same monthly amount which would have been received by the deceased; or

(2) If the facts do not permit payment under subdivision (1) of this subsection, then the following sum shall be paid to the refund beneficiary of the contributor: (A) The contributor's accumulated contributions up to the plan year of his or her death plus an amount equal to his or her ~~employee member~~ contributions. *Provided, That* the latter sum shall emanate from the Employer's Accumulation Fund; and (B) the refund beneficiary of any individual who became a member of the retirement system as a result of the voluntary transfer contemplated in article seven-d of this chapter shall also be paid the member contributions plus the vested portion of employer contributions made on his or her behalf to the Teachers' Defined Contribution Retirement System, plus any earnings thereon, as of June 30, 2008, as stated by the retirement board.

§18-7A-25. Eligibility for retirement allowance.

(a) Any actively contributing member who has attained the age of sixty years or any member who had has thirty-five years of total service as a teacher or nonteaching member in West Virginia, regardless of age, is eligible for an annuity. No new entrant nor present member is eligible for an annuity, however, if either has less than five years of service to his or her credit; *Provided, That* on and after July 1, 2013, any person who becomes a new member of this retirement system shall, in qualifying for retirement under this section, have five or more years of contributory service, all of which shall be actual, contributory ones.

(b) Any member who has attained the age of fifty-five years and who has served thirty years as a teacher or nonteaching member in West Virginia is eligible for an annuity.

(c) Any member who has served at least thirty but less than thirty-five years as a teacher or nonteaching member in West Virginia and is less than fifty-five years of age is eligible for an annuity, but the annuity shall be the reduced actuarial equivalent of the annuity the member would have received if the member were age fifty-five at the time such annuity was applied for.

(d) The request for any annuity shall be made by the member in writing to the retirement board, but in case of retirement for disability, the written request may be made by either the member or the employer.

(e) A member is eligible for annuity for disability if he or she satisfies the conditions in either subdivision (1) or (2) of this subsection and meets the conditions of subdivision (3) of this subsection as follows:

(1) His or her service as a teacher or nonteaching member in West Virginia must total at least ten years and service as a teacher or nonteaching member must have been terminated because of disability, which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved.

(2) His or her service as a teacher or nonteaching member in West Virginia must total at least five years and service as a teacher or nonteaching member must have been terminated because of disability, which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved and the disability is a direct and total result of an act of student violence directed toward the member.

(3) An examination by a physician or physicians selected by the retirement board must show that the member is at the time mentally or physically incapacitated for service as a teacher or nonteaching member, that for that service the disability is total and likely to be permanent and that he or she should be retired in consequence of the disability.

(f) Continuance of the disability of the ~~retired member~~ retirant shall be established by medical examination, as prescribed in subdivision (3), subsection (e) of this section, annually for five years after retirement, and thereafter at such times required by the retirement board. Effective July 1, 1998, a member who has retired because of a disability may select an option of payment under the provisions of section twenty-eight of this article: *Provided*, That any option selected under the provisions of section twenty-eight of this article shall be in all respects the actuarial equivalent of the straight life annuity benefit the disability ~~retiree~~ retirant receives or would receive if the options under said section were not available and that no beneficiary or beneficiaries of the disability ~~annuitant~~ retirant may receive a greater benefit, nor receive any benefit for a greater length of time, than the beneficiary or beneficiaries would have received had the disability ~~retiree~~ retirant not made any election of the options available under said section. In determining the actuarial equivalence, the retirement board shall take into account the life expectancies of the member and the beneficiary: *Provided, however*, That the life expectancies may at the discretion of the retirement board be established by an underwriting medical director of a competent insurance company offering annuities. Payment of the disability annuity provided in this article shall cease immediately if the retirement board finds that the disability of the ~~retired teacher~~ retirant no longer exists, or if the ~~retired teacher~~ retirant refuses to submit to medical examination as required by this section.

§18-7A-26. Computation of annuities.

(a) ~~Annuitants~~ Retirants whose annuities were approved by the retirement board effective before July 1, 1980, shall be paid the annuities which were approved by the retirement board.

(b) Annuities approved by the retirement board effective after June 30, 1980, shall be computed as provided in this section.

(c) Upon establishment of eligibility for a retirement allowance, a member shall be granted an annuity which shall be ~~the sum of the following~~ two percent of the member's average salary multiplied by his or her total service credit, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section twenty-eight-a of this article.

~~(1) Two percent of the member's average salary multiplied by his or her total service credit as a teacher.~~ In this ~~subdivision~~ subsection "average salary" means the average of the highest annual salaries received by the member during any five plan years contained within his or her last fifteen years of total service credit: *Provided*, That the highest annual salary used in this calculation for certain members employed by the West Virginia Higher Education Policy Commission under its control shall be \$4,800, as provided by section fourteen-a of this article.

~~(2) The actuarial equivalent of the voluntary deposits of the member in his or her individual account up to the time of his or her retirement, with regular interest.~~

(d) The disability annuities of all ~~teachers retired for disability~~ disabled retirants shall be based upon a disability table prepared by a competent actuary approved by the retirement board. Disability annuity benefits will begin the first day of the month following the latter of: (1) Six months of absence caused by said disability; (2) date of written report by physician selected by retirement board stating member is mentally or physically incapacitated for service and that disability is total and likely to be permanent; and (3) termination of employment.

(e) Upon the death of ~~an annuitant~~ a retirant who qualified for an annuity as the surviving spouse of an active member or because of permanent disability, the estate of the deceased or beneficiary designated for such purpose shall be paid the difference, if any, between the member's contributions with regular interest thereon, and the sum of the annuity payments. Upon the death of a spouse who was named as the member's survivor, a retirant may elect an annuity option approved by the retirement board in an amount adjusted on a fair basis to be of equal actuarial value as the annuity prospectively in effect relative to the surviving member at the time the new option is elected.

(f) All annuities shall be paid in twelve monthly payments. In computing the monthly payments, fractions of a cent shall be considered a cent. The monthly payments shall cease with the payment for the month within which the beneficiary dies, and shall begin with the payment for the month succeeding the month within which the ~~annuitant~~ retirant became eligible under this article for the annuity granted; in no case, however, shall ~~an annuitant~~ a retirant receive more than four monthly payments which are retroactive after the retirement board receives his or her application for annuity. The monthly payments shall be made on the twenty-fifth day of each month, except the month of December, when the payment shall be made on December 18. If the date of payment falls on a holiday, Saturday or Sunday, then the payment shall be made on the preceding workday.

(g) In case the retirement board receives data affecting the approved annuity of a ~~retired teacher~~ retirant, the annuity shall be changed in accordance with the data, the change being effective with the payment for the month within which the retirement board received the new data.

(h) Any person who has attained the age of sixty-five and who has served at least twenty-five years as a teacher or nonteacher prior to July 1, 1941, is eligible for prior service credit and for prior service pensions as prescribed in this section.

H.B. 2861

Effective Date: July 1, 2013

Signed by Governor: May 3, 2013

Code Reference: Amends §18-2-6

Title: Relating to continued enrollment of at-risk student in public school while enrolled in an alternative program

Major Provisions:

- Makes legislative findings on at-risk students, discouraged and defeated learners and purpose for authorizing continued enrollment.
- Authorizes the state board to approve the alternate program.
- Authorizes county superintendent to approve continued enrollment.
- Provides conditions under which continued enrollment may be approved.
- Eliminates required annual report on cooperation with challenge academy.

ENROLLED

H. B. 2861

(By Delegates Pasdon, M. Poling, Barill, Marshall,
Frich and Fleischauer)

[Passed April 13, 2013; in effect July 1, 2013.]

AN ACT to amend and reenact §18-2-6 of the Code of West Virginia, 1931, as amended, relating to dual enrollment of at-risk student in public school and alternative program that meets certain conditions; making legislative findings; requiring approval of alternative programs by the state board of education; authorizing county superintendent to approve dual enrollment; providing conditions under which dual enrollment may be approved; eliminating required annual report on cooperation with challenge academy; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §18-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Classification and standardization of schools; standards for degrees and diplomas; certificates of proficiency; establishment of alternative education programs.

(a) ~~(4)~~ The state board shall promulgate rules for the accreditation, classification and standardization of all schools in the state, except institutions of higher education, and shall determine the minimum standards for granting ~~of~~ diplomas and certificates of proficiency by those schools.

(1) The certificates of proficiency shall include specific information regarding the graduate's skills, competence and readiness for employment or honors and advanced education and shall be granted, along with the diploma, to every eligible high school graduate.

(2) The certificate of proficiency shall include the program of study major completed by the student only for those students who have completed the required major courses, or higher level courses, advanced placement courses, college courses or other more rigorous substitutes related to the major, and the recommended electives.

(b) ~~(2)~~ An institution of less than collegiate or university status may not grant any diploma or certificate of proficiency on any basis of work or merit below the minimum standards prescribed by the state board.

(c) ~~(3)~~ A charter or other instrument containing the right to issue diplomas or certificates of proficiency may not be granted by the State of West Virginia to any institution or other associations or organizations of less than collegiate or university status within the state until the condition of granting or issuing the diplomas or other certificates of proficiency has first been approved in writing by the state board.

(d) ~~(b)~~ The state board shall promulgate a rule for the approval of alternative education programs for disruptive students who are at risk of not succeeding in the traditional school structure.

(1) This rule may provide for the waiver of other policies of the state board, the establishment and delivery of a nontraditional curriculum, the establishment of licensure requirements for alternative education program teachers, and the establishment of performance measures for school accreditation.

(2) This rule shall provide uniform definitions of disruptive student behavior and uniform standards for the placement of students in alternative settings or providing other interventions including referrals to local

juvenile courts to correct student behavior so that they can return to a regular classroom without engaging in further disruptive behavior.

~~(e)~~ (e) The state board shall establish up to five pilot projects at the elementary or middle school levels, or both, that employ alternative schools or other placements for disruptive students to learn appropriate behaviors so they can return to the regular classroom without further disrupting the learning environment. The state board shall report to the Legislative Oversight Commission on Education Accountability by December 1, 2010, on its progress in establishing the pilot projects and by December 1 in each year after that for the duration of the pilot projects on the effect of the projects on maintaining student discipline.

~~(f)~~ (f) If a student attends an approved alternative education program or the Mountaineer Challenge Academy, which is designated as a special alternative education program pursuant to section twenty-four, article one-b, chapter fifteen of this code, and the student graduates or passes the General Equivalency Development (GED) Tests within five years of beginning ninth grade, that student shall be considered graduated for the purposes of calculating the high school graduation rate used for school accreditation and school system approval, subject to the following:

(1) The student shall be considered graduated only to the extent that this is not in conflict with any provision of federal law relating to graduation rates;

(2) If the state board determines that this is in conflict with a provision of federal law relating to graduation rates, the state board shall request a waiver from the United States Department of Education; and

(3) If the waiver is granted, notwithstanding the provisions of subdivision (1) of this subsection, the student graduating or passing the General Educational Development (GED) Tests within five years shall be considered graduated.

~~(g)~~ (g) The state board shall promulgate a rule to support the operation of the National Guard Youth Challenge Program operated by the Adjutant General and known as the "Mountaineer Challenge Academy" which is designated as a special alternative education program pursuant to section twenty-four, article one-b, chapter fifteen of this code, for students who are at risk of not succeeding in the traditional school structure. The rule shall set forth policies and procedures applicable only to the Mountaineer Challenge Academy that provide for, but are not limited to, the following:

(1) Implementation of provisions set forth in section twenty-four, article one-b, chapter fifteen of this code;

(2) Precedence of the policies and procedures designated by the National Guard Bureau for the operation of the Mountaineer Challenge Academy special alternative education program;

(3) Consideration of a student participating in the Mountaineer Challenge Academy special alternative education program at full enrollment status in the referring county for the purposes of funding and calculating attendance and graduation rates, subject to the following:

(A) The student shall be considered at full enrollment status only for the purposes of calculating attendance and graduation rates to the extent that this is not in conflict with any provision of federal law relating to attendance or graduation rates;

(B) If the state board determines that this is in conflict with a provision of federal law relating to attendance or graduation rates, the state board shall request a waiver from the United States Department of Education;

(C) If the waiver is granted, notwithstanding the provisions of paragraph (A) of this subdivision, the student shall be considered at full enrollment status in the referring county for the purposes of calculating attendance and graduation rates; and

(D) Consideration of the student at full enrollment status in the referring county is for the purposes of funding and calculating attendance and graduation rates only. For any other purpose, a student participating in the academy is considered withdrawn from the public school system;

(4) Articulation of the knowledge, skills and competencies gained through alternative education so that students who return to regular education may proceed toward attainment or may attain the standards for graduation without duplication; and

(5) Consideration of eligibility to take the General Educational Development (GED) Tests by qualifying within the extraordinary circumstances provisions established by state board rule for a student participating in the Mountaineer Challenge Academy special alternative education program who does not meet any other criteria for eligibility.

~~(h)~~ (f) Nothing in this section or the rules promulgated under this section compels the Mountaineer Challenge Academy to be operated as a special alternative education program or to be subject to any other laws governing the public schools except by its consent.

~~(g) The state board shall report to the Legislative Oversight Commission on Education Accountability on or before January 1 of each year on its efforts to cooperate with and support the Mountaineer Challenge Academy pursuant to this section and section twenty four, article one b, chapter fifteen of this code.~~

(i) The Legislature makes the following findings regarding students at-risk:

(1) Defeated and discouraged learners:

(A) Any child who is unlikely to graduate on schedule with both the skills and self esteem necessary to exercise meaningful options in the areas of work, leisure, culture, civic affairs and personal relationships may be defined as being an at-risk student;

(B) Problems associated with students at-risk often begin for them in the early grades as they gradually fall further behind in the essential skills of reading, writing and math;

(C) These problems may be accompanied by such behavior patterns as poor attendance, inattentiveness, negative attitudes and acting out in class. These patterns are both symptoms of and added catalysts for students to become increasingly defeated and discouraged learners;

(D) By the middle grades, students with growing skill deficits, usually know they are behind other students and have good reason to feel discouraged. A growing lack of self confidence and self worth, limited optimism for the future, avoidance of school and adults and a dimming view of the relationship between effort and achievement are among the characteristics of defeated and discouraged learners;

(E) Public schools are expected to address the needs of a1l students, minimizing the likelihood that they will become at-risk and giving additional attention to those who do; however, the circumstances involved with a child becoming at-risk often are complex and may include influences both within and outside of the school environment; and

(F) In fragile homes, a child who is at-risk and is becoming a discouraged and defeated learner often lacks adequate support and may develop peer relationships that further exacerbate the difficulty of reengaging him or her in learning, school and responsible social behavior.

(2) The Legislature further finds that the public schools should not be deterred from seeking and assisting with enrollment of students in an alternative program that helps remedy the discouragement, lessens skill deficits and facilitates a successful return to public school.

(A) For this purpose, subject to approval of the county superintendent, a student enrolled in the public schools of the county may continue to be enrolled while also enrolled in an alternative program subject to the following conditions:

(1) The alternative program is approved by the state board;

(2) The student meets the general description of an at-risk student and exhibits behaviors and characteristics associated with a discouraged and defeated learner;

(3) The alternative program complies with all requests of the county superintendent for information on the educational program and progress of the student;

(4) The alternative program includes a family involvement component in its program. This component shall include, but is not limited to, providing for student and parent participation in activities that help address the challenging issues that have hindered the student's engagement and progress in learning;

(5) The alternative program includes an on site boarding option for students;

(6) The alternative program provides an individualized education program for students that is designed to prepare them for a successful transition back into the public schools; and

(7) The parents or legal guardian of the student make application for enrollment of the student in the alternative program, agree to the terms and conditions for enrollment, and enroll the student in the program.

H.B. 2940

Effective Date: July 8, 2013

Signed by Governor: April 18, 13

Code Reference: Adds §18-2-26a

Title: Relating to regional meetings among certain officials of county boards of education

Major Provisions:

- Requires all county superintendents and members of boards of education belonging to the same regional education service agency (RESA) to meet together during the months of July and August 2013 and biennially thereafter within two months following the organizational meetings specified in WVC §18-5-1c.
- Specifies that the purposes of the meetings are to identify administrative, coordinating and other county level services and functions that may be shared between or among the county boards, especially when resignations, retirements and staffing realignments or similar events occur.
- Specifies that the meetings are to be designated as special meetings called solely for the purposes specified above.
- Requires the School Boards Association to conduct the meetings and notify the State Superintendent in writing of the time, place and date of each meeting.
- Requires that the format of the meetings be approved by the State Board in advance.
- Specifies that prior to seeking the approval of the State Board, the School Boards Association must solicit input from statewide organizations that have an interest in public education, including organizations representing the interests of parents, business and industry, public school administrators, teachers and service personnel.
- Requires that by October 1st following the meetings, the School Boards Association must provide a report to the State Board and the Legislative Oversight Commission on Education Accountability (LOCEA).
- States that nothing in the statute requires the elimination or consolidation of county school districts.

ENROLLED

Committee Substitute

for

H. B. 2940

(By Delegates M. Poling, Stowers, Pasdon,
Moye and Perry)

[Passed April 9, 2013; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-26a, relating to regional meetings among certain officials of county boards of education; establishing purposes and limitation; requiring notice; setting forth the responsibilities of county and state education officials; soliciting input from organizations having an interest in education; requiring certain reports; and providing a process for approval of training.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2-26a, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-26a. Regional meetings on shared services and functions; notice, solicitation of input and approval; reports.

(a) During the months of July and August, 2013, and thereafter biennially within two months following the organizational meetings of county boards required by section one-c, article five of this chapter, all county superintendents of schools and members of county boards belonging to the same regional educational service agency shall meet together to identify administrative, coordinating and other county level services and functions that may be shared between or among the county boards, especially when resignations, retirements, staffing realignments or similar events may occur. The meeting shall be a special meeting of each participating county board, to be called pursuant to section four, article five of this chapter solely for the purposes set forth in this section.

(b) As soon as each meeting is scheduled, the West Virginia School Board Association shall notify the state superintendent in writing of the time, place and date of the meeting. The association shall conduct the meetings and for that purpose may consult with the regional educational service agencies. The format of the meetings shall be approved by the state board in advance.

(c) Prior to seeking the approval of the state board for the format of the meetings, the association shall solicit input from statewide organizations that have an interest in public education, including organizations representing the interests of parents, business and industry, public school administrators, teachers and service personnel.

(d) By October 1, following the meetings required by this section, the West Virginia School Board Association shall provide a report of the meetings to the state board and the Legislative Oversight Commission on Education Accountability. The report shall include, but is not limited to, the following items:

(1) Identification of the administrative, coordinating and other county level services and functions that may be shared between or among the county boards;

(2) An analysis of the advantages and disadvantages of sharing services in each instance; and

(3) A process for implementing recommended changes.

(e) Subject to state board approval, the county board member training standards review committee established by section one-a, article five of this chapter may determine that the attendance of a county board member at the meeting required by subsection (a) of this section shall be approved as training related to boardmanship and governance effectiveness.

(f) Nothing in this section requires the elimination or consolidation of county school districts.

House Bill 2979

Effective Date: July 11, 2013

Signed by Governor: April 29, 2013

Code Reference: Amends and reenacts §31-15C-2, §31-15C-4, §31-15C-8, §31-15C-9, §31-15C-10

Title: Broadband Development Council

Major Provisions:

- Clarifies that the data rate for broadband will be the same as specified by the FCC.
- Requires annual reports to the Joint Committee on Government and Finance.
- Extends the council's public outreach and education efforts beyond unserved areas.
- Describes rule-making and emergency rule-making authority.
- Revises the council's guidelines and criteria for funding assistance.
- Modifies the application process for project assistance.
- Revises notice and publication requirements.

H. B. 2979

COMMITTEE SUBSTITUTE

FOR

(By Delegates Boggs, Skaff, E. Nelson, White, Morgan, M. Poling and Miley)

[Passed April 11, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §31-15C-2, §31-15C-4, §31-15C-8, §31-15C-9 and §31-15C-10 of the Code of West Virginia, 1931, as amended, all relating to the Broadband Deployment Council; modifying and adding definitions; clarifying that the data rate for broadband will be the same as specified by the Federal Communications Commission; requiring annual reports to the Joint Committee on Government and Finance; extending the council's public outreach and education efforts beyond unserved areas; rule-making and emergency rule-making authority; revising the council's guidelines and criteria for funding assistance; modifying the application process for project assistance; and revising notice and publication requirements.

Be it enacted by the Legislature of West Virginia:

That §31-15C-2, §31-15C-4, §31-15C-8, §31-15C-9 and §31-15C-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15C. BROADBAND DEPLOYMENT.

§31-15C-2. Definitions.

(a) For the purposes of this article:

(1) "Broadband" or "broadband service" means any service providing advanced telecommunications capability with the same either a downstream data rate and or upstream data rate as is specified by the Federal Communications Commission and of at least 200 kilobits per second, that does not require the end-user to dial up a connection that has the capacity to always be on, and for which the transmission speeds are based on regular available bandwidth rates, not sporadic or burstable rates, with latency suitable for real-time applications and services such as VoIP and video conferencing, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas: Provided, That as the Federal Communications Commission updates the downstream data rate and the upstream data rate the Council will publish the revised data rates in the State Register within sixty days of the federal update. a minimum downstream-to-upstream data ratio of 10:1 for services with a downstream data rate of up to five megabits per second, and with a minimum upstream data rate of 500 kilobits per second for services with a downstream data rate of five megabits per second or greater.

(2) "Broadband demand promotion project" means a statewide or regional (A) a project to provide broadband services to a type 2 and/or type 3 unserved area, as defined in section six of this article; or (B) a project to undertake activities to promote demand for broadband services and broadband applications.

(3) "Broadband deployment project" means a project to provide broadband services in a type 2 and/or type 3 unserved area, as defined in section six of this article.

(4) "Council" means the Broadband Deployment Council.

(5) (3) "Downstream data rate" means the transmission speed from the service provider source to the end-user.

(6) (4) "Upstream data rate" means the transmission speed from the end-user to the service provider source.

(7) ~~(5)~~ "Unserved area" means a community that has no access to broadband service.

~~(b) The definition of the term "broadband," the designation of areas that are "unserved", and the level of service required to qualify for funding of state programs and projects, are based on the Federal Communications Commission's current definition of broadband, which is stated in terms of the number of Kilobits (Kbps) per second, either upstream or downstream. It is the intention of the Legislature that the definition of broadband in this article and the level of service requirements for state funding be promptly updated by future Legislatures to conform with any revisions enacted by Congress or any rule or regulation promulgated by the Federal Communications Commission or other federal agencies involved with deploying and enhancing broadband services.~~

§31-15C-4. Powers and duties of the council generally.

~~(a) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purpose and intent of this article. The council shall have the power and capacity to:~~

~~(1) Explore the potential for increased use of broadband service for the purposes of education, career readiness, workforce preparation and alternative career training;~~

~~(2) Explore ways for encouraging state and municipal agencies to expand the development and use of broadband services for the purpose of better serving the public, including audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking; and~~

~~(3) Cooperate and assist in the expansion of electronic instruction and distance education services by July 2014.~~

~~(b) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purpose and intent of this article. The council shall have the power and capacity to:~~

~~(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any broadband deployment project;~~

~~(2) Promote awareness of public facilities that have community broadband access that can be used for distance education and workforce development;~~

~~(3) Advise on deployment of e-government portals such that all public bodies and political subdivisions have homepages, encourage one-stop government access and that all public entities stream audio and video of all public meetings;~~

~~(4) ~~(2)~~ To make and execute contracts, commitments and other agreements necessary or convenient for the exercise of its powers, including, including, but not limited to, the hiring of consultants to assist in the mapping of the state, categorization of areas within the state, and evaluation of project applications: *Provided*, That the provisions of article three, chapter five-a of this code do not apply to the agreements and contracts executed under the provisions of this article;~~

~~(5) ~~(3)~~ Acquire by gift or purchase, hold or dispose of real property and personal property in the exercise of its powers and performance of its duties as set forth in this article;~~

~~(6) ~~(4)~~ Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization to carry out its statutory duties; and~~

~~(7) ~~(5)~~ Perform any and all other activities in furtherance of its purpose.~~

(c) ~~(b)~~ The council shall exercise its powers and authority to bring broadband service to unserved areas. The council may not duplicate or displace broadband service in areas already served or where private industry feasibly can be expected to offer services in the reasonably foreseeable future.

In providing governmental funding for broadband deployment projects, the council shall give priority to funding for projects in areas without access to broadband service of any type or any speed before providing governmental funding for projects in areas with existing broadband service below the minimum speeds specified in section two of this article.

(d) The council shall report to the Joint Committee on Government and Finance on or before January 1 of each year. The report shall include the action that was taken by the council during the previous year in carrying out the provisions of this article. The council shall also make any other reports as may be required by the Legislature or the Governor.

§31-15C-8. Stimulation of demand through public outreach and education.

In order to implement and carry out the intent of this article, the council may take such actions as it deems necessary or advisable in order to stimulate demand through public outreach and education ~~in unserved areas~~. The council shall consider the views, if offered, of affected members of the public, including private industry.

§31-15C-9. Development of guidelines and application for funding assistance; emergency rule-making authority.

(a) In order to implement and carry out the intent of this article in type 2 and type 3 unserved areas, the council shall ~~propose promulgate emergency~~ rules for legislative approval, pursuant to the provisions of ~~section fifteen~~, article three, chapter twenty-nine-a of this code, to develop comprehensive, uniform guidelines for use by the council in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop and execute a broadband deployment project in a type 2 or type 3 unserved area. The council may promulgate emergency rules pending authorization of the legislative rules.

(b) The guidelines shall include the following factors:

(1) The cost-effectiveness of the project;

(2) The economic development benefits of the project;

(3) The availability of alternative sources of funding that could help finance the project, including, but not limited to, private grants or federal funding and the efforts undertaken to obtain such funding;

(4) If the project requires the construction of a network, the applicant's ability to operate and maintain such network;

(5) The degree to which the project advances statewide broadband access and other state broadband planning goals;

(6) If the project involves the construction of a network, the proposed technologies, bandwidths, upstream data rates and downstream data rates;

(7) The estimated dates the project would commence and be completed;

(8) How the proposed project compares to alternative proposals for the same unserved area with regard to the number of people served, the amount of financial assistance sought, and the long-term viability of the proposed project; and

(9) Any other consideration the council deems pertinent in evaluating requests for funding assistance.

(c) ~~(b)~~ Under no circumstances may the council's guidelines allow for the approval of any project for broadband service involving the construction of a network that does not meet the minimum specifications for broadband service as set by the Federal Communications Commission that does not include a minimum downstream transmission rate of 600 kilobits per second (Kbps) and a minimum downstream-to-upstream ratio of 8.5:1 for services with a downstream rate of up to five megabits per second (Mbps). In those cases where a project's broadband service's downstream rate is five Mbps or greater, the council's guidelines must require a minimum upstream data rate of 588 Kbps and allow information applications and market demands to dictate acceptable downstream-to-upstream data ratios.

(d) The council shall create an application form that shall be used by all project sponsors requesting funding assistance from the council to plan, acquire, construct, improve or otherwise develop and execute broadband deployment projects in type 2 or type 3 unserved areas or broadband demand promotion projects. The application form shall advise applicants of information required by state agencies that will issue permits and certificates regarding the project contain all information required by all state agencies that will be required to issue permits and certificates regarding the project.

(e) The application form shall require the project sponsor to set forth:

(1) The proposed location of the project;

(2) If the project involves the construction of a network, the type(s) of unserved area(s) the project proposes to address;

(3) The estimated total cost of the project;

(4) The amount of funding assistance required and the specific uses of the funding;

(5) Other sources of funding available or potentially available for the project;

(6) Information demonstrating the need for the project;

(7) That the proposed funding of the project is the most economically feasible and viable alternative to completing the project; and

(8) Such other information as the council considers necessary.

§31-15C-10. Requirements for project funding assistance; review of project application by council; competitive applications.

(a) As determined by the council, project sponsors may submit applications for funding assistance. ~~Once the council has categorized unserved areas pursuant to section six of this article, project sponsors may submit applications for funding assistance for projects in those unserved areas. Upon receiving its first completed application for a categorized unserved area, the council shall post notice of such application with the Secretary of State for sixty days so as to allow for competing applications to be submitted to the council. Within thirty days of the close of the aforementioned sixty-day notice period, the council shall review all applications timely received during the sixty-day period and either: (i) Approve funding for one or more projects after determining that the funding would constitute an appropriate investment of public funds; or (ii) if the council determines that the application does not contain all of the required information or otherwise is incomplete, or that a proposed project is not eligible for funding assistance, or that the proposed project is otherwise not an appropriate or prudent investment of state funds, the council shall deny the project funding request. Prior to approving or denying any funding request, the council may seek the advice of any expert consultant retained pursuant to section seven of this article, but the council is not bound by that advice. The council shall also consider the views, if offered, of affected members of the public, including private industry.~~

(b) ~~Broadband deployment projects, including projects involving the construction of a network, may be submitted for type 2 and/or type 3 unserved areas as those areas are categorized pursuant to section six of this article. Broadband demand promotion projects may be submitted on a statewide or regional basis. To apply for or receive any funding assistance for a broadband deployment project from the council pursuant to subsection (a) of this section, the project sponsor seeking the funding assistance shall submit a completed application to the council on the form prepared for such purpose by the council pursuant to section nine of this article.~~

(c) ~~(a) When a completed application is received for a project~~ Upon receiving its first completed application for a categorized unserved area, the council shall post notice with the Secretary of State of the first completed application received for that project area. The notice shall be published in the State Register for sixty days so as to allow for competing applications to be submitted to the council. In reviewing each application, the council may use the engineering, financial and technical expertise of outside consultants in addition to the respective staffs of the government agencies and private-sector entities represented on the council or other government agencies.

(d) ~~(a) Within thirty days of the close of the aforementioned sixty-day notice period, the council shall review all applications timely received during the sixty-day period and either: Notwithstanding any provision of article fifteen-a, chapter thirty-one or any other provision of this code, broadband deployment project proposals submitted to the council for its consideration pursuant to this article and the council's decisions with regard to such projects shall not be subject to review by the West Virginia Infrastructure and Jobs Development Council.~~

(1) ~~(a) (i)~~ Approve funding for one or more projects after determining that the funding would constitute an appropriate investment of public funds; or

(2) ~~(a) (ii)~~ Deny the project funding request if the council determines that:

(A) ~~(a)~~ The application does not contain all of the required information ~~or otherwise;~~

(B) ~~(a)~~ Is incomplete;

(C) ~~(a) that~~ A proposed project is not eligible for funding assistance; or

(D) ~~(a) that~~ The proposed project is otherwise not an appropriate or prudent investment of state funds, ~~the council shall deny the project funding request.~~

(e) ~~(a)~~ Prior to approving or denying any funding request, the council may seek the advice of any expert consultant retained pursuant to section seven of this article, but the council is not bound by that advice. The council shall also consider the views, if offered, of affected members of the public, including private industry.

(f) ~~(b)~~ To apply for or receive any funding assistance for a broadband deployment project or a broadband demand promotion project from the council pursuant to subsection (a) of this section, the project sponsor seeking the funding assistance shall submit a completed application to the council on the form prepared for such purpose by the council pursuant to section nine of this article.

(g) ~~(c)~~ In reviewing each application, the council may use the engineering, financial and technical expertise of outside consultants in addition to the respective staffs of the government agencies and private-sector entities represented on the council or other government agencies.

(h) ~~(d)~~ Notwithstanding any provision of article fifteen-a, chapter thirty-one or any other provision of this code, broadband deployment project proposals and broadband demand promotion project proposals submitted to the council for its consideration pursuant to this article and the council's decisions with regard to such projects shall not be subject to review by the West Virginia Infrastructure and Jobs Development Council.

H.B. 3086

Effective Date: July 1, 2013

Signed by Governor: April 22, 2013

Code Reference: Amends §25-1-3 and §28-3-1

Repeals §28-3-1a, §28-3-1b, §28-3-2, §28-3-4, §28-3-5, §28-3-6, §28-3-7, §28-3-8, §28-3-9, §28-3-10, §28-3-11, §28-3-12, §28-3-13, §28-3-14, §28-3-15, §28-3-16, §28-3-17 and §28-3-18

Title: Relating to juvenile services and criminal justice institutions

Major Provisions:

- Renames the Industrial Home for Youth as the Salem Correctional Center.
- Transfers control of the Salem Correctional Center from the Division of Juvenile Services to the Division of Corrections.
- Authorizes the Parkersburg Correctional Center and listing it and the Salem Correctional Center among the institutions managed by the Division of Correction.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 3086

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)

[By Request of the Executive]

[Passed April 9, 2013; in effect July 1, 2013]

AN ACT to repeal §28-3-1a, §28-3-1b, §28-3-2, §28-3-4, §28-3-5, §28-3-6, §28-3-7, §28-3-8, §28-3-9, §28-3-10, §28-3-11, §28-3-12, §28-3-13, §28-3-14, §28-3-15, §28-3-16, §28-3-17 and §28-3-18 of the Code of West Virginia, 1931, as amended; to amend and reenact §25-1-3 of said code; and to amend and reenact §28-3-1 of said code, all relating to state correctional and penal institutions; renaming the Industrial Home for Youth the Salem Correctional Center; transferring control of the Salem Correctional Center to the Division of Corrections; and authorizing the Parkersburg Correctional Center and placing it under the control of the Division of Corrections.

Be it enacted by the Legislature of West Virginia:

That §28-3-1a, §28-3-1b, §28-3-2, §28-3-4, §28-3-5, §28-3-6, §28-3-7, §28-3-8, §28-3-9, §28-3-10, §28-3-11, §28-3-12, §28-3-13, §28-3-14, §28-3-15, §28-3-16, §28-3-17 and §28-3-18 of the Code of West Virginia, 1931, as amended, be repealed; that §25-1-3 of said code be amended and reenacted; and that §28-3-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-3. Institutions managed by Commissioner of Corrections; certain institutions transferred to Department of Health and Human Resources; establishment of work and study release units; contracting with certain entities for reentry and direct placement services; reports to Governor.

(a) The Commissioner of Corrections shall manage, direct, control and govern the following penal or correctional institutions and any others placed under his or her jurisdiction or control:

Mount Olive Correctional Complex;

Huttonsville Correctional Center

Anthony Correctional Center;

Denmar Correctional Center;

Pruntytown Correctional Center;

Northern West Virginia Correctional Center;

St. Marys Correctional Center;

Lakin Correctional Center;

Ohio County Correctional Center;

Beckley Correctional Center;

Martinsburg Correctional Center;

Salem Correctional Center; and

Parkersburg Correctional Center.

(b) The Commissioner of Corrections may contract with the County Commission of McDowell County to house and incarcerate inmates at the Stevens Correctional Center consistent with all requirements and standards governing the Division of Corrections.

(c) Jurisdiction of and title to the West Virginia Children's Home at Elkins are hereby transferred to the Department of Health and Human Resources, which is the custodian of all deeds and other muniments of title to the property and shall record those that are susceptible of recordation to be recorded in the proper offices. Notwithstanding any provision of this code to the contrary, the West Virginia Children's Home shall be managed and controlled by a superintendent appointed by the Commissioner of the Division of Human Services.

(d) The Commissioner of Corrections may establish work and study release units as extensions and subsidiaries of those state institutions under his or her control and authority. The work and study release units may be coeducational and shall be managed, directed and controlled as provided in this article.

(e) (1) The commissioner may contract with nonprofit or charitable entities, including, but not limited to, nonprofit community mental health clinics, operating half-way houses or transitional housing facilities for the placement of persons in the commissioner's custody, whether confined or under parole supervision, as long as such facilities meet standards and criteria established by the commissioner.

(2) (A) The Commissioner of Corrections may direct that a person who is placed in a half-way house or transitional housing facility under this section make reimbursement to the state in the amount of a reasonable sum calculated to offset all or part of the costs of the placement.

(B) Prior to ordering the person to make the reimbursement, the commissioner, or his or her designee, shall consider the following:

(i) The person's ability to pay;

(ii) The nature and extent of the person's responsibilities to his or her dependents, if any;

(iii) The length of probable incarceration under the court's sentence; and

(iv) The effect, if any, that reimbursement might have on the person's rehabilitation.

(f) The Division of Corrections shall provide the number of persons placed in a half-way house or a transitional housing facility pursuant to subsection (e) of this section in its report made pursuant to section twenty, article one, chapter five of this code, and shall describe its plans to use the authority provided under the provisions of subsection (e) of this section in furtherance of the duties and responsibilities imposed by this article.

(g) Any person employed by the Office of Public Institutions ~~who on the effective date of this article is a classified civil service employee shall, within the limits contained in section two, article six, chapter twenty-nine of this code remain in the civil service system as a covered employee.~~

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 3. INDUSTRIAL HOME FOR YOUTH.

§28-3-1. Renaming West Virginia Industrial Home for Youth as Salem Correctional Center; transferring control to Division of Corrections Continuation; management.

(a) Effective July 1, 2013, the West Virginia Industrial Home for Youth shall be known as the Salem Correctional Center. The Salem Correctional Center is hereby transferred to the Division of Corrections girls, heretofore established and located at Industrial, in Harrison County, shall be continued and hereafter known as the "West Virginia industrial home for youth." The industrial home shall be charged with the care, training and reformation of girls and boys committed to its custody. It shall be managed, directed and controlled as prescribed in article one, chapter twenty-five of this code.

(b) Commencing July 1, 2013, wherever the "West Virginia Industrial Home for Youth" is referred to in this code, it shall mean the "Salem Correctional Center".

~~§28-3-1a. Transfer of boys from West Virginia industrial school for boys.~~

~~Boys, fourteen years of age and younger, may be transferred from the West Virginia industrial school for boys to the West Virginia industrial home for youth in accordance with section sixteen, article one, chapter twenty-five of this code: **Provided**, That nothing in the foregoing shall prevent the temporary transfer of any male youth for a period not to exceed thirty days for the purpose of testing, evaluation or diagnosis.~~

~~§28-3-1b. Venue for industrial home for youth.~~

~~Notwithstanding any other provision of law to the contrary, venue for any criminal or civil action arising from acts or omissions occurring on the property comprising the West Virginia industrial home for youth, which is established by the provisions of this article, shall be in the circuit or magistrate courts of Harrison County, West Virginia.~~

~~§28-3-2. Commitment; age limits.~~

~~Any female youth between the ages of twelve and eighteen years may be committed to the custody of the commissioner of corrections by a circuit court of this state in the manner described in article five, chapter forty-nine of this code; and further, any such youth who has been adjudged delinquent pursuant to subdivision one, section four, article one of chapter forty-nine of this code, who, as a result thereof, was placed on probation and has been found in a proceeding pursuant to the procedural requirements of article five, chapter forty-nine of this code to have violated a term of probation, prior to the attainment of her twentieth birthday, which constitutes a criminal offense, may be committed to the custody of the commissioner of corrections.~~

~~§28-3-4. Physical, educational and psychological examinations; admission; transfer and placement.~~

~~Every female youth committed hereunder shall be given complete physical, educational and psychological examinations in the same manner and under the same protections and requirements of subsections (b) and (c), section two, article one, chapter twenty-eight of this code. In addition thereto, all such examinations shall be in private, but there shall be present during the examination a woman of good character and of mature years. In addition thereto, all admission, transfer and placement requirements and authority provided to the commissioner in subsections (d) and (e), section two, article one, chapter twenty-eight of this code shall be applicable.~~

~~§28-3-5. Compensation of physician and matron.~~

~~In a proceeding for the commitment of a female youth to the commissioner of corrections, the compensation of the physician and of the matron present during such examination shall be fixed by the court and taxed as other costs.~~

~~§28-3-6. Custody and conveyance of girls committed to institutions; expenses.~~

Whenever a girl is committed to the industrial home by any of the courts hereinbefore named, it shall be the duty of the clerk of the court before whom the trial was held to prepare the commitment papers in the case and forward the same by mail without delay to the superintendent of the industrial home. On receipt of such commitment papers, the superintendent of the home, if the commitment is found by her to conform to the provisions of this article, and there is room in said home, shall promptly so advise the authority making the commitment, who shall at once send the girl so committed to the home, under escort of a discreet woman of mature age. Such escort shall be designated by the authority by whom the commitment was made, and her compensation, which shall be fixed by the same authority and shall not exceed three dollars per day of twenty-four hours, and her expenses, and the girl's necessary traveling expenses, fully itemized and sworn to by the escort, shall be paid out of the treasury of the county from which the commitment was made, by the county commission thereof. No girl committed to said industrial home shall be lodged in any jail or lockup; but the authority committing her shall designate an officer or other proper person, preferably a woman, in whose custody she will be kept until she is delivered to the person duly authorized to conduct her to said home. The expense of keeping such girl shall be paid like any other expense of the hearing or trial.

~~§28-3-7. Return or transfer of incorrigible girls and those diseased at time of commitment; expenses.~~

~~If, at the time of, or after the admission of any girl to the Industrial Home, it is discovered that she was pregnant, or had syphilis, gonorrhoea, or any other infectious disease at the time of her commitment, or was otherwise ineligible for admission, or should she become incorrigible or unmanageable, such girl may be returned to the court or judge by whom she was committed to the home, or, at the discretion of the state commissioner of public institutions, may be transferred temporarily to some other institution for care or treatment, or otherwise disposed of as said commissioner may deem best. The expense incurred in returning such girl to the court or judge by whom she was committed for any or all of the above stated reasons, or by reason of transfer to any other state institution shall be paid by the county court out of the treasury of the county from which the girl was committed to the home.~~

~~§28-3-8. Transfer of certain inmates to other institutions.~~

~~The state commissioner of corrections shall have authority to transfer any girl who is an inmate of the industrial home, in accordance with the provisions of chapter twenty-seven of this code, who is mentally ill, mentally retarded or addicted, to any state institution charged with the care and treatment of such persons; to transfer any girl in such home who is blind or deaf, or whose sight or hearing is so impaired as to make a transfer desirable, to the schools for the deaf and blind; to transfer to Welch Emergency Hospital, any girl infected with syphilis or gonorrhoea.~~

~~§28-3-9. Voluntary inmates of industrial home.~~

~~Girls eligible to admission to the Industrial Home may be admitted thereto at the instance of their parents, guardians, or next friends, under such agreement as to payment for their maintenance as may be made with the state commissioner of public institutions; but all such girls shall be subject to the same treatment, training and discipline as the other inmates of the home, and shall be discharged or paroled only in such manner and under such rules and regulations as are provided for those who have been regularly committed.~~

~~§28-3-10. Rules and regulations.~~

~~The state commissioner of corrections may make such rules and regulations for the management and government of the industrial home, and the instruction, discipline, training, employment and disposition of the youth of the home, and their transportation to and from the home, subject to section thirteen-f, article two, chapter eighteen of this code, as the commissioner may deem proper.~~

~~§28-3-11. Discharge or parole; arrest and return of paroled girls.~~

The state commissioner of public institutions shall have authority, under such rules and regulations as the commissioner may prescribe, to grant, on the recommendation of the superintendent, a discharge or parole to any inmate of the Industrial Home; but while any inmate is on such parole, and until she is finally discharged, she shall remain in the legal custody of the commissioner, and shall be subject to be returned to the home at any time when, in the judgment of the commissioner, the interests of such paroled inmate will best be served thereby. The written order of said commissioner, countersigned by the superintendent, shall be sufficient warrant for any officer or person named therein to arrest and return to the home any paroled inmate named in such order; and it shall be the duty of any such officer or person to arrest and return such girl to the home. Expenses incurred in returning paroled inmates to the home shall be paid out of the funds provided for the support of the home, when such inmates are returned upon order of said commissioner.

~~§28-3-12. Transfer of girls from Industrial Home to penitentiary and vice versa.~~

~~In any case where a girl is committed to the Industrial Home for an offense punishable by confinement in the penitentiary, and it is found by the state commissioner of public institutions that such home is unable to benefit such girl, and that her presence is a detriment or menace to the other girls in the institution, or to the general good of the home, she may be returned to the custody of the court by which she was committed to the home, and thereupon the court shall pass such sentence upon her as to confinement in the penitentiary as may be proper in the premises, or as it might have passed had it not committed such girl to the Industrial Home. The governor shall have power, when, in the judgment of the warden of the penitentiary and of the superintendent of the Industrial Home, it is advisable, to remit the penalty of any girl under the age of eighteen years who is confined in the penitentiary, to a commitment to said Industrial Home, there to be kept until she is twenty-one years of age, unless sooner paroled or discharged, or, upon the order of the governor, returned to the penitentiary.~~

~~§28-3-13. Escape from Industrial Home; arrest and return; reward.~~

~~If any girl shall escape from the Industrial Home, the superintendent or any assistant thereof, or any other person authorized by the superintendent, or any person who may see a girl escaping or know that she has escaped, may arrest her and return her to the home. It shall be the duty of every sheriff, constable, or other peace officer to arrest any such fugitive and return her to the home, whenever in his power to do so. The expense of the arrest and return of such fugitive shall be paid out of the funds provided for the support of the home. With the approval of the state commissioner of public institutions, the superintendent may offer a reward for the arrest and return to the home of any girl who shall have escaped therefrom.~~

~~§28-3-14. Offenses relating to inmates of Industrial Home; penalties.~~

~~If any person shall entice or attempt to entice away from the Industrial Home any girl legally committed thereto, or shall aid or abet any girl to escape therefrom, or shall harbor, conceal, or aid or abet in harboring or concealing, any girl who shall have escaped therefrom; or shall, without the permission of the superintendent, give or sell to any girl in the home, whether on the premises of the institution or elsewhere, any money, intoxicating drink, tobacco, cigarettes or any other article or articles whatsoever; or shall, in any way, cause or influence, or attempt to cause or influence, any girl in said home to violate any rule of the institution, or to rebel against the government of the home in any particular; or shall receive from any inmate of the home anything of value, whether belonging to the state or otherwise; or shall interfere, or attempt to interfere, with the custody or control of any person having any such girl lawfully under his control or in his keeping, while she is out of the home on parole or other lawful temporary release; or shall have, or attempt to have, any improper or unlawful communication or intercourse with any such girl while she is in such home, knowing her to be an inmate thereof; shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than ten nor more than one hundred dollars, or imprisoned not exceeding six months, or, in the discretion of the court, both fined and imprisoned. If any person shall entice any girl away from the industrial home, or attempt to do so, for the purpose of having sexual intercourse with her, or for any other immoral or unlawful purpose, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than ten nor more than one hundred dollars and imprisoned not less than thirty days nor more than six months. If any person shall aid or abet the commission of any of the offenses named in~~

this section, or aid or abet an attempt to commit the same, he shall be punished as herein provided the same as if he were the principal. In the trial of an indictment for committing any of the offenses named in this section, the accused may be found guilty of an attempt to commit the same, or of aiding or abetting another in committing or attempting to commit the same.

§28-3-15. Trespass on grounds of industrial home.

The inclosed premises of the industrial home shall be private grounds. If any person be found thereon without authority or permission, he shall be deemed a trespasser, and, on conviction thereof, shall be fined not less than five nor more than twenty-five dollars, and, if it appear that he was on such premises for any unlawful or immoral purpose, in addition to being sentenced to pay such fine, he shall be imprisoned not exceeding thirty days.

§28-3-16. Payment by counties of cost of detention of girls at Industrial Home -- Reimbursement.

The county court of every county shall pay into the state treasury the sum of fifty dollars a year on account of each girl from the county who shall be received into the Industrial Home on proper commitment. But in all cases of girls received into the home, the parent, if of sufficient means, or the guardian, where the girl has sufficient estate, shall annually reimburse the county the amount paid into the state treasury, by virtue of this section, on account of such girl, and the county court of such county shall have the right to recover the same of such parent or guardian in any court of competent jurisdiction.

§28-3-17. Payment by counties of cost of detention of girls at industrial home -- Preparation of inmate lists for billing purposes; application of county funds in state treasury.

The superintendent of the industrial home shall, before the tenth day of January of each year, prepare and certify to the auditor and the state commissioner of corrections each a list by counties of all such girls as are mentioned in the preceding section, who were kept in the home during the preceding year or any part of it, showing as to each girl what part of the year she was so kept in the home. On receiving such list the auditor shall charge to each county fifty dollars on account of each girl from such county who was kept in such home during the preceding year, and a proportionate amount on account of each girl kept in the home for any part of such year less than the whole. Any money in the treasury of the state to the credit of any such county, from whatever source arising, and not appropriated to pay any other debt of the county to the state, shall be applied, so far as necessary, to the payment of the sums so charged. If any sum in the treasury due the county shall not be sufficient to pay the whole amount so charged against it, such sum shall be applied as a credit on the amount charged, and the balance shall remain a charge against the county.

§28-3-18. Payment by counties of cost of detention of girls at industrial home -- Determination of payments due; levy; compelling payment.

Within ten days after receiving such list the auditor shall certify to the county commission of such county a list of the girls from the county in such home, stating the length of the term during the year each girl was in such home, as shown by the list certified by the superintendent, the amount due from the county on her account, and the total amount due on account of all. He shall credit on such statement whatever amount has been applied as a payment thereon from any funds of the county in the treasury. Such statement shall be a receipt to the county for any amount so credited, and shall be a bill for any amount still appearing to be due from the county. Unless the bill shall have been paid by the application of funds of the county in the state treasury, the county commission shall, at its next levy term, provide for the payment of the same, or such part as may not have been paid, and cause the amount to be paid into the state treasury. If the amount so due from any county be not paid in a reasonable time after such levy term, the auditor may in the name of the state, apply to the circuit court of the county for a mandamus to require the county commission to provide for and pay the same, or he may proceed in the name of the state by any other appropriate remedy to recover the same.

H.B. 3157

Effective Date: July 1, 2013

Signed by Governor: May 3, 2013

Code Reference: Amends §18-5-4, §18-9A-10 and §18-17-8

Adds §18-8-6a

Repeals §18-2-15, §18-2-15a, §18-2-18, §18-2-23, §18-2-30, §18-2-31, §18-2-36, §18-2-37, §18-2-38, §18-2E-3c, §18-2E-3d, §18-5-40, §18-9-2b, §18-9-5, §18-9-7, §18-9-8, §18-9A-3a, §18-9A-3b, §18-9A-10, §18-9A-13, §18-9A-13a, §18-9A-13b, §18-9A-25, §18-9A-26, §18-9B-11, §18-9B-16 and §18A-3-2b

Title: Restoring the authority, flexibility, and capacity of schools and school systems to improve student learning

Major Provisions:

- Repeals several outdated sections of Code.
- Requires the State Board to annually review and evaluate the list of reports required of principals and teachers to determine which reports are repetitive, unnecessary, counterproductive or outdated so that the administrative burden on principals and teachers may be lessened.
- Clarifies that the amendments made to the school calendar provisions in WVC §18-5-45 passed during the 2013 legislative session are not to take effect until the 2014-15 school year.
- Provides that the county boards that enter into a truancy program agreement with the circuit court that provides for the referral of truant juveniles for supervision by the court's probation officer be reimbursed one-half of the cost that each county board is required to pay, subject to funds being appropriated for this purpose (No funds were appropriated for this purpose for the 2013-14 year).
- Reduces the percent of growth in local share that is to be allocated to Step 7a under the Public School Support Program (PSSP) for the improvement of instructional programs from 15% to 10%; effective for the 2014-15 year.
- Increases the percent growth that is to be allocated to Step 7b of the PSSP for the improvement of instructional technology from 15% to 20%.
- Requires that any funds available to a county board for the employment of personnel above the amount available for the 2012-13 year be used for the employment of technology systems specialists (TSS) until the State Superintendent determines that a county has sufficient TSSs to serve the needs of the county. Effective with the 2013-14 school year.
- Clarifies that the funds allocated under Step 7b of the PSSP for the improvement of instructional technology are to be distributed to the county boards and changes the methodology for allocating the funds, effective for the 2014-15 year, to a base of \$30,000 for all county boards with the remainder distributed on the basis of each board's average of net enrollment and average daily attendance.

- Clarifies that the funds allocated under Step 7b of the PSSP for the improvement of instructional technology are to be used to meet the objectives of the West Virginia 21st Century Strategic Technology Learning Plan.
- Eliminates the allowance for workers' compensation for unpaid student work-based learning programs.
- Authorizes the State Board to employ hearing examiners for personnel hearings for the Schools for the Deaf and Blind.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 3157

(By Delegates M. Poling, Stowers, Lawrence, Williams, Perry, Pethtel, Tomblin, Young, Pasdon, Evans and Westfall)

[Passed April 13, 2013; in effect July 1, 2013.]

AN ACT to repeal §18-2-15, §18-2-15a, §18-2-18, §18-2-23, §18-2-30, §18-2-31, §18-2-36, §18-2-37 and §18-2-38 of the code of West Virginia, 1931, as amended; to repeal §18-2E-3c and §18-2E-3d of said code; to repeal §18-5-40 of said code; to repeal §18-9-2b, §18-9-5, §18-9-7 and §18-9-8 of said code; to repeal §18-9A-3a, §18-9A-3b, §18-9A-13, §18-9A-13a, §18-9A-13b, §18-9A-25 and §18-9A-26 of said code; to repeal §18-9B-11 and §18-9B-16 of said code; to repeal §18A-3-2b of said code; to amend and reenact §18-2-5g of said code; to amend and reenact §18-5-45 of said code; to amend said code by adding thereto a new section, designated §18-8-6a; to amend and reenact §18-9A-10 of said code; and to amend and reenact §18-17-8 of said code, all relating to restoring the authority, flexibility and capacity of schools and school systems to improve student learning; eliminating requirement for biennial report on public schools and institutions; eliminating expired provisions for RESA study; eliminating expired provisions for study on staff fluctuations at certain schools; eliminating outdated provisions on comprehensive education program plans; eliminating requirement for statewide curriculum technology resource center; eliminating outdated provisions for automatic cost of living adjustment plan; eliminating outdated provisions for student learning abilities grant program; eliminating expired provisions on flood and property insurance study; eliminating expired provisions on study of school teams and committees; eliminating prescriptive summer reading and math grant program provisions; eliminating provisions pilot program for operation on schools on semester basis; eliminating outdated provisions for transferring school funds from magisterial and independent school districts; eliminating outdated provisions related to the board of the school fund; eliminating outdated provisions related to supplemental aid to for districts with institutional home for orphans and homeless children; eliminating expired provisions for transition to new provisions on school finance; eliminating expired provisions for school finance in certain fiscal year; eliminating expired provisions for one-year transitional allocation appropriation for certain rural districts; eliminating expired provisions related to levies subsequent to passage of statewide uniform excess levy; eliminating inoperable provisions for legislative reserve fund; eliminating requirement for appropriation for teacher of the year salary; eliminating allowance for workers' compensation for unpaid work-based learning; eliminating outdated provisions related to board of school finance; eliminating provisions pertaining to proceeds of the permanent improvement fund; eliminating provisions related to beginning teacher internship; replacing requirement for annual summary and submission of certain county board policies with requirement for state board to review and evaluate certain reports and report to legislative oversight commission; modifying effective date for certain school calendar amendments; providing reimbursement in certain circumstances for county board costs of probation officers for truant juveniles; reducing percent of increase in local share added to allowance to improve instructional programs; requiring certain funds available for use for personnel to be used for only certain personnel subject to certain condition; increasing percent of increase in local share added for instructional technology purposes; changing purpose to county and school strategic improvement plans; changing method of allocation to counties; expanding provisions pertaining to suspension or dismissal of West Virginia Schools for the Deaf and the Blind teachers to include auxiliary and service personnel; and allowing the state board to employ a hearing examiner to preside at the taking of evidence.

Be it enacted by the Legislature of West Virginia:

That §18-2-15, §18-2-15a, §18-2-18, §18-2-23, §18-2-30, §18-2-31, §18-2-36, §18-2-37 and §18-2-38 of the code of West Virginia, 1931, as amended, be repealed; that §18-2E-3c and §18-2E-3d of said code be

repealed; that §18-5-40 of said code be repealed; that §18-9-2b, §18-9-5, §18-9-7 and §18-9-8 of said code be repealed; that §18-9A-3a, §18-9A-3b, §18-9A-13, §18-9A-13a, §18-9A-13b, §18-9A-25 and §18-9A-26 of said code be repealed; that §18-9B-11 and §18-9B-16 of said code be repealed; that §18A-3-2b of said code be repealed; that §18-2-5g of said code be amended and reenacted; that §18-5-45 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-8-6a; that §18-9A-10 of said code be amended and reenacted; and that §18-17-8 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5g. Review and determination of principal and teacher reports; identify reports with recommendations to Legislative Oversight Commission on Education Accountability. Duty to receive and submit summary of policy modification and annual reports.

~~In addition to filing each policy as required by section fourteen, article five of this chapter, the state board shall require each county board to provide a summary of any modifications to the policies and copies of annual reports developed pursuant to section fourteen, article five of this chapter. The state board shall submit copies of these summaries of modifications to the policies and annual reports, together with any comments and recommendations, to the legislative oversight commission on education accountability, no later than the thirty-first day of December of each year.~~

~~(a) The state board annually shall review and evaluate the list of reports required to be written by principals and teachers in order to determine which reports are repetitive, unnecessary, counterproductive or outdated so that the administrative burden on principals and teachers may be lessened.~~

~~(b) The state board shall submit a report to the Legislative Oversight Commission on Education Accountability no later than December 31 of each year identifying those unnecessary reports, together with any comments and recommendations on how to reduce or consolidate principal and teacher reports.~~

§18-2-15. Report to governor and Legislature.

~~On or before the first day of November preceding each odd-year regular session of the Legislature, the state board, through the state superintendent, shall make to the governor and to the Legislature a full report concerning the public schools and the educational institutions under its control and management, together with its recommendations in respect to needed legislation.~~

§18-2-15a. Comprehensive study of regional education service agencies.

~~(a) The state superintendent shall conduct a comprehensive study of the programs, governance and administration of the regional education service agencies established pursuant to section twenty-six of this article.~~

~~(b) The study shall include, but is not limited to, the following:~~

~~(1) The general structure and specific processes for governance and oversight of the regional education service agencies to ensure efficiency of operations and accountability in the areas of:~~

~~(A) Financial integrity, oversight and accountability;~~

~~(B) Fiscal oversight of budgeting, salaries, benefits and employment;~~

~~(C) Service delivery in priority areas, including, but not limited to: (i) The types, cost, convenience and results of in-service training programs and other efforts to assist low performing schools and school systems; and (ii) the costs and turnaround time of computer repair services; and~~

~~(D) The costs and benefits of other services provided to the respective members' counties;~~

- ~~(2) Areas of needed improvements, including any existing limitations or hindrances to improvement;~~
 - ~~(3) The powers and duties of state board and state superintendent relating to regional education service agencies;~~
 - ~~(4) The qualifications and procedures for selection of agency executive directors;~~
 - ~~(5) The selection and supervision of agency staff;~~
 - ~~(6) Development of agency budget;~~
 - ~~(7) Oversight of agency purchasing and auditing procedures;~~
 - ~~(8) Development of programs and delivery of services; and~~
 - ~~(9) Procedures to ensure fiscal and programmatic accountability.~~
- ~~(c) The state superintendent shall report findings generated by the study, together with recommendations and any legislation necessary to effectuate the recommendations, to the Legislative Oversight Commission on Education Accountability by the first day of December, two thousand six.~~

~~§18-2-18. Study on fluctuating staff in schools with a high percentage of at-risk students.~~

~~The West Virginia board of education shall conduct a comprehensive study of staff fluctuations in schools with a high percentage of at-risk students. At-risk students are defined as students with the potential for academic failure, including, but not limited to, the risk of dropping out of school, involvement in delinquent activities and those students with free and reduced lunch status. The state superintendent shall prepare a written report detailing the findings, conclusions and recommendations generated by the study to be presented to the legislative oversight commission on education accountability by the first day of January, one thousand nine hundred ninety five.~~

~~§18-2-23. Comprehensive educational programs; standards, etc.; evaluation and approval; allocation and distribution of funds; distribution of excess funds.~~

~~The West Virginia board of education, through the state superintendent of schools, shall establish standards and criteria especially designed to guide the development of plans for a comprehensive educational program or programs in county school systems, to provide for their evaluation and approval, and to provide, as herein directed, for the allocation and distribution of state funds, which may be appropriated to assist county school systems to meet additional costs of development and operation of such programs. The plans shall include, but need not be restricted to an analysis of existing program area deficiencies and the procedures for their correction. The plans shall be submitted to and be approved by the West Virginia board of education.~~

~~County plans shall include one or more of the following: (1) A plan to initiate comprehensive educational programs in any or all areas or parts of the curriculum, and provide necessary supporting services, or (2) a plan to provide for the maintenance or extension of areas or parts of comprehensive educational programs developed or established under this section, or (3) a plan to give essential aid for instruction or supporting services for enrichment of curriculum in schools designated as isolated by the West Virginia board of education where consolidation of schools or the development of county comprehensive educational programs are not possible or feasible.~~

~~The state superintendent of schools shall provide assistance to counties in the development and preparation of their plans for a comprehensive educational program or programs in order to ensure that every county may have the opportunity to fully participate and receive its maximum share of the funds available. All plans shall be submitted to the West Virginia board of education on or before the first day of July of the school year in which they are operative. The state superintendent of schools shall as soon as~~

~~possible and before the first day of August each year notify any county whose plan fails to receive approval specifying the manner in which the plan fails to meet the criteria established and suggesting the necessary corrections. If the county modifies its plan so that its program or programs become acceptable on or before the first day of September of that year, the county shall be entitled to receive the computed share of its allocation for which it is eligible under its approved plan.~~

~~The total potential cost of the comprehensive educational program for each county shall be determined prior to the first day of July by multiplying the applicable net enrollments at the close of the second month of the current school term by the following amounts: Ten dollars for an adult in a public school program; ten dollars per senior high school student; seven dollars and fifty cents per junior high school student; and five dollars per elementary school student, including kindergarten. If the appropriation is not sufficient to provide for all counties their total potential costs as herein set forth, the allocation to all counties shall be reduced proportionately to secure a total which matches the appropriation.~~

~~Funds allocated to the counties shall be distributed to them annually not later than the first day of November on the basis of net enrollment in approved programs which are part of their current comprehensive educational plan and the funds distributed shall be computed as provided herein.~~

~~The West Virginia board of education shall establish by regulation the number of areas in which a county shall participate to qualify for full or partial distribution of its allocation. The number of curriculum areas in which a county shall be required to participate to qualify for its full allocation shall depend upon factors such as county size, population sparsity, topography and availability of school staff personnel. In no case shall the allocation for any one county exceed the amount derived from application of the maximum pupil allocation as hereinbefore set forth.~~

~~If the county plans approved by the first day of September do not utilize the total allocations by reason of the plan or plans of one or more counties not requiring the full allocations or by failure of one or more counties to submit an acceptable plan or plans by the first day of September, then those moneys which were available to such county or counties shall be declared by the state board of education to be excess funds. These excess funds shall be available for that year only for special distribution. All counties shall be eligible for additional moneys as a special distribution from excess funds if, and to the extent that, such county or counties approved plan or plans require funds in excess of the amount allocated to each county on or before the first day of September: **Provided**, That no county may receive any funds in excess of its total potential cost as determined prior to the first day of July. If the moneys for which the counties are eligible from the special distribution of excess funds exceed the total amount available for such distribution, the special distribution to each county shall be reduced proportionately. It is the intention to distribute all excess funds, in any given year, on a pro rata basis to all counties who have approved comprehensive educational programs for that year and who have not received their total potential funds.~~

~~Appropriations for the purpose of this section shall be used only to meet the requirements of the allocation schedule and of approved county plans.~~

~~§18-2-30. Statewide curriculum technology resource center established; distribution of materials by regional educational service agencies.~~

~~There shall be established a statewide curriculum technology resource center to facilitate access to, and expedite the acquisition of, audiovisual materials to assist in the continued enrichment of the school curriculum. The state board shall designate the statewide center. The legislative intent is that appropriations for the said resource center be designated primarily for supportive materials to be made available for use by teachers: **Provided**, That no more than five percent of the moneys allocated for fiscal year one thousand nine hundred eighty-nine -- ninety be used for capital outlay and improvements on any structure used to house said resource center. The center shall develop a program of services for public school teachers in the fields of curricular development, instructional resources and technology. The center shall also undertake projects to describe systematically and evaluate curriculum materials and instruction resources, provide for dissemination of software and programs to teachers, provide leadership in the areas~~

~~of instructional resources and provide training to increase skills in the use of technology and other instructional resources.~~

~~The center shall be a centralized purchasing agent for audiovisual materials requested for use in the public schools. The center shall utilize curriculum teams of classroom teachers and other professional educators representing all regional educational service agency regions to assist in the materials selection process. The center may obtain authorization to duplicate such materials and may duplicate such materials when duplication is justified by cost and need and when appropriate authorization has been obtained. The center shall maintain a central library of all original materials duplicated and shall compile no later than the first day of July, one thousand nine hundred ninety, a statewide catalog of all audiovisual materials available. The center shall make the statewide catalog accessible to teachers through electronic or other means.~~

~~Each regional educational service agency shall serve as a depository and distribution center for the audiovisual materials available to the public schools in its region. Each regional educational service agency shall survey audiovisual material currently held in the public schools in its region and submit the list to the statewide center for possible inclusion in the statewide catalog. Provided, That nothing in this section shall be construed to change ownership by any county board of any materials which are included in the catalog. Whenever the regional educational service agency receives a request for material not listed in the statewide catalog, the agency shall submit a request to the statewide center for review by one of the curriculum teams and, if appropriate, purchase and distribute the material.~~

~~§18-2-31. Plan for automatic cost of living adjustments.~~

~~After consultation with the governor's office of community and industrial development, the state board of education shall develop within equity guidelines a plan which provides for automatic cost of living adjustments to the salary schedules, as provided in chapter eighteen-a, whenever it is determined that the purchasing power of salaries of teachers and service personnel in areas of the state experiencing extraordinary growth and/or increases in the factors comprising the cost of living index is not equal to the purchasing power of teacher and service personnel salaries statewide, such plan to be submitted to the Legislature by the first day of the regular session one thousand nine hundred ninety-one.~~

~~§18-2-36. Programs to strengthen student learning ability.~~

~~(a) The Legislature finds that schools that have implemented programs to strengthen student learning ability are reporting statistically significant improvement in the statewide test scores in reading, language and math of students referred to the programs. Therefore, it is the intent of the Legislature through this section to establish a more formal method to fund programs that strengthen student learning ability.~~

~~(b) The state board shall establish a program for strengthening student learning ability that includes the following:~~

~~(1) A procedure for schools to apply for funds to implement programs to strengthen student learning ability in accordance with the provisions of this section;~~

~~(2) Specific factors for determining the need for each school applying for funds in accordance with subsection (c) of this section;~~

~~(3) A method for judging applications for funds on a competitive basis; and~~

~~(4) A determination of the maximum percentage of total funds appropriated for the purposes of this section which may be distributed for use in grades six through twelve so that the priority for program implementation is at the prekindergarten and elementary levels.~~

~~(c) Except as provided in subsection (d) of this section, a school is not eligible to receive an award of funds appropriated for the purposes of this section unless the proposed program includes the following:~~

- (1) Assessment of the cognitive abilities of students;
 - (2) Physical screening that identifies barriers to a student's ability to learn;
 - (3) Development of a student-specific program to improve student learning ability based on the results of the assessment and physical screening;
 - (4) Administration of learning development exercises that strengthen the ability of students to learn; and
 - (5) An evaluation of the program's impact, including factors such as student test scores and other measures of student performance, the program's impact on special education referrals, program cost and other information considered important for judging the value of the program.
- (d) A school is eligible to receive an award of funds appropriated for the purposes of this section for the implementation of an early childhood system to strengthen student learning abilities that includes cognitive/perceptual exercises for all children which are clearly based on the same intellectual premise, and are intended to address for all students the same developmental needs, as the more individual-specific remedies required for programs under subsection (c) of this section. The programs shall include a method for evaluating program impact using appropriate measures of early childhood student development and progress.
- (e) All the funds appropriated for the purposes of this section shall be distributed to schools based upon need as determined by the state board. In determining need, the state board may consider such things as the assessment test scores of the students, percentage of students who are enrolled in special education programs, dropout rates, attendance rates, the number of at-risk students, monetary and in-kind resources available from other sources that will be committed to the program and any other indicators the state board determines appropriate.
- (f) The state board shall promulgate a rule pursuant to article three-b, chapter twenty-nine-a of this code to implement the provisions of this section.
- (g) Nothing in this section requires any specific level of funding by the Legislature.

~~§18-2-37. State Board study on flood insurance and general property insurance.~~

- (a) The Legislature finds the following:
- (1) When county boards do not fully insure their buildings and the contents of those buildings, the Legislature is sometimes expected to cover at least part of the costs of any damages that are incurred;
 - (2) Although the Federal Emergency Management Agency through the Public Assistance Grant Program will provide, in some instances, grants to repair or replace buildings owned by a county board, those grants are only provided if those buildings are located in an area where a state of emergency has been declared; and
 - (3) The Federal Emergency Management Agency requires a certain amount and type of insurance for certain school buildings.
- (b) The State Board shall conduct a study on the feasibility of requiring flood insurance, general property insurance or both on all buildings owned by a county board and the contents of those buildings. The State Board shall report back to the Legislative Oversight Commission on Education Accountability before the first day of December, two thousand five. The report shall include any recommended legislation.

~~§18-2-38. School committees and school teams; legislative findings; state board study.~~

- (a) ~~Legislative findings.~~

~~(1) The Legislature finds that the ultimate purpose of public education is to create the best possible environment to foster the teaching and learning process and that this purpose is best accomplished when professional educators are involved in direct interaction with students.~~

~~(2) The Legislature finds further that a number of school committees and school teams have been created over the years, both by state board rule and by state statute, designed to meet the needs of a specific time or place and that these committees and teams sometimes linger long after the specific purpose or need that created them has passed. The time and paperwork required to keep these committees and teams functioning may create a burden for school personnel in certain circumstances.~~

~~(3) The Legislature finds further that a thorough study is needed to determine the feasibility, effectiveness and necessity of each of these committees and teams in relation to one another and to the needs of the students and schools they are intended to serve.~~

~~(b) State board study.--~~

~~(1) Therefore, in view of the findings in subsection (a) of this section, it is the intent of the Legislature that the state board undertake a study of each school committee or school team created by statute or by state board rule and determine its organizational goals, effectiveness in meeting those goals, and viability in relation to the demands of time and paperwork it places on principals, teachers and other school personnel. The study further shall consider alternative ways that the goals of these teams and committees may be met to involve stakeholders in the education process while reducing the time demands and the paperwork burden they place on school personnel.~~

~~(2) The state board shall report its study findings and recommendations, together with draft legislation to implement the recommendations, to the Legislative Oversight Commission on Education Accountability and the Joint Standing Committee on Education by November 1, 2010.~~

~~§18-2E-3c. Summer school READS grant program created; legislative findings and purpose of section.~~

~~(a) The Legislature hereby finds and acknowledges that, if remediation is necessary, it should be provided when students are younger and before patterns of failure are established. The Legislature further acknowledges that the people of West Virginia would be better served if the state acted to ensure that all public school students were able to read at or above grade level upon exiting grade four, that county boards are in the best position to determine if remediation is necessary for students in kindergarten through grade four and that the counties should have the option of providing summer school for students and may consider student attendance as a factor in determining whether a child is eligible to be promoted to the next grade.~~

~~The Legislature further finds that not all students are financially able to pay for summer school, nor do all county schools hold summer school. It is, therefore, the purpose of this section to help the county boards to provide, either individually or cooperatively, free summer school and summer school transportation for those students in kindergarten through grade four who did not perform at grade level during the regular school year. It also is the purpose of this section to help students in kindergarten through grade four who are identified as being in danger of failing to read at grade level by the end of the school year to receive intensive reading instruction during their regularly scheduled reading time throughout the regular school year.~~

~~(b) Subject to appropriation by the Legislature therefor, the state board shall establish a competitive grant program as set forth in this section to provide reading programs for students in kindergarten through grade four who are not performing at grade level. The program shall be designated and known as the "Reading Excellence Accelerates Deserving Students" program and, along with such designation, may be referred to as "West Virginia READS".~~

~~Priorities for awarding the grants shall include, but are not limited to:~~

~~(1) Schools that have test scores below the state standards; and~~

~~(2) Schools that receive federal funds for the improvement of reading.~~

~~Competitive grant applications must be submitted by the county boards, or by a community collaborative with the county board as a partner with leadership responsibility, and shall describe how the program will:~~

~~(1) Employ strategies and proven methods for student learning, teaching and school management that are based on reliable research and effective practices and can be replicated in other schools to improve the reading skills of students;~~

~~(2) Contain measurable goals for the improvement of student reading skills and benchmarks for meeting those goals;~~

~~(3) Include a plan for the evaluation of student progress toward achieving the state's high standards;~~

~~(4) Identify how other federal, state, local and private resources, including volunteers, will be utilized to further the intent of this section;~~

~~(5) Link summer reading improvement programs with reading instruction and remediation throughout the school year;~~

~~(6) Determine feasibility of collaborating with colleges of education for the purpose of providing educational experiences for prospective teachers; and~~

~~(7) Accomplish other objectives as deemed necessary by the state board.~~

~~(c) Any county receiving a grant should encourage students in kindergarten through grade four who did not perform at grade level during the regular school year to attend summer school and may consider summer school attendance as a factor in determining whether a child is eligible to be promoted to the next grade. The county board shall provide intensive reading instruction during regularly scheduled reading time throughout the regular school year to students in kindergarten through grade four who are identified by the classroom teacher as being in danger of failing to read at grade level by the end of the school year. Nothing in this section shall prohibit county boards from permitting students to participate in reading programs on a student fee basis.~~

~~(d) The state board shall approve procedures for the implementation of this section. To assist the state board in developing procedures for the implementation of this section, including the grant application and the grant review and selection process, the state board shall appoint an advisory board consisting of the federal programs director and the title I reading coordinator/specialist, both from the state department of education, a representative from the department of education and the arts representing the library commission and the community schools initiative, a college or university professor of reading, two or more representatives from local school systems, the West Virginia coordinator of the read aloud program, the energy express project director, and a representative of mission West Virginia, or representatives of like successor organizations should these named organizations cease to exist. The procedures shall provide for:~~

~~(1) The appointment of a grant review and selection panel by the state board consisting of persons with expertise and practical experience in delivering programs to increase the reading skills of young students, not more than one half of whom may be employees of the state department of education, or the state board may designate the advisory board as the grant review and selection panel;~~

~~(2) Notice to all schools of the grant competition and the availability of applications on or before the thirtieth day of September, in each fiscal year for which grant funds are available;~~

~~(3) A grant application deadline postmarked on or before the fifteenth day of December, in each fiscal year for which grant funds are available;~~

~~(4) Notice of grant awards on or before the first day of March, in each fiscal year for which grant funds are available; and~~

~~(5) Other such requirements as deemed necessary by the state board.~~

~~(e) The state board may fund, from any other funds available for such purposes, the programs required by this section for students in kindergarten through grade four and any programs required by state board rules such as, but not limited to, the following:~~

~~(1) Tutoring;~~

~~(2) Summer school educational services;~~

~~(3) Additional certified personnel to provide intensive instruction in reading throughout the school year;~~

~~(4) Staff development for teachers; and~~

~~(5) Hot meal programs.~~

~~(f) Nothing in this section shall supersede the individualized education program (IEP) of any student.~~

~~(g) Nothing in this section may be construed to require any specific level of funding by the Legislature.~~

~~§18-2E-3d. Summer school MATH grant program created; legislative findings and purpose of section.~~

~~(a) The Legislature hereby finds and acknowledges that, if remediation is necessary, it should be provided when students are younger and before patterns of failure are established. The Legislature further acknowledges that the people of West Virginia would be better served if the state acted to ensure that all public school students were able to execute mathematical skills at or above grade level upon exiting grade four, that county boards are in the best position to determine if remediation is necessary for students in kindergarten through grade four and that the counties should have the option of providing summer school for students and may consider student attendance as a factor in determining whether a child is eligible to be promoted to the next grade.~~

~~The Legislature further finds that not all students are financially able to pay for summer school, nor do all county schools hold summer school. It is, therefore, the purpose of this section to help the county boards to provide, either individually or cooperatively, free summer school and summer school transportation for those students in kindergarten through grade four who did not perform at grade level during the regular school year. It also is the purpose of this section to help students in kindergarten through grade four who are identified as being in danger of failing to execute mathematical skills at grade level by the end of the school year to receive intensive mathematics instruction during their regularly scheduled mathematics time throughout the regular school year.~~

~~(b) Subject to appropriation by the Legislature therefor, the state board shall establish a competitive grant program as set forth in this section to provide mathematics programs for students in kindergarten through grade four who are not performing at grade level. The program shall be designated and known as the "Mathematic Achievement Through Help" program and, along with such designation, may be referred to as "West Virginia MATH".~~

~~Priorities for awarding the grants shall include, but are not limited to:~~

~~(1) Schools that have math test scores below the state standards; or~~

~~(2) Schools that receive federal funds for the improvement of mathematics.~~

Competitive grant applications must be submitted by the county boards, or by a community collaborative with the county board as a partner with leadership responsibility, and shall describe how the program will:

(1) Employ strategies, proven methods and innovative techniques for student learning, teaching and school management that are based on reliable research and effective practices, and can be replicated in other schools to improve the mathematical skills of students;

(2) Contain measurable goals for the improvement of student mathematical skills and benchmarks for meeting these goals;

(3) Include a plan for the evaluation of student progress toward achieving the state's high standards;

(4) Identify how other federal, state, local and private resources, including volunteers, will be utilized to further the intent of this section;

(5) Link summer improvement programs for mathematics with mathematical instruction and remediation throughout the school year;

(6) Determine the feasibility of collaborating with colleges of education for the purpose of providing educational experiences for prospective teachers;

(7) Identify the use of technology, including computers and calculators, and demonstrate how technology will be integrated into the program; and

(8) Accomplish other objectives as deemed necessary by the state board.

(c) Any county receiving a grant should encourage students in kindergarten through grade four who did not perform at grade level during the regular school year to attend summer school and may consider summer school attendance as a factor in determining whether a child is eligible to be promoted to the next grade. The county board shall provide intensive mathematics instruction during regularly scheduled mathematics time throughout the regular school year to students in kindergarten through grade four who are identified by the classroom teacher as being in danger of failing to execute mathematical skills at grade level by the end of the school year. Nothing in this section shall prohibit county boards from permitting students to participate in mathematics programs on a student fee basis.

(d) The state board shall approve procedures for the implementation of this section. To assist the state board in developing procedures for the implementation of this section, including the grant application and the grant review and selection process, the state board shall appoint an advisory board consisting of the mathematics education coordinator and the Title I mathematics coordinator/specialist, both from the state department of education, a college or university professor of mathematics, a county mathematics curriculum specialist, an elementary teacher with a mathematics certification, an elementary principal with a mathematics certification, a mathematics teacher with a certificate issued by the national board of professional teaching standards, a representative from the West Virginia council of teachers of mathematics and two or more representatives from local school systems that are certified in mathematics education, or representatives of like successor organizations should these named organizations cease to exist. The procedures shall provide for:

(1) The appointment of a grant review and selection panel by the state board consisting of persons with expertise and practical experience in delivering programs to increase the mathematical skills of young students, not more than one half of whom may be employees of the state department of education, or the state board may designate the advisory board as the grant review and selection panel;

(2) Notice to all schools of the grant competition and the availability of applications on or before the thirtieth day of September, in each fiscal year for which grant funds are available;

~~(3) A grant application deadline postmarked on or before the fifteenth day of December, in each fiscal year for which grant funds are available;~~

~~(4) Notice of grant awards on or before the first day of March, in each fiscal year for which grant funds are available; and (5) Other such requirements as deemed necessary by the state board.~~

~~(e) The state board may fund, from any other funds available for such purposes, the programs required by this section for students in kindergarten through grade four and any programs required by state board rules such as, but not limited to, the following:~~

~~(1) Tutoring;~~

~~(2) Summer school educational services;~~

~~(3) Additional certified personnel to provide intensive instruction in mathematics throughout the school year;~~

~~(4) Staff development for teachers; and~~

~~(5) Hot meal programs.~~

~~(f) Nothing in this section shall supersede the individualized education program (IEP) of any student.~~

~~(g) Nothing in this section may be construed to require any specific level of funding by the Legislature.~~

ARTICLE 5. COUNTY BOARD OF EDUCATION.

~~§18-5-40. School entry age; operation of schools on semester basis.~~

~~(a) The state board shall establish guidelines prior to the first day of January, one thousand nine hundred eighty-nine, for the operation of public kindergarten and elementary schools on a semester basis within the applicable provisions of this article and chapter relating to the school term. Notwithstanding any other provision of this code to the contrary relating to compulsory school attendance, any child required or allowed by proximity to attend a school operated on a semester basis shall be deemed to have reached compulsory school age and shall enroll as follows: (1) For the fall semester, in such year when the sixth birthday is reached on or between the first day of July and the last day of December, and (2) for the spring semester, when the sixth birthday is reached on or between the first day of January and the last day of June of that year: **Provided**, That the state board shall establish guidelines for enrollment prior to a child's reaching compulsory school age. Student progress within and between the various grade levels shall be determined on a semester by semester basis, and promotion or assignment to the middle or junior high school grade levels is conditioned upon completion of either of the last two semesters offered at the elementary school.~~

~~(b) By the school year one thousand nine hundred eighty-nine--ninety, the state board shall select at least four elementary schools with kindergarten programs which may be operated on a semester basis upon applications submitted, with preference being given in such selection to schools in different regional educational service agency areas to the extent reasonable and practical based on the applications. The operation of these schools on a semester basis shall be phased in by grade level beginning with kindergarten and progressing by one additional grade level in each successive school year until all of the grade levels offered at that school are operated on a semester basis. Any regulations adopted under this section shall utilize the flexibility contained herein so as to provide the students of West Virginia a more successful educational experience.~~

§18-5-45. School calendar.

~~(a) As used in this section, the following terms have the following meanings:~~

(1) "Instructional day" means a day within the instructional term which meets the following criteria:

(A) Instruction is offered to students for at least the minimum amounts of hours ~~time~~ provided by state board rule;

(B) Instructional time is used for instruction, and cocurricular activities; and, ~~pursuant to the provisions of subdivision twelve, subsection b), section five, article five-a of this chapter, faculty senates; and~~

(C) ~~Such~~ Other criteria as the state board determines appropriate.

~~(2) "Accrued instructional time" means instructional time accruing during the instructional term from time added to the instructional day beyond the time required by state board rule for an instructional day. Accrued instructional time may be accumulated and used in larger blocks of time during the school year for instructional or noninstructional activities as further defined by the state board.~~

~~(3) "Extracurricular activities" are activities under the supervision of the school such as athletics, noninstructional assemblies, social programs, entertainment and other similar activities as further defined by the state board.~~

(2) ~~(4)~~ "Cocurricular activities" are activities that are closely related to identifiable academic programs or areas of study that serve to complement academic curricula as further defined by the state board.

(b) *Findings.* –

(1) The primary purpose of the school system is to provide instruction for students.

(2) The school calendar, as defined in this section, is designed to define the school term both for employees and for instruction.

~~(3) The school calendar shall provide traditionally has provided for one hundred eighty separate actual days of instructional days but numerous circumstances have combined to cause the actual number of instructional days to be less than one hundred eighty.~~

~~(4) The quality and amount of instruction offered during the instructional term is affected by the extracurricular and cocurricular activities allowed to occur during scheduled instructional time.~~

~~(5) Within reasonable guidelines, the school calendar should be designed at least to guarantee that one hundred eighty actual days of instruction are possible.~~

(c) The county board shall provide a school term for its schools that contains the following:

(1) An employment term ~~that excludes of no less than two hundred days, exclusive of Saturdays and Sundays; and consists of at least two hundred days, which need not be successive. The beginning and closing dates of the employment term may not exceed forty-eight weeks;~~

(2) Within the employment term, an instructional term for students of no less than one hundred eighty separate instructional days, which includes an inclement weather ~~shall include an icy conditions~~ and emergencies plan designed to guarantee an instructional term for students of no less than one hundred eighty separate instructional days;

~~(d) The instructional term for students shall include one instructional day in each of the months of October, December, February, April and June which is an instructional support and enhancement day scheduled by the board to include both instructional activities for students and professional activities for teachers to improve student instruction. Instructional support and enhancement days are subject to the following provisions:~~

~~(1) Two hours of the instructional support and enhancement day shall be used for instructional activities for students. The instructional activities for students are subject to the following provisions:~~

~~(A) The instructional activities for students require the direct supervision or involvement by teachers;~~

~~(B) The instructional activities for students shall be limited to two hours;~~

~~(C) The instructional activities for students shall be determined and scheduled at the local school level;~~

~~(D) The instructional activities for students may include, but are not limited to, both in-school and outside of school activities such as student mentoring, tutoring, counseling, student research and other projects or activities of an instructional nature, community service, career exploration, parent and teacher conferences, visits to the homes of students, college and financial aid workshops and college visits;~~

~~(E) To ensure that the students who attend are properly supervised, the instructional activities for students shall be arranged by appointment with the individual school through the principal, a teacher or other professional personnel at the school; and~~

~~(F) Each school shall establish a policy relating to the use of the two-hour block scheduled for instructional activities for students;~~

~~(2) The instructional support and enhancement day shall include a two-hour block of time for professional activities for teachers during which the faculty senate shall have the opportunity to meet;~~

~~(3) All time remaining in the school day after meeting the requirements of subdivisions~~

~~(1) and (2) of this subsection, not including the duty-free lunch period, shall be used for other professional activities for teachers to improve student instruction which may include, but are not limited to, professional staff development, curriculum team meetings, individualized education plan meetings and other meetings between teachers, principals, aides and paraprofessionals to improve student instruction as determined and scheduled at the local school level;~~

~~(4) Notwithstanding any other provision of law or policy to the contrary, the presence of any specific number of students in attendance at the school for any specific period of time shall not be required on instructional support and enhancement days and the transportation of students to the school shall not be required;~~

~~(5) Instructional support and enhancement days are also a scheduled work day for all service personnel and shall be used for training or other tasks related to their job classification if their normal duties are not required; and~~

~~(6) Nothing in this section may be construed to require that the instructional activities for students, faculty senate meetings and other professional activities for teachers be scheduled in any certain order.~~

~~(e) The instructional term shall commence on a date selected by the county board and terminate on a date selected by the county board.~~

~~(3) (f) Within the employment term, noninstructional days shall total twenty and shall be comprised of the following:~~

~~(A) (1) Seven paid holidays as specified in section two, article five chapter eighteen-a of this code;~~

~~(B) (2) Election day as specified in section two, article five, chapter eighteen-a of this code;~~

~~(C) (3) Six days to be designated by the county board to be used by the employees outside the school environment, with at least four outside the school environment days scheduled to occur after the one hundred and thirtieth instructional day of the school calendar; and~~

~~(D) (4) Six~~ The remaining days to be designated by the county board for purposes to include, but not be limited to any of the following purposes:

~~(i) (A)~~ Curriculum development;

~~(ii) (B)~~ Preparation for opening and closing school;

~~(iii) (C)~~ Professional development;

~~(iv) (D)~~ Teacher-pupil-parent conferences;

~~(v) (E)~~ Professional meetings; ~~and~~

~~(vi) (F)~~ Making up days when instruction was scheduled but not conducted; and

~~(g) Three of the days described in subdivision (4), subsection (f) of this section shall be scheduled prior to the commencement of the instructional term for the purposes for the opening of school and staff development.~~

~~h) At least one of the days described in subdivision (4), subsection (f) of this section shall be scheduled after the termination of the instructional term for the purpose of preparing for the closing of school.~~

~~(i) At least four of the days described in subdivision (3), subsection (f) of this section shall be scheduled after March 1.~~

~~(j) At least two of the days described in subdivision (4), subsection (f) of this section will be scheduled for professional development. The professional development conducted on these days will be consistent with the goals established by the state board pursuant to the provisions of section twenty-three-a, article two of this chapter.~~

~~(k) Subject to the provisions of subsection (h) of this section, all noninstructional days will be scheduled prior to the termination of the instructional term.~~

~~(l) The state board may not schedule the primary statewide assessment program prior to May 15 of the instructional year unless the state board determines that the nature of the test mandates an earlier testing date.~~

~~(m) If, on or after March 1, the county board determines that it is not possible to complete one hundred eighty separate days of instruction, the county board shall schedule instruction on any available noninstructional day, regardless of the purpose for which the day originally was scheduled, and the day will be used for instruction, subject to the following:~~

~~(1) The noninstructional days scheduled for professional development shall be the last available noninstructional days to be rescheduled as instructional days;~~

~~(2) On or after March 1, the county board also may require additional minutes of instruction in the school day to make up for lost instructional days in excess of the days available through rescheduling and, if in its judgment it is reasonable and necessary to improve student performance, to avoid scheduling instruction on noninstructional days previously scheduled for professional development; and~~

~~(vii) At least four two-hour blocks of time for faculty senate meetings with each two-hour block of time scheduled once at least every forty-five instructional days; and~~

(4) Scheduled out-of-calendar days that are to be used for instructional days in the event school is canceled for any reason.

(d) A county board of education shall develop a policy that requires additional minutes of instruction in the school day or additional days of instruction to recover time lost due to late arrivals and early dismissals.

(e) If it is not possible to complete one hundred eighty separate instructional days with the current school calendar, the county board shall schedule instruction on any available noninstructional day, regardless of the purpose for which the day originally was scheduled, or an out-of-calendar day and the day will be used for instruction of students: *Provided, That* the provisions of this subsection do not apply to:

(A) Holidays; and

(B) Election day;

(C) Saturdays and Sundays.

~~(n) The following applies to accrued instructional time:~~

~~(1) Except as provided in subsection (m) of this section, accrued instructional time may not be used to avoid one hundred eighty separate days of instruction;~~

~~(2) Accrued instructional time may not be used to lengthen the time provided in law for faculty senates;~~

~~(3) The use of accrued instructional time for extracurricular activities will be limited by the state board;~~

~~(4) Accrued instructional time may be used by schools and counties to provide additional time for professional staff development and continuing education as may be needed to improve student performance and meet the requirements of the federal mandates affecting elementary and secondary education. The amount of accrued instructional time used for this purpose may not exceed three instructional days; and~~

~~(5) Other requirements or restrictions the state board may provide in the rule required to be promulgated by this section.~~

~~(o) The following applies to cocurricular activities:~~

~~(1) The state board shall determine what activities may be considered cocurricular;~~

~~(2) The state board shall determine the amount of instructional time that may be consumed by cocurricular activities; and~~

~~(3) Other requirements or restrictions the state board may provide in the rule required to be promulgated by this section.~~

~~(p) The following applies to extracurricular activities:~~

~~(1) Except as provided by subdivision (3) of this subsection, extracurricular activities may not be scheduled during instructional time;~~

~~(2) The use of accrued instructional time for extracurricular activities will be limited by the state board; and~~

~~(3) The state board shall provide for the attendance by students of certain activities sanctioned by the Secondary School Activities Commission when those activities are related to statewide tournaments or playoffs or are programs required for Secondary School Activities Commission approval.~~

(f) The instructional term shall commence and terminate on a date selected by the county board.

(g) The state board may not schedule the primary statewide assessment program more than thirty days prior to the end of the instructional year unless the state board determines that the nature of the test mandates an earlier testing date.

(h) The following applies to cocurricular activities:

(1) The state board shall determine what activities may be considered cocurricular;

(2) The state board shall determine the amount of instructional time that may be consumed by cocurricular activities; and

(3) Other requirements or restrictions the state board may provide in the rule required to be promulgated by this section.

(i) Extracurricular activities may not be used for instructional time.

(j) ~~(q)~~ Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach.

~~(r) Nothing in this section prohibits establishing year round schools in accordance with rules to be established by the state board.~~

(k) ~~(s)~~ Prior to implementing the school calendar, the county board shall secure approval of its proposed calendar from the state board or, if so designated by the state board, from the state superintendent.

(l) In formulation of a school's calendar, a county school board shall hold at least two public meetings that allow parents, teachers, teacher organizations, businesses and other interested parties within the county to discuss the school calendar. The public notice of the date, time and place of the public hearing must be published in a local newspaper of general circulation in the area as a Class II legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

(m) ~~(t)~~ The county board may contract with all or part of the personnel for a longer term of employment.

(n) ~~(u)~~ The minimum instructional term may be decreased by order of the state superintendent in any county declared a federal disaster area and where the event causing the declaration is substantially related to a reduction of instructional days.

~~(v) Where the employment term overlaps a teacher's or service personnel's participation in a summer institute or institution of higher education for the purpose of advancement or professional growth, the teacher or service personnel may substitute, with the approval of the county superintendent, the participation for up to five of the noninstructional days of the employment term.~~

(o) Notwithstanding any provision of this code to the contrary, the state board may grant a waiver to a county board for its noncompliance with provisions of chapter eighteen, eighteen-a, eighteen-b and eighteen-c of this code to maintain compliance in reaching the mandatory one hundred eighty separate instructional days established in this section.

(p) ~~(w)~~ The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section.

(q) The amendments to this section during the 2013 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2014, and the provisions of this section existing immediately prior to the 2013 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2014.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-6a. Incentive for county board participation in circuit court juvenile probation truancy programs.

A county board that enters into a truancy program agreement with the circuit court of the county that (1) provides for the referral of truant juveniles for supervision by the court's probation office pursuant to section eleven, article five, chapter forty-nine of this code and (2) requires the county board to pay for the costs of the probation officer or officers assigned to supervise truant juveniles, shall be reimbursed for one-half of the costs of the probation officer or officers, subject to appropriation of the Legislature for this purpose to the West Virginia Department of Education. For any year in which the funds appropriated are insufficient to cover the reimbursement costs, the county's costs shall be reimbursed pro rata.

ARTICLE 9. SCHOOL FINANCES.

~~§18-9-2b. Transfer of moneys in separate funds of magisterial districts and independent school districts to county boards of education.~~

~~On and after July first, one thousand nine hundred thirty three, any and all moneys in the separate funds of any magisterial district or independent school district, other than interest and sinking funds, and all moneys which may thereafter be paid into such funds from the collection of delinquent taxes or otherwise, are hereby transferred to the board of education for control, distribution and expenditure; and any such funds so transferred shall be used by said board in payment of any existing legal indebtedness, bonded or otherwise, of any such district, and the residue, if any, for general school purposes without regard to the purpose for which the said moneys were originally collected, except that moneys collected for the purpose of replacement of or the erection of new buildings shall be expended in the magisterial or independent school district from which such moneys were collected.~~

~~§18-9-5. School fund; board of the school fund; investment of school fund; acquisition, etc., of real estate.~~

~~All such sums as have accrued to this state from the several sources enumerated in section 4, article XII of the constitution, not in excess of one million dollars, shall be set apart as a separate fund to be called "the school fund," and the governor, state superintendent of free schools, auditor and treasurer shall be a corporation under the name of "the board of the school fund," and shall have the management, control and investment of said fund, as provided by section 4, article XII of the constitution. Such fund shall be invested in the interest-bearing securities of the United States, or securities, the payment of which as to both principal and interest, has been guaranteed by the United States, or of this state, or of any county, city, town or village, or school district of this state, or if such interest-bearing securities cannot be obtained, then such fund shall be invested in such other solvent interest-bearing securities as shall be approved by such board. The governor shall be president of the board, and in his absence the board shall choose one of the number to preside temporarily in his place. The auditor shall be secretary of the board. The state treasurer shall be custodian of all investments made by such board. A record shall be kept of all the proceedings and be signed by the president and secretary, and a copy thereof, certified by the secretary of the board, shall be evidence in all cases in which the original would be. A majority of the board shall constitute a quorum for the transaction of business.~~

~~The board may acquire, own, hold, use, receive rents and issues from, dispose of and convey, real estate, subject to the following limitations, and for the following purposes:~~

- ~~(a) Such as shall have been mortgaged to it, or conveyed to trustees, as security for debts in its favor;~~
- ~~(b) Such as shall be conveyed to it in satisfaction of debts, or in partial payment of debts, previously contracted;~~

~~(c) Such as it has heretofore purchased, or shall hereafter purchase, at sales under judgments, decrees, trust deeds or mortgages in its favor, or shall purchase at private sale, to secure and effectuate the payment of debts due to it.~~

~~Any real estate acquired by the board under clauses (b) and (c) shall be disposed of by the board at the earliest practicable date, but the board shall have a reasonable discretion in the matter of the time to dispose of such property in order to prevent unnecessary losses; and such property, in the discretion of the board, may be sold either at public sale or at private sale and for cash or on such terms as the board may deem expedient.~~

~~(d) The board shall have full power and authority to extend the time for the payment of the principal or interest, or both principal and interest or any part thereof, of any interest-bearing securities in which the fund may have been invested prior to March fourth, one thousand nine hundred thirty-three, as in the discretion of the board it may deem proper and expedient.~~

~~(e) The board shall have full power and authority to make such adjustments, deductions, settlements and compromises as in its judgment may be deemed reasonably equitable and expedient under all circumstances with respect to any loans or investments made by it prior to the fourth day of March, one thousand nine hundred thirty-three. In the exercise of this power and authority, the board shall give preference to such loans and investments as are not represented by the securities of the United States, this state or any political subdivision of this state.~~

~~§18-9-7. Supplemental aid for districts in which children's homes are located.~~

~~The state superintendent of schools shall apportion supplemental aid to any district or independent district in which is located any institution as a home for orphans or homeless children. The amount of such supplemental aid shall be equal to the product of the per capita cost of education for the preceding year and the total number of pupils from such children's homes enrolled in the public schools of the district applying for such aid, and shall be distributed in the manner prescribed in the next preceding section of this article for distribution of supplemental aid to other districts. The per capita cost of education for this purpose shall be determined on the basis of the enrollment in the elementary and high schools and the total expenditures for elementary and high school teachers and maintenance funds in such district.~~

~~§18-9-8. Exception.~~

~~Notwithstanding the provisions of sections two-a and three-a of this article, the provisions of this article as of January first, one thousand nine hundred sixty-one, shall govern for the year one thousand nine hundred sixty-one, insofar as they relate to school finances.~~

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

~~§18-9A-3a. Total state basic foundation program for fiscal years 2009 through 2013, only.~~

~~(a) Notwithstanding any other provisions of this article to the contrary, the total basic foundation program for the state for the fiscal year 2009 through 2013 shall be the sum of the amounts computed for each county in accordance with this section, less the county's local share:~~

~~(1) For the fiscal year 2009, the Department of Education shall compute the total basic foundation program for each county in accordance with the provisions of this article and in accordance with the provisions of this article in effect for fiscal year 2008. The total basic foundation program for each county computed in accordance with this article is limited to a growth of one-fifth above the amount computed for the county in accordance with the provisions in effect for fiscal year 2008. The total basic foundation program for the county is the greater of the two computations.~~

~~(2) For the fiscal year 2010, the Department of Education shall compute the total basic foundation program for each county in accordance with the provisions of this article and in accordance with the provisions of~~

~~this article in effect for fiscal year 2008. The total basic foundation program for each county computed in accordance with this article is limited to a growth of two-fifths above the amount computed for the county in accordance with the provisions in effect for fiscal year 2008. The total basic foundation program for the county is the greater of the two computations.~~

~~(3) For the fiscal year 2011, the Department of Education shall compute the total basic foundation program for each county in accordance with the provisions of this article and in accordance with the provisions of this article in effect for fiscal year 2008. The total basic foundation program for each county computed in accordance with this article is limited to a growth of three-fifths above the amount computed for the county in accordance with the provisions in effect for fiscal year 2008. The total basic foundation program for the county is the greater of the two computations.~~

~~(4) For the fiscal year 2012, the Department of Education shall compute the total basic foundation program for each county in accordance with the provisions of this article and in accordance with the provisions of this article in effect for fiscal year 2008. The total basic foundation program for each county computed in accordance with this article is limited to a growth of four-fifths above the amount computed for the county in accordance with the provisions in effect for fiscal year 2008. The total basic foundation program for the county is the greater of the two computations.~~

~~(5) For the fiscal year 2013 and each year thereafter, the Department of Education shall compute the total basic foundation program for each county in accordance with the provisions of this article and in accordance with the provisions of this article in effect for fiscal year 2008. For the fiscal year 2013 only, the total basic foundation program for the county is the greater of the two computations.~~

~~(b) When computing the basic foundation program for fiscal years 2010 through 2013 only, the allowance for professional educators and the allowance for service personnel computed for each school district in accordance with the provisions of this article that became effective on July 1, 2008, shall be based on the number of personnel that would be eligible based on the net enrollment of the county notwithstanding the number employed for the second month of the prior school term and notwithstanding the pro rata reduction for failure to establish and maintain the minimum professional instructional personnel ratios set forth in section four of this article.~~

~~**§18-9A-3b. Total state basic foundation program and foundation allowance for regional educational service agencies for fiscal year 1993-1994 only.**~~

~~(a) Notwithstanding any other provision of this article to the contrary, the total basic foundation program for the state for the fiscal year one thousand nine hundred ninety-three-ninety-four shall be the sum of the following, less the county's local share:~~

~~(1) An allowance for professional educators in an amount at least equal to six hundred twenty-three million, five hundred fifteen thousand, seventy dollars;~~

~~(2) An allowance for service personnel in an amount at least equal to one hundred ninety million, four hundred forty-two thousand, three hundred eighty-two dollars;~~

~~(3) An allowance for fixed charges in an amount appropriated by the Legislature;~~

~~(4) An allowance for transportation costs in an amount appropriated by the Legislature;~~

~~(5) An allowance for administrative costs in an amount appropriated by the Legislature;~~

~~(6) An allowance for other current expense and substitute employees in an amount appropriated by the Legislature; and~~

~~(7) An allowance to improve instructional programs in an amount appropriated by the Legislature.~~

§18-9A-10. Foundation allowance to improve instructional programs.

(a) The total allowance to improve instructional programs shall be the sum of the following:

(1) For instructional improvement, in accordance with county and school electronic strategic improvement plans required by section five, article two-e of this chapter, an amount equal to fifteen percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year: Provided, That effective July 1, 2014, an amount equal to ten percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be distributed to the counties as follows:

(A) One hundred fifty thousand dollars shall be allocated to each county; and

(B) Distribution to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Moneys allocated by provision of this subdivision shall be used to improve instructional programs according to the county and school ~~electronic~~ strategic improvement plans required by section five, article two-e of this chapter and approved by the state board: *Provided*, That notwithstanding any other provision of this code to the contrary, moneys allocated by provision of this section also may ~~also~~ be used in the implementation and maintenance of the uniform integrated regional computer information system.

Up to twenty-five percent of this allocation may be used to employ professional educators and service personnel in counties after all applicable provisions of sections four and five of this article have been fully utilized.

Prior to the use of any funds from this subdivision section for personnel costs, the county board must receive authorization from the state superintendent ~~of schools~~. The state superintendent shall require the county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; (3) sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget; and (4) employment of technology integration specialists to meet the needs for implementation of the West Virginia 21st Century Strategic Technology Learning Plan. County boards shall make application for the use of funds for personnel for the next fiscal year by May 1 of each year. On or before June 1, the state superintendent shall review all applications and notify applying county boards of the approval or disapproval of the use of funds for personnel during the fiscal year ~~appropriate distribution of the allocation~~ ~~The funds shall be distributed during the fiscal year~~ ~~appropriate~~. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county's inability to meet the requirements of state law or state board policy: ~~Provided, That the funds available for personnel under this section may not be used to increase the total number of professional non-instructional personnel in the central office beyond four.~~

The provisions relating to the use of any funds from this subdivision for personnel costs are subject to the following: (1) The funds available for personnel under this subsection may not be used to increase the total number of professional noninstructional personnel in the central office beyond four; and (2) For the school year beginning July 1, 2013, and thereafter, any funds available to a county for use for personnel above the amount available for the 2012-2013 school year, only may be used for technology systems specialists until the state superintendent determines that the county has sufficient technology systems specialists to serve the needs of the county.

The plan shall be made available for distribution to the public at the office of each affected county board; plus

(2) For the purposes of ~~improving instructional technology, the West Virginia 21st Century Strategic Technology Learning Plan provided for in section seven, article two-e of this chapter~~ an amount equal to fifteen percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year: Provided, That effective July 1, 2014, an amount equal to twenty percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as provided in section seven, article two-e of this chapter to meet the objectives of the West Virginia 21st Century Strategic Technology Learning Plan; ~~plus:~~ Provided, That effective July 1, 2014, the sum of these amounts shall be distributed to the counties as follows:

(A) Thirty thousand dollars shall be allocated to each county; and

(B) Distribution to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Effective July 1, 2014, moneys allocated by provision of this subdivision shall be used to improve instructional technology programs according to the county and school strategic improvement plans; plus

(3) One percent of the state average per pupil state aid multiplied by the number of students enrolled in dual credit, advanced placement and international baccalaureate courses, as defined by the state board, distributed to the counties proportionate to enrollment in these courses in each county; plus

(4) An amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to January 1, 1994, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to January 1, 1994, shall be paid into the School Building Capital Improvements Fund created by section six, article nine-d of this chapter and shall be used solely for the purposes of that article. The School Building Capital Improvements Fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the School Building Debt Service Fund have been pledged for repayment pursuant to that section.

(b) When the school improvement bonds secured by funds from the School Building Capital Improvements Fund mature, the state Board of Education shall annually deposit an amount equal to \$24,000,000 from the funds allocated in this section into the School Construction Fund created pursuant to the provisions of section six, article nine-d of this chapter to continue funding school facility construction and improvements.

(c) Any project funded by the School Building Authority shall be in accordance with a comprehensive educational facility plan which must be approved by the state board and the School Building Authority.

~~§18-9A-13. Transitional allocation for certain rural district boards.~~

~~For the school year one thousand nine hundred ninety one ninety two only, there shall be a one-time additional appropriation of one million dollars to be distributed to those very few district boards on a needs basis: Provided, That if funds available under this section are used for personnel, such funds may not be used to increase the total number of professional noninstructional personnel in the central office beyond four. The factors used to determine eligibility for funds shall be staffing ratio to students, administrative ratio to staff supervised, funding stability, and sparsity of student population.~~

~~The state superintendent shall require the district board to demonstrate: (1) The need for the allocation, (2) efficiency and fiscal responsibility in staffing, and (3) sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget. District boards shall make application for available funds by the first day of May, one thousand nine hundred ninety one. On or before the first day of June, the state superintendent shall review all applications and~~

notify applying district boards of the distribution of the allocation. Such funds shall be distributed during the fiscal year as appropriate.

§18-9A-13a. Allowance for levy rate reduction under uniform school funding amendment.

(a) Any county which has a local excess levy for schools authorized by sections one and ten, article ten of the constitution of the state of West Virginia which is at a rate greater than ninety percent, approved by the voters of the county prior to the fifth day of March, one thousand nine hundred eighty-eight, and in effect on the first day of July, one thousand nine hundred eighty-eight, shall receive a foundation allowance for levy rate reduction in each fiscal year in which the amount for which tax liens attach pursuant to the uniform levy imposed by section one-d, article ten of the constitution is less than the lesser of the amounts computed pursuant to subsection (b) of this section.

(b) The state board shall compute for each county with such expired levy the amount for which a tax lien for the local excess levy for schools attaches in the year in which said local excess levy expires. Such calculation shall be based on a sixty percent assessment of the value of property subject to ad valorem taxation. In each tax year subsequent to such expiration, the state board shall compute the amount for which a tax lien would attach on the first day of July of the then current year based on the rate of local excess levy for schools that was replaced by the uniform excess levy for schools in accordance with section one-d, article ten of the state constitution.

(c) The foundation allowance for levy rate reduction shall be equal to the difference between the amount which would be realized by the ninety percent uniform levy and the lesser of the two amounts calculated pursuant to subsection (b) of this section.

(d) The provisions of this section shall be null, void and of no effect should the "Uniform School Funding Amendment" fail to be approved by the voters of this state.

§18-9A-13b. Allowance for legislative reserve fund, current expense and substitute costs.

Commencing with the school year beginning on the first day of July, two thousand, funds which accrue from allocations due to decreases in net and adjusted enrollment from the preceding school year shall be deposited in a special revenue fund which is hereby created in the state treasury, designated the "legislative reserve fund". The fund shall be an interest bearing account and shall be appropriated by the Legislature.

§18-9A-25. State allowance for state teacher of the year salary.

To provide for the support of a sabbatical for the state teacher of the year, there shall be appropriated for that purpose from the general revenue fund an amount equal to the state average contractual salary for teachers for the year in which the teacher is selected as state teacher of the year.

§18-9A-26. Allowance for workers' compensation for unpaid student work-based learning.

(a) The workers' compensation commission shall create a classification and calculate a base premium tax rate for students participating in an unpaid work-based learning experience off school premises as a part of the school curriculum with employers other than the county board of education. The workers' compensation commission shall report to the state department of education:

(1) The amount of the base premium tax rate for the class; and

(2) The amount of wages per student to be used to provide the minimum weekly benefits required by section six, article four, chapter twenty-three of this code.

(b) The state department of education shall communicate the amount of the premium to the governor and Legislature by the first day of December of each year.

~~(c) The base premium tax rate reported to the state department of education shall be that which was published by the workers' compensation commission prior to the first day of the immediately preceding July. The workers' compensation commission shall make no merit rate adjustment, as otherwise provided for in paragraph (A), subdivision (1), subsection (a), section four, article two, chapter twenty-three of this code for the members of the class required to be created by subsection (a) of this section.~~

~~(d) Notwithstanding anything to the contrary in any rules adopted to implement the provisions of section four, article two, chapter twenty-three of this code and for the sole purpose of this section, the workers' compensation commission shall permit any county board of education affected by this section to be classified in accordance with this section and to be also classified as otherwise required by any rules adopted to implement the provisions of section four, article two, chapter twenty-three of this code.~~

~~(e) Subject to an appropriation by the Legislature, funds shall be provided to the department of education to distribute to the county boards. If the appropriation is less than the total premium calculated, the county boards, individually, shall either reduce the number of students participating in work-based learning experiences off school premises or the county boards shall pay the difference between the amount of the premium calculated by the workers' compensation commission and the amount allocated to the county board by the department of education.~~

~~§18-9B-11. Emergency and supplemental appropriations.~~

~~The board of finance shall, by uniform regulations, provide for:~~

~~(1) Emergency appropriation to provide for purposes for which no appropriation or an insufficient appropriation was made in the annual budget. An emergency appropriation shall be made only with the prior written approval of the board of finance, which approval shall state the maximum amount of the emergency appropriation authorized. An emergency appropriation may be paid by transfer from some regular item of appropriation or from revenues actually collected in excess of anticipations as the board may direct;~~

~~(2) Supplemental appropriations to provide for lawful school expenditures during the fiscal year in addition to those provided for in the regular budget, made possible by actual collections of receipts in excess of anticipated collections. A supplemental appropriation shall be made only with the prior written approval of the board.~~

~~§18-9B-16. Transmission and investment of proceeds of permanent improvement fund.~~

~~If a county board accumulates the permanent improvement fund for more than two years, the proceeds of the fund shall be transmitted to the state sinking fund commission on or before the first day of December of the year in which the second successive levy for the fund is laid. Amounts subsequently accruing to the fund as of the first day of July of each year shall be transmitted to the state sinking fund commission on or before the first day of December ensuing. The state sinking fund commission shall keep a separate account for the fund of the county and shall invest the proceeds in any obligations authorized for the investment of the state workers' compensation fund. The proceeds of the fund may be withdrawn by the county board of education as authorized by this article upon sixty days' notice in writing to the state sinking fund commission.~~

ARTICLE 17. WEST VIRGINIA SCHOOLS FOR THE DEAF AND THE BLIND.

~~§18-17-8. Continuing contract status established; dismissal and suspension procedures.~~

~~Before entering upon their duties, all teachers shall execute a contract with the state board of education, which contract shall state the salary to be paid and shall be in the form prescribed by the state superintendent of schools. Every such contract shall be signed by the teacher and by the president and secretary of the state board of education.~~

A teacher's contract, under this section, shall be for a term of not less than one nor more than three years; and if, after three years of such employment, the teacher who holds a professional certificate, based on at least a bachelor's degree, has met the qualifications for the same, and the state board of education enter into a new contract of employment, it shall be a continuing contract.

Notwithstanding any other provisions of law, the state board of education may suspend or dismiss any teacher, auxiliary personnel or service personnel, subject to the provisions of this article, ~~with continuing contract status~~, for immorality, incompetency, cruelty, insubordination, intemperance or willful neglect of duty ~~but~~. The charges shall be stated in writing and the teacher, auxiliary personnel or service personnel affected shall be given an opportunity to be heard by the state board, sitting as a hearing board, or by an assigned hearing examiner employed by the state board to preside at the taking of evidence upon not less than ten days' written notice, ~~which charges and notice shall be served on the teacher within five days of the presentation of the charges to the state board~~. The hearing may be held. A hearing examiner shall prepare his or her own proposed finding and recommendation, make copies of the findings available to the parties and then submit the entire record to the state board for final decision. The state board shall set a time and place for hearing of arguments by the parties on the record at a regular meeting of the state board or at a special meeting called for that purpose and shall deliberate and issue a decision at the conclusion of arguments. Written notice of the final decision shall be served within five days of the state board's consideration of the matter.

~~§18A-3-2b. Beginning teacher internships.~~

~~(a) Every person to whom a professional teaching certificate is awarded after the first day of January, one thousand nine hundred ninety two, shall successfully complete a beginning teacher internship program under the provisions of this section, except such persons who were awarded a professional teaching certificate on the basis of at least five years teaching experience in another state.~~

The beginning teacher internship program is a school based program intended to provide appropriate staff development activities and supervision to beginning teachers to assure their competency for licensure to teach in the public schools of this state. The beginning teacher internship program shall consist of the following components:

~~(1) A professional support team comprised of the school principal, who shall be the chair of the professional support team, a member of the county professional staff development council and an experienced classroom teacher at the school who teaches the same or similar subject and grade level as the beginning teacher and who shall serve as a mentor for the beginning teacher;~~

~~(2) An orientation program to be conducted prior to the beginning of the instructional term, but within the employment term, supervised by the mentor teacher;~~

~~(3) The scheduling of joint planning periods for the mentor and beginning teacher throughout the school year;~~

~~(4) Mentor observation of the classroom teaching skills of the beginning teacher for at least one hour per week during the first half of the school year and which may be reduced at the discretion of the mentor to one hour every two weeks during the second half of the school year;~~

~~(5) Weekly meetings between the mentor and the beginning teacher at which the mentor and the beginning teacher discuss the performance of the beginning teacher and any needed improvements, which meetings may be reduced at the discretion of the mentor to biweekly meetings during the second half of the school year;~~

~~(6) Monthly meetings of the professional support team to discuss the performance of the beginning teacher which meetings may include all mentor members of all professional support teams at the school if helpful in the judgment of the participants;~~

~~(7) In-service professional development programs provided through the professional development project of the center for professional development for beginning teachers and for mentors both of which will be held in the first half of the school year;~~

~~(8) The provision of necessary release time from regular duties for the mentor teacher, as agreed to by the principal and the mentor teacher, and a stipend of at least six hundred dollars for the mentor teacher for duties as a mentor teacher; and~~

~~(9) A final evaluation of the performance of the beginning teacher completed by the principal on a form developed by the state board of education.~~

~~(b) The final evaluation form shall be submitted by the principal to the county school superintendent and shall include one of the following recommendations:~~

~~(1) Full professional status: A recommendation of full professional status indicates that the beginning teacher has successfully completed the internship program and in the judgment of the principal has demonstrated competence as a professional educator;~~

~~(2) Continuing internship status: A recommendation of continuing internship status indicates that in the judgment of the principal the beginning teacher requires further supervision and further employment in the district should be conditioned upon successful completion of an additional year under a beginning teacher internship program; or~~

~~(3) Discontinue employment: A recommendation to discontinue employment indicates that in the judgment of the principal the beginning teacher has completed two years of employment under supervision in a beginning teacher internship program, has not demonstrated competence as a professional educator and will not benefit from further supervised employment in the district.~~

House Bill 3159

Effective Date: April 10, 2013
Signed by Governor: April 22, 2013
Code Reference: Amends §18-5B-10
Title: School Innovation Zones Act

Major Provisions:

- Provides for exceptions to state code for designated Local Solutions Dropout Prevention and Recovery Innovation Zones.
- Provides for Nicholas County Schools an exception to the following:
 - o *§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.* This is a waiver of the definition of unexcused absences and allow recording of school attendance on Saturdays.
 - o *§18-8-8. Child suspended for failure to comply with requirements and regulations treated as unlawfully absent.* This waiver allows for successfully participating in and completing the Attendance Recovery Program the absence for suspension will be treated as an excused absence.
 - o *§18-8-11. School attendance and satisfactory academic progress as conditions of licensing for privilege of operation of motor vehicle.*
 - o By successfully participating in and completing the Attendance Recovery Program the student is deemed to have attained “satisfactory academic progress” for purposes of obtaining a motor vehicle license between the ages of fifteen and eighteen.
- Provides for Monroe County Schools an exception to:
 - o *§18-8-1a. Commencement and termination of compulsory school attendance; public school entrance requirements; exceptions.* This is a waiver of the compulsory attendance of age of 17. The compulsory attendance age in Monroe County will be eighteen for ALL students.

ENROLLED

H. B. 3159

(By Delegates M. Poling, Stowers, Young, Perry, Williams, Barill, Pethel, Lawrence, Pasdon, Ambler and Cooper)

[Passed April 10, 2013; in effect from passage.]

AN ACT to amend and reenact §18-5B-10 Bill Title of the code of West Virginia, 1931, as amended, relating to excepting Monroe County Schools from compulsory attendance age law for purpose of increasing age to eighteen; and excepting Nicholas County Schools from requirement to commence compulsory attendance actions after certain maximum absences for purpose of limited absence excusal for Saturday program completion. Title Language

Be it enacted by the Legislature of West Virginia:

That §18-5B-10 Enacting Section of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-10. Exceptions to statutes granted to innovation zones; limitations.

(a) The Legislature hereby grants an exception to the statute or statutes indicated for the following schools pursuant to and for the purposes enumerated in their innovation zone plans approved by the state board at its meeting on the date specified. The grant of an exception to a statute means that the school or schools granted the exception may implement the actions as specifically described in their approved innovation zone plan notwithstanding the provisions of this code from which they are specifically excepted. These exceptions are limited to the purposes as specifically described in the plan approved on the date indicated and are expressly repealed for any plan modification or plan implementation which changes those purposes. However, nothing in this section prohibits a school or schools with an approved innovation zone plan from requesting plan modifications, subject to approval of the state board, and if the modifications change the purposes for which an exception to a statute was granted, the state board shall request an exception to achieve the new purposes in the manner provided in section five of this article for requesting exceptions to a statute. If the approved innovation zone plan of a school or schools is withdrawn by the state board, or the innovation zone designation of a school or schools is revoked by the state board, the exception granted to that school or those schools is expressly repealed.

(b) The following exceptions are granted:

(1) Piedmont Elementary School, Kanawha County, is excepted from subsection (3), section fourteen, article four, chapter eighteen-a of this code for the purpose of allowing specialist teachers to take their planning period before and after school totaling one hour, three days per week, and from section eighteen-a, article five of this chapter for the purpose of permitting a number of students in music and physical education classes in excess of the class size limits to provide the time and structure for teams to meet in professional learning communities, which purposes are as more specifically described in the school's innovation zone plan approved by the state board on January 13, 2010;

(2) Putnam County High Schools Consortium comprised of Buffalo High School, Hurricane High School, Poca High School, Winfield High School and Putnam Career and Technical Center, Putnam County, is excepted from section forty-five, article five of this chapter only to the extent necessary for the purpose of establishing a structured transition program for freshman only one day prior to the beginning of the regular instructional term, and for the purpose of permitting the creation of not more than three hours each month during the school term of structured, regularly scheduled time for all teachers to work in professional

learning communities, which purposes are as more specifically described in the schools' innovation zone plan approved by the state board on January 13, 2010;

(3) Nellis Elementary School, Boone County, is excepted from subsection (a), section two, article five-a of this chapter, for the purpose of expanding the membership of its local school improvement council, which purpose is as more specifically described in the school's innovation zone plan approved by the state board on January 13, 2010;

(4) Cabell County Secondary School Consortium comprised of Cabell County Career Technical Center, Cabell Midland High School and Huntington High School, Cabell County, is excepted from sections one and one-a, article eight of this chapter for the purpose of raising the compulsory school attendance age to eighteen years old, and from section two-b, article three, chapter eighteen-a of this code for the purpose of providing a customized high quality beginning teacher induction program developed at the county level, which purposes are as more specifically described in the schools' innovation zone plan approved by the state board on January 13, 2010; ~~and~~

(5) Clay County Schools is excepted from section fifteen, article five of this chapter for the purpose of allowing persons over the age of twenty-one years to enroll without charge of fees in the Clay County Schools "iREAD" program and upon, successful completion, be awarded a Clay County High School Diploma, which purposes are more specifically described in the Clay County School's innovation zone plan approved by the state board on January 12, 2011. The grant of this exception does not abrogate the authority of the state board to determine the minimum standards for granting diplomas pursuant to section six, article two of this chapter and does not permit persons over the age of twenty-one who re-enter the public schools to be included in net enrollment for the purposes of funding pursuant to article nine-a of this chapter, except as otherwise provided by law;

(6) Monroe County Schools is excepted from subdivision (3), subsection (a), section one-a, article eight of this chapter for the purpose of allowing the school district to increase the compulsory school attendance age from seventeen years of age to eighteen years of age as part of its county-wide dropout prevention initiative as more specifically described in the Monroe County School's Local Solutions Dropout Prevention and Recovery Innovation Zone plan approved by the state board on November 14, 2012; and

(7) Nicholas County Schools is excepted from sections four, eight and eleven, article eight of this chapter only to the extent necessary to permit up to two unexcused absences per semester on regular instructional days to be erased from a student's attendance record and not used toward the initiation of the attendance enforcement actions as set-forth in those sections, if the student successfully completes the county's Saturday instruction program operated as part of the county's county-wide Attendance Recovery dropout prevention initiative as more specifically described in the Nicholas County School's Local Solutions Dropout Prevention and Recovery Innovation Zone plan approved by the state board on October 3, 2012.

House Bill 3160

Effective Date: April 17, 2013

Signed by Governor: May 3, 2013

Code Reference: Amends §18-5-11

Adds §18-5-11a and §18-5A-2a

Title: Providing for a pilot initiative on governance of schools jointly established by adjoining counties

Major Provisions:

- Revises the procedures for the joint establishment of schools.
- Requires that participating county boards enter into a formal agreement in which the cost for the acquisition of the property and equipment is to be apportioned.
- Specifies that the annual operating costs of the school shall be the responsibility of the county in which the joint school is located.
- Specifies that for the purposes of calculating the sending county board's basic foundation allowance under the Public School Support Program (PSSP), the net enrollment of the county that sends students to a jointly established school in another county and provides transportation for those students, or otherwise contributes to the support services or instructional program of the school, is to be increased by fifteen one hundredths multiplied by the number of full-time equivalent students enrolled in the school from the sending county.
- Establishes a joint governing partnership board pilot initiative.
- Specifies that the pilot initiative is limited to the joint establishment by two adjoining counties of a school including elementary grade levels for which a memorandum of understanding on the governance and operation of the school has been signed.
- Specifies that the governing partnership board is comprised of the county superintendent of each county, the president of the county board of each county or his or her designee, and a designee of the state superintendent.
- Specifies that once established, the joint governing partnership board shall remain in effect for five consecutive school years unless authority for the pilot initiative is repealed.
- Modifies the provisions of the local school improvement council for certain jointly established schools to include a composition of parents and at-large members in its membership to represent the interests of the students attending from both participating county boards.

SECOND ENROLLMENT

H. B. 3160

(By Delegates Walker, Stowers, Barill, Cooper, Campbell, Lawrence, Young, Tomblin, Hamrick, Espinosa and WestfallSPONSOR)

[Amended and again passed; in an effort to meet the objections of the Governor, April 17, 2013; in effect from passage.]

AN ACT to amend and reenact §18-5-11 of the code of West Virginia, 1931, as amended; to further amend said code by adding thereto a new section, designated §18-5-11a; and to further amend said code by adding thereto a new section, designated §18-5A-2a; all relating to joint establishment, maintenance and operation of school by two or more adjoining counties; requiring formal agreement for apportionment of acquisition costs; providing for operating costs; providing net enrollment adjustment for certain costs; providing for joint governing partnership board pilot initiative; making findings with respect to pilot initiative and purpose; establishing limitation and condition; providing features of partnership board; authorizing adoption of separate policies and requests of waivers; providing for modifications to local school improvement council membership for jointly established school; providing for modifications to local school improvement council membership for jointly attended school under certain conditions; and aligning authority of improvement council for proposing alternatives and requesting waivers.

Be it enacted by the Legislature of West Virginia:

That §18-5-11 Enacting Section of the code of West Virginia, 1931, as amended, be amended and reenacted; that said code be further amended by adding thereto a new section, designated §18-5-11a; and that said code be further amended by adding thereto a new section, designated §18-5A-2a; all to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-11. Joint establishment of schools.

(a) The boards of two or more adjoining counties may jointly establish and maintain schools. The title to the school shall be vested in the board of the county in which the school is located. The agreement by which the school is established shall be reduced to writing and entered of record in the minutes of each board.

(b) The boards of the several districts shall determine the site of the proposed school and the amount to be expended for its establishment and equipment.

(1) The participating counties shall enter a formal agreement regarding the manner in which the cost shall be apportioned upon the basis of the respective valuations of the taxable property of each district for the acquisition of the property and equipment shall be apportioned.

(2) The board in the district in which the building is located shall be vested with the control and management of the school, except as may otherwise be provided in the agreement between the counties.

(c) The annual operating costs shall be apportioned among the districts on the basis of the average daily attendance of pupils from each district the responsibility of the county in which the joint school is located and subject to the allowance transfer set forth in section fourteen, article nine-a of this chapter unless otherwise provided in the agreement between the counties.

(d) For a county board that sends students to a jointly established school in another county and that provides transportation for those students or that otherwise contributes to the support services or instructional program of the school, the net enrollment of the county for the purposes of calculating its basic foundation program as provided in article nine-a of this chapter, only, shall be increased by fifteen one

hundredths multiplied by the number of full-time equivalent students from the county who are enrolled in the jointly established school.

§18-5-11a. Joint governing partnership board pilot initiative.

(a) The Legislature finds that many examples exist across the state of students who reside in one county, but who attend the public schools in an adjoining county.

(1) These arrangements have been accommodated by the boards of the adjoining counties and applicable statutes to serve best the interests of the students by enabling them to attend a school closer to their homes.

(2) Typically, these arrangements have evolved because school closures or construction of new schools in the student's county of residence have made a cross-county transfer to an existing school in an adjoining county a more convenient, practical and educationally sound option.

(b) The Legislature further finds that as population changes continue to occur, the boards of adjoining counties may best serve the interests of their students and families by establishing a new school in partnership to be attended by students residing in each of the counties. Particularly in the case of elementary grade level schools established in partnership between adjoining counties, the Legislature finds that each of the county boards, as well as the parents of students from each of the counties attending the school, have an interest in the operation of the school and the preparation of the students for success as they transition to the higher grade levels in the other schools of their respective home counties. Therefore, in the absence of a well defined governance structure that accommodates these interests, the purpose of this section is to provide for a joint governing partnership board pilot initiative.

(c) The pilot initiative is limited to the joint establishment by two adjoining counties of a school including elementary grade levels for which a memorandum of understanding on the governance and operation of the school has been signed. The pilot initiative is subject to amendment of the agreement as may be necessary to incorporate at least the following features of a joint governing partnership board:

(1) The joint governing partnership board is comprised of the county superintendent of each county, the president of the county board of each county or his or her designee, and a designee of the state superintendent;

(2) The board shall elect a chair from among its membership for a two-year term and may meet monthly or at the call of the chair.

(A) Meetings of the board are subject to the open governmental proceedings laws applicable to county boards.

(B) The boards of the respective counties are responsible for the expenses of its members and shall apportion other operational expenses of the board upon mutual agreement.

(C) Once the jointly established school is opened, the meetings of the board shall be held at the school;

(3) All provisions of law applicable to the establishment, operation and management of an inter-county school including, but not limited to, section eleven, article five and section fourteen, article nine-a of this chapter and article eight-i, article four, chapter eighteen-a of this code apply, except that the joint governing partnership board may exercise governing authority for operation and management of the school in the following areas:

(A) *Personnel.*

(1) Within the applicable laws for employment, evaluation, mentoring, professional development, suspension and dismissal, the powers and duties of the county superintendent are vested in the joint

governing partnership board with respect to the employees employed by the county in which the school is located or assigned to the school from the partner county.

(2) The employees are the employees of the employing county board and the partnership board may make recommendations concerning these employment matters to the employing board it considers necessary and appropriate;

(B) Curriculum.

(1) The joint governing partnership board is responsible for the formulation and execution of the school's strategic improvement plan and technology plan to meet the goals for student and school performance and progress.

(2) In its formulation of these plans, the partnership board shall consider the curriculum and plans of the respective county boards to ensure preparation of the students at the school for their successful transition into the higher grade level schools of the respective counties;

(C) Finances. The joint governing partnership board shall control and may approve the expenditure of all funds allocated to the school for the school budget from either county and may solicit and receive donations, apply for and receive grants and conduct fund raisers to supplement the budget; and

(D) Facilities. Consistent with the policies in effect concerning liability insurance coverage, maintenance and appropriate uses of school facilities for the schools of the county in which the school is located, the joint governing partnership board governs the use of the school facility and ensures equitable opportunities for access and use by organizations and groups from both counties.

(b) The joint governing partnership board may adopt policies for the school that are separate from the policies of the respective counties and, working in concert with its local school improvement council, may propose alternatives to the operation of the school which require the request of a waiver of policy, interpretation or statute from either or both county boards, the state board or the Legislature as appropriate.

(c) The superintendents and presidents of county boards of adjoining counties that have in effect on the effective date of this section a memorandum of understanding on the governance and operation of a jointly established school shall report to the Legislative Oversight Commission on Education Accountability on or before November 1, 2013, on the status of implementation of this section.

(1) Once established, the joint governing partnership board established under this pilot initiative shall remain in effect for five consecutive school years unless authority for the pilot initiative is repealed.

(2) The Legislative Oversight Commission on Education Accountability may request the superintendents and the presidents of the county boards to provide periodic updates on this pilot initiative. Also, at the conclusion of the five-year pilot initiative, they shall report their recommendations on the viability of the joint governing partnership board approach and any recommended changes to the Legislative Oversight Commission on Education Accountability.

(A) When the five-year period is concluded, by affirmative vote of both boards, the joint governing partnership board shall remain in effect; or

(B) The agreement between the boards for the governance and operation of the school shall revert to the terms in effect on the effective date of this section, subject to amendment by agreement of the boards.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-2a. Local school improvement council modification for certain jointly established and across county schools.

(a) For the purposes of this section, "parent" or "parents" means the person or persons who have legal responsibility for a student, including parents, guardians or custodians.

(b) *Jointly established schools* --

(1) In the case of a school that is jointly established by two or more adjoining counties as provided in section eleven, article five of this chapter, the school's local school improvement council shall be modified to include a composition of parents and at-large members in its membership as follows, notwithstanding subdivisions (4) and (5), subsection (a), section two of this article:

(A) Five parents of students enrolled at the school elected by the parent members of the school's parent teacher organization. If there is no parent teacher organization, the parent members shall be elected by the parents of students enrolled at the school in such manner as may be determined by the principal. No more than three parents may be residents of the same county; and

(B) Four at-large members appointed by the principal:

(i) Two shall reside in the school's attendance area, but may not be from the same county; and

(ii) Two shall represent business or industry and may not be from the same county.

(C) None of the at-large members is eligible for membership under any of the other elected classes of members.

(2) The local school improvement council shall meet at least once each year with the advisory council as established in the memorandum of understanding or with the joint governing partnership board for the jointly established school as applicable.

(3) Prior to commencing an authorized action under section three of this article for the purpose of proposing alternatives to the operation of the school and for the purpose of requesting a waiver of policy, interpretation or statute if needed to implement the alternative, the local school improvement council shall seek advice from the jointly established school's advisory council or joint governing partnership board.

(c) In the case of a school that is not a jointly established school as provided in section eleven, article five of this chapter, but whose net enrollment includes at least one hundred fifty students whose parents are residents of an adjoining county, upon a petition signed by a majority of the parents of the students who are enrolled at the school, but who reside in an adjoining county, the local school improvement council of the school shall be modified as provided in subdivisions (1) and (2), subsection (a) of this section.

(d) For local school improvement councils under this section who are proposing alternatives to the operation of the school which require the request of a waiver of policy, interpretation or statute under the authority and procedures as set forth in section three of this article, the terms "appropriate board" and "affected board" as used in section three, mean the board or the multiple boards from whom a waiver is necessary for the proposal to be implemented.



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