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# ***Ignorance of the Law is No Excuse – Part II***

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# Our Understandings for the Day

- To get the most out of today, please share your difficult situations and ask your tough questions
- Open & honest discussion
- Questions are welcome at any time
- Contact information for your colleagues/post-workshop email
- Have some fun



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# ***Caution!***

- Today we are speaking in generalities rather than specifics
- The information provided is not legal advice
- Information in this presentation may quickly become outdated
- Always update this information to ensure accuracy when dealing with a specific matter
- Consider seeking the advice of an attorney before tackling any significant legal issue involving new school laws, new Court and Grievance Board decisions, or new Ethics Commission advisory opinions

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*Highlights of the “Omnibus  
Education Bill” Enacted at the  
2019 Extraordinary Session of  
the West Virginia Legislature*

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Handout, pages 3-25

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1. Counseling
  2. Enrollment & Attendance
  3. Human Resources
  4. Governance
  5. Innovation
  6. Instruction
  7. Public Charter Schools
  8. Public School Support Plan
  9. Tax Holiday

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# 2. Enrollment & Attendance

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# Inter-County Student Transfers

- County “open enrollment policies” to take effect 7/1/20
- Mandatory provisions
  - County of residence need not approve transfer
  - No tuition charge

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# Inter-County Student Transfers

## ■ Optional provisions

- Admission criteria and preferences

- Application procedures and timelines

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# Inter-County Student Transfers

- **Optional provisions**
  - Transportation, but . . .
  - Capacity restrictions

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# Inter-County Student Transfers

- Permissible priorities
  - Siblings of enrollees
  - 11<sup>th</sup>/12<sup>th</sup> graders whose family moved away
  - Employees' children, grandchildren, wards

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# Inter-County Student Transfers

- **Permissible priorities**
  - Adjoining county students who would travel less time or distance to school
  - Adjoining county students who would surmount transportation obstacles

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# 4. Human Resources

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# Professional Seniority

- Replaces the rule for breaking seniority ties
- In doing so, introduces two unusual notions:
  - “seniority date” and
  - “certification” seniority

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# Professional Reductions in Force

- Declares that all RIF decisions shall be based on qualifications, and require county board policies that define qualifications, but actually requires that only three kinds of RIF decisions be based on those policies



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# Professional Reductions in Force

- Evaluations under WV BOE Policy 5310 take on a new role
- Three factors now determine which professional employees the county must release in a RIF:
  - seniority,
  - certification or licensure, and
  - performance evaluations

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# Professional Reductions in Force

- House Bill 206 does not direct how performance evaluations shall enter into the decision about which professional to release in a RIF
- It says only that a county “may” release from employment any classroom teacher who has unsatisfactory evaluations for the previous two consecutive years, regardless of years of service

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# Professional Reductions in Force

- Performance evaluations may play one other role in RIFs
- If a county's policy on qualifications includes any of the 11 criteria that, by law, we use to assess the candidates for posted professional vacancies, then the policy may do so *“only after considering personnel whose last performance evaluation . . . is less than satisfactory”*

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# 7. Public Charter Schools

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# What is a public charter school?



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- It is a public school or a program within a public school
  - It is part of the state's public education system
  - It is a local educational agency, but only for purpose of applying for federal grants

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- A public charter school is a school established by a non-profit group that has obtained or has applied for 501(c)(3) tax-exempt status

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- There are different kinds of public charter schools. House Bill 206 recognizes two kinds
    - “program conversion public charter school”
    - “start-up public charter school”



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# Public charter schools

- may not be home-school based
- are prohibited from affiliating with or espousing any specific religious denomination, organization, sect, or belief, and must not promote or engage in any religious practices in any programs, policies, or operations

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# Public charter schools

- are not allowed to affiliate with any organized group whose espoused beliefs attack or malign an entire class of people as identified through listings of such groups as may be made by the U. S. Department of Justice, the FBI, or similar state organizations
- are schools to which parents or guardians choose to send their children

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- A public charter school must provide a program of public education that includes one or more of the following:
    - pre-K
    - any grade or grades from kindergarten to grade 12 including
      - post-secondary credit
      - dual credit
      - advanced placement
      - internship, and
      - industry workforce programming

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- Public charter school students participate like noncharter public school students in
    - co-curricular and extracurricular activities
    - state-sponsored or district-sponsored
      - athletic and academic interscholastic leagues
      - competitions
      - awards
      - scholarships
      - recognition programs

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- There is an expectation that a public charter school will empower new, innovative, and more flexible ways of educating students within the public school system

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**Is there a certain number  
of public charter schools  
that can or will be  
established?**



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- No public charter school can begin operation before July 1, 2021
  - Only a school for which an application was made by August of 2020 may begin operating at that time
  - There can be no more than 3 public charter schools before July 1, 2023

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- Up to 3 public charter schools may be created in the year that begins July 1, 2023
  - Every 3 years, 3 more may be created
  - If the Mountaineer Challenge Academy is converted to a public charter school, it does not count towards the limit



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**How is a public charter  
school funded?**



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- The State Board is to enact a policy about funding public charter schools
  
  - The policy must require that 90% of the per-pupil total basic foundation allowance will follow each student to the public charter school
    - But the policy may make an adjustment for student transportation and current expenses in order to account for having to pay a charter school without a corresponding reduction in the board's transportation and current expenses

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- The policy must provide that, for state aid purposes, a public charter school student will be counted in the net enrollment of the county paying for the student
  - The policy will require the State Department to follow federal requirements in ensuring that federal funding follows a student to a public charter school

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- Public charter schools cannot charge tuition, but they can assess student fees that are also assessed of students in noncharter public schools
  - Public charter schools cannot levy taxes

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- A public charter school must annually engage an external auditor to perform an independent audit of the school's finances
  
  - The audit must be submitted within 9 months of the end of the fiscal year to
    - the county board of education or State Board of Education that authorized the public charter school, and
  
    - the State Superintendent of Schools for which the audit was performed.

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How is a public charter  
school governed?



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- Each public charter school will be governed by a governing board of at least 5 members, including
    - at least two parents of students attending the public charter school and
    - two members who reside in the community served by the public charter school

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## The governing board:

- Is accountable to, and under the oversight of, the county board of education or State Board of Education that authorized the school
- Has autonomy over “key decisions” like decision about finance, personnel, scheduling, curriculum and instruction



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**Does a public charter school have to follow the same laws and regulations as our other public schools?**



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House Bill 206 exempts public charter schools  
from ALL statutes and rules applicable to  
noncharter schools or boards of education  
**EXCEPT**

- all federal laws and authorities applicable to noncharter schools in this state
- West Virginia's Freedom of Information Act
- West Virginia's Open Governmental Proceedings Act
- immunization requirements applicable to noncharter public schools

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- compulsory attendance requirements applicable to noncharter public schools
  - the same minimum number of days or an equivalent amount of instructional time per year as required of noncharter public schools
  - the same student assessment requirements applicable to noncharter public schools (but only to the extent that will allow the State Board to measure the performance of the public charter school)
  - West Virginia's Student Data Accessibility, Transparency and Accountability Act

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- use of the electronic education information system (currently, WVEIS) established by the State Department of Education for the purpose of reporting required information
  - reporting information on student and school performance to parents, policy-makers, and the general public in the same manner as noncharter public schools, utilizing the electronic format established by the State Department of Education
  - all applicable accounting and financial reporting requirements as prescribed for public schools, including adherence to generally accepted accounting principles

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- a criminal history check pursuant to West Virginia Code for any staff person that would be required if the person was employed in a noncharter public school, unless a criminal history check has already been completed for that staff person pursuant to the Code
  - facility zoning rules that apply to noncharter public schools
  - facility building codes, regulations and fees that apply to noncharter public schools; and
  - the same student transportation safety laws applicable to public schools when transportation is provided.

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*What is missing from  
that list?*



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**What is the role of the  
county board of education  
with respect to public  
charter schools?**



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# Authorizers

- Review applications for public charter schools
- Approve or reject applications
- Enter into contracts with applicants
- Oversee public charter schools
- Decide whether to renew, not renew, or revoke charter contracts



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Once a public charter school is established, what is the responsibility of the county board of education?



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- Oversight of the public charter school
  - If the school's performance or legal compliance is unsatisfactory, reasonable opportunities for the school to improve
  - When appropriate, placing the school on a corrective action plan
  - Requesting and receiving annual reports

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***RECENT DECISIONS FROM THE  
GRIEVANCE BOARD***



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- **Chapman v. Jefferson County Board of Education, Docket No. 2018-1321-JefED (January 3, 2019).**
  - An employee's absence from work for one day to take care of her sick minor son does not rise to the level of willful neglect of duty. Also, in considering whether to mitigate an employee's punishment, factors to be considered include the employee's work history and personnel evaluations, whether the penalty is clearly disproportionate to the offense proven, the penalties employed by the employer against other employees guilty of similar offenses, and the clarity with which the employee was advised of prohibitions against the conduct involved.

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- **Holton v. Lincoln County Board of Education, Docket No. 2018-1301-LinED (January 14, 2019).**
  - If an employee does not grieve specific disciplinary incidents, he cannot place the merits of such discipline in issue in a subsequent grievance proceeding. In such cases, the information contained in prior disciplinary documentation must be accepted as true.

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- **Rice v. Wayne County Board of Education, Docket No. 2017-2221-CONS, (January 16, 2019).**
  - By law, county boards must reimburse a school employee for each mile traveled when the employee is required to use a personal motor vehicle in the course of employment.

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- **Clutter v. Harrison County Board of Education, Docket No. 2018-1104-HarED, (March 1, 2019).**
  - Unless an aide, who is qualified and certified as a paraprofessional, is performing job duties that may not be performed by an aide without the paraprofessional certification, the aide is not entitled to paraprofessional pay.

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- **Smith v. Roane County Board of Education, Docket No. 2018-1278-CONS, (March 18, 2019).**
  - The reasonable suspension of an employee, pending investigation of an allegation of misconduct, is not disciplinary in nature. Nor is it arbitrary or capricious, a violation of statute, or an abuse of discretion.



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□ **Dempsey v. Kanawha County Board of Education, Docket No. 2019-0324-KanED, (June 17, 2019).**

- The required annual review of each service person's job classification is not discretionary. It is required. In order to prevail in a misclassification grievance, an employee must establish that the employee's job duties and responsibilities more closely fit the sought classification rather than the existing classification. However, simply because an employee is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render the employee misclassified per se.



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- **Gonzales v. Cabell County Board of Education, Docket No. 2018-1255-CabED, (September 27, 2019).**
  - Where a school employee's insubordinate and willfully negligent acts directly compromise the safety of school children to which the employee has been entrusted, such actions are not correctable within the meaning of the State Board of Education policy that entitles an employee to an improvement plan before the employee's contract of employment is suspended or terminated.

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*RECENT DECISIONS FROM THE OPEN  
GOVERNMENTAL MEETINGS ADVISORY  
COMMITTEE*



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□ **Open Meetings Advisory Opinion No. 2019-01 (January 3, 2019).**

- County boards must post meeting notices and make meeting agendas available at least three business days before each regularly scheduled meeting and at least two business days before each special meeting. Legal holidays, Saturdays, Sundays, and the day of the meeting are not counted when computing the number of business days required for giving appropriate notice of a board meeting under the Open Governmental Proceedings Act. Outside-of-school environment (OSE) days and out-of-calendar (OC) days must be counted when computing the notice time periods, unless they fall on a legal holiday or the day of the board meeting.

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□ **Open Meetings Advisory Opinion No. 2019-02 (January 3, 2019).**

- The Open Governmental Proceedings Act requires that county boards allow the placement and use of equipment necessary for broadcasting, photographing, filming or recording public meetings. The ordinary use of such equipment, by members of the public or the media, during a board meeting does not constitute undue interference with the meeting. However, if a county board, acting in good faith, determines that the size of the meeting room is such that all the members of the public present and the audio/video equipment and personnel necessary for broadcasting, photographing, filming and recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting, and an adequate alternative meeting room is not readily available, a county board may require that all audio/video equipment and the persons operating it be restricted to one area of the meeting room. The decision to require such pooling of equipment and persons must be made in good faith and consistent with the purposes of the Open Governmental Proceedings Act. Open Meetings Advisory Opinion No. 2019-02 (January 3, 2019).

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# Wrapping Up

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Thank you for joining  
us today!

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