



2019 LEGISLATIVE UPDATES

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

October 25, 2019 – WVASBO Fall Conference



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HIGHLIGHTS OF THE “OMNIBUS EDUCATION BILL” ENACTED AT THE 2019 FIRST EXTRAORDINARY SESSION OF THE WEST VIRGINIA LEGISLATURE

By the Education Law Group at Bowles Rice LLP

House Bill 206
Relating to Public Education
In effect June 24, 2019
[Read the Entire Bill](#)

Counseling

House Bill 206 requires school counselors to spend at least 80% of work time in a direct counseling relationship with pupils (compared to 75% under the prior version of the counselor statute). The bill also requires school counselors to devote no more than 20% of the work day to administrative activities related to counseling (compared to 25% under the prior version of the counselor statute). *West Virginia Code § 18-5-18b(f)*.

Enrollment and Attendance

Absences

Previously, when a student had three total unexcused absences during a school year, the attendance director or assistant attendance director had to serve written notice on the parent, guardian, or custodian advising that the student’s attendance was required, and that if the student accumulated five unexcused absences, a conference with the principal or a designee would be required. When the student had five total unexcused absences during a school year, the attendance director or assistant director had to serve written notice that the parent, guardian, or custodian, along with the student, must report to the school for that conference to discuss and correct the circumstances causing the unexcused absences.

House Bill 206 replaces those requirements. Now, once a student has three unexcused absences in a school year, the attendance director, assistant director, or principal must “make meaningful contact” with the parent, guardian, or custodian to learn the reasons for the unexcused absences and what measures the school may employ to assist the student in attending school and not incurring additional unexcused absences. *West Virginia Code § 18-8-4(b)*.

When the student has five total unexcused absences in a school year, the very same procedure is now required. The attendance director, assistant director, or principal must “make meaningful contact” with the parent, guardian, or custodian to learn the reasons for the unexcused absences



and what measures the school may employ to assist the student in attending school and not incurring additional unexcused absences. *West Virginia Code § 18-8-4(c)*.



Inter-County Student Transfers

For many years, a statute has provided that a student residing in one county can attend public school in another West Virginia county if the school boards of both counties approve the transfer. When a transfer occurs, the student, if full-time, is counted, for state aid purposes, in the net enrollment of the district to which the pupil transfers. But, if the student transfers on only a part-time basis, the student continues to be counted for that purpose in the net enrollment of the district of residence. Additionally, the two school districts are supposed to agree on a tuition to be paid by the county board of the student's residence to the receiving board, not to exceed the difference between the state aid per pupil received by the two counties. The student, parent, or guardian cannot be required to pay a fee or tuition for the transfer. A county board's refusal to consent to a student transfer can be appealed by the parent or guardian to the State Superintendent of Schools under a process established by the State Board of Education. *West Virginia Code § 18-5-16; West Virginia Code § 18-5-16a.*

Under House Bill 206, those provisions remain in effect until July 1, 2020. Student transfer agreements made under those provisions prior to July 1, 2020, will remain in effect on and after that date. *West Virginia Code § 18-5-16(i); West Virginia Code § 18-5-16a.*

For school years beginning on or after July 1, 2020, House Bill 206 requires every county board of education to, instead, adopt and implement an open enrollment policy that permits inter-county student transfers without charging tuition and without requiring approval of the school board of a student's county of residence. The policy must clearly articulate any admission criteria, application procedures, transportation provisions, timelines for open enrollment periods, and restrictions on transfers due to building capacity limits. A parent or guardian will still be allowed to appeal, per State Board of Education policy, a county board's refusal to accept a student's transfer. *West Virginia Code § 18-5-16(c); West Virginia Code § 18-5-16(d).*

In its open enrollment policy, a county board may give enrollment preference to students (1) who are siblings of students already enrolled through open enrollment; (2) who have completed tenth grade, have become nonresidents due to family relocation, and wish to complete their education in a specific school; (3) who are children, grandchildren, or legal wards of employees; (4) whose legal residence is more proximate to a school in the receiving county, whether calculated by miles or travel time; and (5) who reside in a part of a county where topography, impassable roads, long bus rides, or other conditions prevent their practicable transportation to a school within the county of residence and where a school in a contiguous county is more easily accessible. A county will also have to comply with all enrollment requirements for children in foster care or who meet the McKinney-Vento Homeless Assistance Act's definition of unaccompanied youth. *West Virginia Code § 18-5-16(c)(1); West Virginia Code § 18-5-16(c)(2).*

A county board educating a nonresident student under these new provisions is authorized, but not required, to provide transportation to the student. However, school boards do not have to uniformly



provide nonresident student transportation. In deciding whether to furnish transportation to a student from another county, a school board may consider whether the student meets the eligibility criteria for free and reduced lunch and milk. However, in the case of a student with disabilities who has an individualized education program requiring transportation, the receiving board will be required to provide transportation to and from school, or to and from an agreed pickup point on a regular transportation route, or “for the total miles traveled each day for the nonresident student to reach the school.” *West Virginia Code § 18-5-16(c)(3)*.

The legislation provides that when a student is transferred on a full-time basis from one district to another, the county to which the student transfers will have to include the student in its net enrollment for purposes of the state basic foundation program. If the student returns to the county of residence after the second month of a school year, the counties must pro-rate the amount the county of residence would have received under the foundation program. *West Virginia Code § 18-5-16(e)*.

The bill expressly provides that nothing in the student transfer provisions supersedes eligibility requirements of the Secondary Schools Activities Commission for participation in extracurricular activities. *West Virginia Code § 18-5-19(i)*.

Mountaineer Challenge Academy

House Bill 206 directs the Governor to both expand the capacity of the Mountaineer Challenge Academy in Preston County and establish, in Fayette County, a second location for the Academy. To the extent necessary to achieve those ends, and to maximize the use of federal funds, the Governor is instructed to pursue an amendment to the existing agreement between the Governor and the United States Secretary of Defense. *West Virginia Code § 15-1B-24*.

Governance

Faculty Senates

Each faculty senate is now required to allot \$300 instead of \$100 to each classroom teacher and librarian for expenditure during each instructional year, to be spent on academic materials, supplies, or equipment, which, in the recipient’s judgment, will assist in providing instruction. *West Virginia Code § 18-5A-5*.

Local School Improvement Councils

Three provisions of House Bill 206 affect the membership of local school improvement councils. The first is a new rule prohibiting any of the parent members of an LSIC from being simultaneously employed at the school in any capacity. (Previously, one of the three parent members could be so employed.) The second adds an at-large member to each LSIC, to be appointed, like the other two at-large members, by the principal. Unlike the other two at-large members, the additional at-large



member need not reside in the school’s attendance area or represent business or industry. The third provision replaces one that allowed the vocational director or principal to appoint two more members of a vocational-technical school LSIC. The new provision applies not only to vocational-technical schools, but also to the LSICs of comprehensive middle schools and comprehensive high schools. It requires the school’s director or principal, as applicable, to appoint up to four additional LSIC members from the categories of employer, employer-sponsored training program, apprenticeship program, and/or post-secondary education. *West Virginia Code § 18-5A-2(a)(4)*; *West Virginia Code § 18-5A-2(a)(5)*; *West Virginia Code § 18-5A-2(a)(5)*.

Previously, an LSIC chair could not serve more than two consecutive one-year terms. LSIC chairs are no longer term-limited. *West Virginia Code § 18-5A-2(f)*.

School principals must now notify LSIC members at least five employment days, instead of two, before the annual organizational meeting. Under prior law, the notice had to be written. It can now be either written or given by electronic means. Notice of all other LSIC meetings continues to be the responsibility of the LSIC chair. As before, notice given by the chair must be written; the statute does not give the chair the option of giving notice by electronic means. The chair must now give notice five employment days in advance of a meeting instead of two days in advance. *West Virginia Code § 18-5A-2(e)*; *West Virginia Code § 18-5A-2(f)*; *West Virginia Code § 18-5A-2(g)*.

The legislation repeals the requirement that local school improvement councils annually conduct a meeting to engage the public, students, school employees, and others in a dialogue about effective discipline policies. It also removes the requirement that LSICs annually develop and deliver a report to the countywide council on productive and safe schools. Instead, each LSIC must now annually conduct at least one meeting to engage parents, students, school employees, business partners, and other interested parties in a “positive and interactive dialogue” regarding the school’s academic performance and the school’s standing as determined by measures adopted by the State Board of Education. Participants in the meeting must be given an opportunity to make specific suggestions on how to address issues affecting the school’s academic performance. The issues may include parent and community involvement, the learning environment, student engagement, attendance, supports for at-risk students, curricular offerings, resources, and the capacity for school improvement. The meeting must be announced ten employment days in advance. *West Virginia Code § 18-5A-2(h)*.

Under House Bill 206, the LSICs of only those schools deemed to be low performing under the State Board’s accountability system are required to meet annually with the county board of education. At the meeting, the principal and LSIC chair (or another designated member) must address the dialogue from the meeting, *above*, concerning the school’s academic performance and standing, as well as any other matters identified by the county board in the meeting agenda the board provides to the LSIC. The president and chair may, at the same meeting, provide any other information, comments, or suggestions the LSIC wishes to bring to the county board’s attention.



Anything presented by the LSIC at this meeting must be submitted to the school board in writing. *West Virginia Code § 18-5A-2(1)*.

In addition to receiving the school's cooperation in implementing certain policies and programs already identified in the LSIC statute, an LSIC is now entitled to the school's cooperation in implementing policies and programs to encourage students to adopt safe and healthy lifestyles, as well as policies and programs to communicate to students the common skills and attributes that employers seek in prospective employees. *West Virginia Code § 18A-5-2(l)(6)*; *West Virginia Code § 18A-5-2(l)(7)*.

Promoting School Board Effectiveness

For more than 15 years, county boards of education have been under a duty to have policies to promote school board effectiveness. Boards have also been required to review the policies annually, on or before August 1.

House Bill 206 reiterates the requirement, setting a new deadline of January 2020 for each board to have such policies. As before, the policies must address direct links between the county board of education and its local school improvement councils and faculty senates; direct links between the county board and the community at large; periodic review of personnel policies; broad guidelines for oversight, accountability, and long-range plans; and data-based decision-making. However, county boards are no longer required to file the policies and policy amendments with the State Board of Education. *West Virginia Code § 18-5-14(a)*.

The legislation mandates that a county board meet, at least annually, with the LSIC of each school that is determined, under the State Board of Education's accountability system, to be low-performing. County boards are permitted, but no longer required, to meet with representatives of the remaining LSICs. *West Virginia Code § 18-5-14(a)(1)(A)*.

At least 30 days before each such required meeting, a county board of education must give the LSIC an agenda for the meeting. The agenda must require the school's principal and LSIC chair (or a member designated by the chair) to address (1) the dialogue that occurred in the LSIC's meeting(s) with parents, students, school employees, business partners, and other interested parties where participants were allowed to suggest how to address issues affecting the school's academic performance; (2) any reports by the county superintendent about the school's performance and progress; and (3) any issues designated by the county board concerning the school's performance, curriculum, and progress in meeting the school's improvement plan and relevant parts of the county's strategic improvement plan. In addition to the required annual meeting, the county board can, throughout the year, make written requests for information from the LSIC of a low performing school or hold community forums to receive input from the affected community. *West Virginia Code § 18-5-14(a)(1)(B)*; *West Virginia Code § 18-5-14(a)(1)(C)*.



Human Resources

House Bill 206 makes significant changes to statutes that govern professional employees' compensation and benefits, seniority, reduction in force, and recall, plus the posting of vacancies in classroom teacher positions. The legislation also addresses the salaries and benefits of service employees. Finally, the bill repeals provisions for state-funded equity supplements for both professional and service employees.

Professional Employee Compensation and Benefits

For the 2019-2020 school year, and continuing thereafter, each annual salary figure appearing on the 2018-2019 state minimum salary schedule for teachers is increased by \$2,120. *West Virginia Code § 18A-4-2(b)*.

Effective July 1, 2019, and solely for purposes of the state salary schedule, three additional years of experience are credited to each classroom teacher who provides math instruction in his or her certified area for at least 60% of the time that he or she instructs students. If this causes a teacher's years of experience to exceed the maximum years of experience provided on the salary schedule, the teacher must nevertheless be paid the additional amount equivalent to three additional years of experience. *West Virginia Code § 18A-4-2(d)*.

Effective July 1, 2019, and solely for purposes of the state salary schedule, three additional years of experience are credited to each classroom teacher certified in special education and employed as a full-time special education teacher. If this causes a teacher's years of experience to exceed the maximum years of experience provided on the salary schedule, the teacher must nevertheless be paid the additional amount equivalent to three additional years of experience. *West Virginia Code § 18A-4-2(e)*.

County boards of education are now specifically permitted to provide additional compensation to teachers in three categories. The first category consists of teachers who are assigned and fully certified to teach in a subject area in which the county board finds it has a critical need and shortage of fully certified teachers. The second category consists of those who teach in schools that are in remote geographical locations or in schools that have experienced high rates of turnover in experienced teachers. The third category consists of teachers who, in addition to regularly assigned teaching duties, are assigned as a master teacher, academic coach, or other title with duties that include providing strong school-based support and supervision to assist licensure candidates in a clinical internship, beginning teachers, and other teachers at the school to improve professional practice as set forth in the county's comprehensive system of support for teacher and leader induction and professional growth. *West Virginia Code § 18A-4-5a(a)(3)*; *West Virginia Code § 18A-4-5a(a)(4)*; *West Virginia Code § 18A-4-5a(a)(5)*.



Professional employees are now permitted, during each school year, to use four days of paid personal leave, instead of only three, without regard to the cause of the absence. *West Virginia Code § 18A-4-10(a)(3)*.

Effective July 1, 2019, a classroom teacher who has not used more than four days of personal leave during the 200-day employment term will receive a bonus of \$500 at the end of the school year. This bonus cannot be counted as part of the final average salary in calculating retirement benefits. *West Virginia Code § 18A-4-10(c)*.

Professional Employee Seniority

Under statutory provisions untouched by House Bill 206, professional employee seniority is expressed as a quantity, rather than as a date, e.g., “two years” instead of “August 15, 2017.” Professional seniority also accrues in all areas of a teacher’s licensure, and not in each separate certification area, regardless of whether the employee achieved some certifications later than others. *West Virginia Code § 18A-4-7a(g); West Virginia Code § 18A-4-7a(i); West Virginia Code § 18A-4-7a(j); West Virginia Code § 18A-4-7a(k); West Virginia Code § 18A-4-7b*.

Prior to House Bill 206, in making seniority-based decisions among professionals who were tied in seniority, county boards were required to use a random process to break the tie. The result of the tiebreaker established the relative seniority of the individuals for purposes of the decision. Unlike the corresponding rule for service employees, the professional seniority provision did not state that the result of a tiebreaker was permanent. If a seniority-based decision had to later be made among the same employees while they had the same seniority, county boards typically conducted new tiebreakers. A special rule applied in breaking seniority ties among principals when making decisions on reductions in force; those ties were to be resolved based on “qualifications.”

The new legislation, in addressing seniority ties among professional employees, eliminates all the previous provisions for breaking seniority ties among professional employees. It replaces them with a single new rule that applies only when two or more persons, initially employed as regular teachers on or after July 1, 2019, have “the same certification” and the same seniority “date” (a term that is not defined). In such cases, “all employees” with an identical seniority date and the same certification must, within 30 days of when the tie occurred, participate in a random tiebreaker. The outcome of the tiebreaker will, for the duration of the participating employees’ careers with the county board of education, govern their relative seniorities within the certification as long as they have the same seniority date. The statute no longer contains a separate “qualifications” rule for breaking seniority ties among principals. *West Virginia Code § 18A-4-7a(h)*.

The Legislature made two other changes to the seniority laws. One frees county boards from having to annually compile and make available to employees a list of all professional personnel, their areas of certification, and their seniority. The other entitles personnel in public charter schools “to continue to accrue seniority” in the same manner as if employed in a noncharter public school



in the county “for the purpose of employment in noncharter public schools.” *West Virginia Code § 18A-4-7a(v)*.

Reductions in Force of Professional Employees

House Bill 206 declares that, in the case of professional employees, “all decisions on reductions in force shall be based on qualifications.” *West Virginia Code § 18A-4-7a(l)*.

Accordingly, the bill changes the longstanding rule for identifying the teacher to be transferred when reducing the number of classroom teaching positions in an elementary school. The “least qualified classroom teacher” in the school, instead of the least senior, must now be recommended for transfer. In its emphasis on qualifications, the bill also amends a provision that applies when a county board reduces the number of teachers at a specific grade level in an elementary school. Now, the “least qualified teacher in the grade level that needs to be reduced,” instead of the least senior teacher in the grade level to be reduced, is the one whose job is eliminated and has the option, in some instances, of bumping the school’s “least qualified” classroom teacher, instead of the school’s least senior classroom teacher. *West Virginia Code § 18A-4-7a(s)*.

For purposes of these new reduction-in-force rules, the meaning of “qualifications” is left to each county board of education, to be set forth in a written policy. The statute prohibits a board from using salary in the definition of qualifications. It also requires the county board to consider whether to adopt the same criteria that continue to govern the assessment of candidates for posted professional vacancies: (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 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) in the case of a classroom teaching position or the position of principal, certification by the National Board for Professional Teaching Standards; (6) specialized training relevant to the performance of the duties of the job; (7) past performance evaluations conducted pursuant to West Virginia Code § 18A-2-12 and § 18A-3C-2 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 transfer or recall to 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 transfer or recall to a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to West Virginia Code § 18-5A-5 by the faculty senate of the school at which the employee will be performing a majority of his or her duties. *West Virginia Code § 18A-4-7a(l)*.

After considering whether to include the 11 criteria in its definition of qualifications, a county board may apparently adopt a policy that includes none or less than all of them. However, a curious provision of the House bill states that if the board decides to include any of the 11 criteria in its qualifications policy, it may do so “only after considering personnel whose last performance



evaluation conducted pursuant to [the evaluation statutes] is less than satisfactory.” *West Virginia Code § 18A-4-7a(l)(2)*.

Apart from the provisions for reducing elementary school classroom teacher positions, *above*, and despite the bill’s declaration that “all decisions on reductions in force shall be based on qualifications,” the new law does not require or even authorize a county board of education to use its county policy on “qualifications” to determine which professional employees will lose jobs in a reduction in force. Rather, the legislation specifies that the selection of professional employees to be released from employment during a reduction in force must be based on three factors. The first two factors are, as under pre-existing law, seniority, and certification/licensure. The third consideration, new to the process, is “performance evaluations.” *West Virginia Code § 18A-4-7a(m)*.

As to the role of performance evaluations in identifying professionals to be let go in a reduction in force, the legislation contains just one provision, and it is permissive, instead of mandatory. The statute provides that a county board “may” release from employment any classroom teacher who has unsatisfactory evaluations for the previous two consecutive years, regardless of years of service, instead of releasing less senior teachers with satisfactory performance evaluations. *West Virginia Code § 18A-4-7a(m)(1)*.

Finally, House Bill 206 amends the rule requiring county boards to adopt policies that define which professional positions are to be treated as lateral when, to avoid release during a reduction in force, a professional employee may be entitled to bump another professional. In formulating and amending their laterality policies, counties used to have a mandatory duty to consider 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. The amendment states that along with days in the period of employment, counties now “may” consider the first four of those indicators in defining lateral positions. *West Virginia Code § 18A-4-7a(n)*.

Except as noted, *above*, there are no significant changes to the reduction in force laws that determine which professional employees will be released and which professionals will avoid release by either bumping other employees or being placed into vacancies for the next school year.



Preferred Recall of Released Professional Employees

Previously, county boards of education were required to place on a preferred recall list the professional employees whose seniority was insufficient for their retention during a reduction in force. House Bill 206 removes the reference to seniority. The statute now refers to the preferred recall list as a list of professional personnel whose “lesser qualifications, as determined by county board policy,” are insufficient to allow their retention. The county board policy is the same one required by the reduction-in-force provisions of the legislation, *above*. *West Virginia Code § 18A-4-7a(l)*; *West Virginia Code § 18A-4-7a(o)*.

This new terminology is arguably at odds with the bill’s requirement, *above*, that the selection of professional employees for release during a reduction in force must be based on three factors: seniority, certification/licensure, and performance evaluations. Except for certain elementary school classroom teacher reductions in force, nothing in House Bill 206 predicates the reduction-in-force-related release of professionals on qualifications as determined by board policy. *West Virginia Code § 18A-4-7a(m)*; *West Virginia Code § 18A-4-7a(s)*.

A corresponding change was made to the Code subsection that describes the recall rights of professionals whose names are on the preferred list. Previously defined as a right to be recalled to open professional positions based on seniority, the right is now one to be recalled based on qualifications as defined in the county board policy. The Legislature also removed statutory language that gave recall-listed professionals a priority in substituting for other professionals whose absences are known or expected to extend for at least 20 consecutive workdays. *West Virginia Code § 18A-4-7a(l)*; *West Virginia Code § 18A-4-7a(o)*.

The legislation relieves county boards of educations of the duty to notify professionals on the preferred list, by certified mail, about each posted opening for which they qualify. Only an annual notice is now required. Sent by certified mail, the notice must alert personnel on the preferred list to the county board’s job application procedures and any websites used to advertise vacancies. *West Virginia Code § 18A-4-7a(p)*.

The rules governing the rescission of reduction-in-force-related professional employee discharges and transfers remain unchanged. These include the right of a certified person on the preferred recall list to be placed in the former job of a less senior person on the list when, before August 1, the reason for eliminating the job ceases to exist. *West Virginia Code § 18A-4-7a(m)(6)*.

Re-Postings of Vacancies in Professional Positions

Prior to House Bill 206, county boards of education were permitted to re-post classroom teacher openings a second time to attract more qualified applicants, but only if fewer than three individuals applied during the initial posting. As amended, the statute does not restrict the re-posting of a classroom teacher vacancy to situations where there are less than three applicants under the initial posting. Nor does it limit the number of re-postings for a classroom teacher vacancy, provided that



the opening is filled within 30 days of the end of the first posting period if one or more qualified persons apply under any of the postings. *West Virginia Code § 18A-4-7a(q)(r)*.

Service Employee Compensation and Personal Leave

For the 2019-2020 school year, and continuing thereafter, each monthly salary figure appearing on the 2018-2019 state minimum pay scale for service employees is increased by \$115. *West Virginia Code § 18A-4-8a(a)(1)*.

Service employees are now permitted, during each school year, to use four days of paid personal leave, instead of only three, without regard to the cause of the absence. *West Virginia Code § 18A-4-10(a)(3)*.

Equity Supplements for Professional and Service Employees

In House Bill 206, the Legislature declares that, because the public school support program takes into account each county's specific characteristics and ensures that all counties are provided equitable funding, the program is a non-discriminatory mechanism for financing the educational system in our state. The legislation also states that counties must have the discretion and flexibility to use local county funds not otherwise factored into the public school support program to provide the best education possible to their students, including providing salary supplements to teachers. *West Virginia Code § 18A-4-5(a)*.

Against that background, House Bill 206 removes from the school statutes the definition of "salary equity among the counties." It also repeals the requirement that the State Department of Education include in its budget request a request for funding sufficient to meet the objectives of salary equity. Professional and service employees are still entitled to the salary supplements that were previously called "equity supplements," but the supplements are now referred to only as "supplements." *West Virginia Code § 18A-4-5; West Virginia Code § 18A-4-2(f); West Virginia Code § 18A-4-8a(f)*.

Innovation

The preexisting version of West Virginia Code § 18-5A-3 permitted local school improvement councils, by vote of two-thirds of their members, to propose alternatives to the operations of their schools. Under the statute, any such proposal had to meet or exceed the high quality standards established by the State Board of Education and had to be intended to (1) increase administrative efficiency, (2) enhance the delivery of instructional programs, (3) promote community involvement in the local school system, or (4) improve, in general, the school's educational performance.

The statute required that any such proposal contain certain information. It also established a process by which each proposal would be considered, including proposals that required the waiver



of a State Superintendent of Schools interpretation or a policy or rule of the state or county board of education. If a waiver request of that nature involved policies or interpretations affecting employees, a majority of the local affected employee group had to agree. In the case of proposed waivers of state statute or legislative rule, an LSIC could directly ask the Legislative Oversight Commission on Education to consider whether to recommend that the Legislature grant the request.

Under that process, all LSIC proposals for alternatives to the operations of the school were submitted to the State Board of Education for review and either approval or disapproval. Although the State Board was required to consult with the county board in reviewing a proposal, the county board's approval of the proposal was not required. In approving a proposal, the State Board was required to establish a process to evaluate the operation of the alternative.

House Bill 206 not only continues to permit LSICs to propose alternatives to the operations of their schools; it also expressly encourages them to do so. It no longer requires that every proposal both meet or exceed the State Board's high quality standards *and* have, as its purpose, one of the four enumerated outcomes listed above. It is enough that a proposal is one to enable a school to meet or exceed the high quality standards or one that seeks any one of the four enumerated outcomes. The legislation expands the list of sanctioned outcomes to include proposals to promote business partnerships, as well as proposals to promote parent involvement in the school. *West Virginia Code § 18-5A-3(a)*.

A two-thirds vote of LSIC members is still required before a proposal will be considered. In the case of a proposal involving the waiver of policies, rules, or interpretations affecting employees, a majority of the local affected employee group must still agree, but that requirement now also applies to any proposal involving the waiver of a state statute affecting employees. *West Virginia Code § 18-5A-3(c)*.

House Bill 206 directs LSICs to submit their proposed alternatives to the county board instead of the State Board. After requesting any additional information or clarifications from the LSIC, a county board must approve or disapprove the proposal and return it to the LSIC with a statement of reasons for the action taken. *West Virginia Code § 18-5A-3(d)*.

Approval by the county board constitutes a grant of any requested waiver of county policies or rules. If an approved proposal requires waiver of any State Board policies or rules, the county board must send the approved proposal to the State Board for final determination. The State Board's approval of the proposal constitutes a grant of the waiver. Similarly, if a county-approved proposal requires a waiver of a State Superintendent's interpretation, the county board must send it to the State Superintendent, whose approval of the proposal constitutes a grant of the waiver. If the proposal requires waiver of a state statute, the county board must send it to the Legislative Oversight Commission on Education Accountability, which will determine whether to recommend an appropriate Act of the Legislature. *West Virginia Code § 18-5A-3(d)(1)*; *West Virginia Code § 18-5A-3(d)(2)*; *West Virginia Code § 18-5A-3(d)(3)*; *West Virginia Code § 18-5A-3(d)(4)*.



The county board of education, instead of the State Board, is responsible for establishing a process to evaluate the operation of an approved LSIC alternative to the operation of the school. *West Virginia Code § 18-5A-3(d)(6)*.



Instruction

Exceptional Needs Expense Fund

County boards of education are now authorized to establish from surplus funds, by policy, an Exceptional Needs Expense Fund for the benefit of students who are likely to perform better outside the public school setting. *West Virginia Code § 18-5-48.*

Without limiting the provisions that a county might include in its policy, House Bill 206 states that the policy's provisions "may" include (1) allowing the county board to spend excess funds or donated funds on services and materials that are necessary for a student's education success but are not met within the public school district; (2) the amount of funds to be deposited into the fund annually, which may vary based on the availability of surpluses; (3) the qualifying expenses for which the funds may be used; (4) measures to protect against improper use of the funds, such as an audit of all expenditures related to an individual student for services outside the district; (5) conditions under which payments from the fund will cease; (6) eligibility requirements for service providers that can accept payments from the fund; and (7) a requirement that overpayments recaptured from refunded expenditures revert to the fund. *West Virginia Code § 18-5-48.*

Mountain State Digital Literacy Project

Beginning with school year 2020-2021, the State Board of Education must implement a pilot project under which participating schools will receive instructional resources for students and teachers featuring an extensive curriculum related to digital literacy, online assessment preparation, and internet safety. The project must complement and build upon (1) digital literacy standards and assessments established under the State Board's policy that details the appropriate level of computer science instruction at each programmatic level, (2) the State Board's high quality education standards for digital literacy skills, and (3) the preparation that the State Board already supplies to ensure that students have the requisite digital literacy skills to be successful on online assessments. The administrators and teachers of participating schools will have access to online digital literacy-related professional development and support. *West Virginia Code § 18-2E-12(a); West Virginia Code § 18-2E-12(b); West Virginia Code § 18-2E-12(c).*

On a yearly basis, the State Board will determine the number of schools eligible to participate in the pilot project. In doing so, the State Board must ensure that selected schools possess varying geographic and demographic characteristics and serve students in grades K-8. The State Board may also contract with a third party to facilitate the project. *West Virginia Code § 18-2E-12(a); West Virginia Code § 18-2E-12(d).*

The Governor and Legislative Oversight Commission on Education Accountability are to receive, by January 1, 2020, a report on the project's development, structure, and estimated cost and, by January 1, 2025, an evaluation of the pilot project's impact, together with a recommendation for



the pilot project's continuation, expansion, or termination. *West Virginia Code § 18-2E-12(e); West Virginia Code § 18-2E-12(f).*



Promotion

House Bill 206 provides that the teacher’s recommendation on whether a student should be promoted to the next grade shall be “a primary consideration” when making that determination. *West Virginia Code § 18-5-46(b)*.

Pupil-Teacher Ratios

The legislation directs the State Department of Education to survey school districts to determine the grade levels, content areas, and geographic locations where class overcrowding is impeding student achievement. By July 1, 2020, the Department is to give the Legislature a tailored plan for reducing class overcrowding in those areas. *West Virginia Code § 18-5-18a(i)*.

In making the survey and creating the plan, the Department is to examine three specific issues. The first is the effect of limits on the number of pupils per teacher on student learning in elementary classes and in a middle and high school format in which students have different teachers for different subject matter instruction. The second issue is the effect on equity among teachers in a middle school in which the number of pupils per teacher is limited for some teachers and not others, including the additional pay for certain teachers in whose classrooms the limits are exceeded. The third issue to be examined is the effect of limits on the number of pupils per teacher on the ability of school systems to offer elective courses in the secondary schools. *West Virginia Code § 18-5-18a(i)*.

Insurance

Effective July 1, 2020, House Bill 206 increases the minimum liability insurance coverage that the Board of Risk and Insurance Management must provide to county boards of education. Specifically, the legislation raises the coverage, per occurrence, to \$1,250,000. The previous limit was \$1,000,000. County boards are still required to purchase excess coverage of at least \$5,000,000 per occurrence through the Board of Risk and Insurance Management. *West Virginia Code § 29-12-5a(c)*.

Beginning July 1, 2019, each county board must, at least annually, give written notice of insurance coverage to each of its insureds, including teachers, supervisors, administrators, service personnel, the county superintendent, and board members. The notice must identify the coverages, monetary limits of insurance, and duty to defend for each occurrence, as provided by the Board of Risk and Insurance management under the statute. The notice may be sent by email, or by first-class mail to the insured’s last mailing address known to the county board. The notice must also include contact information for the Board of Risk and Insurance Management. *West Virginia Code § 29-12-5a(f)*.



Public School Support Plan

Net Enrollment

The definition of “net enrollment” under the West Virginia Public School Support Plan is modified as to adults who are enrolled in vocational programs. The definition no longer excludes those adults charged tuition or special fees beyond that required of the regular secondary vocational student. *West Virginia Code § 18-9A-2(i)*.

In calculating net enrollment for purposes of a county’s basic foundation allowance, the prior version of the statute made an upward adjustment for any county with less than 1,400 in actual enrollment. House Bill 206 increases this calculated net enrollment by 10% but caps it at 1,400. *West Virginia Code § 18-9A-2(i)(5)*.

Allowance for Professional Student Support Personnel

In the Public School Support Plan, the definition of “professional student support personnel” is expanded. As before, it includes professional employees who are assigned and serve on a regular full-time basis as a counselor or school nurse. House Bill 206 now adds to the definition of professional student support personnel those professional personnel providing direct social and emotional support services to students, as well as professional personnel addressing chronic absenteeism. *West Virginia Code § 18-A-2(f)*.

In the Public School Support Plan, the basic foundation allowance for professional student support personnel is modified. Each county will now receive an allowance for five state aid eligible professional student support personnel positions for each 1,000 students in net enrollment. The statute also expressly recognizes that county boards of education may provide student support services through public-private partnerships or other contracts. *West Virginia Code § 18-9A-8(b)(1)*.

If a county employs fewer professional student support persons than allocated by this formula, the plan’s allowance for the difference is to be determined using the average state-funded salary of the county’s professional student support persons. In making the calculation, the number of and allowance for personnel paid in part by state and county funds is prorated. When counties together support a vocational or comprehensive high school or any other program or service, the professional student support personnel for the program or service may be prorated among those counties on the basis of each county’s student enrollment in the program or service. *West Virginia Code § 18-9A-8(b)(2)*; *West Virginia Code § 18-9A-8(b)(3)*; *West Virginia Code § 18-9A-8(b)(4)*.



For the 2019-2020 fiscal year only, the number of professional student support positions funded by the plan cannot be less than the number that would have been funded under the methodology of the prior version of the statute. *West Virginia Code § 18-9A-8(b)(5)*.

Allowances for Other Current Expense and Faculty Senates

In calculating each county's allowance for current expense, the revised statute increases the percentage of a county's state average costs per square foot per student for operations and maintenance. The percentage is now 71.25%, instead of 70.25%. *West Virginia Code § 18-9A-9(1)(E)*.

Also increased is the allotment to each county for academic materials, supplies, and equipment for use in instructional programs. Instead of multiplying by \$200 the number of professional instructional personnel and professional student support personnel, the statute now requires multiplication by \$400. When distributed to each county, these funds will be allocated to the faculty senate of each school on the basis of \$400 per professional instructional personnel and professional student support personnel employed at the school. *West Virginia Code § 18-9A-9(4)*.

Levy Rate

The legislation also decreases the percentage of the levy rate used to calculate local share. It was 90%. It is now 85%. *West Virginia Code § 18-9A-2(k)*.

State Aid Block Grant Funding

Beginning for the 2019-2020 school year, each county board of education will receive its allocated state aid share of the county's basic foundation program in the form of a block grant. *West Virginia Code § 18-9A-19*.

All funds distributed to a county board in a block grant are exempt from expenditure requirements and limitations contained in Article 9A of Chapter 18 of the West Virginia Code, "Public School Support." However, expenditures are not exempt from, and must be consistent with, all other provisions of the West Virginia Code. A county board may expend remaining block grant funds in any authorized and allowable manner that it deems appropriate. *West Virginia Code § 18-9A-19*.

Searchable Budget Database and Website

Effective July 1, 2020, the State Superintendent of Schools must provide the State Auditor with required data for use by the searchable budget data website, but without violating the federal Family Educational Rights and Privacy Act. The data must contain the required information for the previous three fiscal years, if available, and then must be updated for each fiscal year within 30 days of the end of each fiscal year. The legislation states that none of this is intended to cause



a substantial modification of the West Virginia Education Information System. *West Virginia Code § 18-9B-22.*

Tax Holiday

West Virginia reinstates an annual sales tax holiday. The holiday occurs on the first Sunday of August, the previous Friday and Saturday, and the following Monday.

During the holiday, the sale and purchase of these items will be exempt from the consumers sales and use taxes, but only if the purchase or sale is not for use in a trade or business: (1) an item of clothing priced \$125 or less; (2) an item of school supplies priced \$50 or less; (3) an item of school instructional material priced \$20 or less; (4) laptop and table computers priced \$500 or less; and (5) sports equipment priced \$150 or less. The terms “clothing,” “school supplies,” and “school instructional material” are further defined in the statute. The State Tax Commissioner is responsible for issuing rules to establish eligibility for the exemptions. *West Virginia Code § 11-15-9s.*

Underwood-Smith Teaching Scholars Program; Teacher Education Loan Repayment Program

House Bill 206 renames and modifies the Underwood-Smith Teacher Scholarship and Loan Assistance programs. They are now known as the “Underwood-Smith Teaching Scholars Program” and the “Teacher Education Loan Repayment Program.” *West Virginia Code § 18C-4-1(b).*

Both programs are meant to encourage and enable people of outstanding academic ability to pursue in-state teaching careers in “critical shortage fields at the elementary, middle, and secondary levels in the public schools.” The revised statute does not define that term, unlike the previous version of the statute that expressly focused on addressing the critical need for teachers in subject areas, schools, and geographic areas. Instead, the revised statute directs the Higher Education Policy Commission’s Vice Chancellor for Administration to establish criteria and procedures for identifying “critical teacher shortage fields.” The Vice Chancellor for Administration is also to establish, and update, a list of critical teacher shortage fields for which scholarships are available. Scholarship recipients will be required to teach in a West Virginia public school in a listed critical teacher shortage field at the elementary, middle, or secondary level. *West Virginia Code § 18C-4-1(a); West Virginia Code § 18C-4-1(b).*

Underwood-Smith Teaching Scholars Program

Each recipient of a scholarship under the Underwood-Smith Teaching Scholars Program is now to be distinguished as an “Underwood-Smith Teaching Scholar.” Previously, the selection of persons to receive Underwood-Smith teacher scholarships was made by a panel designated by the



Governor. The selection panel will now be appointed by the Vice Chancellor for Administration. *West Virginia Code § 18C-4-1(g); West Virginia Code § 18C-4-2(a).*

Under the program, a scholarship must be used in preparation for becoming an elementary, middle, or secondary school teacher in a critical teacher shortage field in the West Virginia public schools. Each award is for \$10,000 annually and is available for a maximum of four academic years toward completion of a bachelor's degree. However, a scholarship award may not exceed the cost of attendance at the institution the Underwood-Smith Teaching Scholar is attending, to include the actual cost of tuition and fees, and reasonable allowances for books, educational supplies, room and board, and other necessary expenses. If the student has other scholarships and awards that, together with the Underwood-Smith Teacher Scholarship, exceed the cost of attendance, the college's financial aid officer will, to the best advantage of the Underwood-Smith Teaching Scholar, determine which aid is to be reduced. *West Virginia Code § 18C-4-5(a); West Virginia Code § 18C-4-5(b).*

Underwood-Smith Teaching Scholars will also receive additional academic support and training from mentors in their academic field, beginning with the freshman year and continuing through completion of their degree and their teaching obligation. *West Virginia Code § 18C-4-1(c).*

To qualify for the scholarship, a student must be a United States citizen or a non-citizen holding a valid Employment Authorization Document or work permit. The student must also (1) have graduated or be graduating from high school with a cumulative grade point average of at least 3.25; (2) have met the Higher Education Policy Commission's college algebra ready assessment standards, as well as its college readiness English, reading, and writing standards; and (3) agree to teach in a critical teacher shortage field at the elementary, middle, or secondary level in a West Virginia public school for at least five consecutive years. The Vice Chancellor for Administration will develop additional criteria, and procedures, for the selection of scholarship recipients. *West Virginia Code § 18C-4-2(b); West Virginia Code § 18C-4-2(c); West Virginia Code § 18C-4-2(d); West Virginia Code § 18C-4-3(a)(2).*

Underwood-Smith Teaching Scholars must, beginning one year after completing the teacher preparation program for which the scholarship was awarded, teach full-time, for five consecutive years, in a critical shortage field at the elementary, middle, or secondary level in a West Virginia public school. Service as a substitute teacher in such an assignment is counted, but credited only pro-rata, toward the teacher's obligation. An Underwood-Smith Teaching Scholar will not be in violation of this requirement during any period while pursuing a full-time course of study at an accredited college or university; serving in the armed services of the United States for not more than four years; or satisfying the provisions of any exemptions that the Higher Education Policy Commission may prescribe. Nor will an Underwood-Smith Teaching Scholar be considered in violation of the agreement due to the individual's death or temporary disability. *West Virginia Code § 18C-4-3(a)(1); West Virginia Code § 18C-4-3(a)(2); West Virginia Code § 18C-4-3(c); West Virginia Code § 18C-4-4(c).*



Underwood-Smith Teaching Scholars who do not discharge their obligations under the scholarship agreement must repay all or part of the scholarship, plus interest and, if applicable, reasonable collection fees. *West Virginia Code § 18C-4-3(a)(3); West Virginia Code § 18C-4-4(b).*

Underwood-Smith Teaching Scholarships may be renewed only during periods when the recipient meets certain conditions specified in the revised statute. The conditions are the same as under the previous Underwood-Smith scholarship program, except that the student must be pursuing a program of study leading to certification in a critical teacher shortage field and must be maintaining a 3.0 cumulative grade point average. *West Virginia Code § 18C-4-4(a).*

House Bill 206 does not alter the terms, conditions, requirements, and agreements that applied to an Underwood-Smith teacher scholarship or loan repayment prior to the effective date of House Bill 206. *West Virginia Code § 18C-4-1(h)(3).*

Teacher Education Loan Repayment Program

The Teacher Education Loan Repayment Program repays, to a recipient's student loan institution, an amount determined annually by the Higher Education Policy Commission based on available funds, but not less than \$3,000. Recipients are selected by the Higher Education Student Financial Aid Advisory Board. *West Virginia Code § 18C-4A-1(a); West Virginia Code § 18C-4A-3(a).*

To be eligible, a person must currently be employed in a West Virginia public school as a teacher in a critical teacher shortage field or as a school counselor at the elementary, middle, or secondary level in a school or geographic area of the state identified as an area of critical need for such field. The recipient must agree to be so employed for each year for which a loan repayment assistance award is received. The Vice Chancellor for Administration may grant a partial award to an eligible recipient whose contract term is for less than a full year. Recipients who do not comply with a Teacher Education Loan Repayment Program agreement must repay all or part of the award. *West Virginia Code § 18C-4A-1(b); West Virginia Code § 18C-4A-2(a)(2); West Virginia Code § 18C-4A-2(a)(4).*



PUBLIC CHARTER SCHOOLS

House Bill 206 authorizes the creation of “public charter schools.” The main provisions affecting public charter schools are found in new sections of West Virginia Code. *West Virginia Code § 18-5G-1* through *§ 18-5G-12*.

The Legislative Purpose and Intent

The overarching purposes of public charter schools are to renew commitment to the mission goals and diversity of public education and to empower new, innovative, and more flexible ways of educating students within the public system. The legislation provides various ways to meet those purposes. *West Virginia Code § 18-5G-1(a)-(b)*.

Public charter schools created under House Bill 206 are public schools and part of the state’s public education system. All provisions of the new public charter school law must be interpreted liberally to support the purpose and intent of the legislature. However, no provision of the new law may be interpreted to allow the conversion of private schools into public charter schools. *West Virginia Code § 18-5G-1(d)-(e)*.

Total Number of Charter Schools Permitted and When Charter Schools May Begin Operation

No public charter school may begin operation prior to the 2021-22 school year. The application deadline is August of 2020 for any public charter school proposing to begin operations for the 2021-22 school year, *West Virginia Code § 18-5G-4(b)(1)*.

The total number of charter schools is limited to three “pilot” public charter schools until July 1, 2023. By November 1, 2022, and every three years thereafter, the State Board of Education must report to the Legislative Oversight Commission on Education Accountability (LOCEA) regarding the status of the state’s public charter schools. The State Board must report any recommendations to the Legislature during the next Regular Session. *West Virginia Code § 18-5G-1(g)*.

Beginning July 1, 2023, and every three years thereafter, THREE more public charter schools may be created. However, the Mountaineer Challenge Academy, if converted to a public charter school, does not count towards the limitation. *West Virginia Code § 18-5G-1(g)*.

Definition of a “Public Charter School”

A public charter school is a public school or a program within a public school that is authorized in accordance with the new law and meets the general criteria, governance structure, and statutory compliance requirements of the law. *West Virginia Code § 18-5G-2(11)*.



Criteria, Governance Structure, and Statutory Compliance Requirements

House Bill 206 provides that public charter schools:

- (1) are part of the state’s public school system, are subject to the general supervision of the State Board of Education, and must meet the student performance standards set for other public schools;
- (2) may not be home-school based;
- (3) 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;
- (4) 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;
- (5) are schools to which parents or guardians choose to send their children; and
- (6) must not charge tuition, but are allowed to charge fees that are imposed by noncharter public schools.

West Virginia Code § 18-5G-3(a)(b).

Each public charter school will be governed by a board. Either the board or the school will:

- (1) have autonomy over “key decisions,” including, but not limited to, decisions concerning finance, personnel, scheduling, curriculum, and instruction;
- (2) have no power to levy taxes;
- (3) operate in pursuit of specific objectives that must be provided in the charter contract (see “*Charter Contract Requirements*,” below);
- (4) be eligible to participate in state-sponsored or district-sponsored athletic and academic interscholastic leagues, competitions, awards, scholarships, and recognition programs to the same extent as noncharter schools;
- (5) employ personnel as employees of the public charter school and be ultimately responsible for processing employee paychecks and managing the employees’ participation in insurance plans; and



(6) be responsible for establishing a staffing plan that includes the requisite qualifications, certifications, and/or licensure for teachers and other instructional staff.

West Virginia Code § 18-5G-3(b).

A public charter school is obligated to provide a program of public education that includes one or more of the following: pre-K and any grade or grades from kindergarten to grade 12, including post-secondary credit, dual credit, advanced placement, internship, and industry workforce programming. It must also provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws and regulations. To deliver those services, a public charter school may contract with a county board or another provider. *West Virginia Code § 18-5G-3(b)(4)-(5).*

A public charter school has the option of specifically focusing on providing services to students with special needs. A charter school is also allowed to include a specific academic approach or theme, including, but not limited to, STEM education, mastery-based education, early college, or fine and performing arts. *West Virginia Code § 18-5G-3(b)(4)(B)-(C).*

The Governing Board of a Public Charter School

To ensure compliance with this article, a public charter school must be administered by a governing board, accountable to the authorizer (see “*Authorizers*,” below) as set forth in the charter contract between the authorizer and the school. A governing board must consist of no fewer than five members, elected or selected in a manner specified in the charter application, including at least two parents of students attending the public charter school that the governing board is operating and two members who reside in the community served by the public charter school. *West Virginia Code §18-5G-7(a).*

The new law sets forth five criteria that apply to members of a public charter school's governing board, including one that applies to the members collectively. The members of the governing board shall:

- (1) not be employed by the public charter school administered by the governing board;
- (2) not be an employee of an education service provider that provides services to the public charter school;
- (3) file a full disclosure report with the authorizer, identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other



business dealings with the school, the management organization of the school, or any other public charter school;

(4) collectively possess expertise in leadership, curriculum and instruction, law, and finance; and

(5) be considered officers of a school district for purposes of removal from office.

West Virginia Code §18-5G-7(b).

Powers and Duties of Governing Boards

Generally, the public charter school governing board is responsible for the operation of the school, including, but not limited to, ensuring compliance with the public charter school criteria. The board is responsible for governance and statutory compliance, the preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program. *West Virginia Code §18-5G-7(e).*

The new statute provides a list of things that the governing board of a public charter school shall do and a list of actions that the governing board may take. First, the public charter school governing board shall:

(1) operate under the oversight of its authorizer in accordance with its charter contract;

(2) as a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to, the power to:

(a) receive and disburse funds for school purposes;

(b) secure appropriate insurance and enter into contracts and leases;

(c) contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(d) pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(e) solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(f) acquire real property for use as its facilities or facilities from public or private sources;



- (3) enroll students in the public charter school pursuant to the new law;
- (4) require any education service provider contracted by the governing board to provide a monthly detailed budget to the governing board; and
- (5) provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

West Virginia Code §18-5G-7(c).

House Bill 206 provides that a public charter school may:

- (1) negotiate and separately contract with its authorizer (at cost) or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract;
- (2) sue and be sued in its own name;
- (3) own, rent, or lease its space;
- (4) participate in co-curricular activities to the same extent as noncharter public schools; and
- (5) participate in extracurricular activities to the same extent as noncharter public schools.

West Virginia Code §18-5G-7(d).

Exemptions and Applicability of Laws for Public Charter Schools

Under the new statute, public charter schools are exempt from all statutes and rules applicable to noncharter public schools or boards of education except:

- (1) all federal laws and authorities applicable to noncharter schools in this state;
- (2) West Virginia's Freedom of Information Act;
- (3) West Virginia's Open Governmental Proceedings Act;
- (4) immunization requirements applicable to noncharter public schools;



- (5) compulsory attendance requirements applicable to noncharter public schools;
- (6) the same minimum number of days or an equivalent amount of instructional time per year as required of noncharter public schools;
- (7) 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);
- (8) West Virginia's Student Data Accessibility, Transparency and Accountability Act;
- (9) use of the electronic education information system (currently, WVEIS) established by the State Department of Education for the purpose of reporting required information;
- (10) 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;
- (11) all applicable accounting and financial reporting requirements as prescribed for public schools, including adherence to generally accepted accounting principles;
- (12) 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;
- (13) facility zoning rules that apply to noncharter public schools;
- (14) facility building codes, regulations and fees that apply to noncharter public schools; and
- (15) the same student transportation safety laws applicable to public schools when transportation is provided.

West Virginia Code §18-5G-3(c).

House Bill 2016 also specifically provides that a public charter school must annually engage an external auditor to perform an independent audit of the school's finances and submit the audit to the school's authorizer and to the State Superintendent of Schools within nine



months of the end of the fiscal year for which the audit was performed. *West Virginia Code §18-5G-3(c)(10)*.

Additionally, the new law requires that governing board members and other public charter school personnel are subject to criminal history record checks and fingerprinting requirements applicable to noncharter public schools. Contractors and service providers or their employees are prohibited from making direct, unaccompanied contact with students and are prohibited from access to school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or employees have not previously been convicted of a qualifying offense pursuant to West Virginia Code §18-5-15c, which includes certain criminal offenses such as sexual assault. *West Virginia Code §18-5G-3(c)(11)*.

Limitations on County Boards of Education

The new statute also places limitations on county boards of education. The statute provides that a county board may not require any employee of its school system to be employed in a public charter school and may not harass, threaten, discipline, discharge, retaliate, or in any manner discriminate against any school system employee involved directly or indirectly with an application to establish a public charter school. *West Virginia Code §18-5G-3(b)(7)*.

Regarding seniority for employment in public charter schools, the statute provides that all personnel in a public charter school who were previously employed by the county board shall continue to accrue seniority with the county board in the same manner that they would accrue seniority if employed in a noncharter public school in the county. *West Virginia Code §18-5G-3(b)(7)*.

Powers, Duties and Supervision by the West Virginia Board of Education

The State Board of Education must consult with nationally recognized charter school organizations and establish and maintain a catalogue of best practices for public charter schools that apply to all public charter school applicants, authorizers, governing board members, and administrators. The best practices must be consistent with the new statute and with nationally recognized principles and professional standards for quality public charter schools in all major areas of authorizing and governance responsibility. The best practices must address:

- (1) organizational capacity and infrastructure;
- (2) solicitation and evaluation of charter applications;
- (3) a framework to guide the development of charter contracts;
- (4) performance contracting, including a performance framework;



- (5) providing transparency and avoiding all conflicts of interest;
- (6) ongoing charter school oversight and evaluation; and
- (7) decision-making about charter approval, renewal, and revocation.

West Virginia Code §18-5G-4(a).

The new statute provides that the State Board of Education is responsible for exercising the following powers and duties with respect to oversight and authorization of public charter schools:

- (1) provide forms to promote the quality and ease of use for authorizers to solicit applications for public charter schools, for applicants to complete applications, and for establishing quality charter contracts that include a framework for performance standards;
- (2) provide training programs for public charter school applicants, administrators, and governing board members, as applicable, that include, but are not limited to:
 - (a) pre-application training programs and forms to assist in the development of high quality public charter school applications;
 - (b) the required components and the necessary information of the public charter school application and the charter;
 - (c) the charter school board's statutory role and responsibilities;
 - (d) charter school employment policies and practices; and
 - (e) authorizer responsibilities for charter school contract oversight and performance evaluation;
- (3) receive and expend appropriate gifts, grants, and donations of any kind from any public or private entity to carry out the purposes of the new statute, subject to all lawful terms and conditions under which the gifts, grants, or donations are given;
- (4) apply for any federal funds that may be available for the implementation of public charter school programs;
- (5) establish reporting requirements that enable the State Board to monitor the performance and legal compliance of authorizers and public charter schools; and



(6) submit to the Governor and the Legislature an annual report within 60 days of the end of each school year, summarizing:

(a) the student performance of all operating public charter schools;

(b) the authorization status of all public charter schools within the last school year, identifying all public charter schools as “application pending,” “application denied,” “application approved but not yet operating,” “operating and years of operation,” “renewed and years of operation,” “terminated,” “closed,” or “never opened”; and

(c) any successful innovations applied in authorized schools that may be replicated in other schools. The report must provide information about how noncharter public schools may implement these innovations.

West Virginia Code §18-5G-4(b).

Public Charter School Funding and State Board Oversight

House Bill 206 directs the State Board to promulgate a rule for funding public charter schools. The new law also imposes certain requirements that the State Board’s rule must contain. The rule, to be adopted on or before January 1, 2020, must require that 90 percent of the per-pupil total basic foundation allowance will follow a student to the public charter school. However, that requirement is subject to the following:

(1) the rule may provide for modifications to the calculations set forth in the Code for the allowances for student transportation and current expenses in order to account for student transportation and current expense funding a school district loses in situations where it pays money to a charter school without a corresponding decrease in the county’s transportation and current expense expenditures;

(2) the rule must designate which county school district is required to pay for a student attending a public charter school and, in spite of the Code’s definition of “net enrollment,” the rule must provide that the school district paying for a student attending a public charter school must have that student included in its net enrollment for the purposes of the state aid calculation; and

(3) the rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows a student to a public charter school.

West Virginia Code §18-5G-5(a).



The State Board is authorized by House Bill 206 to also adopt a rule, if necessary, to ensure the accountability of public charter schools for meeting standards for student performance required of other public school students under West Virginia Code, and the accountability of authorizers for ensuring that those standards are met in the public charter schools authorized by the State Board. If an authorizer fails to close a charter school that does not meet the standards, the authorizer must then appear before the State Board to justify its decision. In such case, the State Board may uphold or overturn the authorizer's decision and may revoke the authority of the authorizer to authorize charter schools. *West Virginia Code §18-5G-5(b)*.

To cover authorizer costs for overseeing public charter schools, the new statute provides that the State Board must establish a statewide formula for authorizer oversight funding, which shall apply uniformly to every authorizer in the state. Each public charter school must remit to its respective authorizer an oversight fee. The oversight fee must be drawn from and calculated as a uniform percentage of the per-student operational funding allocated by State Board rule to each public charter school, not to exceed one percent of each public charter school's per-student funding in a single school year. The State Board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after an authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The State Board must establish a cap on the total amount of funding that an authorizer may withhold from a full-time public charter school. Annually, the State Board is required to review the effectiveness of the state formula for authorizer funding. It must adjust the formula, if necessary, to maximize public benefit and strengthen the implementation of the new statute. *West Virginia Code §18-5G-5(d); West Virginia Code §18-5G-6(i)*.

In addition to the above funding provisions, House Bill 206 allows an authorizer to receive and expend appropriate gifts, grants, and donations of any kind from any public or private entity to carry out the purposes of the new law, subject to all lawful terms and conditions under which the gifts, grants, or donations are given. Further, the authorizer may apply for any federal funds that may be available for the implementation of public charter school programs. *West Virginia Code §18-5G-6(j)*.

Local Education Agency Status

The school district in which the public charter school is located remains the local educational agency for all public charter schools authorized by the county board. A public charter school is a school within that local educational agency, except that the public charter school is treated as a local educational agency for purposes of applying for federal grants. However, for a public charter school authorized by the State Board, the State Board is the local education agency, except that the public charter school is treated as a local educational agency for purposes of applying for federal grants. *West Virginia Code §18-5G-5(c)*.



***Authority of State Board to Promulgate Rules
Addressing Issues and Clarifying the New Statute***

House Bill 206 contains a catchall provision that permits the State Board of Education to adopt a new rule to clarify the new statute and to address unforeseen issues. It provides that the State Board shall promulgate a rule to clarify, if necessary, the requirements of the new provisions for public charter schools and to address any unforeseen issues that might arise relating to the implementation of the statutory requirements. The State Board, by rule, must prohibit a county board from discrimination against any district employee involved directly or indirectly with an application to establish a public charter school. *West Virginia Code §18-5G-5(e)*.

Although the new statute provides that “all state board rules required to be promulgated by this article shall be promulgated on or before January 1, 2020,” the above catchall rule-making authority directs the State Board to promulgate a rule, “if necessary,” to address unforeseen issues. It seems possible that unforeseen issues will not become apparent until after January 1, 2020. *West Virginia Code §18-5G-5(e)-(f)*.

Authorizers

Authorizers are the entities responsible for reviewing applications for charter schools. In addition to reviewing and deciding whether to approve or reject applications, authorizers enter into contracts with applicants, oversee public charter schools, and decide whether to renew, not renew, or revoke charter contracts. The new statute establishes three categories of authorizers:

- (1) a county board when the charter school or application to form a charter school includes a primary recruitment area that is wholly within the county over which the board has jurisdiction;
- (2) two or more county boards when the charter school or application to form a charter school includes a primary recruitment area that encompasses territory in the two or more counties over which the respective boards have jurisdiction; and
- (3) the State Board of Education in the following instances: (a) the charter school or application to form a charter school or to renew a charter contract is in a county where the state board has intervened in the operation of the school system and limited the authority of the county board to act, or (2) the application to form a public charter school or to renew a charter contract is approved by an affected county board or boards and is forwarded to the West Virginia Board of Education with a request that it perform the authorizer function.

West Virginia Code §18-5G-2(2).



Powers and Duties of Authorizers

House Bill 206 limits regulation of charter schools by county boards and the State Board to those powers set forth in the new statute and general supervision. Specifically, the law states that regulation of public charter schools by the State Board and a county board shall be limited to those powers and duties of authorizers prescribed in the new law and general supervision consistent with the spirit and intent of the new law. *West Virginia Code §18-5G-6(l)*.

The statute provides that each authorizer is responsible for exercising the following eight powers and duties with respect to the oversight and authorization of public charter schools:

- (1) demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;
- (2) establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:
 - (a) organizational capacity and infrastructure;
 - (b) evaluating applications;
 - (c) ongoing public charter school oversight and evaluation; and
 - (d) charter approval, renewal, and revocation decision-making;
- (3) solicit applications and guide the development of high-quality public charter school applications;
- (4) approve new charter applications that meet the requirements of House Bill 206, satisfy all requirements of the new law regarding applications, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and demonstrate a likelihood of improving student achievement through the program detailed in the charter application;
- (5) decline to approve charter applications that fail to meet the requirements of the application statute;
- (6) negotiate and execute, in good faith, a charter contract with each public charter school it authorizes;
- (7) monitor the performance and compliance of each public charter school according to the terms of the charter contract; and



(8) determine whether each charter contract it authorizes merits renewal or revocation.

West Virginia Code §18-5G-6(a).

Charter School Application Requirements

The new statute provides that to create or convert a noncharter school to a public charter school, the applicant must submit an application to the authorizer. The statute details who or what entities may qualify as applicants and sets forth the information that the application must contain.

An applicant is defined by the statute as any one or more in combination of parents, community members, teachers, school administrators, or institutions of higher education in this state who are interested in organizing a public charter school, and

(1) have obtained 501(c)(3) tax-exempt status or have submitted an application for 501(c)(3) tax-exempt status; and

(2) have developed and submitted to an authorizer an application to establish a public charter school.

West Virginia Code §18-5G-2(1).

To establish a new public charter school, to convert an existing noncharter public school to a public charter school, or to establish a program conversion public charter school (defined, below), an applicant must submit a charter application to an authorizer. Charter authorizers must accept and document the date and time of receipt of all charter applications. *West Virginia Code §18-5G-8(a).*

In order to understand what information the application must contain, it is important to understand the definitions of certain terms that are used in the statute. A “noncharter public school” is a public school or multi-county vocational center other than a public charter school established under the new law. A “program conversion public charter school” means a program within an existing noncharter public school that is either preexisting and converted, or newly created, to become a separate and discreet program governed and operated under House Bill 206 within a noncharter public school. A “start-up public charter school” means that a public charter school not did not exist as a noncharter public school prior to becoming a public charter school. An “education service provider” is an education management organization, school designer, or any other entity with which a public charter school contracts for educational design, implementation, or comprehensive management. *West Virginia Code §18-5G-2(7),(9),(12),(13).*



The new statute sets forth 25 different criteria that must be included in an application. However, if the applicant intends to contract with an education service provider for education program implementation or comprehensive management, the new statute requires certain additional information to be included. *West Virginia Code §18-5G-8(b)(c)*.

An application must contain the following information:

- (1) a mission statement and a vision statement for the public charter school, including specialized academic focus, if any, to be promoted and advanced through the establishment of the public charter school;
- (2) a detailed description of the public charter school's proposed program;
- (3) the student achievement goals for the public charter school's program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;
- (4) the school's plan for using data derived from student evaluations and assessments, including the statewide summative assessment, to drive instruction and promote continued school improvement;
- (5) an explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district;
- (6) the proposed governance structure of the school, including a list of members of the initial governing board, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of governing board members, and the organizational structure of the school that clearly presents lines of authority and reporting between the governing board, school administrators, staff, any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;
- (7) plans and timelines for student enrollment, including the school primary recruitment area, and policies and procedures for conducting transparent and random admission lotteries when applications for enrollment exceed capacity;
- (8) a proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions;
- (9) proposed fiscal and internal control policies for the public charter school;
- (10) acknowledgement that the public charter school will participate in the state's accountability system;



- (11) a proposed handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;
- (12) an explanation of proposed student discipline procedures, including disciplinary procedures for students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;
- (13) a description of the facilities to be used by the public charter school, including the location of the school and how the facility supports the implementation of the school's program (the school must obtain all required occupation and operation certificates and licenses prior to the first instructional day for students);
- (14) the proposed ages and grade levels to be served by the public charter school, including the planned minimum and maximum enrollment per grade per year;
- (15) the school calendar and school day schedule;
- (16) types and amounts of insurance coverage to be obtained by the public charter school, which must include adequate insurance for liability, property loss, and the personal injury of students comparable to noncharter public schools within the local school district and may include coverage from the Board of Risk and Insurance Management;
- (17) a description of the food services to be provided to students attending the school;
- (18) process and procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity after payment of debts;
- (19) a code of ethics for the school, setting forth the standards of conduct expected of its governing board, officers, and employees;
- (20) the public charter school's plan for successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including, but not limited to, the school's plan for compliance with all applicable federal and state laws and regulations;



- (21) a description of co-curricular and extracurricular programs to be offered by the public charter school and how they will be funded and delivered;
- (22) the process by which the school will resolve any disputes with the authorizer;
- (23) a detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan;
- (24) the public charter school's plan for notice to parents and others of enrollment in the school as an option available for students and the school's primary recruitment area; and
- (25) the public charter school's plan for parental involvement.

West Virginia Code §18-5G-8(b).

As noted above, if the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the applicant must additionally provide the following information with respect to the service provider:

- (1) evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement, as well as successful management of nonacademic school functions, if applicable;
- (2) student performance data and financial audit reports for all current and past public charter schools;
- (3) documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns;
- (4) the proposed duration of the service contract;
- (5) the annual proposed fees and other amounts to be paid to the education service provider;
- (6) the roles and responsibilities of the governing board, the school staff, and the education service provider;
- (7) the scope of services and resources to be provided by the education service provider;
- (8) performance evaluation measures and timelines;
- (9) methods of contract oversight and enforcement;



- (10) investment disclosure;
- (11) conditions for renewal and termination of the contract; and
- (12) disclosure and explanation of any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

West Virginia Code §18-5G-8(c).

***Duties of Authorizer After Submission of
Charter School Application and Effect of Failure to Act within 90 Days***

The new statute gives an authorizer the right to reject an application, approve an application, or receive more information from the applicant, and then make a final determination as to whether to reject or approve the application. The statute provides that after an applicant submits a written application to establish a public charter school, the authorizer must:

- (1) complete a thorough review process;
- (2) conduct an in-person interview with the applicant;
- (3) provide an opportunity, in a public forum, for local residents to provide input and learn about the charter application;
- (4) provide a detailed analysis of the application to the applicant or applicants;
- (5) allow an applicant reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and
- (6) approve or deny a charter application based on established objective criteria, or request additional information.

West Virginia Code §18-5G-6(b).

The authorizer has 90 days after a public charter school application is filed to approve or reject the application in an open meeting. The authorizer must provide its decision in writing, including an explanation stating the reasons for approval or denial. The statute further provides that any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer. *West Virginia Code §18-5G-6(d).*



Factors and Information that Authorizer Must Consider in Deciding Whether to Approve or Reject the Application

The authorizer must:

- (1) approve charter applications only to applicants that possess competence in all elements of the application requirements identified in the new law;
- (2) base decisions on documented evidence collected through the application review process; and
- (3) follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

West Virginia Code §18-5G-6(c).

Charter Contract Requirements

The next step, following an organizer’s approval of a charter school application, is the negotiation and execution of the charter school contract. The “charter contract” or, just simply, “contract” is a fixed-term, renewable contract between a public charter school’s governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract. *West Virginia Code §18-5G-2(4).*

No public charter school may commence operations without a charter contract that meets the requirements of the new statute, has been properly executed, and has been approved by, as applicable, a county board, county boards, or the State Board. *West Virginia Code §18-5G-9(g).*

Within 90 days of approval of the charter application, the governing board and the authorizer must negotiate and enter into a charter contract. The charter contract must address, in detail, the following items:

- (1) the term of the contract, which shall not exceed five years;
- (2) the agreements relating to each item required in the charter application and, if applicable, the agreement with an education service provider that the governing board intends to contract for educational program implementation or comprehensive management;
- (3) the rights and duties of the authorizer and the public charter school;



- (4) the administrative relationship between the authorizer and the public charter school;
- (5) the process the authorizer will use to provide ongoing oversight;
- (6) the specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;
- (7) the process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;
- (8) the process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;
- (9) the process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and
- (10) any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

West Virginia Code §18-5G-9(a)-(b).

The new statute also requires that certain additional provisions be included in the contract, the purpose of which is to allow the authorizer to evaluate the public charter school. The statute provides that the charter contract must include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions must include indicators, measures, and metrics for:

- (1) student academic proficiency;
- (2) student academic growth;
- (3) achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;
- (4) student attendance;
- (5) student suspensions;
- (6) student withdrawals;



- (7) recurrent enrollment from year to year;
- (8) the governing board's performance and stewardship, including compliance with all applicable statutes and with the terms of the charter contract; and
- (9) additional valid and reliable indicators requested by the public charter school.

West Virginia Code §18-5G-9(c).

House Bill 206 further requires that the charter contract include provisions for revoking the charter contract. At a minimum, these provisions must include:

- (1) the information that must be included in the authorizer's initial decision to revoke the charter contract;
- (2) notification requirements to the governing board about the authorizer's initial decision to revoke a charter contract and the reasons for the revocation;
- (3) an opportunity and timeframe for the governing board to provide a response to the authorizer's initial decision to revoke the charter contract;
- (4) an opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;
- (5) an opportunity for a recorded public hearing, at the request of the governing board;
- (6) that the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;
- (7) the information that must be included in the authorizer's final decision if it determines to revoke the charter contract;
- (8) a timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;
- (9) a requirement that the authorizer's decision be adopted during an open meeting; and
- (10) a provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed approval of the application.

West Virginia Code §18-5G-9(d).



The charter contract must be signed by the chair of the governing board and the president of the county board, or the presidents of the county boards. (The statute also states that the charter contract must be signed by “the president of the public or private institution of higher education,” as applicable, which appears to be a stray and unintended provision. Higher education institutions are not authorizers under House Bill 206.) A copy of the charter contract must be provided to the State Superintendent of Schools. *West Virginia Code §18-5G-9(f)*.

Under the statute, the authorizer is responsible for collecting and reporting to the State Board all state-required assessment and achievement data for the public charter school. *West Virginia Code §18-5G-9(e)*.

Oversight of Charter School by Authorizer and Annual Report

An authorizer must conduct or require oversight activities that enable it to fulfill its responsibilities under the new statute, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of the new statute, adhere to the terms of the charter contract, and do not unduly inhibit the autonomy granted to charter schools. *West Virginia Code §18-5G-6(f)*.

In the event that a public charter school’s performance or legal compliance appears unsatisfactory, the authorizer must promptly notify, in writing, the public charter school governing board of perceived problems and provide a reasonable opportunity for the charter school to remedy the problems. If the problems warrant revocation, the revocation time frames (below) apply. *West Virginia Code §18-5G-6(f)*.

House Bill 206 allows an authorizer to place a public charter school on a corrective action plan if the charter school has been found deficient. An authorizer must take appropriate corrective actions, or exercise sanctions, in response to apparent deficiencies in a charter school’s performance or legal compliance. If warranted, the actions or sanctions may include requiring a charter school to develop and execute a corrective action plan within a specified time frame. *West Virginia Code §18-5G-6(g)*.

The new statute contains a mechanism to keep the authorizer aware of the effectiveness of a charter school. An authorizer may require each charter school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school, consistent with the performance framework. *West Virginia Code §18-5G-6(h)*.

Liability of Authorizer for Actions or Omissions by Charter School

The new statute provides that no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Further, neither the county board of education nor the State of West Virginia shall be liable for the debts or financial



obligations of a public charter school or any person or entity that operates a public charter school. *West Virginia Code §18-5G-6(l)*.

Public Charter School Contract Renewal Process

The statute provides for a process to renew a public charter school contract and sets forth the criteria that must be considered in determining whether the contract must be renewed. It should be noted that the statute does not require a five-year term for a charter contract. Rather, it provides that the contract term may be no longer than five years. However, the legislation also provides that no later than June 30 of a public charter school's fourth year of operation under each five-year charter contract term, the authorizer must issue a performance report on the public charter school. These provisions present issues regarding when an authorizer, such as a county board, must issue a performance report if the term of the charter school contract is less than five years. *West Virginia Code §18-5G-9(a)(1); West Virginia Code §18-5G-10(a)*.

House Bill 206 states that the performance report shall summarize the public charter school's performance record to date, based on the data collected under the statute's performance framework (below) and the charter contract. The report must provide notice of any weaknesses or concerns perceived by the authorizer concerning the public charter school that may jeopardize its position in seeking renewal if not timely rectified. The school and the authorizer must mutually agree to a reasonable time period for the charter school to respond to the performance report and submit any corrections for the report. *West Virginia Code §18-5G-10(a)*.

The authorizer is required by the statute to provide guidance to the public charter school for purposes of renewal. If the public charter school's contract is expiring, the authorizer must offer the school guidance about the renewal application. The renewal application guidance must include or refer explicitly to the criteria and standards that will guide the authorizer's renewal decisions. These criteria and standards must be based on the statutory performance framework as set forth in the charter contract, and they must be consistent with the new statute. The renewal application guidance must, at a minimum, require and provide an opportunity for the public charter school to

- (1) present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;
- (2) describe improvements undertaken or planned for the school; and
- (3) detail the school's plans for the next charter term.

West Virginia Code §18-5G-10(b).

The governing board of the public charter school must use the guidance provided by the authorizer in submitting an application for renewal of the contract. No later than September



30 of a public charter school's final authorized year of operation under a term of a charter contract, the governing board of the public charter school seeking renewal must submit a renewal application to the authorizer pursuant to the renewal application guidance. *West Virginia Code §18-5G-10(c)*.

The authorizer must rule on the renewal application in a public meeting no later than 45 days after the filing of the renewal application. In making charter renewal decisions, the authorizer must:

- (1) ground its decisions on a thorough analysis of evidence of the school's performance over the term of the charter contract in accordance with the terms and measures established in the performance framework set forth in the charter contract;
- (2) ensure that data used in making renewal decisions are available to the public charter school and the public;
- (3) provide a public report summarizing the evidence basis for each decision; and
- (4) include one of the following rulings:
 - (a) to renew the charter contract "for another term of five years," based on the school's performance data and demonstrated capacities of the public charter school; or
 - (b) to decline to renew the charter contract. The authorizer shall clearly state in a resolution the reasons for the nonrenewal.

West Virginia Code §18-5G-10(c).

Following the authorizer's ruling, the public charter school's governing has 30 days before that decision becomes final to respond, in writing, to the decision and public report. The governing board must be allowed to provide the authorizer with such arguments and supporting information as the governing board sees fit and, also, shall be granted an opportunity for a recorded public hearing at the request of the governing board. The authorizer must consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract. The authorizer must render its final determination within ten days of the close of the 30-day period. *West Virginia Code §18-5G-10(c)*.

Importantly, the statute provides that failure of the authorizer to act on a renewal application within the designated time frames shall be deemed an approval of the renewal application. *West Virginia Code §18-5G-10(d)*.



Within ten days of taking final action to renew, not renew, or revoke a charter, the authorizer must report the action taken and reasons for the decision to the public charter school's governing board and the State Board of Education, or affected county board, as applicable. A copy of the report must be submitted at the same time to the State Superintendent of Schools. *West Virginia Code §18-5G-10(e)*.

A charter contract may be revoked at any time, or not renewed, if the authorizer determines that the health and safety of students attending the public charter school is threatened or the public charter school has:

- (1) failed to comply with the provisions of the public charter school law;
- (2) committed a material violation of any of the terms, conditions, standards, or procedures required under the public charter school law;
- (3) failed to meet the performance expectations set forth in the charter contract;
- (4) failed to meet generally accepted standards of fiscal management; or
- (5) violated any provision of law from which the school was not exempted.

West Virginia Code §18-5G-10(f).

Ultimately, if an authorizer decides not to renew or to revoke a charter contract, the authorizer must state in a resolution, at a public meeting, the reasons for nonrenewal or revocation of the contract. *West Virginia Code §18-5G-10(g)*.

Events Following Revocation or Nonrenewal of Charter Contract

If an authorizer revokes a charter contract, the authorizer shall close the school. But if the school began as a conversion public charter school or a program conversion public charter school, the county board of the district in which the school is located may return the school to noncharter public school status. *West Virginia Code §18-5G-10(h)*.

If a public charter school is closed, the authorizer must state, in a resolution at a public meeting, the reasons for the closure. In the event of a public charter school closure for any reason, the authorizer must oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol established by the State Board, including, but not limited to, the following:

- (1) overseeing and working with the closing public charter school to ensure timely notification to parents, orderly transition of students and student records to new schools,



and proper disposition of school funds, property, and assets in accordance with the requirements of West Virginia Code; and

(2) distributing the assets of the public charter school first to satisfy outstanding payroll obligations for employees of the public charter school and then to creditors of the public charter school. Any remaining funds must be paid to the county board of education. If the assets of the public charter school are insufficient to pay all parties to whom the public charter school owes compensation, the prioritization of distribution of assets may be determined by decree of a court of law.

West Virginia Code §§18-5G-10(i)-(j).

Curiously, the statute provides that “if a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-13 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition.” The statute also provides that “if the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.” *West Virginia Code § 18-5G-10(k).*

The quoted provisions refer to West Virginia Code § 18-5G-13. However, no such section exists. In fact, no other appeal process is found in the newly enacted statute. The quoted provisions also refer to a “board of directors.” There is no other reference in the newly enacted public charter school statute to a “board of directors.”

Provisions Relating to Students of Public Charter Schools

The statute provides that public charter schools are open for enrollment to all students of appropriate grade level age, and all students must be enrolled in accordance with ten rules:

(1) A public charter school must provide or publicize, to parents and the general public, information about the public charter school as an enrollment option for students. It must similarly provide information about the process for application and enrollment, including dates and timelines. If the public charter school includes in its mission a specific focus on students with special needs (such as at-risk students, English language learners, students with severe disciplinary problems, or students involved with the juvenile justice system), it must include that information in such publication. A public charter school’s recruitment effort must include all segments of the student populations served by noncharter public schools of comparable grade levels.



(2) A county board must provide or publicize, to parents and the general public, information about public charter schools within the county as an enrollment option to the same extent and through the same means that the county provides and publicizes information about noncharter public schools in the county.

(3) A county board may not require any student residing in the county to enroll in a public charter school, nor may it prohibit any charter school student from returning to a noncharter public school.

(4) In its charter application and charter contract, a public charter school must designate its primary recruitment area. The establishment of a primary recruitment area by a public charter school does not prohibit any overlapping attendance area or areas established for noncharter public schools by a county board or boards of education. A primary recruitment area may include territory in more than one county.

(5) The primary recruitment area shall be based on the public charter school's estimated facility and program capacity. The capacity of the public charter school shall be determined annually by the governing board of the public charter school in conjunction with its authorizer and in consideration of the public charter school's ability to facilitate the academic success of its students, to achieve the other objectives specified in the charter contract, and to ensure that the student enrollment does not exceed the capacity of its facility, site, and programs. An authorizer may not restrict the number of students a public charter school may enroll.

(6) Public charter schools may not discriminate against any person on any basis that would be unlawful for noncharter public schools in the school district and may not establish admission policies or limit student admissions in any manner in which a public school is not permitted to establish admission policies or limit student admissions. However, this rule does not limit the formation of a public charter school that is dedicated to focusing its education program and services on students with special needs (such as at-risk students, English language learners, students with severe disciplinary problems, or students involved with the juvenile justice system).

(7) A public charter school may establish any one or more of the following enrollment preferences: (a) children who reside within the school's primary recruitment area; (b) students enrolled in the public charter school the previous school year and siblings of students already enrolled in the public charter school; (c) children with special needs, including, but not limited to, at-risk students, English language learners, students with severe disciplinary problems at a noncharter public school, or students involved with the juvenile justice system; and



(d) children of governing board members and full-time employees of the school as long as the number of students enrolled under this preference constitute no more than five percent of the school's total student enrollment.

(8) A start-up public charter school must enroll all students who apply and to whom an enrollment preference has been established. If the school has excess capacity after enrolling these students, the school shall enroll all other students who apply, provided that if the remaining applicants exceed the enrollment capacity of the program, class, grade level, or building of the public charter school, the public charter school must select students for enrollment from among all remaining applicants by a random selection lottery. The school's lottery procedures and timelines must support equal and open access for all students and take place in an open meeting.

(9) A conversion public charter school must guarantee enrollment to all students who were previously enrolled in the noncharter public school, and the school must adopt and maintain a policy that gives enrollment preference to students who reside within the attendance area as established prior to the conversion of the school. If the school has excess capacity after enrolling these students and all others to whom an enrollment preference has been given, the school must enroll all other students who apply. However, if the remaining applicants exceed the enrollment capacity of the program, class, grade level, or building of a public charter school, the public charter school must select students for enrollment from among all remaining applicants by a random selection lottery. The school's lottery procedures and timelines must support equal and open access for all students and take place in an open meeting.

(10) A program conversion public charter school shall enroll all students who apply for enrollment in the program who, at the time of authorization, are enrolled in the noncharter public school at which the program is operated. A program conversion public charter school must adopt and maintain a policy that gives enrollment preference to students who are enrolled in the noncharter public school at which the program is operated. If the school has excess capacity after enrolling these students, the school must enroll all other students who apply. However, if the remaining applicants exceed the enrollment capacity of the program, class, grade level, or building of a public charter school, the public charter school must select students for enrollment from among all remaining applicants by a random selection lottery. The school's lottery procedures and timelines must support equal and open access for all students and take place in an open meeting.

West Virginia Code §§ 18-5G-11(a)(1)-(10).



The statute also recognizes those instances in which a student transfers to a public charter school and addresses issues with transfer of credits. The statute provides that if a student who was previously enrolled in a public charter school transfers enrollment to a noncharter public school in this state, the school to which the student transfers shall accept credits earned by the student in courses or instructional programs at the public charter school in a uniform and consistent manner and according to the same criteria that are used to accept academic credits from other noncharter public schools or that consider content competency when appropriate, due to differences in curriculum delivery, instructional methods and strategies, or course designations and sequence. *West Virginia Code § 18-5G-11(b)*.

The statute requires each public charter school to certify, annually, to the State Department of Education and to the county board of the school district in which the charter school is located, its student enrollment, average daily attendance, and student participation in the national school lunch program, special education, vocational education, gifted education, advanced placement and dual credit courses, and federal programs in the same manner as school districts. *West Virginia Code § 18-5G-11(d)*.

Lease and Access to Public Facilities for Charter Schools

A public charter school may request usage of public facilities from the county board or other public entity in the county where the charter school is located or proposes to locate. A county board or other public entity must make facilities available to the charter school that are not used, in whole or in part, for classroom instruction at the time the charter school seeks to use or lease the public facility. *West Virginia Code § 18-5G-12(a)*.

However, if a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value. During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs, and remodeling. The county school board is responsible, however, for any debt incurred or liens that are attached to the school building before the charter school leases the public facility. *West Virginia Code §§ 18-5G-12(b)-(c)*.



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