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2021 Highlights of Education Related Legislation
 Bowles Rice, LLP
 2021 Spring WVASBO Conference
 May 13, 2021

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A Word About This Presentation

- We speak in general terms today. The specific facts of each situation can make a difference in the legal principles that apply
- This presentation must not be treated as legal advice about any specific situation
- Due to the rapidly changing nature of the law, information in this presentation may become outdated
- When in doubt, don't act or rely upon the information contained in this presentation without seeking legal advice



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Some School Law Resources to Help You Keep Up-to-Date All Year Long

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Education Law Updates



<https://www.bowlesrice.com/education-law-blog>

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Join the Mailing List

- Send an email to Sarah Plantz:
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- Tell Sarah:
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This Evening's Agenda

- Some Bills that **DID NOT** Pass
- Some Bills that we will not Discuss Today
- What we are left with!
- Answers to some Frequently Asked Questions

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Some Bills that *DID NOT* Pass

- ✗ HB 3217: Student Rescue Act allowing for academic relief for students impacted by COVID
- ✗ SB 588: Requiring county boards and superintendents to comply with instructions from the State Superintendent of Schools (arising out of issues related to school closures during the pandemic)
- ✗ SB 601: Revising the grievance process

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**SENATE BILL 11
DECLARING WORK STOPPAGE OR
STRIKE BY PUBLIC EMPLOYEES TO BE
UNLAWFUL
IN EFFECT JUNE 2, 2021**

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**Senate Bill 11
Declaring work stoppage or strike by public
employees to be unlawful**

- Under Senate Bill 11, a county board employee is considered to be participating in a concerted work stoppage or strike if, on any day during a concerted work stoppage or interruption of operations by the board's employees, the employee
 - does not report to work as required by their contract,
 - is not on leave "as specifically permitted" by any West Virginia Code provision, and
 - is not otherwise prevented from reporting to work based on circumstances that the county superintendent determines are beyond the employee's control and unrelated to their participation in the ongoing stoppage or strike.
- Participation in a concerted work stoppage or strike is a ground for terminating an employee's contract. If not discharged, the employee must forfeit their prorated pay for each day they participated in the stoppage or strike.
- Senate Bill 11 forbids using accrued and equivalent instructional time and the delivery of instruction through alternative methods to cancel days lost due to concerted work stoppages and strikes.

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**SENATE BILL 14
PROVIDING FOR ADDITIONAL OPTIONS
FOR ALTERNATIVE CERTIFICATION FOR
TEACHERS
IN EFFECT MAY 27, 2021**

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Senate Bill 14
Providing for additional options for alternative certification for teachers

- Subject to State Board of Education rules, the State Superintendent is authorized to issue a public school professional teaching certificate to a person who
 - holds a bachelor's degree from an accredited college or university,
 - submits to a criminal history check, the results of which may form the basis for the denial of a certificate for just cause;
 - successfully completes pedagogical training or coursework aligned with standards that are nationally recognized or established by the State Board; and
 - passes the same subject matter and competency test or tests required by the State Board for traditional applicants for licensure.

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SENATE BILL 89
EXEMPTING CERTAIN KINDERGARTEN AND PRESCHOOL PROGRAMS OFFERED BY PRIVATE SCHOOLS FROM REGISTRATION REQUIREMENTS
IN EFFECT JULY 7, 2021

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Senate Bill 89
Exempting certain kindergarten and preschool programs offered by private schools from registration requirements

- Public school kindergarten, preschool and school education programs are already excused by law from having to obtain child-care center licenses from the State Department of Health and Human Services. The same exemption now applies to kindergarten, preschool and school education programs operated by private, parochial or church schools recognized by the State Department of Education, and to school education programs operated by federal Head Start Program grantees.
- In accordance with federal requirements, the Head Start programs must continue to perform criminal background checks on all employees.

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**SENATE BILL 272
RELATING TO THE WV EMPLOYMENT
LAW WORKER CLASSIFICATION ACT
IN EFFECT JUNE 9, 2021**

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**Senate Bill 272
Relating to the WV Employment Law Worker
Classification Act**

- The Act contains standards that are to be used in determining who is an employee and who is an independent contractor for purposes of West Virginia's workers compensation laws, unemployment compensation laws, Human Rights Act, and Wage Payment and Collection Act.
- A worker engaged by a county board of education must be classified as an independent contractor if they meet all four tests set forth in the statute.
- An important limitation is that Senate Bill 272's test for determining whether a worker is an independent contractor or an employee does not govern such determinations in areas of West Virginia law outside of the workers compensation laws, unemployment compensation laws, Human Rights Act, and Wage Payment and Collection Act. For example, the Act does not apply in determining principal-agent status for purposes of vicarious liability to a third party in tort.

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**SENATE BILL 275
RELATING GENERALLY TO WV
APPELLATE REORGANIZATION ACT OF
2021
IN EFFECT JUNE 30, 2021**

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Senate Bill 275
Relating generally to WV Appellate Reorganization Act of 2021

- **Senate Bill 275 creates an Intermediate Court of Appeals for West Virginia which will have appellate jurisdiction over**
 - final judgments or orders of a circuit court in civil cases, entered after June 30, 2022;
 - final judgments or orders of a family court entered after June 30, 2022;
 - final judgments or orders of a circuit court concerning guardianship or conservatorship matters, entered after June 30, 2022;
 - final judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County under the State Administrative Procedures Act or any other provision of State Code, including decisions of the West Virginia Public Employees Grievance Board;
 - certain final orders or decisions of the Health Care Authority issued prior to June 30, 2022, in a certificate of need review;
 - certain final orders or decisions issued by the workers compensation Office of Judges after June 30, 2022; and
 - final orders or decisions of the Workers Compensation Board of Review entered after June 30, 2022.

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Senate Bill 275
Relating generally to WV Appellate Reorganization Act of 2021

- **The new court will not have appellate jurisdiction over**
 - judgments or final orders issued in any criminal proceeding in this state unless the West Virginia Supreme Court of Appeals should adopt a policy of discretionary review of criminal appeals;
 - judgments or final orders issued in any juvenile proceeding;
 - judgments or final orders issued in child abuse and neglect proceedings;
 - orders of commitment;
 - any proceedings of the Lawyer Disciplinary Board;
 - any proceedings of the Judicial Investigation Commission;
 - final decisions of the Public Service Commission;
 - interlocutory appeals;
 - certified questions of law; and
 - extraordinary remedies, and any appeal of a decision or order of another court regarding an extraordinary remedy.

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SENATE BILL 277
RELATING TO CREATING THE
COVID-19 JOBS PROTECTION ACT
IN EFFECT MARCH 11, 2021

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Senate Bill 277
Relating to creating the COVID-19 Jobs Protection Act

With exceptions, the COVID-19 Jobs Protection Act protects county boards of education against claims for loss, damage, physical injury or death arising from COVID-19. The Act applies retroactively from January 1, 2020 and applies to any cause of action accruing on or after that date. *West Virginia Code § 55-19-1; West Virginia Code § 55-19-4; West Virginia Code § 55-19-9(a).*

The exceptions include some workers compensation claims for work-related injury, disease or death caused by or arising from COVID-19 in the course of and resulting from employment by a county board of education. An exception is also made in the case of any person, employee or agent who engaged in intentional conduct with actual malice. *West Virginia Code § 55-19-6; West Virginia Code § 55-19-7.*

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SENATE BILL 356
ALLOWING FOR WRITTEN PART OF
DRIVERS' EXAM GIVEN IN HIGH SCHOOL
DRIVERS' EDUCATION COURSE
IN EFFECT JUNE 24, 2021

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Senate Bill 356
Allowing for written part of drivers' exam given in high school drivers' education course

- By September 1, 2021, the Commissioner of the State Division of Motor Vehicles must propose emergency rules and rules for legislative approval to allow State Department of Education-sanctioned driver education instructors to administer a knowledge test developed by the Division of Motor Vehicles. Any person successfully completing the test administered is exempt from proof of school enrollment that is otherwise required by West Virginia Code § 18-8-11 for persons under the age of 18 who have not yet graduated from high school.

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**SENATE BILL 375
RELATING TO COUNTY BOARDS OF
EDUCATION POLICIES FOR OPEN
ENROLLMENT
IN EFFECT JULY 6, 2021**

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**Senate Bill 375
Relating to county boards of education policies for open enrollment**

- **Senate Bill 375 removes many of the open enrollment/transfer provisions enacted in 2019, including a requirement that the policy also articulate any admission criteria, transportation provisions, timelines for open enrollment periods, and restrictions on transfers due to building capacity constraints.**
- **Under the bill, an application to transfer into a school district may now be denied by a county board for only two reasons: lack of grade level capacity or the nonresident student's failure to correctly fill out or submit the application form. All denials must be in writing and sent to the parent or guardian and State Department of Education within three business days of the decision. Every denial must include the reason and explanation for the denial, plus information on appealing the decision to the State Superintendent of Schools.**
- **The bill further provides that the county board to which a student wishes to transfer may not refuse the transfer by virtue of the student transferring from a private, parochial, church, or religious school that holds an exemption under West Virginia Code § 18-8-1(k) from the compulsory school attendance requirement. However, the legislation states that this provision shall not be construed to allow a county board to give an enrollment preference to such students.**

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**Senate Bill 375
Relating to county boards of education policies for open enrollment**

- **The statute's funding provisions are amended to address situations where a student transfers after the school year has begun.**
 - **If the transfer occurs after the second month of the school year, the receiving county may, in the next fiscal year, invoice the student's former county for a pro rata share of the amount the receiving county otherwise would have received under the state basic foundation program had the student been included in its prior year's net enrollment.**
 - **If a student in grades K-12 transfers after the second month, the receiving county may, in the next fiscal year, invoice the student's former county for the amount the receiving county otherwise would have received under aid to exceptional students had the student been included in the county's prior child count enrollment.**
 - **If a student in Pre-K transfers after the child count of exceptional students is certified for the school year, the receiving county may, in the next fiscal year, invoice the student's former county for the amount the receiving county otherwise would have received under aid to exceptional students had the student been included in the county's prior year's child count enrollment.**

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SB 398
LIMITING ELIGIBILITY OF CERTAIN
EMPLOYERS TO PARTICIPATE IN PEIA
PLANS
IN EFFECT APRIL 10, 2021

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SB 398
Limiting eligibility of certain employers to participate in
PEIA plans

- Beginning July 1, 2021, notwithstanding any other provision of this article to the contrary, the director may not consider any employer eligible for participation in a plan except for the following:
 - All mandatory participants, including the State of West Virginia, its boards, agencies, commissions, departments, institutions, or spending units.
 - Any county board of education or public charter school established pursuant to §18-5G-1 *et seq.* of this code, if the charter school includes in its charter contract entered into pursuant to [§18-5G-7](#) of this code a determination to participate in the Public Employees Insurance program: *Provided*, That as it relates to eligible public charter schools, only employees directly employed by a charter school that is exempt from the payment of taxes under the United States Internal Revenue Code, Title 26 U.S.C. §501(c)(3), may participate in a plan.
 - Any employer participating in a plan as of June 30, 2021: *Provided*, That such employer must have an agency participation agreement signed with the agency before May 1, 2021, with an effective coverage date before June 1, 2021.

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SENATE BILL 431
RELATING TO SCHOOL ATTENDANCE
NOTIFICATION REQUIREMENTS TO DMV
IN EFFECT JUNE 24, 2021

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Senate Bill 431
Relating to school attendance notification requirements to DMV

- In lieu of a written notice or form, the Division of Motor Vehicles may now accept electronic notice from a county board of education that a student under the age of 18 who applies for an instruction permit or operator's license is properly enrolled in school and making satisfactory progress.

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SENATE BILL 435
REQUIRING COUNTY SUPERINTENDENTS TO AUTHORIZE CERTAIN SCHOOL PRINCIPALS OR ADMINISTRATORS AT NONPUBLIC SCHOOLS TO ISSUE WORK PERMITS FOR ENROLLED STUDENTS
IN EFFECT JUNE 24, 2021

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Senate Bill 435
Requiring county superintendents to authorize certain school principals or administrators at nonpublic schools to issue work permits for enrolled students

- This legislation modifies laws under which county superintendents of schools and their designees issue work permits for the employment of 14- and 15-year-old county residents in any gainful operation. Work permits can now also be issued by persons who administer public, private or home school secondary education programs and who are also authorized to issue diplomas or other appropriate credentials to persons who have completed those programs. The State Commissioner of Labor must make printed forms for work permits available to all such persons.
- Applicants for work permits for homeschooled students are no longer put in the position of having to produce a certificate signed by the principal of a school the child attends; no such certificate or counterpart is required. As for the other documents that applicants for work permits must submit, issuers of permits must still review the documents, but are no longer required to keep them on record. Senate Bill 435 also removes a requirement that the child must appear before the person issuing the work permit.

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**SENATE BILL 636
REQUIRING CERTAIN HISTORY
AND CIVIC COURSES BE TAUGHT
IN SCHOOLS
IN EFFECT JULY 9, 2021**

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**Senate Bill 636
Requiring certain history and civic courses be taught in schools**

- An existing statute requires all West Virginia public, private, parochial and denominational schools to give at least one year of instruction, prior to the completion of eighth grade, in the history of the state. The statute also requires those schools to require courses by the completion of twelfth grade in United States history, civics, the Constitution of the United States and the government of West Virginia.

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**Senate Bill 636
Requiring certain history and civic courses be taught in schools**

- Senate Bill 636 now specifies that those required courses must:
 - include instruction on the institutions and structure of American government, such as the separation of powers, the Electoral College, and federalism;
 - include instruction that provides students an understanding of American political philosophy and history, utilizing writings from prominent figures in Western civilization, such as Aristotle, Thomas Hobbes, John Locke, and Thomas Jefferson;
 - offer an objective and critical analysis of ideologies throughout history including, but not limited to, capitalism, republicanism, democracy, socialism, communism, and fascism; and
 - emphasize the use of primary sources and interactive learning techniques, such as mock scenarios, debates, and open and impartial discussions.

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**SENATE BILL 651
ALLOWING COUNTY BOARDS OF
EDUCATION TO PUBLISH FINANCIAL
STATEMENTS ON WEBSITE
IN EFFECT JULY 6, 2021**

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**Senate Bill 651
Allowing county boards of education to publish financial
statements on website**

- County boards of education will have 120 days after the end of a fiscal year, instead of 90 days, to prepare and publish the financial statement for that year on the form prescribed by the State Auditor and State Superintendent of Schools. However, another provision of Senate Bill 651 requires boards to prepare their financial statements and file them with the State Auditor and State Superintendent no later than 90 days after the end of the fiscal year.
- Boards will have the choice as of July 1, 2023, of publishing their financial statements either as Class I-0 legal advertisements or on their websites. However, prior to publishing its financial statement on its website for the first time, a county board must (1) hold a public hearing at which interested persons may express their views on whether the statement should be published as a Class I-0 legal ad or on the website, and (2) give public notice of the availability of the website posting, publishing this notice once a week in a qualified newspaper of general circulation for two successive weeks.
- If posted as a Class I-0 legal advertisement, the financial statement must not include the name of any person who has entered into a contract with the county board as a regular or substitute teacher or service employee.

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**Senate Bill 651
Allowing county boards of education to publish financial
statements on website**

- If posted on a board's website, the financial statement must remain posted there at least until publication of the next annual statement, and it must include
 - the name of every regular and substitute teacher and service employee who has entered into a contract with the board, with the amounts paid to each,
 - budget estimates, and
 - a list of the names of each firm, corporation and person who received less than \$250 from any fund during the fiscal year, showing the amount paid to each and the purpose of the payment.
- Lastly, when a board transmits, as it must, a copy of the financial statement to any county resident requesting a copy, the information that must accompany the copy will now include a list of each firm, corporation and person who received less than \$250 from any fund during the fiscal year, showing the amount paid to each and the purpose of the payment. Until this change takes effect for financial statements for the fiscal year beginning July 1, 2023, the supplemental information must name parties who received less than \$500.

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SENATE BILL 673
RELATING TO VENUE FOR BRINGING
CIVIL ACTION OR ARBITRATION
PROCEEDINGS UNDER CONSTRUCTION
CONTRACTS
IN EFFECT JULY 1, 2021

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Senate Bill 673
Relating to Venue for Bringing Civil Action or
Arbitration Proceedings under Construction Contracts

- Where a party whose principal place of business is in the state of West Virginia enters into a construction contract on or after July 1, 2021, to design, manage construction of, construct, alter, repair, maintain, move, demolish, or excavate, or supply goods, equipment, or materials for the construction, alteration, repair, maintenance, movement, demolition, or excavation of a building, structure, appurtenance, road, bridge, or tunnel which is physically located in the state of West Virginia, such construction contract must provide that any civil action or arbitration called for or permitted by the contract must be commenced and heard in the State of West Virginia in the jurisdiction where the construction project is located, or other such jurisdiction where venue is proper.

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SENATE BILL 680
ALLOWING STATE SUPERINTENDENT OF
SCHOOLS TO DEFINE CLASSROOM
TEACHERS CERTIFIED IN SPECIAL
EDUCATION
IN EFFECT JULY 5, 2021

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Senate Bill 680
Allowing State Superintendent of Schools to Define Classroom Teachers Certified in Special Education

- Under legislation enacted in 2019, the state minimum salary schedule for teachers was amended to credit three additional years of experience to "each classroom teacher certified in special education and employed as a full-time special education teacher." The questions has since arisen whether speech-language pathologists are to be considered classroom teachers for purposes of this salary enhancement. The State Department of Education has advised that they are not. The State Public Employees Grievance Board has ruled that they are.
- With the apparent intent of resolving the question, Senate Bill 680 provides that the meaning of "each classroom teacher certified in special education and employed as a full-time special education teacher" shall be determined by the State Superintendent of Schools.

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HOUSE BILL 2001
RELATING GENERALLY TO CREATING THE WEST VIRGINIA JUMPSTART SAVINGS PROGRAM
IN EFFECT JUNE 19, 2021

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House Bill 2001
Relating generally to creating the West Virginia Jumpstart Savings Program

- The West Virginia Jumpstart Savings Act is a savings and investment program to assist West Virginia citizens who wish to embark on a new trade or establish a new business in the state. It recognizes the importance of cultivating an environment where tradespersons and entrepreneurs can be successful in their careers and remain in their home state. *West Virginia Code § 18-30A-2.*
- The Act establishes a Jumpstart Savings Program that will be operable on or before July 1, 2022 and administered by the seven-member Jumpstart Savings Board that includes the State Treasurer and the State Superintendent of Schools. The board will implement the program through financial organizations serving as account depositories and managers. The Treasurer will develop marketing plans and promotional material to ensure that potential beneficiaries will be aware of and take advantage of the program.
- Under the Act, with an initial deposit of at least \$25, people may open and invest money into a Jumpstart Savings Account for the benefit of a single named person as the designated beneficiary. The Treasurer will deposit \$100 into a newly opened account if the designated beneficiary is a West Virginia resident, but only if the beneficiary is either under 18 years of age or has, within the previous 180 days, enrolled in an approved apprenticeship or educational program. Once a Jumpstart Savings Account is opened, any person may contribute, subject to applicable state and federal laws. The Jumpstart Program will manage and invest funds in all the accounts and funds received from any other sources.
- The Act gives favorable West Virginia income tax treatment to up to \$25,000 per year in qualifying Jumpstart Savings Account contributions, distributions and employer matching contributions.

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House Bill 2001
Relating generally to creating the West Virginia Jumpstart Savings Program

- A beneficiary may receive distributions from the account for these qualified expenses set out in the Act:
 - the purchase of tools, equipment, or supplies to be used exclusively in an occupation or profession for which the beneficiary is required to complete an apprenticeship program, earn a license or certification from an Advanced Career Education (ACE) career center, or earn an associate degree or certification from a community and technical college;
 - fees for required certification or licensure to practice any such trade or occupation in this state; and
 - costs incurred by the beneficiary that are necessary for the purpose of establishing and operating in West Virginia a business in which the beneficiary will practice any such occupation or profession.

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HOUSE BILL 2008
AMENDING REQUIREMENTS FOR LICENSURE RELATING TO ELEVATOR MECHANICS, CRANE OPERATORS, HVAC, ELECTRICIANS AND PLUMBERS
IN EFFECT JUNE 16, 2021

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House Bill 2008
Amending requirements for licensure relating to elevator mechanics, crane operators, HVAC, electricians and plumbers

- "Plumber II" is among the official class titles assigned to service personnel employed by county boards of education. The title is defined in West Virginia Code § 18A-4-8(i) as a person employed as a journeyman plumber. The term "journeyman plumber" is not further defined in the school statutes. However, with certain exceptions that appear not to apply to plumber-employees of county boards, in order to perform plumbing work in our state, an individual must have a license issued by the State Commissioner of Labor.
- House Bill 2008 modifies the qualifications for licensure as a journeyman plumber. Instead of having at least 8,000 hours of plumbing or related experience, an applicant now must pass a journeyman plumber written exam with a score of at least 70 percent. As before, they must also be competent to instruct and supervise the work of a plumber in training, meaning a person who has not passed the journeyman exam.
- "Electrician II" is another of the official class titles for service personnel employed by county boards of education, defined in West Virginia Code § 18A-4-8(j) as a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the State Fire Marshall. Although House Bill 2008 does not modify the qualifications an individual must have to qualify for the journeyman's license, the bill now makes it mandatory, rather than optional, for the Fire Marshall to issue the license, without written examination, to a person holding the same or equivalent license from another jurisdiction if they are in good standing with all other jurisdictions where they are licensed and if they demonstrate that they can work safely and competently.

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**HOUSE BILL 2009
RELATING TO LIMITATIONS ON THE USE
OF WAGES AND AGENCY SHOP FEES BY
EMPLOYERS AND LABOR
ORGANIZATIONS FOR POLITICAL
ACTIVITIES
IN EFFECT JUNE 17, 2021**

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**House Bill 2009
Relating to limitations on the use of wages and agency
shop fees by employers and labor organizations for
political activities**

- **House Bill 2009 prohibits the deduction or assignment of union, labor organization or club dues or fees from the earnings of county board of education employees.**
- **As for wage assignments for permissible purposes, the bill also removes the requirement that assignments of an employee's future wages must be notarized. It will now be sufficient if the assignment is in writing.**

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**HOUSE BILL 2012
RELATING TO PUBLIC CHARTER
SCHOOLS
IN EFFECT JUNE 1, 2021**

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House Bill 2012
Relating to public charter schools

- House Bill 2012 extensively amends the 2019 public charter school legislation. It begins by increasing to ten (from three) both the total number of public charter schools that may be operational before July 1, 2023, and the cap on public charter schools that may become operational every three years thereafter. The bill also provides that two years after the first public charter school begins operations, the Legislative Auditor must conduct an audit of the public charter school program and make a report to the Legislative Oversight Commission on Education Accountability.
- Previously, the statute provided that the school district in which a charter public school is located remained the local education agency (LEA) for public charter schools in the county. A public charter school was to be treated as an LEA only for purposes of applying for competitive federal grants. Now, each public charter school must be treated as its own LEA "for all purposes" except as needed under the West Virginia Public School Support Plan for funding purposes.

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HOUSE BILL 2013
RELATING TO THE HOPE SCHOLARSHIP PROGRAM
IN EFFECT JUNE 15, 2021

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House Bill 2013
Relating to the Hope Scholarship Program

- The Hope Scholarship Act creates the Hope Scholarship Program, which is to be operational no later than July 1, 2022. The stated purpose of the Program is to help parents better meet the individual education needs of their children by providing them with an option to a full-time public school education. A child participating in the Hope Scholarship Program is exempt from the compulsory school attendance requirement that would otherwise apply.
- The Program will be administered by the Hope Scholarship Board, the members of which include the State Superintendent of Schools. Upon request of the Board, the State Superintendent may provide staff to the Board. The Board is authorized to contract with private organizations to administer the Program, including private financial management firms.

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**HOUSE BILL 2029
RELATING TO TEACHER PREPARATION
CLINICAL EXPERIENCE PROGRAMS
IN EFFECT JULY 9, 2021**

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**House Bill 2029
Relating to teacher preparation clinical experience programs**

- This bill renames Teacher in Residence programs as Clinical Teacher of Record programs and renames the Teacher in Residence permit as the Clinical Teacher of Record permit.

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**HOUSE BILL 2145
RELATING TO STUDENT AIDE
CLASS TITLES
IN EFFECT JULY 9, 2021**

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House Bill 245
Relating to Student Aide Class Titles

- Four new class titles are established for service personnel:
 - "Aide V (Special Education Assistant Teacher – Temporary Authorization)," meaning a person who does not possess minimum requirements for the Aide V permanent authorization but is enrolled in and pursuing requirements as prescribed by the State Board of Education. The employee is compensated at pay grade E.
 - "Aide V (Special Education Assistant Teacher)," meaning a service person referred to in the Aide I classification who holds a high school diploma or a GED certificate and who has completed the requirements and experience to be prescribed by the State Board. The employee is compensated at pay grade F.
 - "Aide VI (Behavioral Support Assistant Teacher – Temporary Authorization)," meaning a person who does not possess minimum requirements for the Aide VI permanent authorization but is enrolled in and pursuing the requirements as prescribed by the State Board. The employee is compensated at pay grade E.
 - "Aide VI (Behavioral Support Assistant Teacher)," meaning a person who works with a student or students who have identified behavior difficulties, holds at least an Aide III classification, and has completed the requirements and experience to be prescribed by the State Board. The employee is compensated at pay grade F.
- In the case of all four new class titles, no service person is entitled to the paygrade associated with the title unless they have been selected to fill a posted position which specifically requires the successful candidate to hold or be enrolled in and pursuing the requirements for the classification. In each case, the determination as to whether a position will be posted requiring the class title is "solely at the discretion of the county."

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HOUSE BILL 2267
ESTABLISHING AN OPTIONAL BUS OPERATOR IN RESIDENCE PROGRAM FOR SCHOOL DISTRICTS
IN EFFECT JULY 7, 2021

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House Bill 2267
Establishing an Optional Bus Operator in Residence Program

- County boards are now permitted to establish locally funded recruitment and training programs for prospective bus operators. Each program requires State Department of Education approval and may only be used if the county board is unable to maintain an adequate number of regular or substitute bus operators in its pool or is experiencing a shortage in adequately staffing its transportation program.
- Approved programs must include requirements for trainees to pass a background check and drug screen. Programs must specify the amount of any stipend, reimbursement or other benefit to be paid to participants; any obligation of program completers to apply or become employed as a bus operator for a period of time; and any penalties for failure to complete the program or to comply with any post-program requirements.

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House Bill 2267
Establishing an Optional Bus Operator in Residence Program

- To successfully complete a program, a trainee must complete all requirements to become classified as a bus operator. However, completion does not entitle a participant to employment. Completers may attain employment only upon successful application for an open regular or substitute bus operator position. Nor does a trainee accrue any seniority for time spent in the training program.

Bowles Rice

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HOUSE BILL 2290
INITIATING A STATE EMPLOYMENT FIRST POLICY TO FACILITATE INTEGRATED EMPLOYMENT OF DISABLED PERSONS
IN EFFECT JUNE 28, 2021

Bowles Rice

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House Bill 2290
Initiating a State Employment First Policy to facilitate integrated employment of disabled persons

- The Legislature enacted the Employment First Policy initiative to promote the expectation that individuals with intellectual, developmental and other disabilities are valued members of the workforce who can often meet the same employment standards, responsibilities and expectations as other working-age adults when provided proper education, reasonable accommodations and supports.
- The policy's goal is to use publicly funded services to promote employment opportunities for citizens with disabilities in
 - competitive employment (work for which an individual with disabilities is compensated at a rate not less than minimum wage and for which the employee is eligible for the same level of benefits and opportunities for advancement as employees who are not individuals with disabilities),
 - integrated employment (at a location where the percentage of employees with disabilities relative to those without disabilities is consistent with the norms of the general workforce and where employees with disabilities interact with other persons to the same extent as employees without disabilities in comparable positions), and
 - customized employment (with support and services that are designed to personalize the employment relationship between the person with a disability and employer in a way that meets the needs of both).

Bowles Rice

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**HOUSE BILL 2529
PROHIBITING WEST VIRGINIA
INSTITUTIONS OF HIGHER EDUCATION
FROM DISCRIMINATING AGAINST
GRADUATES OF PRIVATE, NONPUBLIC
OR HOME SCHOOLS BY REQUIRING
THEM TO SUBMIT TO ALTERNATIVE
TESTING
IN EFFECT JULY 6, 2021**

Bowles Rice

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**House Bill 2529
Prohibiting West Virginia institutions of higher education from
discriminating against graduates of private, nonpublic or home
schools by requiring them to submit to alternative testing**

- In 2015, the Legislature enacted a statute authorizing administrators of secondary education at public, private and home schools to issue diplomas or other appropriate credentials to persons who complete the secondary education program. Because the diploma or credential is deemed legally sufficient to show that a person has a high school diploma or equivalent, West Virginia state institutions of higher learning are prohibited from rejecting or treating a person differently based upon the source of the diploma or credential. However, under the 2015 statute, an institution could inquire into and assess the substance or content of the program for the purpose of determining whether a person meets other specific requirements.
- House Bill 2529 now adds that once a student has been fully admitted, nothing in the statute prevents an institution of higher learning from administering placement tests or other assessments to determine the student's appropriate placement into college-level course sequences.
- The bill also provides that a person who possesses such a diploma or credential, and who has acceptable test results on ACT, SAT or other tests recognized by the institution, may not be required to submit to alternate testing as a condition of admission. Further, a person who obtained a diploma or other appropriate credential may not be rejected for admission to an institution of higher education solely because their secondary education was not accredited by the State Board of Education or any accrediting agency approved by the State Board.

Bowles Rice

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**House Bill 2633
CREATING THE 2021 FARM BILL
IN EFFECT JULY 5, 2021**

Bowles Rice

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**House Bill 2633
CREATING THE 2021 FARM BILL**

- The West Virginia Fresh Food Act **required schools**, beginning July 1, 2019, to purchase a minimum of five percent of their fresh produce, meat and poultry products from in-state producers. House Bill 2021 modifies that requirement in several respects.
- **First, the rule now specifies that the five percent minimum applies to foods that the schools "obtain" rather than just purchase.**
- **Second, the five percent minimum for obtaining food from in-state producers will no longer apply to just fresh produce, meat and poultry products, but now will also apply to "milk and other dairy products, and other foods."**
- **Third, the bill clarifies that the five percent rule can be satisfied not only with food grown or produced by in-state producers, but also with food "processed" by them.**
- **The Commissioner of Agriculture is required to establish rules that contain criteria for a food or food product to satisfy these requirements. The Commissioner must also establish criteria for determining when exceptions or exemptions should be granted, such as when a desired food cannot be grown or is not available from in-state producers. Schools' contracts for the purchase of food, or that include the purchase of food as a component of the contract, must contain provisions to ensure that the schools comply with the provisions of the bill and any such rule of the Commissioner.**

Bowles Rice

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**House Bill 2763
Creating WV Cyber Incident Reporting
IN EFFECT JULY 5, 2021**

Bowles Rice

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**House Bill 2763
Creating WV Cyber Incident Reporting**

- Under House Bill 2763, when a county board of education determines that it experienced any of certain "cybersecurity incidents" it must, within ten days, report the incident to the State Cybersecurity Office. The county board may not first make any citizen notification of the incident..
- The kind of cybersecurity incident that must be reported is any "violation, or imminent threat of violation, of computer security policies, acceptable use policies, or standard security practices" that meets at least one of these criteria: (1) state or federal law requires the reporting of the incident to regulatory or law-enforcement agencies or affected citizens; (2) the ability of the entity that experienced the incident to conduct business is substantially affected; or (3) the incident would be classified as emergency, severe, or high by the U.S. Cybersecurity and Infrastructure Security Agency.
- The required report must contain, at least, the approximate date of the incident, the date it was discovered, the nature of any data that may have been illegally obtained or accessed, and a list of all state and federal regulatory agencies, self-regulatory bodies and foreign regulatory agencies to whom the notice has or will be provided.
- All executive branch state agencies, constitutional officers, local government entities, the judiciary and the Legislature are under the same duty to report.

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**HOUSE BILL 2785
RELATING TO PUBLIC SCHOOL
ENROLLMENT FOR STUDENTS FROM
OUT OF STATE
IN EFFECT JULY 6, 2021**

Bowles Rice

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**House Bill 2785
Relating to public school enrollment for students from out
of state**

- Compulsory school attendance now begins with the school year in which a child's sixth birthday is reached prior to July 1 instead of September 1. As before, it also begins upon enrolling in a publicly supported kindergarten program. Compulsory school attendance now continues to the seventeenth birthday instead of the sixteenth birthday. As before, it also continues for as long as the student continues to be enrolled in a school system.
- Attendance at a Montessori kindergarten, as before, is deemed school attendance for purposes of the compulsory attendance law. But now state-approved nonpublic kindergarten programs, homeschool kindergarten programs, Hope Scholarship kindergarten programs, and private, parochial or church kindergarten programs recognized under West Virginia Code § 18-9-1(k) also may satisfy the compulsory attendance law. If, after such kindergarten, a student enters the public school system, they now must be placed in the developmentally and academically appropriate grade level.
- The removal of a child from a kindergarten program may now occur when only the parent or guardian determines that the best interest of the child would not be served by requiring further attendance. Previously, the removal decision could also be made when the principal or teacher made that determination. Also, prior to enrolling in a publicly supported kindergarten, a parent may now apply for a Hope Scholarship on behalf of the child and, annually, will then have the option to renew the child's enrollment in the Hope Scholarship Program.
- For purposes of placement and credit assignment in the public schools, a transcript or other credential provided by a public school program, private school program, homeschool program or Hope scholarship program shall now be accepted by a West Virginia public school as a record of a student's previous academic performance.

Bowles Rice

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**HOUSE BILL 2791
RELATING TO ENROLLMENT AND COSTS
OF HOMESCHOOLED OR PRIVATE
SCHOOL STUDENTS AT VOCATIONAL
SCHOOLS
IN EFFECT JULY 4, 2021**

Bowles Rice

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House Bill 2791
Relating to enrollment and costs of homeschooled or private school students at vocational schools

- Under a new section of West Virginia Code, county boards of education must permit homeschooled and private school students to enroll and take classes at the county's vocational schools, if any are provided and as capacity allows, at no expense or cost greater than expenses or costs normally charged to public school students. If such a student is not permitted to enroll in a county vocational school, the county must in writing notify the parent or guardian, sending a copy to the State Department of Education.

Bowles Rice

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HOUSE BILL 2852
RELATING TO THE DISTRIBUTION OF THE ALLOWANCE FOR INCREASED ENROLLMENT
IN EFFECT JUNE 30, 2021

Bowles Rice

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House Bill 2852
Relating to the distribution of the allowance for increased enrollment

- Prior to House Bill 2852, the State Superintendent of Schools distributed to county boards of education, in two installments, funds that the Legislature appropriates as support for student enrollment that exceeds the enrollment used in computing total state aid to the school districts for that year. The first installment, transferred before September 1, was 60 percent of the county's total allowance for increased enrollment. Because the actual increase in student enrollment could not be ascertained until after September 1, this first installment was calculated based on a projection of the school district's increased enrollment instead of on actual enrollment figures.
- The second distribution was made on or before December 31. By then the actual increase in student enrollment was known. The State Superintendent calculated the total amount of the county's allowance based on the actual enrollment increase, then deducted the amount of the first installment. The balance was remitted to the school district.
- If it turned out that, based on projected enrollment, the distribution to a county board on or before September 1 was greater than the total amount of the allowance based upon its actual increase in enrollment, the county board was required to refund the difference to the State prior to June 30 of the same fiscal year.
- House Bill 2852 requires the State Superintendent to now calculate a county board's allowance for increased enrollment based on the actual, rather than projected, increase in enrollment, and to distribute the allowance to each county in a single transfer on or before December 31 of each year. But if, before the actual increase in net enrollment is known, a school district requests an early distribution of up to 60 percent of its estimated share based on its projected enrollment increase, the State Superintendent is authorized to do so. In that case, if the county's actual increase in enrollment turns out to be lower than the projection, the school district must refund any overpayment prior to June 30. Whenever an advanced partial distribution is made, the State Department of Education must notify committees of the Legislature.

Bowles Rice

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HOUSE BILL 2906
RELATING TO THE SCHOOL BUILDING
AUTHORITY'S ALLOCATION OF MONEY
IN EFFECT JULY 5, 2021

Bowles Rice

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House Bill 2906
Relating to the SBA's Allocation of Money

- The State School Building Authority laws have until now given the Authority discretion to allocate up to three percent of available funds (other than the School Major Improvement Fund and the School Access Safety fund) for projects serving the educational community statewide, facilities under direct supervision of the State Board of Education, and school major improvement projects for multicounty vocational technical centers, vocational programs at comprehensive high schools and comprehensive middle schools, and vocational schools that cooperate with community and technical college programs. The cap on such allocations is increased under House Bill 2906 to ten percent.

Bowles Rice

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HOUSE BILL 2916
CREATING THE SEMIQUINCENTENNIAL
COMMISSION FOR THE CELEBRATION OF
THE 250TH ANNIVERSARY OF THE
FOUNDING OF THE UNITED STATES OF
AMERICA
IN EFFECT APRIL 7, 2021

Bowles Rice

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House Bill 2916
Creating the Semiquincentennial Commission

- To prepare for and commemorate the 250th anniversary of our nation's founding, the Legislature creates the ten-member West Virginia Semiquincentennial Commission, one of whose members is the State Superintendent of Schools. The Commission will develop, lend technical assistance to and encourage programs and events involving localities, organizations and all West Virginians.

Bowles Rice

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HOUSE BILL 3177
REMOVING EXPIRED, OUTDATED,
INOPERATIVE AND ANTIQUATED
PROVISIONS AND REPORT REQUIREMENTS
IN EDUCATION
IN EFFECT JULY 9, 2021

Bowles Rice

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House Bill 3177
Removing Expired, Outdated, Inoperative and Antiquated Provisions and Reporting Requirements In Education

- The Legislature repeals and removes from State Code a number of public education-related provisions that it considers expired, outdated, inoperative or antiquated.
- Among them is West Virginia Code § 18-2-35, which required the State Board of Education to adopt rules allowing county boards of education to implement dress codes requiring students to wear school uniforms.
- The bill also removes provisions from various sections of chapter 18, article 9B of the Code that created the State Board of School Finance and established its powers and duties. The State Superintendent of Schools is now required by the school finance laws to exercise those powers and duties.

Bowles Rice

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**HOUSE BILL 3191
REQUIRING EMPLOYERS TO SEND
CERTAIN NOTIFICATIONS WHEN
RETIRANTS ARE HIRED AS TEMPORARY,
PART-TIME EMPLOYEES
IN EFFECT JULY 6, 2021**

Bowles Rice

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**House Bill 3191
Requiring employers to send certain notifications when
retirants are hired as temporary, part-time employees**

- An amendment to the State Public Employees Retirement Act requires that when a retired employee becomes employed on a part-time, temporary basis by a participating employer, the employer must notify the employee if their subsequent employment will negatively impact their retired status or benefits. *West Virginia Code § 5-10-19(b)*.
- A corresponding amendment to the State Teachers Retirement System statutes requires that when a retired employee subsequently becomes employed on a part-time, temporary basis which, if full-time, would qualify them as a teacher member or nonteaching member of the system, the employer must notify the individual if their subsequent employment will negatively impact their retired status or benefits.

Bowles Rice

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**HOUSE BILL 3266
PROVIDING FOR TERMINATION OF
EXTRACURRICULAR CONTRACT UPON
RETIREMENT
IN EFFECT JULY 1, 2021**

Bowles Rice

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House Bill 3266
Providing for Termination of Extracurricular Contract upon Retirement

- This bill provides that, effective with the retirement of a county board of education employee on or after July 1, 2021, any extracurricular contract of the employee shall terminate when the employee retires. However, retired employees are permitted to apply for and, if they are the successful applicant, may be employed in an extracurricular assignment or other position with the county board consistent with rules established by the Consolidated Public Retirement Board for the employment of retirees.

Bowles Rice

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HOUSE BILL 3293
RELATING TO SINGLE-SEX PARTICIPATION IN INTERSCHOLASTIC ATHLETIC EVENTS
IN EFFECT JULY 8, 2021

Bowles Rice

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House Bill 3293
Relating to single-sex participation in interscholastic athletic events

- Finding that classification of sports teams according to biological sex at birth is necessary to promote equal athletic opportunities for the female sex, the Legislature requires that each interscholastic, intercollegiate, intramural or club athletic team or sport sponsored by any public secondary school or state institution of higher education, must be designated as one of the following based on biological sex: (1) males, men, or boys; (2) females, women, or girls; or (3) coed or mixed.
- Under House Bill 3293, athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, nothing in the statute may be construed to restrict the eligibility of any student to participate on teams or sports designated as "males," "men" or "boys" or designated as "coed" or "mixed," and selection for such a team may still be based on those who try out and possess the requisite skill to make the team.

Bowles Rice

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House Bill 3293
Relating to single-sex participation in interscholastic athletic events

- A student claiming a violation of the statute may bring an action against the county board or higher education institution seeking injunctive relief and actual damages, as well as reasonable attorney's fees and court costs if the student substantially prevails. The State Board of Education is required to adopt rules, including emergency rules, to implement House Bill 3293 for public secondary schools.

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HOUSE BILL 3294
RELATING TO UNEMPLOYMENT INSURANCE
IN EFFECT JULY 1, 2021

Bowles Rice

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House Bill 3294
Relating to unemployment insurance

- A new section of State Code provides that an employer may contact Workforce West Virginia in situations when an employee who was previously laid off by that employer is given the opportunity to be rehired but declines to do so.
- **In response, Workforce West Virginia must investigate to determine whether the employee should continue to receive unemployment benefits.**

Bowles Rice

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West Virginia Supreme Court of Appeals

- **Webster County Bd. of Educ. v. Davis, et al., No. 19-1028 (March 26, 2021)**
 - In reduction-in-force cases, Aide seniority and ECCAT (Early Childhood Classroom Assistant Teacher) seniority are earned independently of each other.
 - A multiclassified Aide/ECCAT might well have more Aide seniority than ECCAT seniority.
 - In reduction-in-force of Aide/ECCAT positions serving pre-K and Kindergarten classrooms, ECCAT seniority, not Aide seniority, may determine which Aide/ECCAT employees lose their ECCAT class title.

[Click here](#) to read the Supreme Court's *Webster County* opinion.

Bowles Rice

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West Virginia Public Employees Grievance Board

Apesos v. Hancock County Board of Education, Docket No. 2019-0735-HanED (February 21, 2020)

Full-time service personnel required to work in excess of their normal working day during any week which contains a paid school holiday are paid for additional hours, or a fraction of the additional hours, at a rate of one and one-half times their usual hourly rate. Election days are not school holidays for purposes of this rule.

Click here to see the full text of the Grievance Board's Decision

[Read the Decision](#)

Bowles Rice

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West Virginia Public Employees Grievance Board

Hall v. Kanawha County Board of Education, Docket No. 2020-0897-CONS (November 24, 2020)

An educational sign language interpreter holding a paraprofessional license who works with students with hearing impairments but lacks a recognized teaching license with qualifying special education endorsement is not entitled to the three-step pay increase, granted by statute, to special education-certified teachers employed as full-time special education teachers. Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous.

[Click here to see the full text of the Grievance Board's Decision](#)
[Read the Decision](#)

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**Thank you for taking time to stay
on top of developments in our
school laws**

And thank you for all you do to improve
student achievement in West Virginia's
schools

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