

2023 Green Book

***SUMMARY OF PUBLIC EDUCATION BILLS
ENACTED DURING THE 2023 REGULAR SESSION***



West Virginia DEPARTMENT OF
EDUCATION



**West Virginia Board of Education
2022-2023**

L. Paul Hardesty, President
Nancy J. White, Vice President
F. Scott Rotruck, Financial Officer

Robert W. Dunlevy, Member
Victor L. Gabriel, Member
Daniel D. Snavelly, M.D., Member
Christopher A. Stansbury, O.D., Member
Debra K. Sullivan, Member
James S. Wilson, D.D.S., Member

Sarah Armstrong Tucker, Ph.D., Ex Officio
Chancellor

West Virginia Higher Education Policy Commission
West Virginia Council for Community and Technical College Education

David L. Roach, Ex Officio
State Superintendent of Schools
West Virginia Department of Education

FOREWORD

Each year, the West Virginia Department of Education (WVDE) issues a summary of public education bills enacted during the regular legislative session. The Green Book, as it is called, offers a summary of each piece of education legislation passed allowing the reader to gain a better understanding of the new laws.


It is encouraged that the Green Book be placed with the most current copy of the School Laws of West Virginia as it contains new language and laws that must be reviewed in conjunction with the School Laws Book.

The 2023 Green Book is an important resource and should be referenced as questions arise for the upcoming school year. You may view an online version at <https://wvde.us/legal-services/education-law/>.

The summaries provided as part of this document are not intended to supplant an actual reading of the text of the bills, nor should this document be considered an official interpretation of the State Superintendent of Schools. Formal interpretations to specific questions may be provided upon request.

Suggestions for improving this document as a service to the WVDE's clientele are always welcome. Those needing information or with questions regarding this document, education legislation not included in this publication, or legislation from past years, please contact WVDE Legal Services at (304) 558-3667.

Sincerely,

A handwritten signature in black ink that reads "David R. Roach". The signature is written in a cursive, flowing style.

David R. Roach
State Superintendent of Schools

CODE CHANGES

Code	Bill	Code	Bill	Code	Bill
§5-10-22m	SB 237	§6C-2-6	SB 461	§18-5G-12	HB 3084
§5-10-22N	SB 237	§15-2-5	SB 423	§18-5G-15	HB 3084
§5-10C-3	SB 449	§15-2D-1	HB 3369	§18-5G-17	SB 47
§5-10C-4	SB 449	§15-2D-2	HB 3369	§18-7A-3	SB 451
§5-10C-5	SB 449	§15-2D-3	HB 3369	§18-7A-13a	SB 451
§5-16-2	SB 268	§15A-4-8a	SB 495	§18-7A-15	SB 451
§5-16-3	SB 268	§18-1B-7	HB 3218	§18-7A-17	SB 451
§5-16-4	SB 268	§18-2-7c	HB 3113	§18-7A-26x	SB 237
§5-16-5b	SB 268	§18-2-25	HB 2820	§18-7A-26y	SB 237
§5-16-7	SB 268	§18-2-25e	HB 2820	§18-2-25e	HB 2820
§5-16-7b	SB 268	§18-2-40b	HB 3218	§18-7B-2	SB 451
§5-16-7c	SB 268	§18-2E-10	HB 3035	§18-7B-17	SB 451
§5-16-7g	SB 268	§18-2E-13	HB 3055	§18-8-1a	SB 625
§5-16-8	SB 268	§18-4-10	HB 3547	§18-9A-5	HB 3035
§5-16-9	SB 268	§18-5-1	HB 2890	§18-9A-15	HB 3084
§5-16-10	SB 268	§18-5-13	HB 2607	§18-9F-10	SB 275
§5-16-11	SB 268	§18-5-13a	SB 51	§18-20-10	HB 3035
§5-16-13	SB 268	§18-5-16	HB 2596	§18-20-11	HB 3271
§5-16-14	SB 268	§18-5-18a	HB 3035	§18A-4-2	SB 4230
§5-16-15	SB 268	§18-5-20	SB 688	§18A-4-8	HB 2602
§5-16-16	SB 268	§18-5-27	SB 422	§18A-4-8a	SB 423
§5-16-18	SB 268	§18-5-28	SB 99	§18A-4-15a	HB 3055
§5-16-23	SB 268	§18-5-48	HB 2827	§18B-14-4	HB 2005
§5-16-25	SB 268	§18-5-48	HB 3084	§18B-21-1	SB 121
§5-16-26	SB 268	§18-5-50	SB 469	§18B-21-2	SB 121
§5-16-28	SB 268	§18-5G-1	HB 3084	§18B-21-4	SB 121
§5-16-30	SB 268	§18-5G-2	HB 3084	§18B-21-3	SB 121
§5-16-31	SB 268	§18-5G-3	HB 3084	§18B-21-4	SB 121
§5-16-32	SB 268	§18-5G-4	HB 3084	§49-4-405	HB 2018
§6C-2-1	SB 461	§18-5G-5	HB 3084	§49-4-406	HB 2018
§6C-2-2	SB 461	§18-5G-6	SB 453	§61-8B-11b	SB 187
§6C-2-3	SB 461	§18-5G-7	HB 3084		
§6C-2-4	SB 461	§18-5G-10	SB 453		

Legend for this page:

- **Black** designates amended code.
- **Red** designates stricken code.
- **Green** designates new code.

TABLE OF CONTENTS

2023 Regular Legislative Session

SB 47	1
<i>Creating Charter Schools Stimulus Fund</i>	
§18-5G-17	
SB 51	4
<i>Requiring impact statement in certain instances of school closing or consolidation</i>	
§18-5-13a	
SB 99	9
<i>Relating to meetings among county boards of education</i>	
§18-5-28	
SB 121	13
<i>Creating Student Journalist Press Freedom Protection Act</i>	
§18B-21-1, §18B-21-2, §18B-21-3, §18B-21-4	
SB 187	18
<i>Making it a felony offense for school employee or volunteer to engage in sexual contact with students</i>	
§61-8B-11b	
SB 237	20
<i>Relating to Public Employees Retirement System and State Teachers Retirement System</i>	
§5 10-22m, §5 10-22n, §18-7A-26x, §18-7A-26y	
SB 268	24
<i>Relating to PEIA</i>	
§5-16-2, §5-16-3, §5-16-4, §5-16-5, §5-16-5b, §5-16-7, §5-16-7b, §5-16-7c, §5-16-7g, §5-16-8, §5-16-9, §5-16-10, §5-16-11, §5-16-13, §5-16-14, §5-16-15, §5-16-16, §5-16-18, §5-16-23, §5-16-25, §5-16-26, §5-16-28, §5-16-30, §5-16-31, §5-16-32	
SB 275	65
<i>Adding State Fire Marshals to statute included with law enforcement and first responders that receive information on school safety requirements</i>	
§18-9F-10	
SB 422	66
<i>Requiring public schools to publish curriculum online at beginning of each new school year</i>	
§18-5-27	

SB 423	69
<i>Increasing salary for certain state employees</i>	
§15-2-5, §18A-4-2, §18A-4-8a	
SB 449	84
<i>Updating terms for Natural Resources Police Officers Retirement System and retirement systems for charter schools</i>	
§5-10C-3, §5-10C-4, §5-10C-5	
SB 451	90
<i>Relating to Teachers Retirement System and Teachers’ Defined Contribution Retirement System</i>	
§18-7A-3, §18-7A-13a, §18-7A-15, §18-7A-17, §18-7B-2, §18-7B-17	
SB 453	105
<i>Ensuring retirement contributions and delinquency charges of charter school employees be paid upon school closure or by successor</i>	
§18-5G-6, §18-5G-10	
SB 461	112
<i>Relating to Public Employees Retirement System and State Teachers Retirement System</i>	
§6C-2-1, §6C-2-2, §6C-2-3, §6C-2-4, §6C-2-6	
SB 469	126
<i>Providing funding for CPR instruction to high school students</i>	
§18-5-50	
SB 495	128
<i>Creating Student Journalist Press Freedom Protection Act</i>	
§15A-4-8a	
SB 625	131
<i>Requiring certain transcripts to be accepted as record of student’s performance for placement in microschooel programs</i>	
§18-8-1a	
SB 688	134
<i>Allowing BOE to hire retired teachers to assist with tutoring</i>	
§18-5-20	

HB 2005	137
<i>Establishing the dual enrollment pilot program to be administered by the Higher Education Policy Commission and the Council for Community and Technical College Education in conjunction with the State Board of Education</i>	
§18B-14-4	
HB 2018	141
<i>Permitting the managed care case coordinator to attend the multidisciplinary team meeting</i>	
§49-4-405, §49-4-406	
HB 2346	147
<i>Declaring a shortage of qualified bus operators and allowing retired bus operators to accept employments</i>	
§18A-4-15a	
HB 2596	151
<i>To modify when a nonresident student’s transfer may be denied</i>	
§18-5-16	
HB 2597	158
<i>Amending performance evaluations of professional personnel</i>	
§18A-3C-2	
HB 2602	162
<i>Reestablishing certain specialized school service personnel classifications</i>	
§18A-4-8	
HB 2607	177
<i>Clarify that vehicles with a capacity larger than 10 passengers may be used to transport students provided that no more than 10 passengers may be transported at one time</i>	
§18-5-13	
HB 2820	184
<i>To provide HOPE Scholarship recipients with the ability to play sports</i>	
§18-2-25, §18-2-25e	
HB 2827	188
<i>Make public charter schools eligible for Safe Schools Fund</i>	
§18-5-48	

HB 2890	191
<i>Modifying student discipline</i>	
§18-5-1	
HB 3035	197
<i>Third Grade Success Act</i>	
§18-2E-10, §18-5-18a, §18-9A-5, §18-20-10	
HB 3055	217
<i>To create a vocational math class for students interested in careers in the trades</i>	
§18-2E-13	
HB 3084	219
<i>Relating to revising provisions related to public charter schools</i>	
§18-5-48, §18-5G-1, §18-5G-2, §18-5G-3, §18-5G-4, §18-5G-5, §18-5G-7, §18-5G-12, §18-5G-15, §18-9A-15	
HB 3113	244
<i>Requiring high school students to complete course of study in personal finance</i>	
§18-2-7c	
HB 3218	246
<i>Relating to requiring suicide prevention resources be printed on student identification cards</i>	
§18-2-40b , §18-1B-7	
HB 3271	249
<i>Relating to increasing monitoring of special education classrooms</i>	
§18-20-11	
HB 3369	256
<i>Creating a School Safety Unit within the Division of Protective Services</i>	
§15-2D-1, §15-2D-2, §15-2D-3	
HB 3547	261
<i>Increasing the number of personal leave days that county board of education employees may use</i>	
§18-4-10	

Senate Bill 47:

Creating Charter Schools Stimulus Fund.

Effective: Passed March 10, 2023; Effective June 8, 2023

Code Reference: **W. Va. Code §18-5G-17 (New)**

WVDE Contact: School Operations

Summary: This Act creates the Charter Schools Stimulus Fund in the State Treasury to provide financial support to charter schools and charter school applicants that may not otherwise have the financial resources for start-up costs, such as renovations or remodeling of existing buildings and structures and purchasing school buses. The fund includes money from legislative appropriations, grants, gifts, devises, and donations from any public or private source. The Act also provides that any balance remaining in the fund at the end of each fiscal year remains in the fund for future expenditure.

The WVBOE is required to promulgate an emergency rule, if necessary, to meet the June 1, 2023, deadline that includes application requirements, requirements for the WV Public Charter School Board (WVPCSB) to notify potential applicants, and a requirement for the applicant to attest or demonstrate eligibility criteria.

Under the provisions of this Act, qualifying charter schools or charter school applicants will be awarded an initial grant of not more than \$300,000 during, or before, the first two years of the charter school's operation and may be awarded an additional grant of not more than \$100,000. However, if an applicant fails to begin operating a charter school within 30-months of a grant award, the applicant is required to reimburse the WVPCSB for the initial grant, plus prorated interest calculated at 10% annually. The WVPCSB has the authority to extend the 30-month period for extenuating circumstances.

Enrolled Bill: ENROLLED Committee Substitute for Committee Substitute for Senate Bill 47
BY SENATORS RUCKER, OLIVERIO, AND ROBERTS

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5G-17, relating to creating the Charter Schools Stimulus Fund to provide financial support to charter school applicants and charter schools that may not

otherwise have the resources for start-up costs; requiring State Board of Education rules; specifying requirements the rules are to include; requiring the West Virginia Professional Charter School Board to distribute moneys from the fund to qualifying charter school applicants and charter schools; specifying the manner of distribution; and requiring reimbursement of grant amount plus interest if the recipient has not begun operating a charter school within the next 30 months.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5G. PUBLIC CHARTER SCHOOLS.

§18-5G-17. Charter Schools Stimulus Fund.

(a) There is hereby created in the State Treasury a special revenue fund designated and known as the Charter Schools Stimulus Fund. The fund is established for the purpose of providing financial support to charter school applicants and charter schools that may not otherwise have the resources for start-up costs such as costs associated with renovating or remodeling existing buildings and structures and costs for the purchase of school buses. The fund consists of money appropriated by the Legislature, grants, gifts, devises, and donations from any public or private source. All interest and other returns derived from the deposit and investment of money in the Charter Schools Stimulus Fund shall be credited to the fund. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund and be expended as provided in this section. The West Virginia Professional Charter School Board shall administer the fund.

(b) On or before June 1, 2023, the state board shall promulgate legislative rules pursuant to §29A-3B-1 et seq. of this code to implement the provisions of this section. If necessary to meet the June 1, 2023, deadline, the state board shall promulgate an emergency rule. The rules shall include application requirements, requirements for the West Virginia Professional Charter School Board to notify potential applicants, and a requirement for the applicant to attest to or demonstrate that it:

(1) Would not otherwise have the financial capacity without money from the Charter Schools Stimulus Fund to:

- (A) Successfully apply to an authorizer; or
- (B) Start a public charter school; and

(2) Is not working with or financed by any organization that has started or financed other charter schools to the degree that facilitating and starting charter schools is a significant portion of the organization's purpose.

(c) Subject to the availability of funding, the West Virginia Professional Charter School Board shall distribute money from the Charter Schools Stimulus Fund to qualifying charter school applicants and charter schools in the following manner:

(1) Each qualifying charter school applicant or charter school shall be awarded an initial grant of up to \$300,000 during or before the first two years of the charter school's operation. If an applicant for a charter school receives an initial grant pursuant to this paragraph and fails to begin operating a charter school within the next 30 months, the applicant shall reimburse the West Virginia Professional Charter School Board for the initial grant plus interest calculated at a prorated rate of 10 percent a year: Provided, That the West Virginia Professional Charter School Board may lengthen this 30-month time period in extenuating circumstances; and

(2) Applicants for charter schools and charter schools that received initial grants pursuant to subdivision (1) of this subsection may apply to the West Virginia Professional Charter School Board for an additional grant of up to \$100,000. If an applicant for a charter school receives an additional grant pursuant to this paragraph and fails to begin operating a charter school within the next 30 months, the applicant shall reimburse the West Virginia Professional Charter School Board for the additional grant plus interest calculated at a prorated rate of 10 percent a year: Provided, That the West Virginia Professional Charter School Board may lengthen this 30-month time period in extenuating circumstances. A reimbursement required by this subdivision is in addition to any reimbursement required by subdivision (1) of this subsection.

Senate Bill 51: **Requiring impact statement in certain instances of school closing or consolidation.**

Effective: Passed March 7, 2023; Effective June 5, 2023

Code Reference: W. Va. Code §18-5-13a (Amended)

WVDE Contact: School Operations

Summary: In addition to their duties under W. Va. Code §18-5-13, this Act requires county boards of education to prepare an impact statement with the written reasons and supporting data regarding the closing of a school or the consolidation of schools established in current law. The county board is required to give the impact statement substantial weight when considering possible school closure or consolidation prior to rendering a final decision.

Additionally, this Act requires the WVBOE to promulgate a rule by June 1, 2023, detailing the information that a county board must submit as part of its impact statement. The promulgated rule must require the impact statement to address the following:

- 1) Impact on the students including transportation time;
- 2) Financial health of the county including anticipated cost savings;
- 3) The enrollment of schools designated by the county board to receive the capacity of students effected;
- 4) The school personnel employed by the county board including anticipated increase or decrease in employees, and if a decrease in school employees is anticipated, the number of school employees that are anticipated to be decreased through attrition and the number of school employees anticipated to be decreased through a reduction in force; and,
- 5) Impact on the community.

Finally, any project in progress or approved by the county board on the effective date of this section is not subject to the impact statement requirement established by this Act.

Enrolled Bill: ENROLLED Committee Substitute for Senate Bill 51

BY SENATORS RUCKER, GRADY, MAYNARD, AND CHAPMAN

AN ACT to amend and reenact §18-5-13a of the Code of West Virginia, 1931, as amended, relating to requiring an impact statement in certain instances of a school closing or consolidation; requiring, in instances where an impact statement is required, county board of education to give the impact statement substantial weight when making a decision on any proposal to close or consolidate a school; requiring State Board of Education rule detailing information that a county board is required to include as part of its impact statement; setting forth minimum requirements for the rule; and providing that amended provisions do not apply to projects currently in progress or approved by the county board of education.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13a. School closing or consolidation.

(a) In addition to the provisions of §18-5-13 of this code, prior to any final decision of a county board on any proposal to close or consolidate any school, except in cases in which a construction bond issue was passed by the voters and which bond issue included the schools to be closed or consolidated, the county board shall:

(1) Prepare and reduce to writing its reasons and supporting data regarding the school closing or consolidation, and an impact statement on the school closing or consolidation. The written reasons and impact statement, as applicable, shall:

(A) Be available for public inspection in the office of the county school superintendent during the 30 days preceding the date of the public hearing required by this section;

(B) Be delivered in duplicate to the:

(i) Principal of a school which is proposed to be closed or consolidated, and of any school which will receive the students who are relocated as a result of the closure or consolidation; and

(ii) The chair, if any, of the local school improvement council representing a school which is proposed to be closed or consolidated, and any school which will receive the students who are relocated as a result of the closure or consolidation;

(C) Comply with the rule relating to the written statement of reason promulgated pursuant to subsection (b) of this section; and

(D) Comply with the rule relating to the impact statement promulgated pursuant to subsection (c) of this section;

(2) Provide notice for a public hearing. The notice shall be advertised through a Class III legal advertisement, pursuant to the provisions of §59-3-1 et seq. of this code for the three weeks prior to the date of the hearing. The notice shall contain the time and place of the hearing and the proposed action of the county board. Additionally, the notice shall contain the statement that the hearing location is subject to change if at the time the meeting is called to order, it is determined that the meeting location is of insufficient size. A copy of the notice shall be posted at any school which is proposed to be closed or consolidated, and at any school which will receive the students who are relocated as a result of the closure or consolidation, in conspicuous working places for all professional and service personnel to observe. The notice shall be posted at least 30 days prior to the date of the hearing;

(3) Conduct a public hearing which meets the following criteria:

(A) At least a quorum of the county board members and the county superintendent from the county wherein an affected school is located shall attend and be present at the public hearing;

(B) Members of the public may be present, submit statements and testimony, and question county school officials at the public hearing;

(C) A separate hearing shall be held for each school closed or consolidated;

(D) More than one hearing may be held during any one day;

(E) The hearing shall be held in a facility of sufficient size to accommodate all those who desire to attend;

(F) If, at the time the hearing is called to order, it is determined by the board that insufficient space is available to accommodate all those who desire to attend, the hearing shall be recessed and moved to a new location of sufficient size to accommodate all those who desire to attend. If the meeting location is changed due to insufficient capacity, the county board shall cause the new meeting location to be posted at the original meeting location; and

(G) The hearing is subject to the requirements set forth in the rule promulgated in accordance with subsection (d) of this section; and

(4) Receive findings and recommendations from any local school improvement council representing an affected school relating to the proposed closure or consolidation prior to or at the public hearing.

(b) If a county board is required to prepare an impact statement pursuant to subsection (a) of this section, the board shall give the impact statement substantial weight when making a decision on any proposal to close or consolidate a school.

(c) The state board shall promulgate a rule, in accordance with §29A-3B-1 et seq. of this code, detailing the type of supporting data a county board shall include as part of its written statement of reason required by this section for school closing or consolidation. The rule shall require at least any data required by the state board to amend a county's comprehensive educational facilities plan.

(d) The state board shall promulgate a rule pursuant to §29A-3B-1 et seq. of this code detailing information that a county board shall include as part of its impact statement required by this section for school closing or consolidation. The rule shall require at least the impact on the following:

(1) The students, which at least shall include the transportation time of the affected students;

(2) The financial health of the county, which at least shall include the anticipated cost or savings;

(3) The enrollment of schools designated by the county board to receive the students as it relates to the capacity of the school;

(4) The school personnel employed by the county board, which at least shall include the anticipated increase or decrease in the number employed, and if a decrease in school employees is anticipated, the number of school employees that are anticipated to be decreased through attrition and the number anticipated to be decreased through a reduction in force; and

(5) The community.

(e) The state board shall promulgate a rule, in accordance with §29A-3B-1 et seq. of this code, that establishes the procedure to be followed by county boards when conducting a public hearing on the issues of school consolidation and closing.

(1) The rule shall provide standards for at least the following:

(A) The appropriate forum and venue for public hearings to be held;

(B) A process for affording interested parties the opportunity for their perspectives to be expressed;

(C) Establishing, where necessary, reasonable restrictions on the amount of time allowed each individual desiring to speak so that all parties wishing to speak at the hearing are given an equal amount of time; and

(D) Scheduling and organizing public hearings when more than one school within a county is proposed for consolidation or closure.

(2) It is the purpose of this subsection to provide for uniformity among the counties in the procedures followed when scheduling, organizing, and conducting public hearings on the issues of school consolidation and closure.

(f) The state board shall promulgate the rules required by this section by June 1, 2023.

(g) Any project currently in progress or approved by the county board on the effective date of this section, shall not be subject to the 2023 amended provision of this legislation.

Senate Bill 99: Relating to meetings among county boards of education.

Effective: Passed March 8, 2023; Effective June 6, 2023

Code Reference: **W. Va. Code §18-5-28 (New)**

WVDE Contact: Accountability and Assessment

Summary: This Act creates a process that allows two or more county boards of education to explore and discuss the possibility of consolidating their school districts into a new school district or to share administrative, coordinating, or other county-level services and functions for efficiency and cost saving purposes.

Specifically, the Act provides that the boards must agree upon the call of the initial joint special meeting as well as a meeting facilitator who is responsible for preparing and delivering a detailed written report after each meeting that includes the meeting discussion and any areas that he or she has identified that may need to be discussed or considered further to both participating boards. After reviewing the facilitator’s report, a participating board may, by a majority vote, accept the report and determine if they should schedule another meeting to continue discussions in the identified areas outlined in the facilitator’s report. Regardless of whether or not the participating boards accept the report, they are required to make the report available to the public. The boards are authorized to continue holding joint special meetings and reviewing facilitator reports after each meeting for a period of 120 days after the initial joint meeting. All joint meetings authorized by this section are required to adhere to legal provisions regarding open meetings.

Enrolled Bill: ENROLLED Senate Bill 99
BY SENATORS NELSON, ROBERTS, AND OLIVERIO

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-28, relating to meetings of county boards of education to explore and discuss the feasibility of consolidating school districts or sharing certain services; requiring, when two or more county boards of education elect to explore and discuss with each other the idea of possibly consolidating or sharing certain services and functions, the boards to agree on the call of a joint special public meeting;

specifying minimum topics; requiring facilitator for the meeting; requiring facilitator to prepare and deliver to the participating boards a detailed written report of the meeting's discussions and identifying any areas for further discussion or consideration by the boards; requiring each participating board to determine whether to accept the report and whether the participating boards should meet again; providing that upon vote to accept of the facilitator's report and hold another meeting, the participating boards shall attend another meeting; specifying minimum topics; requiring the facilitator to prepare and deliver to the participating boards a detailed written report of the meeting's discussion and identifying any areas for further discussion or consideration; requiring each participating board to determine whether to accept the report and whether the participating boards should meet again; requiring meeting process to be repeated until 120 days have passed since the initial joint meeting or until the participating boards no longer wish to meet; requiring a full report of all meetings identifying the extent to which the participating boards think existing laws may enable or complicate the consolidation of school districts or the sharing of services and functions, together with any suggestions of legislation; requiring report, upon approval by the participating boards, to be forwarded to the President of the Senate and the Speaker of the House of Delegates; authorizing Legislature to consolidate participating county boards as a pilot; and authorizing Legislature to incentivize county boards to explore and discuss the feasibility of consolidating school districts or sharing of services.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-28. Meetings among county boards of education to explore and discuss the feasibility of consolidating school districts or sharing certain services.

(a) When two or more county boards of education, in order to provide efficiencies and direct cost savings, elect, by majority vote, to explore and discuss with each other: (1) The idea of possibly consolidating their school districts into a new school district by act of the Legislature as provided by section six, article XII of the Constitution of West Virginia; or (2) possibly sharing administrative, coordinating or other county-level services and functions between or among them, the boards shall agree upon the call of a joint special meeting to be conducted wholly in public and in accordance with guidelines and topics of discussion specified in the call and in all public notices of the meeting. The topics shall include, but not

be limited to, the extent to which existing laws appear to enable or complicate the consolidation of the school districts or the sharing of services and functions, as the case may be.

(b) The joint special meeting shall be facilitated by a party upon whom the participating boards agree. Within 21 days following the joint meeting, the facilitator shall prepare and deliver to the participating boards a detailed written report of the meeting's discussions and identifying any areas for further discussion or consideration by the boards. After reviewing the facilitator's report, each participating board shall determine by majority vote whether to accept it and whether the participating boards should meet again to discuss or consider the areas identified by the facilitator. Whether or not a board accepts the report, each participating board shall make the report available to the public.

(c) Upon majority vote by any participating board to accept the facilitator's report and to hold another joint special meeting of the participating boards to discuss or consider areas for further discussion or consideration identified in the facilitator's report, the participating boards shall attend another joint special meeting called for that purpose. The meeting shall be called, noticed, conducted, and facilitated as in the case of the initial joint special meeting. Topics of discussion shall include, but not be limited to, the extent to which existing laws appear to enable or complicate the consolidation of the school districts or the sharing of services and functions, as the case may be. Within 21 days following the joint meeting, the facilitator shall prepare and deliver to the participating boards a detailed written report of the meeting's discussions and identifying any areas for further discussion or consideration by the boards. After reviewing the facilitator's report, each participating board shall determine by majority vote whether to accept it and whether the participating boards should meet again to discuss or consider the areas identified by the facilitator. Whether or not a board accepts the report, each participating board shall make the report available to the public.

(d) The process set forth in subsection (c) of this section shall be repeated until 120 days have passed since the initial joint meeting or until the participating boards no longer wish to meet in joint session for those purposes, whichever first occurs. At that point the facilitator or other individual or committee designated by the participating boards shall promptly prepare and submit to the participating boards a full report of all meetings held under this section. The report shall identify the extent to which the participating boards think existing laws may enable or complicate the consolidation of the school districts or the sharing of services and functions, together with any suggestions of legislation to be considered by the

Legislature. Upon approval by any of the participating boards by majority vote, the report shall be forwarded to the President of the Senate and the Speaker of the House of Delegates. If the Legislature elects to consolidate the participating county boards, it may consolidate the county boards as a pilot.

(e) Nothing in this section requires the consolidation of any school districts or that any of the participating boards share administrative, coordinating, or other county-level services and functions between or among them. Nor may this section be construed to rescind, without action by participating county boards, any existing agreements or arrangements for the sharing of such services and functions.

(f) The Legislature may incentivize county boards to explore and discuss the feasibility of consolidating school districts or sharing of services pursuant to this section.

Senate Bill 121:

Creating Student Journalist Press Freedom Protection Act.

Effective:

Passed March 11, 2023; Effective June 9, 2023

Code Reference:

W. Va. Code §18B-21-1 (New)
W. Va. Code §18B-21-2 (New)
W. Va. Code §18B-21-3 (New)
W. Va. Code §18B-21-4 (New)

WVDE Contact:

Legal Services

Summary:

This Act creates the Student Journalist Press Freedom Protection Act as follows:

- 1) Defines “school-sponsored media,” “student journalist,” and “student media advisor.”
- 2) Specifies that student journalists have a right to freedom of speech and of the press in school-sponsored media regardless if the media is supported financially by a school, uses school facilities, or is produced in conjunction with a course or class.
- 3) Student journalists are entitled to the protections established in W. Va. Code §57-3-10 (Reporters’ Privilege).
- 4) Provides that student journalists are responsible for determining the news, opinion, feature, and other news reporting content of school-sponsored media.
- 5) Excludes certain student journalist expressions from authorization and protection under the Act.
- 6) Provides that student journalists cannot be restrained prior to material being prepared for official school publications except when the material is not authorized or protected.
- 7) School officials have the burden of showing prior justification for limitation of student journalists’ expression and must afford students a timely opportunity to appeal.
- 8) Provides that this Act shall not be construed as authorizing advertisements in school-sponsored media that promotes the purchase of products or services that are unlawful for purchase or use by minors.
- 9) Provides that student journalists and/or media advisors cannot be disciplined if they are acting in accordance with the provisions of the Act.

10) Requires the West Virginia Board of Education (WVBOE) to adopt a written policy addressing the right of student journalist to exercise freedom of speech and the press in school-sponsored media that includes a process for timely appeal of school administration decisions.

11) Provides that student journalists or media advisors must exhaust administrative remedies established in WVBOE policy before instituting proceedings for injunctive or declaratory relief in a court of competent jurisdiction. However, this Act does not create any private cause of action on behalf of a student other than for injunctive relief allowing the publication of the speech in question. A plaintiff who substantially prevails may be awarded reasonable attorney fees by the court.

12) Grants civil and criminal immunity to school officials for statements or positions made by student journalists exercising free speech or free press rights because such expressions cannot be considered an expression of school policy.

Enrolled Bill:

ENROLLED Committee Substitute for Senate Bill 121
BY SENATORS AZINGER, ROBERTS, TARR AND MAYNARD

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-21-1, §18B-21-2, §18B-21-3, and §18B-21-4, all relating to the creation of the Student Journalist Press Freedom Protection Act; making legislative findings; defining terms; requiring that public high schools, colleges, and universities allow for the free expression of student journalists in school sponsored media; providing a framework and parameters for free expression; allowing for civil actions in the event that a student journalist's rights are violated; specifying the judicial relief available in an appeal; and clarifying that provisions of the article do not apply to students attending private high schools, colleges, or universities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. STUDENT JOURNALIST PRESS FREEDOM PROTECTION ACT.

§18B-21-1. Short title.

This article may be cited and known as the Student Journalist Press Freedom Protection Act.

§18B-21-2. Legislative findings.

(a) The Legislature finds that:

(1) Freedom of expression through high school, college, and university sponsored media is protected by the First Amendment to the United States Constitution and Article III, section 7 of the West Virginia Constitution;

(2) A high school, college, and university student press can contribute to the continuing development of informed and civic-minded citizens; and

(3) Instructors and administrators who defend their students' freedom of expression may sometimes do so at professional risk.

(b) It is the intent of the Legislature to protect freedom of expression in school-sponsored media at public high schools and institutions of higher education in this state, and to protect the instructors and administrators who support that right, in order to encourage students to become educated, informed, and responsible members of society.

§18B-21-3. Definitions.

As used in this article:

“School-sponsored media” means any material that is prepared, substantially written, published, or broadcast, in any media, by a student journalist at a public high school, college, or university under the supervision of a student media adviser and distributed or generally made available to members of the student body. School-sponsored media does not include media intended for distribution or transmission for classroom purposes only.

“Student journalist” means a public high school, college, or university student who writes, edits, photographs, records, or prepares information for inclusion in school-sponsored media.

“Student media adviser” means an individual employed, appointed, or designated by a public high school, college, or university to supervise or provide instruction relating to school-sponsored media.

§18B-21-4. Student journalists' freedom of expression.

(a) Except as provided in subsection (b) of this section, a student journalist has the right to freedom of speech and of the press in school-sponsored media regardless of whether the media is supported financially by the school, uses the facilities of the school, or is produced in conjunction with a course or class in which the student is enrolled. Subject to subsection (b) of this section, a student journalist is responsible for determining the news, opinion, feature, and other news reporting content of school-sponsored media. A student journalist is entitled to the protections set forth in §57-3-10 of this code.

(b) This section does not authorize or protect expression by a student that:

- (1) Is libelous or slanderous;
- (2) Constitutes an actionable invasion of privacy;
- (3) Is obscene, vulgar, pornographic, or of sensual or illicit sexual content;
- (4) Violates federal or state law; or

(5) Expressly incites students to engage in the commission of an unlawful act or acts, or violate a lawful school policy, or is likely to cause the material and substantial disruption of the operation of the school. Administrators must base a forecast of material and substantial disruption on specific facts, including past experience in the school and current events influencing student behavior, and not on undifferentiated fear or apprehension.

(c) There shall be no prior restraint of material prepared for official school publications except insofar as the material violates the standards of subsection (b) of this section. School officials have the burden of showing prior justification for their limitation of student journalists expression under this section and shall afford students a timely opportunity for appeal.

(d) Nothing in this section shall be construed as authorizing the publication of an advertisement in school-sponsored media that promotes the purchase of a product or service that is unlawful for purchase or use by minors.

(e) A student journalist is not subject to discipline for acting in accordance with this section.

(f) A student media adviser may not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for acting in conformity with this article.

(g)(1) Each county board of education, public college, and public university shall adopt a written policy for the exercise of the right of student journalists to freedom of speech and the press in school-sponsored media in accordance with this section.

(2) The policy shall include a provision allowing for the timely appeal of school administration decisions made regarding behavior protected by this section. A student journalist or student media advisor who believes a violation of this section has occurred must exhaust school administrative review procedures prior to availing himself or herself of the relief authorized by subsection (i) of this section.

(h) A statement or position made or taken by students in the exercise of free speech or free press rights shall not be considered to be an expression of school policy, and school officials shall not be held responsible in any civil or criminal action for any expression made or published by students in conformity with this section.

(i) Any student or student media adviser may institute proceedings for injunctive or declaratory relief in any court of competent jurisdiction to enforce the rights provided in this section. Nothing in this section shall be construed to create any private cause of action on behalf of a student other than for injunctive relief allowing the publication of the speech in question. A court may award reasonable attorneys' fees to a plaintiff who substantially prevails.

(j) This article does not apply to students attending private high schools, colleges or universities.

Senate Bill 187: Making it a felony offense for school employee or volunteer to engage in sexual contact with students.

Effective: Passed March 11, 2023; Effective June 9, 2023

Code Reference: **W. Va. Code §61-8B-11b (New)**

WVDE Contact: Legal Services

Summary: This Act provides that it is a felony for any teacher, principal, counselor, coach, other employee, or volunteer of any private or public elementary or secondary school to engage in sexual intercourse, sexual intrusion, or sexual contact, as defined in W. Va. Code §61-8B-1, with any student enrolled in school regardless of the age of the student. The Act provides a criminal penalty of 1- 5 years confinement and/or a fine of not more than \$5,000 upon conviction. This new offense is separate and distinct from any other applicable offenses and are in addition to any other penalties imposed for such other offenses.

The Act requires permanent forfeiture of any teaching or other certificate issued pursuant to the provisions of W. Va. Code §18A-3-2a.

Enrolled Bill: ENROLLED Committee Substitute for Committee Substitute for Senate Bill 187
BY SENATORS CLEMENTS, WOELFEL, ROBERTS, STUART, PLYMALE, HUNT, RUCKER, DEEDS, AND GRADY

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8B-11b, relating to making it a felony offense for any school employee or volunteer to engage in sexual intercourse, sexual intrusion, or sexual contact with any student in the school where the person is employed regardless of age; defining terms; declaring that neither consent nor location where an offense occurs is a defense to prosecution specifying the criminal penalties for this offense; and declaring that a final conviction under this section causes the permanent revocation of any education related certificate the school employee may hold.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-11b. Prohibiting sexual intercourse sexual intrusion or sexual contact, or intrusion against students by school employees; penalties.

(a) Any teacher, principal, counselor, coach, other employee, or volunteer of any private or public elementary or secondary school who engages in sexual intercourse, sexual intrusion, or sexual contact, as those terms are defined in §61-8B-1 of this code, with any student enrolled in the school regardless of the age of the student is guilty of a felony and upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years or fined not more than \$5,000 or both imprisoned and fined. The fact that the student may have consented to such an act or that the act did not occur on school property or during a school function is not a defense.

(b) For purposes of this section:

(1) A private elementary or secondary school means any school enrolling students who are exempt from compulsory school attendance under either §18-8-1(b) of this code or §18-8-1(k) of this code; and

(2) A public elementary or secondary school means any school under the general supervision of the West Virginia Board of Education pursuant to section two, article XII of the West Virginia Constitution.

(c) This is a separate and distinct criminal offense from any other applicable offense under this code. The penalties set forth, in this section, are in addition to any other penalties for any other applicable offense.

(d) A final conviction under this section shall cause the permanent forfeiture of any teaching or other certificate issued pursuant to §18A-3-2a of this code.

Senate Bill 237: Relating to Public Employees Retirement System and State Teachers Retirement System.

Effective: Passed March 11, 2023; Effective July 1, 2023

Code Reference: **W. Va. Code §5 10-22m (New)**
W. Va. Code §5 10-22n (New)
W. Va. Code §18-7A-26x (New)
W. Va. Code §18-7A-26y (New)

WVDE Contact: Human Resources

Summary: This Act provides a one-time bonus payment of \$1,500 to retirants, or his or her beneficiary, under the Public Employee Retirement System (PERS) and the State Teachers Retirement System (TRS). Retirants eligible for the one-time payment must be at least 70 years old with a minimum of 20 years of service as of July 1, 2023.

On or before December 1, 2023, PERS and TRS retirants, or his or her beneficiary, who are at least 70 years old with 25 years of total service, not including service as a public official, temporary legislative employee, or higher-education employee capped under \$4,800, that receives a retirement annuity of less than \$1,000 per month will be increased to a minimum monthly benefit of \$1,000. However, a beneficiary of a retirant who chose Option B (50% joint and survivor annuity) that receives a retirement annuity of less than \$500 per month will be increased to a minimum monthly benefit of \$500 per month.

Any maximum benefits authorized under this Act are in lieu of, and not in addition to, the payments of any retirement benefit, supplement benefit, or incentives otherwise provided by law and are subject to the provisions of I.R.C. § 415, W. Va. Code §5-10-27a and W. Va. Code §18-7A-28 (TRS) all relating to federal law maximum benefit limitations.

Enrolled Bill: ENROLLED Senate Bill 237
BY SENATORS NELSON, QUEEN, SWOPE, GRADY, BOLEY, AZINGER, HAMILTON, PLYMALE, ROBERTS, DEEDS, BARRETT, HUNT, TRUMP, AND JEFFRIES

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §5-10-22m and §5-10-22n; and to amend said code by adding

thereto two new sections, designated §18-7A-26x and §18-7A-26y, all relating to the Public Employees Retirement System and the State Teachers Retirement System; providing a one-time bonus of \$1,500 for certain annuitants; and increasing the minimum monthly benefit for certain annuitants.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22m. One-time bonus payment for certain annuitants.

(a) As an additional bonus payment to other retirement allowances provided, a one-time bonus payment to retirement benefits shall be paid to retirants of the system as provided in subsection (b) of this section. The one-time bonus payment shall equal \$1,500 and shall be paid on or before December 31, 2023.

(b) The one-time bonus payment provided by this section applies to any retirant age 70 as of July 1, 2023, who has at least 20 years of total service as of July 1, 2023, and whose monthly annuity is less than \$1,000. This bonus payment is subject to any applicable limitations under Section 415 of the Internal Revenue Code of 1986, as amended.

(c) The one-time bonus payment provided by this section shall be payable pro rata to any beneficiary of a qualifying retirant who currently receives an annuity or other benefit payable by the system.

§5-10-22n. Minimum benefit for certain annuitants.

(a) For purposes of this section:

(1) "Elected public official" means any member of the Legislature or any member of the legislative body of any political subdivision; and

(2) "Temporary legislative employee" means any employee of the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, including the Joint Committee on Government and Finance, whose employment is classified as temporary and who is employed to perform services required by the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, as the case may be, for regular sessions, extraordinary sessions and/or interim meetings of the Legislature.

(b) If the retirement annuity of a retirant (or, if applicable, his or her beneficiary) at least 70 years of age as of July 1, 2023, with at least 25 years of total service as of July 1, 2023, is

less than \$1,000 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the retirant (or if applicable, his or her beneficiary) beginning on or before December 31, 2023, shall be increased to \$1,000 per month: Provided, That any year of total service while an elected public official or a temporary legislative employee may not be taken into account for purposes of this section.

(c) Notwithstanding any provision of subsection (b) of this section to the contrary, if the retirement annuity of a beneficiary at least 70 years of age as of July 1, 2023, of a retirant who chose option B - 50 percent joint and survivor annuity as provided in §5-10-24 of this code and who had at least 25 years of total service is less than \$500 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the beneficiary shall be increased to \$500 per month beginning on or before December 31, 2023: Provided, That any year of total service while an elected public official or a temporary legislative employee may not be taken into account for purposes of this section.

(d) The payment of any minimum benefit under this section is in lieu of, and not in addition to, the payments of any retirement benefit or supplemental benefit or incentives otherwise provided by law: Provided, That the minimum benefit provided in this section is subject to any limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended, and §5-10-27a of this code.

(e) Any minimum benefit conferred in this section is not retroactive to the time of retirement and applies only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26X. One-time bonus payment for certain annuitants.

(a) As an additional bonus payment to other retirement allowances provided, a one-time bonus payment to retirement benefits shall be paid to retirants of the retirement system as provided in subsection (b) of this section. The one-time bonus payment shall equal \$1,500 and shall be paid on or before December 31, 2023.

(b) The one-time bonus payment provided in this section applies to any retirant age 70 as of July 1, 2023, who has at least 20 years of service as of July 1, 2023, and whose monthly annuity is less than \$1,000. This one-time bonus payment is subject to any applicable limitations under Section 415 of the Internal Revenue Code of 1986, as amended.

(c) The one-time bonus payment provided by this section shall be payable pro rata to any beneficiary of a qualifying retirant who currently receives an annuity or other benefit payable by the retirement system.

§18-7A-26y. Minimum benefit for certain retired members.

(a) If the retirement annuity of a retirant (or applicable beneficiary thereof) at least 70 years of age with at least 25 years of total service as of July 1, 2023, is less than \$1,000 per month (including any supplemental or additional benefits provided by this article), then the monthly retirement annuity for the retirant, beginning on or before December 31, 2023, shall be increased to \$1,000 per month: Provided, That any year of service while an employee of an institution of higher education may not be taken into account for purposes of this section if his or her salary was capped under the retirement system at \$4,800 per year pursuant to §18-7A-14a of this code.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary, if the retirement annuity of a beneficiary at least 70 years of age as of July 1, 2023, of a retirant who chose option B - 50 percent joint and survivor annuity under the retirement system and who had at least 25 years of total service is less than \$500 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the beneficiary shall be increased to \$500 per month beginning on or before December 31, 2023: Provided, That any year of service while an employee of an institution of higher education may not be taken into account for purposes of this section if his or her salary was capped under the retirement system at \$4,800 per year pursuant to §18-7A-14a of this code.

(c) The payment of any minimum benefit under this section is in lieu of, and not in addition to, the payments of any retirement annuity or supplemental or additional benefits otherwise provided by this article: Provided, That the minimum benefit provided in this section is subject to any limitations thereon under Section 415 of the Internal Revenue Code of 1986, as the same may be amended, and §18-7A-28a of this code.

(d) Any minimum benefit conferred in this section is not retroactive to the time of retirement and applies only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

Senate Bill 268: Relating to PEIA.

Effective: Passed March 6, 2023; Effective March 6, 2023

Code Reference: W. Va. Code §5-16-2 (Amended)
W. Va. Code §5-16-3 (Amended)
W. Va. Code §5-16-4 (Amended)
W. Va. Code §5-16-5 (Amended)
W. Va. Code §5-16-5b (Repealed)
W. Va. Code §5-16-7 (Amended)
W. Va. Code §5-16-7b (Amended)
W. Va. Code §5-16-7c (Amended)
W. Va. Code §5-16-7g (Amended)
W. Va. Code §5-16-8 (Amended)
W. Va. Code §5-16-9 (Amended)
W. Va. Code §5-16-10 (Amended)
W. Va. Code §5-16-11 (Amended)
W. Va. Code §5-16-13 (Amended)
W. Va. Code §5-16-14 (Amended)
W. Va. Code §5-16-15 (Amended)
W. Va. Code §5-16-16 (Amended)
W. Va. Code §5-16-18 (Amended)
W. Va. Code §5-16-23 (Amended)
W. Va. Code §5-16-25 (Amended)
W. Va. Code §5-16-26 (Amended)
W. Va. Code §5-16-28 (Repealed)
W. Va. Code §5-16-30 (New)
W. Va. Code §5-16-31 (New)
W. Va. Code §5-16-32 (New)

WVDE Contact: Human Resources

Summary: This Act amends the WV Public Employees' Insurance Act as follows:

- 1) Modifies and/or includes definitions for the following terms: Applied behavior analysis, autism spectrum disorder, certified behavior analyst, dependent, device, distant site, established patient, health care practitioner, originating site, objective evidence, plan, prescription insulin drug, primary coverage, remote patient monitoring services, telehealth services, and virtual telehealth.
- 2) Gives PEIA Finance Board members fiduciary responsibility to protect PEIA assets and requires the members to complete fiduciary training and conflict-of-interest forms beginning July 1, 2023.

- 3) Increases the reimbursement rate for inpatient hospital care to 110% of the rate established for the federal Medicare Program.
- 4) Codifies the cost-sharing percentages between employers and employees at a ratio of 80/20.
- 5) Removes the maximum coverage limitation for applied behavior analysis.
- 6) Removes reporting requirement relating to medical coverage to the Joint Committee on Government and Finance but maintains reporting requirement to the Joint Committee on Health.
- 7) Provides 100% coverage for child immunization services from birth through age 16.
- 8) Establishes that both the group life insurance and accidental death insurance coverage at \$10,000 for every employee.
- 9) Requires PEIA to contract with out-of-state networks to provide care to members.
- 10) Removes the statutory list of medical procedures that the PEIA Director can contract for and grants exclusive authority to the PEIA Director to enter into any contacts necessary to provide medical services.
- 11) Provides that if an employee's spouse has health insurance available through an employer, then the state employer may not cover any portion of premiums for the employee's spouse coverage but may add the spouse to the employee's plan at an actuarial value cost. "Actuarial value" is defined as the value recommended by PEIA's healthcare actuaries. This provision does not apply to the spouse of a retired employee.
- 12) Provides an internal effective date of July 1, 2023, for inclusion in the 2023-2024 plan.
- 13) Requires PEIA to start conducting an actuarial study of the plan's financial solvency on or before July 1, 2023, and report the findings to the Joint Committee on Government Finance on or before July 1, 2024.

Enrolled Bill:

ENROLLED Committee Substitute for Committee Substitute for Senate Bill 268
BY SENATORS TAKUBO, HAMILTON, QUEEN, PLYMALE, DEEDS, AND NELSON

AN ACT to amend and reenact §5-16-2, §5-16-3, §5-16-4, §5-16-5 of the Code of West Virginia, 1931, as amended; to repeal §5-16-5b of said code; to amend and reenact §5-16-7, §5-16-7b, §5-16-7c, §5-16-7g, §5-16-8, §5-16-9, §5-16-10, §5-16-11, §5-16-13, §5-16-14, §5-16-15, §5-16-16, §5-16-18, §5-16-23, §5-16-25, and §5-16-26 of said code; to repeal §5-16-28 of said code; and to amend said code by adding thereto three new sections, designated §5-16-30, §5-16-31, and §5-16-32, all relating generally to the West Virginia Public Employees Insurance Act; providing definitions; removing antiquated reporting requirement; imposing fiduciary responsibility on finance board members and requiring training; providing requirements for actuary opinions and financial plans; modifying levels of reimbursements to health care providers; modifying public hearing requirements; providing for the use of Governor's revenue estimates; requiring director to provide certain information to the board; requiring that certain actuary opinions and financial plans include, but not be limited to, the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, at a level of 80 percent for the employer and 20 percent for employees beginning with the plan year for fiscal year 2024; providing for retention of excess revenues; terminating the Post-July 1, 2010, Employee Trust Fund; removing limitations on benefits for certain services provided for autism spectrum disorder; moving certain provisions of law to other places within the code; modifying provisions relating to coverage for reconstructive surgery following mastectomies; modifying provisions relating to coverage for prescription insulin drugs; providing for health and wellness programs; require PEIA to use networks to provide care to members out of state; clarifying language allowing a PEIA plan to provide benefits for retired employees and their spouses and dependents; requiring employees to pay actuarial value of plan for spouse coverage in certain circumstances; requiring programs that qualify for favorable income tax treatment; providing for optional dental, optical, disability, and prepaid retirement plan, and audiology and hearing-aid service plans, and preferred provider plans; providing for employers' payment of PEIA costs; providing for coverage of members of the Legislature; providing for reserve fund and quarterly reports; requiring an independent actuarial study of financial solvency of plan; and providing that amendments made to article shall be incorporated into the plan beginning with plan year 2024.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES' INSURANCE ACT.

§5-16-2. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

"Agency" or "PEIA" means the Public Employees Insurance Agency created by this article.

"Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences in order to produce socially significant improvement in human behavior and includes the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

"Autism spectrum disorder" means any pervasive developmental disorder, including autistic disorder, Asperger's syndrome, Rett syndrome, childhood disintegrative disorder, or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

"Certified behavior analyst" means an individual who is certified by the Behavior Analyst Certification Board or certified by a similar nationally recognized organization.

"Dependent" includes an eligible employee's child under the age of 26 as defined in the Patient Protection and Affordable Care Act.

"Device" means a blood glucose test strip, glucometer, continuous glucose monitor (CGM), lancet, lancing device, or insulin syringe used to cure, diagnose, mitigate, prevent, or treat diabetes or low blood sugar, but does not include insulin pumps.

"Director" means the Director of the Public Employees Insurance Agency created by this article.

"Distant site" means the telehealth site where the health care practitioner is seeing the patient at a distance or consulting with a patient's health care practitioner.

"Employee" means any person, including an elected officer, who works regularly full-time in the service of the State of West Virginia; and, for the purpose of this article only, the term "employee" also means any person, including an elected officer, who works regularly full-time in the service of a county board of education; a 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; a county, city, or town in the state; any separate corporation or

instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or intellectually and developmentally disabled facility established, operated, or licensed by the Secretary of the Department of Health and Human Resources pursuant to §27-2A-1 of this code and which is supported in part by state, county, or municipal funds; any person who works regularly full-time in the service of the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, or a governing board as defined in §18B-1-2 of this code; any person who works regularly full-time in the service of a combined city-county health department created pursuant to §16-2-1 et seq. of this code; any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code; and any person who works as a long-term substitute as defined in §18A-1-1 of this code in the service of a county board of education: Provided, That a long-term substitute who is continuously employed for at least 133 instructional days during an instructional term, and, until the end of that instructional term, is eligible for the benefits provided in this article until September 1 following that instructional term: Provided, however, That a long-term substitute employed fewer than 133 instructional days during an instructional term is eligible for the benefits provided in this article only during such time as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and upon election by a county board of education to allow elected board members to participate in the Public Employees Insurance Program pursuant to this article, any person elected to a county board of education shall be considered to be an "employee" during the term of office of the elected member. Upon election by the State Board of Education to allow appointed board members to participate in the Public Employees Insurance Program pursuant to this article, any person appointed to the State Board of Education is considered an "employee" during the term of office of the appointed member: Provided further, That the elected member of a county board of education and the appointed member of the State Board of Education shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

On or after July 1, 1997, a person shall be considered an "employee" if that person meets the following criteria:

- (A) Participates in a job-sharing arrangement as defined in §18A-1-1 et seq. of this code;
- (B) Has been designated, in writing, by all other participants in that job-sharing arrangement as the "employee" for purposes of this section; and
- (C) Works at least one-third of the time required for a full-time employee.

"Employer" means the State of West Virginia, its boards, agencies, commissions, departments, institutions, or spending units; a county board of education; a 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; a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or intellectually and developmentally disabled facility established, operated, or licensed by the Secretary of the Department of Health and Human Resources pursuant to §27-2A-1 et seq. of this code and which is supported in part by state, county, or municipal funds; a combined city-county health department created pursuant to §16-2-1 et seq. of this code; and a corporation meeting the description set forth in §18B-12-3 of this code that is employing a 21st Century Learner Fellow pursuant to §18A-3-11 of this code but the corporation is not considered an employer with respect to any employee other than a 21st Century Learner Fellow. Any matters of doubt as to who is an "employer" within the meaning of this article shall be decided by the director. The term "employer" does not include within its meaning the National Guard.

"Established patient" means a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

"Finance board" means the Public Employees Insurance Agency finance board created by this article.

"Health care practitioner" means a person licensed under §30-1-1 et seq. of this code who provides health care services.

"Originating site" means the location where the patient is located, whether or not accompanied by a health care practitioner, at the time services are provided by a health care

practitioner through telehealth, including, but not limited to, a health care practitioner's office, hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's home, and other nonmedical environments such as school-based health centers, university-based health centers, or the work location of a patient.

"Objective evidence" means standardized patient assessment instruments, outcome measurements tools, or measurable assessments of functional outcome. Use of objective measures at the beginning of treatment, during, and after treatment is recommended to quantify progress and support justifications for continued treatment. The tools are not required but their use will enhance the justification for continued treatment.

"Person" means any individual, company, association, organization, corporation, or other legal entity.

"Plan" means a group hospital and surgical insurance plan or plans, a group prescription drug insurance plan or plans, a group major medical insurance plan or plans, and a group life and accidental death insurance plan or plans.

"Prescription insulin drug" means a prescription drug that contains insulin and is used to treat diabetes, and includes at least one type of insulin in all of the following categories:

- (1) Rapid-acting;
- (2) Short-acting;
- (3) Intermediate-acting;
- (4) Long-acting;
- (5) Pre-mixed insulin products;
- (6) Pre-mixed insulin/GLP-1 RA products; and
- (7) Concentrated human regular insulin.

"Primary coverage" means individual or group hospital and surgical insurance coverage or individual or group major medical insurance coverage or group prescription drug coverage in which the spouse or dependent is the named insured or certificate holder.

"Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and other condition-specific data; medication adherence monitoring; and interactive video conferencing with or without digital image upload.

"Retired employee" means an employee of the state who retired after April 29, 1971, and an employee of the Higher Education Policy Commission, the Council for Community and

Technical College Education, a state institution of higher education, or a county board of education who retires on or after April 21, 1972, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system, and whose last employer immediately prior to retirement under the state retirement system is a participating employer in the state retirement system and in the Public Employees Insurance Agency: Provided, That for the purposes of this article, the employees who are not covered by a state retirement system, but who are covered by a state-approved or state-contracted retirement program or a system approved by the director, shall, in the case of education employees, meet the minimum eligibility requirements of the State Teachers Retirement System, and in all other cases, meet the minimum eligibility requirements of the Public Employees Retirement System and may participate in the Public Employees Insurance Agency as retired employees upon terms as the director sets by rule as authorized in this article. Employers with employees who are, or who are eligible to become, retired employees under this article shall be mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to §5-16D-1 et seq. of this code. Nonstate employers may opt out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but may do so only upon the written certification, under oath, of an authorized officer of the employer that the employer has no employees who are, or who are eligible to become, retired employees and that the employer will defend and hold harmless the Public Employees Insurance Agency from any claim by one of the employer's past, present, or future employees for eligibility to participate in the Public Employees Insurance Agency as a retired employee. As a matter of law, the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits to a retired employee of a nonstate employer which has opted out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.

"Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio-only telephone calls by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include e-mail messages or facsimile transmissions.

"Virtual telehealth" means a new patient or follow-up patient for acute care that does not require chronic management or scheduled medications.

§5-16-3. Composition of Public Employees Insurance Agency.

(a) The Public Employees Insurance Agency consists of the director, the finance board, the advisory board, and any employees who may be authorized by law. The director shall be appointed by the Governor, with the advice and consent of the Senate, and serve at the will and pleasure of the Governor. The director shall have at least three years' experience in health or governmental health benefit administration as his or her primary employment duty prior to appointment as director. The director shall receive actual expenses incurred in the performance of official business. The director shall employ any administrative, technical, and clerical employees required for the proper administration of the programs provided in this article. The director shall perform the duties that are required of him or her under the provisions of this article and is the Chief Administrative Officer of the Public Employees Insurance Agency. The director may employ a deputy director.

(b) Except for the director, his or her personal secretary, the deputy director, and the chief financial officer, all positions in the agency shall be included in the classified service of the civil service system pursuant to §29-6-1 et seq. of this code.

(c) The director is responsible for the administration and management of the Public Employees Insurance Agency as provided in this article and in connection with his or her responsibility may make all rules necessary to effectuate the provisions of this article. Nothing in §5-16-4 or §5-16-5 of this code limits the director's ability to manage on a day-to-day basis the group insurance plans required or authorized by this article, including, but not limited to, administrative contracting, studies, analyses and audits, eligibility determinations, utilization management provisions and incentives, provider negotiations, provider contracting and payment, designation of covered and noncovered services, offering of additional coverage options or cost containment incentives, pursuit of coordination of benefits, and subrogation, or any other actions which would serve to implement the plan or plans designed by the finance board. The director is to function as a benefits management professional and should avoid political involvement in managing the affairs of the Public Employees Insurance Agency.

(d) The director may, if it is financially advantageous to the state, operate the Medicare retiree health benefit plan offered by the agency based on a plan year that runs concurrent with the calendar year. Financial plans as addressed in section five of this article shall continue to be on a fiscal-year basis.

(e) The director should make every effort to evaluate and administer programs to improve quality, improve health status of members, develop innovative payment methodologies, manage health care delivery costs, evaluate effective benefit designs, evaluate cost sharing and benefit-based programs, and adopt effective industry programs that can manage the long-term effectiveness and costs for the programs at the Public Employees Insurance Agency to include, but not be limited to:

- (1) Increasing generic fill rates;
- (2) Managing specialty pharmacy costs;
- (3) Implementing and evaluating medical home models and health care delivery;
- (4) Coordinating with providers, private insurance carriers, and, to the extent possible, Medicare to encourage the establishment of cost-effective accountable care organizations;
- (5) Exploring and developing advanced payment methodologies for care delivery such as case rates, capitation, and other potential risk-sharing models and partial risk-sharing models for accountable care organizations and medical homes;
- (6) Adopting measures identified by the Centers for Medicare and Medicaid Services to reduce cost and enhance quality;
- (7) Evaluating the expenditures to reduce excessive use of emergency room visits, imaging services, and other drivers of the agency's medical rate of inflation;
- (8) Recommending cutting-edge benefit designs to the finance board to drive behavior and control costs for the plans;
- (9) Implementing programs to encourage the use of the most efficient and high-quality providers by employees and retired employees;
- (10) Identifying employees and retired employees who have multiple chronic illnesses and initiating programs to coordinate the care of these patients;
- (11) Initiating steps to adjust payment by the agency for the treatment of hospital-acquired infections and related events consistent with the payment policies, operational guidelines, and implementation timetable established by the Centers of Medicare and Medicaid Services. The agency shall protect employees and retired employees from any adjustment in payment for hospital acquired infections; and
- (12) Initiating steps to reduce the number of employees and retired employees who experience avoidable readmissions to a hospital for the same diagnosis-related group illness within 30 days of being discharged by a hospital in this state or another state consistent with

the payment policies, operational guidelines, and implementation timetable established by the Centers of Medicare and Medicaid Services.

§5-16-4. Public Employees Insurance Agency Finance Board.

(a) The Public Employees Insurance Agency Finance Board is continued and consists of the Secretary of the Department of Administration or his or her designee, as a voting member, and 10 members appointed by the Governor, with the advice and consent of the Senate, for terms of four years and each may serve until his or her successor is appointed and qualified. Members may be reappointed for successive terms. No more than six members, including the Secretary of the Department of Administration, may be of the same political party. Members of the board shall satisfy the qualification requirements provided for by subsection (b) of this section. The Governor shall make appointments necessary to satisfy the requirements of subsection (b) of this section to staggered terms as determined by the Governor.

(b) (1) Of the 10 members appointed by the Governor with advice and consent of the Senate:

(A) One member shall represent the interests of education employees. The member shall hold a bachelor's degree, shall have obtained teacher certification, shall be employed as a teacher for a period of at least three years prior to his or her appointment, and shall remain a teacher for the duration of his or her appointment to remain eligible to serve on the board.

(B) One member shall represent the interests of public employees. The member shall be employed to perform full- or part-time service for wages, salary, or remuneration for a public body for a period of at least three years prior to his or her appointment and shall remain an employee of a public body for the duration of his or her appointment to remain eligible to serve on the board.

(C) One member shall represent the interests of retired employees. The member shall meet the definition of retired employee as provided in §5-16-2 of this code.

(D) One member shall represent the interests of a participating political subdivision. The member shall have been employed by a political subdivision for a period of at least three years prior to his or her appointment and shall remain an employee of a political subdivision for the duration of his or her appointment to remain eligible to serve on the board. The member may not be an elected official.

(E) One member shall represent the interests of hospitals. The member shall have been employed by a hospital for a period of at least three years prior to his or her appointment and

shall remain an employee of a hospital for the duration of his or her appointment to remain eligible to serve on the board.

(F) One member shall represent the interests of non-hospital health care providers. The member shall have owned his or her non-hospital health care provider business for a period of at least three years prior to his or her appointment and shall maintain ownership of his or her non-hospital health care provider business for the duration of his or her appointment to remain eligible to serve on the board.

(G) Four members shall be selected from the public at large, meeting the following requirements:

(i) One member selected from the public at large shall generally have knowledge and expertise relating to the financing, development, or management of employee benefit programs;

(ii) One member selected from the public at large shall have at least three years of experience in the insurance benefits business;

(iii) One member selected from the public at large shall be a certified public accountant with at least three years of experience with financial management and employee benefits program experience; and

(iv) One member selected from the public at large shall be a health care actuary or certified public accountant with at least three years of financial experience with the health care marketplace.

(2) No member of the board may be a registered lobbyist.

(3) All appointments shall be selected to represent the different geographical areas within the state and all members shall be residents of West Virginia. No member may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty, neglect of fiduciary duty, or other specific responsibility imposed by this article or gross immorality.

(4) All members of the board shall have a fiduciary responsibility to protect plan assets for the benefit of plan participants.

(5) Beginning July 1, 2023, and every year thereafter, all board members shall complete fiduciary training and timely complete any conflict-of-interest forms required to serve as a fiduciary.

(c) The Secretary of the Department of Administration shall serve as chair of the finance board, which shall meet at times and places specified by the call of the chair or upon

the written request to the chair by at least two members. The Director of the Public Employees Insurance Agency shall serve as staff to the board. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting. Six members shall constitute a quorum. The board shall pay each member the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties for each day or portion of a day engaged in the discharge of official duties.

(d) Upon termination of the board and notwithstanding any provisions of this article to the contrary, the director is authorized to assess monthly employee premium contributions and to change the types and levels of costs to employees only in accordance with this subsection. Any assessments or changes in costs imposed pursuant to this subsection shall be implemented by legislative rule proposed by the director for promulgation pursuant to §29A-3-1 et seq. of this code. Any employee assessments or costs previously authorized by the finance board shall then remain in effect until amended by rule of the director promulgated pursuant to this subsection.

§5-16-5. Powers and duties of the finance board.

(a) The purpose of the finance board is to bring fiscal stability to the Public Employees Insurance Agency through development of annual financial plans and long-range plans designed to meet the agency's estimated total financial requirements, taking into account all revenues projected to be made available to the agency and apportioning necessary costs equitably among participating employers, employees, and retired employees and providers of health care services.

(b) The finance board shall retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group health insurance plans, to estimate the total financial requirements of the Public Employees Insurance Agency for each fiscal year and to review and render written professional opinions as to financial plans proposed by the finance board. The actuary shall also assist in the development of alternative financing options and perform any other services requested by the finance board or the director. All reasonable fees and expenses for actuarial services shall be paid by the Public Employees Insurance Agency. Any financial plan or modifications to a financial plan approved or proposed by the finance board shall be submitted to and reviewed by the actuary and may not be finally approved and submitted to the Governor and to the Legislature without the actuary's written professional opinion that the plan may be reasonably expected to generate sufficient

revenues to meet all estimated program and administrative costs of the agency, including incurred but unreported claims, for the fiscal year for which the plan is proposed.

(c) All financial plans shall establish:

(1) The minimum level of reimbursement at 110 percent of the Medicare amount for all providers: Provided, That the plan shall reimburse a West Virginia hospital that provides inpatient medical care to a beneficiary, covered by the state and non-state plans, at a minimum rate of 110 percent of the Medicare diagnosis-related group rate for the admission, or the Medicare per diem, per day rate applicable to a critical access hospital, as appropriate: Provided, however, That the rates established pursuant to this subdivision do not apply to any Medicare primary retiree health plan.

(2) Any necessary cost-containment measures for implementation by the director;

(3) The levels of premium costs to participating employers; and

(4) The types and levels of cost to participating employees and retired employees.

The financial plans may provide for different levels of costs based on the insureds' ability to pay. The finance board may establish different levels of costs to retired employees based upon length of employment with a participating employer, ability to pay, or other relevant factors. The financial plans may also include optional alternative benefit plans with alternative types and levels of cost. The finance board may develop policies which encourage the use of West Virginia health care providers.

In addition, the finance board may allocate a portion of the premium costs charged to participating employers to subsidize the cost of coverage for participating retired employees, on such terms as the finance board determines are equitable and financially responsible.

(d)(1) The finance board shall prepare an annual financial plan for each fiscal year. The finance board chairman shall request the actuary to estimate the total financial requirements of the Public Employees Insurance Agency for the fiscal year.

(2) The finance board shall prepare a proposed financial plan designed to generate revenues sufficient to meet all estimated program and administrative costs of the Public Employees Insurance Agency for the fiscal year. The proposed financial plan shall allow for no more than 30 days of accounts payable to be carried over into the next fiscal year. Before final adoption of the proposed financial plan, the finance board shall request the actuary to review the plan and to render a written professional opinion stating whether the plan will generate sufficient revenues to meet all estimated program and administrative costs of the Public Employees Insurance Agency for the fiscal year. The actuary's report shall explain the basis of

its opinion. If the actuary concludes that the proposed financial plan will not generate sufficient revenues to meet all anticipated costs, then the finance board shall make necessary modifications to the proposed plan to ensure that all actuarially determined financial requirements of the agency will be met.

(3) Upon obtaining the actuary's opinion, the finance board shall conduct at least two public hearings in each congressional district to receive public comment on the proposed financial plan, shall review the comments, and shall finalize and approve the financial plan.

(4) For each fiscal year, the Governor shall provide his or her estimate of total revenues to the finance board no later than October 15 of the preceding fiscal year: Provided, That for the prospective financial plans required by this section, the Governor shall estimate the revenues available for each fiscal year of the plans based on the estimated percentage of growth in general fund revenues: Provided, however, That the director and finance board may only use revenue estimates from the Governor as necessary to maintain an actuarially recommended reserve fund and to maintain premium cost-sharing percentages as required in this article: Provided, further, That the director and finance board may not incorporate revenue sources into the finance board plan beyond the premium cost-sharing percentages as required in this article. The director shall provide the number of covered lives for the current fiscal year and a five-year analysis of the costs for covering paid claims to the finance board no later than October 15 of the preceding year. The finance board shall submit its final approved financial plan after obtaining the necessary actuary's opinion, which opinion shall include, but not be limited to, the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, at a level of 80 percent for the employer and 20 percent for employees, to the Governor and to the Legislature no later than January 1 preceding the fiscal year. The financial plan for a fiscal year becomes effective and shall be implemented by the director on July 1 of the fiscal year. In addition to each final approved financial plan required under this section, the finance board shall also simultaneously submit financial statements based on generally accepted accounting practices (GAAP) and the final approved plan restated on an accrual basis of accounting, which shall include allowances for incurred but not reported claims. The financial statements and the accrual-based financial plan restatement shall not affect the approved financial plan.

(e) The provisions of §29A-1-1 et seq. of this code shall not apply to the preparation, approval and implementation of the financial plans required by this section.

(f) By January 1 of each year, the finance board shall submit to the Governor and the Legislature a prospective financial plan for a period not to exceed five years for the programs provided in this article. Factors the board shall consider include, but are not limited to, the trends for the program and the industry; the medical rate of inflation; utilization patterns; cost of services; and specific information such as average age of employee population, active to retiree ratios, the service delivery system, and health status of the population.

(g) The prospective financial plans shall be based on the estimated revenues submitted in accordance §5-16-5(d)(4) of this code and shall include an average of the projected cost-sharing percentages of premiums and an average of the projected deductibles and copays for the various programs. Each plan year, the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, shall be at a level of 80 percent for the employer and 20 percent for employees, except for the employers provided in §5-16-18(d) of this code whose premium cost-sharing percentages shall be governed by that subsection. After the submission of the initial prospective plan, the board may not increase costs to the participating employers or change the average of the premiums, deductibles, and copays for employees, except in the event of a true emergency. If the board invokes the emergency provisions, the cost shall be borne between the employers and employees in proportion to the cost-sharing ratio for that plan year. For purposes of this section, "emergency" means that the most recent projections demonstrate that plan expenses will exceed plan revenues by more than one percent in any plan year. The aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, may be offset, in part, by a legislative appropriation for that purpose.

(h) The finance board shall meet on at least a quarterly basis to review implementation of its current financial plan in light of the actual experience of the Public Employees Insurance Agency. The board shall review actual costs incurred, any revised cost estimates provided by the actuary, expenditures, and any other factors affecting the fiscal stability of the plan, and may make any additional modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met. The finance board may not increase the types and levels of cost to employees during its quarterly review except in the event of a true emergency.

(i) For any fiscal year in which legislative appropriations differ from the Governor's estimate of general and special revenues available to the agency, the finance board shall,

within 30 days after passage of the budget bill, make any modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met.

(j) In the event the revenues in a given year exceed the expenses, the amount of revenues in excess of the expenses shall be retained by the Public Employees Insurance Agency to offset future premium increases.

§5-16-5b. Creation of trust for retirees hired on or after July 1, 2010.

[Repealed.]

§5-16-7. Authorization to establish plans; mandated benefits; optional plans; separate rating for claims experience purposes.

(a) The agency shall establish plans for those employees herein made eligible and establish and promulgate rules for the administration of these plans subject to the limitations contained in this article. These plans shall include:

(1) Coverages and benefits for x-ray and laboratory services in connection with mammograms when medically appropriate and consistent with current guidelines from the United States Preventive Services Task Force; pap smears, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or the American College of Obstetricians and Gynecologists; and a test for the human papilloma virus when medically appropriate and consistent with current guidelines from either the United States Preventive Services Task Force or the American College of Obstetricians and Gynecologists, when performed for cancer screening or diagnostic services on a woman age 18 or over;

(2) Annual checkups for prostate cancer in men age 50 and over;

(3) Annual screening for kidney disease as determined to be medically necessary by a physician using any combination of blood pressure testing, urine albumin or urine protein testing, and serum creatinine testing as recommended by the National Kidney Foundation;

(4) For plans that include maternity benefits, coverage for inpatient care in a duly licensed health care facility for a mother and her newly born infant for the length of time which the attending physician considers medically necessary for the mother or her newly born child. No plan may deny payment for a mother or her newborn child prior to 48 hours following a vaginal delivery or prior to 96 hours following a caesarean section delivery if the attending physician considers discharge medically inappropriate;

(5) For plans which provide coverages for post-delivery care to a mother and her newly born child in the home, coverage for inpatient care following childbirth as provided in subdivision (4) of this subsection if inpatient care is determined to be medically necessary by the attending physician. These plans may include, among other things, medicines, medical equipment, prosthetic appliances, and any other inpatient and outpatient services and expenses considered appropriate and desirable by the agency; and

(6) Coverage for treatment of serious mental illness:

(A) The coverage does not include custodial care, residential care, or schooling. For purposes of this section, "serious mental illness" means an illness included in the American Psychiatric Association's diagnostic and statistical manual of mental disorders, as periodically revised, under the diagnostic categories or subclassifications of:

(i) Schizophrenia and other psychotic disorders;

(ii) Bipolar disorders;

(iii) Depressive disorders;

(iv) Substance-related disorders with the exception of caffeine-related disorders and nicotine-related disorders;

(v) Anxiety disorders; and

(vi) Anorexia and bulimia.

With regard to a covered individual who has not yet attained the age of 19 years, "serious mental illness" also includes attention deficit hyperactivity disorder, separation anxiety disorder, and conduct disorder.

(B) The agency shall not discriminate between medical-surgical benefits and mental health benefits in the administration of its plan. With regard to both medical-surgical and mental health benefits, it may make determinations of medical necessity and appropriateness and it may use recognized health care quality and cost management tools including, but not limited to, limitations on inpatient and outpatient benefits, utilization review, implementation of cost-containment measures, preauthorization for certain treatments, setting coverage levels, setting maximum number of visits within certain time periods, using capitated benefit arrangements, using fee-for-service arrangements, using third-party administrators, using provider networks, and using patient cost sharing in the form of copayments, deductibles, and coinsurance. Additionally, the agency shall comply with the financial requirements and quantitative treatment limitations specified in 45 CFR 146.136(c)(2) and (c)(3), or any successor regulation. The agency may not apply any nonquantitative treatment limitations to benefits for

behavioral health, mental health, and substance use disorders that are not applied to medical and surgical benefits within the same classification of benefits: Provided, That any service, even if it is related to the behavioral health, mental health, or substance use diagnosis if medical in nature, shall be reviewed as a medical claim and undergo all utilization review as applicable;

(7) Coverage for general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed health care individuals in conjunction with dental care if the covered person is:

(A) Seven years of age or younger or is developmentally disabled and is an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual, or other medically compromising condition of the individual and for whom a superior result can be expected from dental care provided under general anesthesia.

(B) A child who is 12 years of age or younger with documented phobias or with documented mental illness and with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth, or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(8) (A) All plans shall include coverage for diagnosis, evaluation, and treatment of autism spectrum disorder in individuals ages 18 months to 18 years. To be eligible for coverage and benefits under this subdivision, the individual must be diagnosed with autism spectrum disorder at age eight or younger. Such plan shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist and in accordance with a treatment plan developed from a comprehensive evaluation by a certified behavior analyst for an individual diagnosed with autism spectrum disorder.

(B) The coverage shall include, but not be limited to, applied behavior analysis which shall be provided or supervised by a certified behavior analyst. This subdivision does not limit, replace, or affect any obligation to provide services to an individual under the Individuals with Disabilities Education Act, 20 U. S. C. §1400 et seq., as amended from time to time, or other

publicly funded programs. Nothing in this subdivision requires reimbursement for services provided by public school personnel.

(C) The certified behavior analyst shall file progress reports with the agency semiannually. In order for treatment to continue, the agency must receive objective evidence or a clinically supportable statement of expectation that:

- (i) The individual's condition is improving in response to treatment;
- (ii) A maximum improvement is yet to be attained; and
- (iii) There is an expectation that the anticipated improvement is attainable in a reasonable and generally predictable period of time.

(D) To the extent that the provisions of this subdivision require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of insurance plans offered by the Public Employees Insurance Agency.

(9) For plans that include maternity benefits, coverage for the same maternity benefits for all individuals participating in or receiving coverage under plans that are issued or renewed on or after January 1, 2014: Provided, That to the extent that the provisions of this subdivision require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of a health benefit plan when the plan is offered in this state.

(10) (A) Coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 et seq. or §30-14-1 et seq. of this code:

- (i) Immunoglobulin E and nonimmunoglobulin E-medicated allergies to multiple food proteins;
- (ii) Severe food protein-induced enterocolitis syndrome;
- (iii) Eosinophilic disorders as evidenced by the results of a biopsy; and
- (iv) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract (short bowel).

(B) The coverage required by paragraph (A) of this subdivision shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(C) For purposes of this subdivision, "medically necessary foods" or "medical foods" shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: Provided, That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(D) The provisions of this subdivision shall not apply to persons with an intolerance for lactose or soy.

(11) The cost for coverage of children's immunization services from birth through age 16 years to provide immunization against the following illnesses: Diphtheria, polio, mumps, measles, rubella, tetanus, hepatitis-b, hemophilia influenzae-b, and whooping cough. Any contract entered into to cover these services shall require that all costs associated with immunization, including the cost of the vaccine, if incurred by the health care provider, and all costs of vaccine administration be exempt from any deductible, per visit charge, and copayment provisions which may be in force in these policies or contracts. This section does not require that other health care services provided at the time of immunization be exempt from any deductible or copayment provisions.

(12) The provision requiring coverage for 12-month refill for contraceptive drugs codified at §33-58-1 of this code.

(13) The group life and accidental death insurance herein provided shall be in the amount of \$10,000 for every employee.

(b) The agency shall make available to each eligible employee, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance as established under the rules of the agency. In addition, each employee is entitled to have his or her spouse and dependents, as defined by the rules of the agency, included in the optional coverage, at full cost to the employee, for each eligible dependent.

(c) The finance board may cause to be separately rated for claims experience purposes:

(1) All employees of the State of West Virginia;

(2) All teaching and professional employees of state public institutions of higher education and county boards of education;

(3) All nonteaching employees of the Higher Education Policy Commission, West Virginia Council for Community and Technical College Education, and county boards of education; or

(4) Any other categorization which would ensure the stability of the overall program.

(d) The agency shall maintain the medical and prescription drug coverage for Medicare- eligible retirees by providing coverage through one of the existing plans or by enrolling the Medicare-eligible retired employees into a Medicare-specific plan, including, but not limited to, the Medicare/Advantage Prescription Drug Plan. If a Medicare-specific plan is no longer available or advantageous for the agency and the retirees, the retirees remain eligible for coverage through the agency.

(e) The agency shall establish procedures to authorize treatment with a nonparticipating provider if a covered service is not available within established time and distance standards and within a reasonable period after service is requested, and with the same coinsurance, deductible, or copayment requirements as would apply if the service were provided at a participating provider, and at no greater cost to the covered person than if the services were obtained at or from a participating provider.

(f) If the Public Employees Insurance Agency offers a plan that does not cover services provided by an out-of-network provider, it may provide the benefits required in paragraph (A), subdivision (6), subsection (a) of this section if the services are rendered by a provider who is designated by and affiliated with the Public Employees Insurance Agency, and only if the same requirements apply for services for a physical illness.

(g) In the event of a concurrent review for a claim for coverage of services for the prevention of, screening for, and treatment of behavioral health, mental health, and substance use disorders, the service continues to be a covered service until the Public Employees Insurance Agency notifies the covered person of the determination of the claim.

(h) Unless denied for nonpayment of premium, a denial of reimbursement for services for the prevention of, screening for, or treatment of behavioral health, mental health, and substance use disorders by the Public Employees Insurance Agency shall include the following language:

(1) A statement explaining that covered persons are protected under this section, which provides that limitations placed on the access to mental health and substance use disorder benefits may be no greater than any limitations placed on access to medical and surgical benefits;

(2) A statement providing information about the internal appeals process if the covered person believes his or her rights under this section have been violated; and

(3) A statement specifying that covered persons are entitled, upon request to the Public Employees Insurance Agency, to a copy of the medical necessity criteria for any behavioral health, mental health, and substance use disorder benefit.

(i) On or after June 1, 2021, and annually thereafter, the Public Employees Insurance Agency shall submit a written report to the Joint Committee on Government and Finance that contains the following information regarding plans offered pursuant to this section:

(1) Data that demonstrates parity compliance for adverse determination regarding claims for behavioral health, mental health, or substance use disorder services and includes the total number of adverse determinations for such claims;

(2) A description of the process used to develop and select:

(A) The medical necessity criteria used in determining benefits for behavioral health, mental health, and substance use disorders; and

(B) The medical necessity criteria used in determining medical and surgical benefits;

(3) Identification of all nonquantitative treatment limitations that are applied to benefits for behavioral health, mental health, and substance use disorders and to medical and surgical benefits within each classification of benefits;

(4) The results of analyses demonstrating that, for medical necessity criteria described in subdivision (2) of this subsection and for each nonquantitative treatment limitation identified in subdivision (3) of this subsection, as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to benefits for behavioral health, mental health, and substance use disorders within each classification of benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to medical and surgical benefits within the corresponding classification of benefits;

(5) The Public Employees Insurance Agency's report of the analyses regarding nonquantitative treatment limitations shall include at a minimum:

(A) Identify factors used to determine whether a nonquantitative treatment limitation will apply to a benefit, including factors that were considered but rejected;

(B) Identify and define the specific evidentiary standards used to define the factors and any other evidence relied on in designing each nonquantitative treatment limitation;

(C) Provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to design each nonquantitative treatment limitation, as written, and the written processes and strategies used to apply each nonquantitative treatment limitation for benefits for behavioral health, mental health, and substance use disorders are comparable to, and are applied no more stringently than, the processes and strategies used to design and apply each nonquantitative treatment limitation, as written, and the written processes and strategies used to apply each nonquantitative treatment limitation for medical and surgical benefits;

(D) Provide the comparative analysis, including the results of the analyses, performed to determine that the processes and strategies used to apply each nonquantitative treatment limitation, in operation, for benefits for behavioral health, mental health, and substance use disorders are comparable to, and are applied no more stringently than, the processes and strategies used to apply each nonquantitative treatment limitation, in operation, for medical and surgical benefits; and

(E) Disclose the specific findings and conclusions reached by the Public Employees Insurance Agency that the results of the analyses indicate that each health benefit plan offered by the Public Employees Insurance Agency complies with paragraph (B), subdivision (6), subsection (a) of this section; and

(6) After the initial report required by this subsection, annual reports are only required for any year thereafter during which the Public Employees Insurance Agency makes significant changes to how it designs and applies medical management protocols.

(j) The Public Employees Insurance Agency shall update its annual plan document to reflect its comprehensive parity compliance. An annual report shall also be filed with the Joint Committee on Government and Finance and the Public Employees Insurance Agency Finance Board.

§5-16-7b. Coverage for telehealth services.

(a) The plan shall provide coverage of health care services provided through telehealth services if those same services are covered through face-to-face consultation by the policy.

(b) The plan may not exclude a service for coverage solely because the service is provided through telehealth services.

(c) The plan shall provide reimbursement for a telehealth service at a rate negotiated between the provider and the insurance company for virtual telehealth encounters. The plan shall provide reimbursement for a telehealth service for an established patient, or care

rendered on a consulting basis to a patient located in an acute care facility, whether inpatient or outpatient, on the same basis and at the same rate under a contract, plan, agreement, or policy as if the service is provided through an in-person encounter rather than provided via telehealth.

(d) The plan may not impose any annual or lifetime dollar maximum on coverage for telehealth services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or impose upon any person receiving benefits pursuant to the provisions of or the requirements of this section any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services that is not equally imposed upon all terms and services covered under the policy, contract, or plan.

(e) An originating site may charge the plan a site fee.

(f) The coverage required by this section shall include the use of telehealth technologies as it pertains to medically necessary remote patient monitoring services to the full extent that those services are available.

§5-16-7c. Required coverage for reconstruction surgery following mastectomies.

(a) The plan shall provide, in a case of a participant or beneficiary who is receiving benefits in connection with a mastectomy and who elects breast reconstruction in connection with such mastectomy, coverage for:

(1) All stages of reconstruction of the breast on which the mastectomy has been performed;

(2) Surgery and reconstruction of the other breast to produce a symmetrical appearance; and

(3) Prostheses and physical complications of mastectomy, including lymphedemas in a manner determined in consultation with the attending physician and the patient. Coverage shall be provided for a minimum stay in the hospital of not less than 48 hours for a patient following a radical or modified mastectomy and not less than 24 hours of inpatient care following a total mastectomy or partial mastectomy with lymph node dissection for the treatment of breast cancer. Nothing in this section shall be construed as requiring inpatient coverage where inpatient coverage is not medically necessary or where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits

under the plan. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter in the summary plan description or similar document.

(b) The plan may not:

(1) Deny a patient eligibility, or continued eligibility, to enroll or renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section; and

(2) Penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section.

§5-16-7g. Coverage for prescription insulin drugs.

(a) A policy, plan, or contract that is issued or renewed on or after January 1, 2023, shall provide coverage for prescription insulin drugs and equipment pursuant to this section.

(b) Cost sharing for a 30-day supply of a covered prescription insulin drug may not exceed \$35 in aggregate, including situations where the covered person is prescribed more than one insulin drug, per 30-day supply, regardless of the amount or type of insulin needed to fill such covered person's prescription. Cost sharing for a 30-day supply of covered device(s) may not exceed \$100 in aggregate, including situations where the covered person is prescribed more than one device, per 30-day supply. Each cost-share maximum is covered regardless of the person's deductible, copayment, coinsurance, or any other cost-sharing requirement.

(c) Nothing in this section prevents the agency from reducing a covered person's cost sharing by an amount greater than the amount specified in this subsection.

(d) No contract between the agency or its pharmacy benefits manager and a pharmacy or its contracting agent shall contain a provision: (i) Authorizing the agency's pharmacy benefits manager or the pharmacy to charge; (ii) requiring the pharmacy to collect; or (iii) requiring a covered person to make a cost-sharing payment for a covered prescription insulin drug in an amount that exceeds the amount of the cost-sharing payment for the covered prescription insulin drug established by the agency as provided in subsection (b) of this section.

(e) The agency shall provide coverage for the following equipment and supplies for the treatment or management of diabetes for both insulin-dependent and noninsulin-dependent persons with diabetes and those with gestational diabetes: Blood glucose monitors, monitor

supplies, insulin, injection aids, syringes, insulin infusion devices, pharmacological agents for controlling blood sugar, and orthotics.

(f) The agency shall provide coverage for diabetes self-management education to ensure that persons with diabetes are educated as to the proper self-management and treatment of their diabetes, including information on proper diets. Coverage for self-management education and education relating to diet shall be provided by a health care practitioner who has been appropriately trained as provided in §33-53-1(k) of this code.

(g) The education may be provided by a health care practitioner as part of an office visit for diabetes diagnosis or treatment, or by a licensed pharmacist for instructing and monitoring a patient regarding the proper use of covered equipment, supplies, and medications, or by a certified diabetes educator or registered dietitian.

(h) A pharmacy benefits manager, a health plan, or any other third party that reimburses a pharmacy for drugs or services shall not reimburse a pharmacy at a lower rate and shall not assess any fee, charge-back, or adjustment upon a pharmacy on the basis that a covered person's costs sharing is being impacted.

§5-16-8. Conditions of insurance program.

The insurance plans provided for in this article shall be designed by the Public Employees Insurance Agency:

(1) To provide a reasonable relationship between the hospital, surgical, medical, and prescription drug benefits to be included and the expected reasonable and customary hospital, surgical, medical, and prescription drug expenses as established by the director to be incurred by the affected employee, his or her spouse, and his or her dependents. The establishment of reasonable and customary expenses by the Public Employees Insurance Agency pursuant to the preceding sentence is not subject to chapter §29A-1-1 et seq. of this code;

(2) To include reasonable controls which may include deductible and coinsurance provisions applicable to some or all of the benefits, and shall include other provisions, including, but not limited to, copayments, preadmission certification, case management programs, and preferred provider arrangements;

(3) To prevent unnecessary utilization of the various hospital, surgical, medical, and prescription drug services available;

(4) To provide reasonable assurance of stability in future years for the plans;

(5) To provide major medical insurance for the employees covered under this article;

(6) To provide certain group life and accidental death insurance for the employees covered under this article;

(7) To include provisions for the coordination of benefits payable by the terms of the plans with the benefits to which the employee, or his or her spouse, or his or her dependents may be entitled by the provisions of any other group hospital, surgical, medical, major medical, or prescription drug insurance, or any combination thereof;

(8) To provide a cash incentive plan for employees, spouses, and dependents to increase utilization of, and to encourage the use of, lower cost alternative health care facilities, health care providers, and generic drugs. The plan shall be reviewed annually by the director and the advisory board;

(9) To provide health and wellness programs and resources impacting various components of health and wellness. PEIA may explore, review, evaluate, and offer a variety of health and wellness programming and resources to meet the needs of its members. These programs are voluntary for participants and are separate and distinct from any medical benefit;

(10) To provide a program, to be administered by the director, for a patient audit plan with reimbursement up to a maximum of \$1,000 annually to employees for discovery of health care provider or hospital overcharges when the affected employee brings the overcharge to the attention of the plan. The hospital or health care provider shall certify to the director that it has provided, prior to or simultaneously with the submission of the statement of charges for payments, an itemized statement of the charges to the employee participant for which payment is requested of the plan;

(11) To require that all employers give written notice to each covered employee prior to institution of any changes in benefits to employees, and to include appropriate penalty for any employer not providing the required information to any employee; and

(12) (A) To provide coverage for emergency services under offered plans.

(B) Plans shall provide coverage for emergency services, including any pre-hospital services, to the extent necessary to screen and stabilize the covered person. The plans shall reimburse, less any applicable copayments, deductibles, or coinsurance for emergency services rendered and related to the condition for which the covered person presented. Prior authorization of coverage shall not be required for the screening services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Prior authorization of coverage shall not be required for stabilization if an emergency

medical condition exists. In the event that prior authorization was obtained, the authorization may not be retracted after the services have been provided except when the authorization was based on a material misrepresentation about the medical condition by the provider of the services or the insured person. The provider of the emergency services and the plan representative shall make a good faith effort to communicate with each other in a timely fashion to expedite post-evaluation or post-stabilization services. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person.

(C) For purposes of this subdivision:

"Emergency services" means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including pre-hospital care;

"Prudent layperson" means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;

"Emergency medical condition for the prudent layperson" means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part;

"Stabilize" means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: Provided, That this provision may not be construed to prohibit, limit, or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

"Medical screening examination" means an appropriate examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

"Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the

individual's health, or, with respect to a pregnant woman, the health of the unborn child, serious impairment to bodily functions, or serious dysfunction of any bodily part or organ.

§5-16-9. Authorization to execute contracts.

(a) The director is given exclusive authorization to execute such contract or contracts as are necessary to carry out the provisions of this article.

(b) The provisions of §5A-3-1 et seq. of this code, relating to the Division of Purchasing of the Department of Finance and Administration, shall not apply to any contracts for any insurance coverage or professional services authorized to be executed under the provisions of this article. Before entering into any contract for any insurance coverage, as authorized in this article, the director shall invite competent bids from all qualified and licensed insurance companies or carriers that may wish to offer plans for the insurance coverage desired. The director shall negotiate and contract directly with health care providers and other entities, organizations, and vendors in order to secure competitive premiums, prices, and other financial advantages. The director shall deal directly with insurers or health care providers and other entities, organizations, and vendors in presenting specifications and receiving quotations for bid purposes. No commission or finder's fee, or any combination thereof, shall be paid to any individual or agent: Provided, That this shall not preclude an underwriting insurance company or companies, at their own expense, from appointing a licensed resident agent within this state to service the companies' contracts awarded under the provisions of this article. Commissions reasonably related to actual service rendered for the agent or agents may be paid by the underwriting company or companies. In no event shall payment be made to any agent or agents when no actual services are rendered or performed. The director shall award the contract or contracts on a competitive basis. In awarding the contract or contracts the director shall take into account the experience of the offering agency, corporation, insurance company, or service organization in the group hospital and surgical insurance field, group major medical insurance field, group prescription drug field, and group life and accidental death insurance field, and its facilities for the handling of claims. In evaluating these factors, the director may employ the services of impartial, professional insurance analysts or actuaries, or both. Any contract executed by the director with a selected carrier shall be a contract to govern all eligible employees subject to the provisions of this article. Nothing contained in this article shall prohibit any insurance carrier from soliciting employees covered hereunder to purchase additional hospital and surgical, major medical, or life and accidental death insurance coverage.

(c) The director may authorize the carrier with whom a primary contract is executed to reinsure portions of the contract with other carriers which elect to be a reinsurer and who are legally qualified to enter into a reinsurance agreement under the laws of this state.

(d) Each employee who is covered under any contract or contracts shall receive a statement of benefits to which the employee, his or her spouse, and his or her dependents are entitled under the contract, setting forth the information as to whom the benefits are payable, to whom claims shall be submitted, and a summary of the provisions of the contract or contracts as they affect the employee, his or her spouse, and his or her dependents.

(e) The director may at the end of any contract period discontinue any contract or contracts it has executed with any carrier and replace the same with a contract or contracts with any other carrier or carriers meeting the requirements of this article.

(f) The director shall include language in all contracts for pharmacy benefits management, as defined by §33-51-3 of this code, requiring the pharmacy benefit manager to report quarterly to the agency the following:

(1) The overall total amount charged to the agency for all claims processed by the pharmacy benefit manager during the quarter;

(2) The overall total amount of reimbursements paid to pharmacy providers during the quarter;

(3) The overall total number of claims in which the pharmacy benefits manager reimbursed a pharmacy provider for less than the amount charged to the agency for all claims processed by the pharmacy benefit manager during the quarter; and

(4) For all pharmacy claims, the total amount paid to the pharmacy provider per claim, including, but not limited to, the following:

(A) The cost of drug reimbursement;

(B) Dispensing fees;

(C) Copayments; and

(D) The amount charged to the agency for each claim by the pharmacy benefit manager.

In the event there is a difference between the amount for any pharmacy claim paid to the pharmacy provider and the amount reimbursed to the agency, the pharmacy benefit manager shall report an itemization of all administrative fees, rebates, or processing charges associated with the claim. All data and information provided by the pharmacy benefit manager shall be kept secure, and notwithstanding any other provision of this code to the contrary, the

agency shall maintain the confidentiality of the proprietary information and not share or disclose the proprietary information contained in the report or data collected with persons outside the agency. All data and information provided by the pharmacy benefit manager shall be considered proprietary and confidential and exempt from disclosure under the West Virginia Freedom of Information Act pursuant to §29B-1-4(a)(1) of this code. Only those agency employees involved in collecting, securing, and analyzing the data for the purpose of preparing the report provided for herein shall have access to the proprietary data. The director shall provide a quarterly report to the Joint Committee on Health detailing the information required by this section, including any difference or spread between the overall amount paid by pharmacy benefit managers to the pharmacy providers and the overall amount charged to the agency for each claim by the pharmacy benefit manager. To the extent necessary, the director shall use aggregated, nonproprietary data only: Provided, That the director must provide a clear and concise summary of the total amounts charged to the agency and reimbursed to pharmacy providers on a quarterly basis.

(g) If the information required herein is not provided, the agency may terminate the contract with the pharmacy benefit manager and the Office of the Insurance Commissioner shall discipline the pharmacy benefit manager as provided in §33-51-8(e) of this code.

(h) The Public Employees Insurance Agency shall contract with networks to provide care to its members out of state.

§5-16-10. Contract provisions for group hospital and surgical, group major medical, group prescription drug and group life, and accidental death insurance for retired employees, their spouses, and dependents.

A plan may provide benefits for retired employees and their spouses and dependents as defined by rules and regulations of the Public Employees Insurance Agency, and on such terms as the director may deem appropriate.

In the event the Public Employees Insurance Agency provides the above benefits for retired employees, their spouses, and dependents, the Public Employees Insurance Agency shall adopt rules and regulations prescribing the conditions under which retired employees may elect to participate in or withdraw from the plan or plans. Any plan provided for shall be secondary to any insurance plan administered by the United States Department of Health and Human Services to which the retired employee, spouse, or dependent may be eligible under any law or regulation of the United States. If an employee eligible to participate in the Public Employees Insurance Agency plans is also eligible to participate in the state Medicaid

program, and chooses to do so, then the Public Employees Insurance Agency may transfer to the Medicaid program funds to pay the required state share of such employee's participation in Medicaid except that the amount transferred may not exceed the amount that would be allocated by the agency to subsidize the cost of coverage for the retired employee if he or she were enrolled in the Public Employees Insurance Agency's plans.

§5-16-11. To whom benefits paid.

Any benefits payable under a plan may be paid either directly to the medical provider, hospital, medical group, or other person, firm, association, or corporation furnishing the service upon which the claim is based, or to the insured upon presentation of valid bills for such service, subject to such provisions designed to facilitate payments as may be made by the director.

§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage;

involuntary employee termination coverage; conversion of annual leave and sick leave authorized for health or retirement benefits; authorization for retiree participation; continuation of health insurance for surviving dependents of deceased employees; requirement of new health plan; limiting employer contribution.

(a) Cost-sharing. - The director shall provide plans that shall be paid by the employer and employee.

(b) Spouse and dependent coverage. -(1) An employee is entitled to have his or her spouse and dependents included in any plan to which the employee is entitled to participate.

(2) The spouse and dependent coverage is limited to excess or secondary coverage for each spouse and dependent who has primary coverage from any other source. If an employee's spouse has health insurance available through an employer not defined in §5-16-2 of this code, then the employer may not cover any portion of premiums for the employee's spouse coverage, unless the employee adds his or her spouse to his or her coverage by paying the cost of the actuarial value of the plan: Provided, That this does not apply to spouses of retired employees or employers subject to §5-16-22 of this code. For purposes of this subsection, "actuarial value" means the value as recommended by healthcare actuaries under §5-16-5 of this code.

The director may require proof regarding spouse and dependent primary coverage and shall adopt rules governing the nature, discontinuance, and resumption of any employee's coverage for his or her spouse and dependents.

(c) Continuation after termination. - If an employee participating in the plan is terminated from employment involuntarily or in reduction of work force, the employee's insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee and the employer shall continue to contribute the employer's share of plan premiums for the coverage. An employee discharged for misconduct shall not be eligible for extended benefits under this section. Coverage may be extended up to the maximum period of three months, while administrative remedies contesting the charge of misconduct are pursued. If the discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within 12 months of his or her prior termination, he or she shall not be considered a new enrollee and may not be required to again contribute his or her share of the premium cost if he or she had already fully contributed such share during the prior period of employment.

(d) Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan before July, 1988. - Except as otherwise provided in subsection (g) of this section, when an employee participating in the plan, who elected to participate in the plan before July 1, 1988, is compelled or required by law to retire before reaching the age of 65, or when a participating employee voluntarily retires as provided by law, that employee's accrued annual leave and sick leave, if any, shall be credited toward an extension of the insurance coverage provided by this article, according to the following formulae: The insurance coverage for a retired employee shall continue one additional month for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. For a retired employee, his or her spouse and dependents, the insurance coverage shall continue one additional month for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement.

(e) Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan after June, 1988. - Notwithstanding subsection (d) of this section, and except as otherwise provided in subsections (g) and (l) of this section, when an employee participating in the plan who elected to participate in the plan on and after July 1, 1988, is compelled or required by law to retire before reaching the age of 65, or when the participating employee voluntarily retires as provided by law, that employee's annual leave or sick leave, if any, shall be credited toward one half of the premium cost of the insurance provided by this article, for periods and scope

of coverage determined according to the following formulae: (1) One additional month of single retiree coverage for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement; or (2) one additional month of coverage for a retiree, his or her spouse, and dependents for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. The remaining premium cost shall be borne by the retired employee if he or she elects the coverage. For purposes of this subsection, an employee who has been a participant under spouse or dependent coverage and who reenters the plan within 12 months after termination of his or her prior coverage shall be considered to have elected to participate in the plan as of the date of commencement of the prior coverage. For purposes of this subsection, an employee shall not be considered a new employee after returning from extended authorized leave on or after July 1, 1988.

(f) In the alternative to the extension of insurance coverage through premium payment provided in subsections (d) and (e) of this section, the accrued annual leave and sick leave of an employee participating in the plan may be applied, on the basis of two days' retirement service credit for each one day of accrued annual and sick leave, toward an increase in the employee's retirement benefits with those days constituting additional credited service in computation of the benefits under any state retirement system: Provided, That for a person who first becomes a member of the Teachers Retirement System as provided in §18-7A-1 et seq. of this code on or after July 1, 2015, accrued annual and sick leave of an employee participating in the plan may not be applied for retirement service credit: Provided, however, That the additional credited service shall not be used in meeting initial eligibility for retirement criteria, but only as additional service credited in excess thereof.

(g) Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for certain higher education employees. Except as otherwise provided in subsection (k) of this section, when an employee, who is a higher education full-time faculty member employed on an annual contract basis other than for 12 months, is compelled or required by law to retire before reaching the age of 65, or when such a participating employee voluntarily retires as provided by law, that employee's insurance coverage, as provided by this article, shall be extended according to the following formulae: The insurance coverage for a retired higher education full-time faculty member, formerly employed on an annual contract basis other than for 12 months, shall continue beyond the effective date of his or her retirement one additional year for each three and one-third years of teaching service, as determined by

uniform guidelines established by the University of West Virginia Board of Trustees and the Board of Directors of the State College System, for individual coverage, or one additional year for each five years of teaching service for family coverage.

(h) Retiree participation. -All retired employees are eligible to obtain health insurance coverage. The retired employee's premium contribution for the coverage shall be established by the finance board.

(i) Surviving spouse and dependent participation. - A surviving spouse and dependents of a deceased employee, who was either an active or retired employee participating in the plan just prior to his or her death, are entitled to be included in any comprehensive group health insurance coverage provided under this article to which the deceased employee was entitled, and the spouse and dependents shall bear the premium cost of the insurance coverage. The finance board shall establish the premium cost of the coverage.

(j) Elected officials. - In construing the provisions of this section or any other provisions of this code, the Legislature declares that it is not now, nor has it ever been the Legislature's intent that elected public officials be provided any sick leave, annual leave, or personal leave, and the enactment of this section is based upon the fact and assumption that no statutory or inherent authority exists extending sick leave, annual leave, or personal leave to elected public officials, and the very nature of those positions preclude the arising or accumulation of any leave so as to be thereafter usable as premium paying credits for which the officials may claim extended insurance benefits.

(k) Participation of certain former employees. - An employee, eligible for coverage under the provisions of this article who has 20 years of service with any agency or entity participating in the public employees insurance program or who has been covered by the public employees insurance program for 20 years may, upon leaving employment with a participating agency or entity, continue to be covered by the program if the employee pays 105 percent of the cost of retiree coverage: Provided, That the employee shall elect to continue coverage under this subsection within two years of the date the employment with a participating agency or entity is terminated.

(l) Prohibition on conversion of accrued annual and sick leave for extended coverage upon retirement for new employees who elect to participate in the plan after June, 2001. - Any employee hired on or after July 1, 2001, who elects to participate in the plan may not apply accrued annual or sick leave toward the cost of premiums for extended insurance coverage upon his or her retirement. This prohibition does not apply to the conversion of accrued

annual or sick leave for increased retirement benefits, as authorized by this section: Provided, That any person who has participated in the plan prior to July 1, 2001, is not a new employee for purposes of this subsection if he or she becomes reemployed with an employer participating in the plan within two years following his or her separation from employment and he or she elects to participate in the plan upon his or her reemployment.

(m) Prohibition on conversion of accrued years of teaching service for extended coverage upon retirement for new employees who elect to participate in the plan July, 2009. - Any employee hired on or after July 1, 2009, who elects to participate in the plan may not apply accrued years of teaching service toward the cost of premiums for extended insurance coverage upon his or her retirement.

§5-16-14. Program qualifying for favorable federal income tax treatment.

The director shall develop deductible and employee premium programs which qualify for favorable federal income tax treatment under section 125 of the Internal Revenue Code.

§5-16-15. Optional dental, optical, disability, and prepaid retirement plan, and audiology and hearing-aid service plan.

(a) The director shall make available to participants in the public employees insurance system:

- (1) A dental insurance plan;
- (2) An optical insurance plan;
- (3) A disability insurance plan;
- (4) A prepaid retirement insurance plan; and
- (5) An audiology and hearing-aid services insurance plan.

(b) Public employees insurance participants may elect to participate in any one of these plans separately or in combination. All actuarial and administrative costs of each plan shall be totally borne by the premium payments of the participants or local governing bodies electing to participate in that plan. The director is authorized to employ such administrative practices and procedures with respect to these optional plans as are authorized for the administration of other plans under this article. The director shall establish separate funds for each of the above listed plans. The funds shall not be supplemented by nor be used to supplement any other funds.

§5-16-16. Preferred provider plan.

The director shall establish a preferred provider system for the delivery of health care to plan participants by all health care providers, which may include, but not be limited to,

medical doctors, chiropractors, physicians, osteopathic physicians, surgeons, hospitals, clinics, nursing homes, pharmacies, and pharmaceutical companies.

The director shall establish the terms of the preferred provider system and the incentives therefor. The terms and incentives may include multiyear renewal options as are not prohibited by the Constitution of this state and capitated primary care arrangements which are not subject to the provisions of §33-25A-1 et seq. of this code.

§5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of Treasurer with respect thereto.

(a) All employers operating from state general revenue or special revenue funds, or federal funds, or any combination of those funds, shall budget the cost of insurance coverage provided by the Public Employees Insurance Agency to current and retired employees of the employer as a separate line item titled PEIA in its respective annual budget and are responsible for the transfer of funds to the director for the cost of insurance for employees covered by the plan. Each spending unit shall pay to the director its proportionate share from each source of funds. Any agency wishing to charge General Revenue Funds for insurance benefits for retirees under §5-16-13 of this code shall provide documentation to the director that the benefits cannot be paid for by any special revenue account or that the retiring employee has been paid solely with General Revenue Funds for 12 months prior to retirement.

(b) If the general revenue appropriation for any employer, excluding county boards of education, is insufficient to cover the cost of insurance coverage for the employer's participating employees, retired employees, and surviving dependents, the employer shall pay the remainder of the cost from its "personal services" or "unclassified" line items. The amount of the payments for county boards of education shall be determined by the method set forth in §18-9A-24 of this code: Provided, That local excess levy funds shall be used only for the purposes for which they were raised: Provided, however, That after approval of its annual financial plan, but in no event later than December 31 of each year, the finance board shall notify the Legislature and county boards of education of the maximum amount of employer premiums that the county boards of education shall pay for covered employees during the following fiscal year.

(c) All other employers not operating from the state General Revenue Fund shall pay to the director their share of premium costs from their respective budgets. The finance board shall establish the employers' share of premium costs to reflect and pay the actual costs of the coverage including incurred but not reported claims.

(d) The contribution of the other employers that are counties, cities, or towns in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or comprehensive mental health facility established, operated, or licensed by the Secretary of the Department of Health and Human Resources pursuant to §27-2A-1 et seq. of this code, and which is supported in part by state, county, or municipal funds; and a combined city-county health department created pursuant to §16-2-1 et seq. of this code for their employees shall be the percentage of the cost of the employees' insurance package as the employers determine reasonable and proper under their own particular circumstances.

(e) The employee's proportionate share of the premium or cost shall be withheld or deducted by the employer from the employee's salary or wages as and when paid and the sums shall be forwarded to the director with any supporting data as the director may require.

(f) All moneys received by the Public Employees Insurance Agency shall be deposited in a special fund or funds as are necessary in the State Treasury and the Treasurer is custodian of the fund or funds and shall administer the fund or funds in accordance with the provisions of this article or as the director may from time to time direct. The Treasurer shall pay all warrants issued by the State Auditor against the fund or funds as the director may direct in accordance with the provisions of this article. All funds received by the agency, shall be deposited, as determined by the director, in any of the investment pools with the West Virginia Investment Management Board, with the interest income or other earnings a proper credit to all such funds for the benefit of the Public Employees Insurance Agency.

(g) The Public Employees Insurance Agency may recover an additional interest amount from any employer that fails to pay in a timely manner any premium or minimum annual employer payment, as defined in §5-16D-1 et seq. of this code, which is due and payable to the Public Employees Insurance Agency or the Retiree Health Benefit Trust. The agency may recover the amount due plus an additional amount equal to 2.5 percent per annum of the amount due. Accrual of interest owed by the delinquent employer commences upon the 31st day following the due date for the amount owed and shall continue until receipt by the Public Employees Insurance Agency of the delinquent payment. Interest shall compound every 30 days.

§5-16-23. Members of Legislature may be covered if cost of the entire coverage is paid by such members.

Notwithstanding any other provision of this article to the contrary, members of the Legislature may participate in and be covered by any insurance plan or plans authorized hereunder for state officers and employees, except that all members of the Legislature who elect to participate in or to be covered by any such plan or plans shall pay their proportionate individual share of the full cost for all group coverage on themselves, their spouses, and dependents, so that there will be no cost to the state for the coverage of any such members, spouses, and dependents.

§5-16-25. Reserve fund.

The finance board shall establish and maintain a reserve fund for the purposes of offsetting unanticipated claim losses in any fiscal year. The finance board shall maintain the actuarially recommended reserve in an amount no less than 10 percent of the projected total plan costs for that fiscal year in the reserve fund, which is to be certified by the actuary and included in the final, approved financial plan submitted to the Governor and Legislature.

§5-16-26. Quarterly report.

On or before the 30th day of January, April, July, and October the director shall prepare for the approval of the finance board, and thereafter present to the Joint Committee on Government and Finance a quarterly report setting forth:

(a) A summary of the cost to the plan of health care claims incurred in the preceding calendar quarter;

(b) A summary of the funds accrued to the plan by legislative appropriation, employer and employee premiums, or otherwise, in the preceding calendar quarter for payment of health care claims;

(c) An explanation of all cost containment measures, increased premium rates, and any other plan changes adopted by the director in the preceding calendar quarter and estimated cost savings and enhanced revenues resulting therefrom, and a certification that the director made a good faith effort to develop and implement all reasonable health care cost containment alternatives;

(d) Expected claim costs for the next calendar year;

(e) Such other information as the director deems appropriate; and

(f) Any other financial or other information as may be requested by the Joint Committee on Government and Finance.

§5-16-28. Incorporation of the coverage for 12-month refill for contraceptive drugs.

[Repealed.]

§5-16-30. PEIA solvency.

The Public Employees Insurance Agency shall return to, and provide that, the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, shall be at a level of 80 percent for the employer and 20 percent for employees during fiscal year 2024 and thereafter.

§5-16-31. PEIA actuarial study.

PEIA shall conduct an independent actuarial study of the financial solvency of the plan, including, but not limited to, a consideration of alternatives to bring long-term financial stability to the plan, options regarding continued nonstate employee participation in the plan, collapsing salary levels, and any other cost-saving measures. PEIA shall seek input from public employees, retirees, providers, and other interested parties on solutions to evaluate in the study. The actuarial study shall begin on or before July 1, 2023. A report on the study shall be presented to the Joint Committee on Government and Finance on or before July 1, 2024.

§5-16-32. Effective date of amendments.

The amendments made to this article during the regular session of the Legislature, 2023, shall be incorporated into the plan beginning with plan year 2024.

Senate Bill 275: Adding State Fire Marshals to statute included with law enforcement and first responders that receive information on school safety requirements.

Effective: Passed January 18, 2023; Effective May 18, 2023

Code Reference: W. Va. Code §18-9F-10 (Amended)

WVDE Contact: Instructional Leadership and School Improvement

Summary: Current law requires county boards of education to provide updated school floor plans to law enforcement and first responders for school safety purposes. This Act amended current law to include that State Fire Marshals also be provided updated floor plans of schools.

Enrolled Bill: ENROLLED Senate Bill 275
BY SENATORS TRUMP, DEEDS, AND PHILLIPS

AN ACT to amend and reenact §18-9F-10 of the Code of West Virginia, 1931, as amended, relating to adding State Fire Marshals to the list of persons who receive information related to school safety requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9F. SCHOOL ACCESS SAFETY ACT.

§18-9F-10. School safety requirements.

In addition to any other requirement contained in this article or the Crisis Response Plan required by §18-9F-9 of this code, each county board of education shall implement a school safety program before September 1, 2019, that at a minimum, requires:

- (1) Room numbers to be placed on exterior walls or windows of school buildings, so rooms with exterior walls can be identified by law enforcement, first responders, and State Fire Marshals from the outside;
- (2) Providing updated floor plans of the school to first responders, local law enforcement, and State Fire Marshals by September 1 of each school year;
- (3) First aid training for all school personnel and students each school year; and
- (4) Active shooter training for all school personnel and students at the beginning of each school year.

Senate Bill 422: **Requiring public schools to publish curriculum online at beginning of each new school year.**

Effective: Passed March 11, 2023; Effective June 9, 2023

Code Reference: W. Va. Code §18-5-27 (Amended)

WVDE Contact: Instructional Leadership and School Improvement

Summary: This Act requires county boards of education to post the county-adopted class curriculum for each school on the school’s internet website no later than 30 days after a new or revised curriculum is adopted. However, only students, parents and guardians of the students are required to have access through a login. If the public school does not have a website, the information is required to be posted on the county board of education’s website or a website authorized by the state board of education (WVBOE).

For the purposes of this Act, “class curriculum” includes curriculum created under the provisions of existing law, W. Va. Code §18-5A-6 (Establishment of school curriculum teams; process for teacher collaboration to improve learning).

Finally, the county boards of education are authorized to provide access to the county adopted class curriculum.

Enrolled Bill: ENROLLED Committee Substitute for Senate Bill 422
BY SENATORS BLAIR (MR. PRESIDENT) AND WOELFEL (BY REQUEST OF THE EXECUTIVE)

AN ACT to amend and reenact §18-5-27 of the Code of West Virginia, 1931, as amended, all relating to publishing county board curriculum; requiring public schools to post county-adopted curriculum online and establishing deadlines therefore; providing that only students, parents, or guardians have access to online curriculum; defining term; allowing county board to provide access to county-adopted curriculum; and providing that if a public school does not have a website, the information shall be posted on county board website or website authorized by state board.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-27. Requirement to publish curriculum online; parental right to inspect instructional materials; listing books on syllabus; right to file complaint.

(a) Each public school shall ensure that the adopted, up-to-date, county-adopted class curriculum is posted on the school's internet website at the beginning of each school year or no later than 30 business days after new or revised curriculum is adopted: Provided, That only students, parents, or guardians of the students shall be provided the login information to gain access to the online curriculum.

(1) For purposes of this section, class curriculum shall include curriculum created pursuant to §18-5A-6 of this code.

(2) The county board of education may provide access, or authorize access, to the county-adopted class curriculum.

(3) If the public school has no accessible website, the information shall be posted on the website of the appropriate county board of education, or website authorized by the state board of education.

(b) Each classroom teacher shall comply with the request of any parent, custodian, or guardian to inspect additional instructional materials adopted by the county board pursuant to §18-2A-10 of this code, supplementary instructional materials that were not adopted by the county board pursuant to §18-2A-10 of this code, and books in the classroom that are available for students to read, subject to the following:

(1) Only the parent, custodian, or guardian of a child enrolled in the class may make a request pursuant to this subsection;

(2) The classroom teacher may require that the parent, custodian, or guardian schedule an appointment in order to inspect the instructional materials. If the classroom teacher requires an appointment pursuant to this subdivision, the teacher shall schedule the appointment within 10 business days of the request of the parent, custodian, or guardian; and

(3) As part of the inspection and upon request of the parent, custodian, or guardian, the classroom teacher shall demonstrate how the instructional material relates to the content standards adopted by the state board.

(c) For any class in which reading a book or books will be required, the classroom teacher shall include the book or books on a class syllabus. The classroom teacher shall make the syllabus available to any parent, custodian, or guardian of a child enrolled in the class upon request.

(d) Any parent, custodian, or guardian may file a complaint with the county superintendent, on a form developed and provided by the county superintendent, if the classroom teacher fails to comply with any provision of this section. If the complaint is not resolved by the county superintendent within seven business days, the parent, custodian, or guardian may file a complaint with the State Superintendent or his or her designee. The State Superintendent shall make a form available for parents to file a complaint pursuant to this subsection.

(e) By September 1 of each year, each county superintendent shall report to the State Superintendent the number of complaints filed with him or her the previous school year. The State Superintendent, annually by October 1, shall report to the Legislative Oversight Commission on Education Accountability the number of complaints filed during the previous school year. The report shall include the number of complaints filed statewide and by county.

(f) For purposes of this section, "parent" means a parent who has some allocation of physical custody of the child or who has some share of joint decision-making authority for the child. For purposes of this section, "custodian" means a person who has some allocation of physical custody of the child or who has provided to the school written permission of a parent to have access to the information contemplated by this section. For purposes of this section, "guardian" means a person other than a parent or custodian who, pursuant to a court order, acts in loco parentis for the child.

STATE MINIMUM SALARY SCHEDULE

Years Exp	4th Class	3rd Class	2nd Class	A.B.	A.B. 15	M.A.	M.A. 15	M.A. 30	M.A.	Doc- torate
0	36,597	37,286	37,552	38,995	39,756	41,523	42,284	43,045	43,806	44,841
1	36,925	37,614	37,880	39,513	40,274	42,042	42,803	43,563	44,324	45,359
2	37,254	37,942	38,208	40,032	40,793	42,560	43,321	44,082	44,843	45,878
3	37,582	38,270	38,536	40,551	41,311	43,079	43,840	44,600	45,361	46,396
4	38,154	38,842	39,108	41,313	42,074	43,842	44,603	45,363	46,124	47,159
5	38,482	39,170	39,436	41,832	42,593	44,360	45,121	45,882	46,643	47,678
6	38,810	39,498	39,764	42,350	43,111	44,879	45,640	46,400	47,161	48,196
7	39,138	39,827	40,092	42,869	43,630	45,397	46,158	46,919	47,680	48,715
8	39,466	40,155	40,421	43,387	44,148	45,916	46,677	47,437	48,198	49,233
9	39,794	40,483	40,749	43,906	44,667	46,434	47,195	47,956	48,717	49,752
10	40,123	40,811	41,077	44,426	45,186	46,954	47,715	48,476	49,236	50,271
11	40,451	41,139	41,405	44,944	45,705	47,473	48,233	48,994	49,755	50,790
12	40,779	41,467	41,733	45,463	46,223	47,991	48,752	49,513	50,273	51,308
13	41,107	41,795	42,061	45,981	46,742	48,510	49,270	50,031	50,792	51,827
14	41,435	42,123	42,389	46,500	47,260	49,028	49,789	50,550	51,310	52,345
15	41,763	42,451	42,717	47,018	47,779	49,547	50,307	51,068	51,829	52,864
16	42,091	42,779	43,045	47,537	48,297	50,065	50,826	51,587	52,347	53,382
17	42,419	43,108	43,373	48,055	48,816	50,584	51,345	52,105	52,866	53,901
18	42,747	43,436	43,702	48,574	49,335	51,102	51,863	52,624	53,385	54,420
19	43,075	43,764	44,030	49,092	49,853	51,621	52,382	53,142	53,903	54,938
20	43,403	44,092	44,358	49,611	50,372	52,139	52,900	53,661	54,422	55,457
21	43,732	44,420	44,686	50,129	50,890	52,658	53,419	54,179	54,940	55,975
22	44,060	44,748	45,014	50,648	51,409	53,176	53,937	54,698	55,459	56,494
23	44,388	45,076	45,342	51,167	51,927	53,695	54,456	55,216	55,977	57,012
24	44,716	45,404	45,670	51,685	52,446	54,214	54,974	55,735	56,496	57,531
25	45,044	45,732	45,998	52,204	52,964	54,732	55,493	56,254	57,014	58,049

26	45,372	46,060	46,326	52,722	53,483	55,251	56,011	56,772	57,533	58,568
27	45,700	46,388	46,654	53,241	54,001	55,769	56,530	57,291	58,051	59,086
28	46,028	46,717	46,982	53,759	54,520	56,288	57,048	57,809	58,570	59,605
29	46,356	47,045	47,311	54,278	55,038	56,806	57,567	58,328	59,088	60,123
30	46,684	47,373	47,639	54,796	55,557	57,325	58,085	58,846	59,607	60,642
31	47,013	47,701	47,967	55,315	56,076	57,843	58,604	59,365	60,125	61,160
32	47,341	48,029	48,295	55,833	56,594	58,362	59,123	59,883	60,644	61,679
33	47,669	48,357	48,623	56,352	57,113	58,880	59,641	60,402	61,163	62,198
34	47,997	48,685	48,951	56,870	57,631	59,399	60,160	60,920	61,681	62,716
35	48,325	49,013	49,279	57,389	58,150	59,917	60,678	61,439	62,200	63,235

(b) Six hundred dollars shall be paid annually to each classroom teacher who has at least 20 years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

(c) Effective July 1, 2019, each classroom teacher providing math instruction in the teacher’s certified area of study for at least 60 percent of the time the teacher is providing instruction to students shall be considered to have three additional years of experience only for the purposes of the salary schedule set forth in subsection (a) of this section: Provided, That for any classroom teacher who satisfies these requirements and whose years of experience plus the three additional years due to them exceeds the years of experience provided for on the salary schedule shall be paid the additional amount equivalent to three additional years of experience notwithstanding the maximum experience provided on the salary schedule.

(d) Effective July 1, 2019, each classroom teacher certified in special education and employed as a full-time special education teacher, as defined by the State Superintendent, shall be considered to have three additional years of experience only for the purposes of the salary schedule set forth in subsection (a) of this section: Provided, That for any classroom teacher who satisfies these requirements and whose years of experience plus the three additional years due to them exceeds the years of experience provided for on the salary schedule shall be paid the additional amount equivalent to three additional years of experience notwithstanding the maximum experience provided on the salary schedule.

(e) In accordance with §18A-4-5 of this code, each teacher shall be paid the supplement amount as applicable for his or her classification of certification or classification of training and years of experience as follows, subject to the provisions of that section:

(1) For "4th Class" at zero years of experience, \$1,781. An additional \$38 shall be paid for each year of experience up to and including 35 years of experience;

(2) For "3rd Class" at zero years of experience, \$1,796. An additional \$67 shall be paid for each year of experience up to and including 35 years of experience;

(3) For "2nd Class" at zero years of experience, \$1,877. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(4) For "A.B." at zero years of experience, \$2,360. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(5) For "A.B. + 15" at zero years of experience, \$2,452. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(6) For "M.A." at zero years of experience, \$2,644. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(7) For "M.A. + 15" at zero years of experience, \$2,740. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(8) For "M.A. + 30" at zero years of experience, \$2,836. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(9) For "M.A. + 45" at zero years of experience, \$2,836. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience; and

(10) For "Doctorate" at zero years of experience, \$2,927. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience.

These payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to §18A-4-5a of this code; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

§18A-4-8a. Service personnel minimum monthly salaries.

(a) Effective July 1, 2023, the minimum monthly pay for each service employee shall be as follows:

(1) For school year 2023-2024 and continuing thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade Schedule set forth in this subdivision and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade Schedule set forth in this subdivision.

STATE MINIMUM PAY SCALE PAY GRADE SCHEDULE

Years	PAY GRADE							
Exp.	A	B	C	D	E	F	G	H
0	2,237	2,258	2,300	2,353	2,406	2,469	2,501	2,574
1	2,269	2,291	2,332	2,385	2,439	2,502	2,533	2,607
2	2,302	2,323	2,365	2,418	2,471	2,534	2,566	2,639
3	2,334	2,356	2,398	2,451	2,504	2,567	2,599	2,672
4	2,367	2,389	2,430	2,483	2,536	2,600	2,631	2,706
5	2,400	2,421	2,463	2,516	2,569	2,632	2,664	2,738
6	2,432	2,454	2,497	2,549	2,602	2,665	2,697	2,771
7	2,466	2,486	2,529	2,581	2,634	2,698	2,729	2,804
8	2,499	2,519	2,562	2,614	2,667	2,730	2,762	2,836
9	2,531	2,552	2,595	2,648	2,700	2,763	2,794	2,869
10	2,564	2,585	2,627	2,680	2,732	2,797	2,828	2,902
11	2,597	2,618	2,660	2,713	2,765	2,829	2,861	2,934
12	2,629	2,651	2,692	2,746	2,799	2,862	2,893	2,967
13	2,662	2,683	2,725	2,778	2,831	2,894	2,926	3,000
14	2,695	2,716	2,758	2,811	2,864	2,927	2,959	3,032
15	2,727	2,749	2,790	2,843	2,896	2,960	2,991	3,065
16	2,760	2,781	2,823	2,876	2,929	2,992	3,024	3,098
17	2,792	2,814	2,857	2,909	2,962	3,025	3,057	3,131
18	2,825	2,847	2,889	2,941	2,994	3,058	3,089	3,164
19	2,859	2,879	2,922	2,974	3,027	3,090	3,122	3,196
20	2,891	2,912	2,955	3,008	3,060	3,123	3,155	3,230
21	2,924	2,944	2,987	3,040	3,092	3,156	3,187	3,264
22	2,957	2,978	3,020	3,073	3,125	3,189	3,221	3,296
23	2,989	3,011	3,053	3,106	3,159	3,223	3,255	3,330
24	3,022	3,043	3,085	3,138	3,191	3,257	3,288	3,364
25	3,055	3,076	3,118	3,171	3,225	3,289	3,322	3,396

26	3,087	3,109	3,150	3,205	3,259	3,323	3,354	3,430
27	3,120	3,141	3,183	3,237	3,291	3,355	3,388	3,463
28	3,153	3,174	3,217	3,271	3,325	3,389	3,422	3,497
29	3,185	3,208	3,250	3,303	3,358	3,423	3,454	3,531
30	3,219	3,240	3,284	3,337	3,391	3,455	3,488	3,564
31	3,252	3,274	3,318	3,371	3,425	3,489	3,522	3,597
32	3,286	3,307	3,350	3,404	3,457	3,523	3,554	3,631
33	3,320	3,340	3,384	3,438	3,491	3,555	3,588	3,664
34	3,352	3,374	3,418	3,472	3,525	3,589	3,622	3,697
35	3,386	3,408	3,450	3,504	3,557	3,623	3,655	3,731
36	3,420	3,441	3,484	3,538	3,592	3,656	3,689	3,763
37	3,452	3,475	3,518	3,572	3,626	3,690	3,722	3,797
38	3,486	3,507	3,550	3,604	3,658	3,723	3,755	3,831
39	3,520	3,541	3,584	3,638	3,692	3,756	3,789	3,863
40	3,552	3,575	3,617	3,671	3,726	3,790	3,822	3,897

(2) Each service employee shall receive the amount prescribed in the State Minimum Pay Scale Pay Grade in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

CLASS TITLE.....	PAY GRADE
Accountant I	D
Accountant II	E
Accountant III	F
Accounts Payable Supervisor	G
Aide I	A
Aide II	B
Aide III	C

Aide IV	D
Aide V – Temporary Authorization	E
Aide V	F
Aide VI – Temporary Authorization	E
Aide VI	F
Audiovisual Technician	C
Auditor	G
Autism Mentor	F
Braille Specialist	E
Bus Operator	D
Buyer	F
Cabinetmaker	G
Cafeteria Manager	D
Carpenter I	E
Carpenter II	F
Chief Mechanic	G
Clerk I	B
Clerk II	C
Computer Operator	E
Cook I	A
Cook II	B
Cook III	C
Crew Leader	F
Custodian I	A
Custodian II	B

Custodian III	C
Custodian IV	D
Director or Coordinator of Services	H
Draftsman	D
Early Childhood Classroom Assistant Teacher I	E
Early Childhood Classroom Assistant Teacher II	E
Early Childhood Classroom Assistant Teacher III	F
Educational Sign Language Interpreter I	F
Educational Sign Language Interpreter II	G
Electrician I	F
Electrician II	G
Electronic Technician I	F
Electronic Technician II	G
Executive Secretary	G
Food Services Supervisor	G
Foreman	G
General Maintenance	C
Glazier	D
Graphic Artist	D
Groundsman	B
Handyman	B
Heating and Air Conditioning Mechanic I	E
Heating and Air Conditioning Mechanic II	G
Heavy Equipment Operator	E
Inventory Supervisor	D

Key Punch Operator	B
Licensed Practical Nurse	F
Locksmith	G
Lubrication Man	C
Machinist	F
Mail Clerk	D
Maintenance Clerk	C
Mason	G
Mechanic	F
Mechanic Assistant	E
Office Equipment Repairman I	F
Office Equipment Repairman II	G
Painter	E
Paraprofessional	F
Payroll Supervisor	G
Plumber I	E
Plumber II	G
Printing Operator	B
Printing Supervisor	D
Programmer	H
Roofing/Sheet Metal Mechanic	F
Sanitation Plant Operator	G
School Bus Supervisor	E
Secretary I	D
Secretary II	E

Secretary III	F
Sign Support Specialist	E
Supervisor of Maintenance	H
Supervisor of Transportation	H
Switchboard Operator-Receptionist	D
Truck Driver	D
Warehouse Clerk	C
Watchman	B
Welder	F
WVEIS Data Entry and Administrative Clerk	B

(b) An additional \$12 per month is added to the minimum monthly pay of each service person who holds a high school diploma or its equivalent.

(c) An additional \$11 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds 12 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(2) A service person who holds 24 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(3) A service person who holds 36 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(4) A service person who holds 48 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(5) A service employee who holds 60 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(6) A service person who holds 72 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service person who holds 84 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service person who holds 96 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service person who holds 108 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service person who holds 120 college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

(d) An additional \$40 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds an associate's degree;

(2) A service person who holds a bachelor's degree;

(3) A service person who holds a master's degree;

(4) A service person who holds a doctorate degree.

(e) An additional \$11 per month is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds a bachelor's degree plus 15 college hours;

(2) A service person who holds a master's degree plus 15 college hours;

(3) A service person who holds a master's degree plus 30 college hours;

(4) A service person who holds a master's degree plus 45 college hours; and

(5) A service person who holds a master's degree plus 60 college hours.

(f) Each service person is paid a supplement, as set forth in §18A-4-5 of this code, of \$164 per month, subject to the provisions of that section. These payments: (i) Are in addition to

any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to §18A-4-5b of this code; (ii) are paid in equal monthly installments; and (iii) are considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service person's daily shift of work is performed between the hours of 6:00 p. m. and 5:00 a. m. the following day, the employee is paid no less than an additional \$10 per month and one half of the pay is paid with local funds.

(h) Any service person required to work on any legal school holiday is paid at a rate one and one-half times the person's usual hourly rate.

(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid is paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(j) A service person may not have his or her daily work schedule changed during the school year without the employee's written consent and the person's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(k) The minimum hourly rate of pay for extra duty assignments as defined in §18A-4-8b of this code is no less than one seventh of the person's daily total salary for each hour the person is involved in performing the assignment and paid entirely from local funds: Provided, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be used if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time persons within that classification category of employment within that county: Provided, however, That the vote is by secret ballot if requested by a service person within that

classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment is prorated accordingly. When performing extra duty assignments, persons who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the person were employed on a full-day salary basis.

(l) The minimum pay for any service personnel engaged in the removal of asbestos material or related duties required for asbestos removal is their regular total daily rate of pay and no less than an additional \$3 per hour or no less than \$5 per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos-related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos, decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos-related duties outside of the employee's regular employment county, the daily rate of pay is no less than the minimum amount as established in the employee's regular employment county for asbestos removal and an additional \$30 per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel may be used in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act-approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(m) For the purpose of qualifying for additional pay as provided in §18A-5-8 of this code, an aide is considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort, or render service to a child or children when not under the direct supervision of a certified professional

person within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds, or wherever supervision is required. For purposes of this section, "under the direct supervision of a certified professional person" means that certified professional person is present, with and accompanying the aide.

Senate Bill 449: Updating terms for Natural Resources Police Officers Retirement System and retirement systems for charter schools.

Effective: Passed March 7, 2023; Effective June 5, 2023

Code Reference: W. Va. Code §5-10C-3 (Amended)
W. Va. Code §5-10C-4 (Amended)
W. Va. Code §5-10C-5 (Amended)

WVDE Contact: Legal Services

Summary: As it relates to public education, this Act amended “Participating Public Employer” to include “nonteachers” employed by a county board of education and covered under a state retirement plan. The Act also added language for charter schools to elect to participate in the State Teachers Retirement System or the Teachers’ Defined Contribution Retirement System. The Act specifies that the terms “teacher” and “nonteacher” have the same meanings ascribed to them in W. Va. Code §18-7A-3. Additionally, county boards of education are required to pick-up and pay the contributions of both teachers and nonteachers for federal law purposes.

Note: The Internal Revenue Service provides the following in its Key Terms and Concepts section:

Employer "Pick-Up" Contributions: Section 414(h)(2) allows state or local government entities with Section 401(a) plans to treat certain contributions designated as employee contributions, but which are "picked up" (paid) by the employer, to be treated as employer contributions, and therefore as exempt from income tax. This does not include contributions made under a salary reduction agreement. For purposes of FICA, the term "salary reduction" relates to amounts treated as an employer contribution under Code §414(h)(2) that would have been included in wages for FICA tax purposes, but for the employer contribution.

Enrolled Bill: ENROLLED Senate Bill 449
BY SENATORS NELSON, DEEDS, OLIVERIO, AND HUNT

AN ACT to amend and reenact §5-10C-3, §5-10C-4, and §5-10C-5 of the Code of West Virginia, 1931, as amended; all relating to government employees' retirement plans; updating definitions; clarifying pick-up contributions for nonteachers; and inserting new retirement plan in savings clause.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-3. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

(1) "Accumulated contributions" means the sum of all amounts credited to a member's individual account in the member's deposit fund and includes both contributions deducted from the compensation of a member and contributions of a member picked up and paid by the member's participating public employer, plus applicable interest thereon.

(2) "Board of trustees" means, as appropriate: The Consolidated Public Retirement Board created in article ten-d of this chapter; the Higher Education Policy Commission; the West Virginia Council for Community and Technical College Education; the institutional governing boards responsible for the higher education retirement plan and supplemental retirement plan; or the boards of trustees of the firemen's and policemen's pension and relief funds created in §8-22-1 et seq. of this code.

(3) "Employee" means any person, whether appointed, elected or under contract, providing services for a public employer for which compensation is paid and who is a member of the applicable retirement system.

(4) "Member" means any person who has accumulated contributions standing to his or her credit in a retirement system.

(5) "Member contributions" means, as appropriate: The contributions required by §5-10-29 of this code from employees who are members of the West Virginia Public Employees Retirement System; the contributions required by section §15-2-26 of this code from employees who are members of the West Virginia State Police Death, Disability and Retirement Fund; the contributions required by §7-14D-7 of this code from employees who are members of the Deputy Sheriff Retirement System; the contributions required by §18-7A-14 of this code from employees who are members of the State Teachers Retirement System; the contributions authorized or required by §18-7A-14a of said chapter or by §18-23-4a of said chapter from employees who are members of the West Virginia higher education retirement plan and

supplemental retirement plan; the contributions required by §51-9-4 of this code from employees who are members of the Judges' Retirement System; the contributions required by §8-22-19 of this code from employees who are members of municipal firemen's and policemen's pension and relief funds; the contributions required by §8-22A-8 of this code from employees who are members of the Municipal Police Officers and Firefighters Retirement System; the contributions required by §18-7B-9 of this code from employees who are members of the Teachers' Defined Contribution Retirement System; the contributions required by §15-2A-5 of this code from the employees who are members of the West Virginia State Police Retirement System; the contributions required by §16-5V-8 of this code from employees who are members of the West Virginia Emergency Medical Services Retirement System; or the contributions required by §20-18-8 of this code from employees who are members of the West Virginia Natural Resources Police Officers Retirement System.

(6) "Participating public employer" means the State of West Virginia, any board, commission, department, institution or spending unit and includes any agency with full-time employees, created by rule of the Supreme Court of Appeals, which for the purpose of this article shall be considered a department of state government and county boards of education with respect to teachers and nonteachers employed by them; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Public Employees Retirement System; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the Deputy Sheriff Retirement System; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Emergency Medical Services Retirement System; any political subdivision in this state which is subject to the provisions of articles twenty-two and twenty-two-a, chapter eight of this code; and any public charter school established pursuant to §18-5G-1 et seq. of this code which has elected to participate in, and cover its employees under, either the State Teachers Retirement System or the Teachers' Defined Contribution Retirement System.

(7) "Political subdivision" means the State of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns, any agency or organization established

by or approved by the Department of Health and Human Resources for the provision of community health or mental retardation services and which is supported in part by state, county or municipal funds.

(8) "Retirement system" means, as appropriate: The West Virginia Public Employees Retirement System created in §5-10-1 et seq. of this code; the West Virginia State Police Death, Disability and Retirement Fund created in §15-2-26 through §15-2-39a of this code, inclusive; the West Virginia Deputy Sheriff Retirement System created in §7-14D-1 et seq. of this code; the state Teachers Retirement System created in §18-7A-1 et seq. of this code; the West Virginia higher education retirement plan and supplemental retirement plan created in §18-7A-14a of this code and §18-23-4a of this code; the Judges' Retirement System created in §51-9-1 et seq. of this code; the firemen's or policemen's pension and relief funds created in §8-22-16 of this code; the Municipal Police Officers and Firefighters Retirement System created in §8-22A-4 of this code; the Teachers' Defined Contribution Retirement System created in article seven-b, chapter eighteen of this code; the West Virginia State Police Retirement System created in article two-a, chapter fifteen of this code; the West Virginia Emergency Medical Services Retirement System created in §16-5V-1 et seq. of this code; or the West Virginia Natural Resources Police Officers Retirement System created in article eighteen, chapter twenty of this code.

(9) "Teacher" and "nonteacher" have the meanings ascribed to the terms "teacher member" and "nonteaching member" in §18-7A-3 of this code.

§5-10C-4. Pick-up of members' contributions by participating public employers.

(a) The State of West Virginia for its public employees and county boards of education for its teachers and nonteachers shall pick-up and pay the contributions which the employees are required by law to make to the retirement system in which they are a member for all compensation earned by its member employees after June 30, 1986. Any political subdivision that is a participating public employer in the West Virginia Public Employees Retirement System shall pick-up and pay the contributions which the employees are required by law to make to the retirement system in which they are members for all compensation earned by its member employees after January 1, 1995. Public employers participating in the Municipal Police Officers and Firefighters Retirement System shall pick-up and pay the contributions which the employees are required by law to make to the system in which they are members for all compensation earned by its member employees beginning January 1, 2010. Counties shall pick-up and pay the contributions which the employees are required by law to make to

the Deputy Sheriff Retirement System in which they are members for all compensation earned by its member employees after June 30, 1998. Any election made by a political subdivision to pick-up and pay employee contributions prior to January 1, 1995, remains in effect and is not altered or amended by the amendments made to this section during the regular legislative session, 1995. Unless a different commencement date for pick-up is specifically stated in this section, all participating public employers under this article, with respect to retirement systems subject to this article, shall pick-up and pay the contributions which their employees are required by law to make to the retirement system in which they are a member from and after the commencement of the required employee contributions.

(b) When the participating public employer picks up and pays the contributions of its member employees, the contributions, although designated by statute as employee contributions, shall be treated as employer contributions in determining the tax treatment thereof under article twenty-one, chapter eleven of this code and the federal Internal Revenue Code of 1986, as amended, and the contributions shall not be included in the gross income of the employee in determining his or her tax treatment under those provisions until they are distributed or made available to the employee or his or her beneficiary. The participating public employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee, by effecting an equal cash reduction in the gross salary of the employee, or by an off-set against future salary increases, or by a combination of reduction in gross salary and off-set against future salary increases. In no event shall any employee of a participating public employer have the right to opt out of pick-up or to elect to receive the picked-up and contributed amounts directly instead of having them paid by the participating public employer into the retirement system pursuant to this article.

(c) When employee contributions are picked up and paid by the participating public employer, they shall be treated by the board of trustees in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions are picked up by the participating public employer.

(d) The amount of employee contributions picked up by the participating public employer shall be paid to the retirement system in the manner and form and in the frequency required by the board of trustees and shall be accompanied by supporting data that the board of trustees may prescribe. When paid to the retirement system, each of these amounts shall be credited to the deposit fund account of the member for whom the contribution was picked up and paid by the participating public employer.

§5-10C-5. Savings clause.

In enacting this article, it is the intent of the Legislature that the retirement plan created pursuant to this article and those created pursuant to §5-10-1 et seq.; §7-14D-1 et seq.; §8-22A-1 et seq.; §15-2-1 et seq.; §18-7A-1 et seq.; §51-9-1 et seq.; §18-23-4a; §8-22-16; §18-7B-1 et seq.; §15-2A-1 et seq.; §16-5V-1 et seq.; and §20-18-1 et seq. of this code qualify under Section 401 of the Internal Revenue Code of 1986, as amended, and that the member contributions picked up by the participating public employer qualify under Subsection (h), Section 414 of the Internal Revenue Code of 1986, as amended. If the United States Internal Revenue Service does not approve of certain sections or phraseology of certain sections of this article as being in compliance with the statutes or regulations governing the Internal Revenue Service, the respective boards of trustees, in the adoption of the deferred compensation plan, shall adopt the terminology with respect to those sections that comply with the statutes or regulations governing the Internal Revenue Service.

Senate Bill 451: Relating to Teachers Retirement System and Teachers’ Defined Contribution Retirement System.

Effective: Passed March 9, 2023; Effective June 7, 2023

Code Reference: W. Va. Code §18-7A-3 (Amended)
W. Va. Code §18-7A-13a (Amended)
W. Va. Code §18-7A-15 (Amended)
W. Va. Code §18-7A-17 (Amended)
W. Va. Code §18-7B-2 (Amended)
W. Va. Code §18-7B-17 (Amended)

WVDE Contact: Legal Services

Summary: This Act modified the State Teachers Retirement System (TRS) and the Teachers Defined Contribution Retirement System (TDC) statutes as follows:

- 1) Defined “electing charter school,” “employer,” and “medical examination.”
- 2) Amended “public schools” definition to exclude any public charter school that is not an electing charter school.
- 3) Amended “teacher member” definition to include instructional personnel, principals and librarians of a public charter school that has elected to participate in TRS or TDC.
- 4) Requires employers to notify the Consolidated Public Retirement Board (CPRB) if a TRS retiree is re-employed in a full-time, permanent position.
- 5) Authorizes the CPRB to take steps authorized under the provisions of W. Va. Code §5-10D-13 (Withholding state and county money to satisfy judgements) if a county board of education or an electing charter school fails to timely remit contributions withheld from members.
- 6) Provides that a member of the Public Employees Retirement System (PERS) that first became a member on or after July 1, 2023, may only transfer service credit to TRS if they first became a member of TRS after July 1, 2015.

Enrolled Bill: ENROLLED Committee Substitute for Senate Bill 449
BY SENATORS NELSON AND HUNT

AN ACT to amend and reenact §18-7A-3, §18-7A-13a, §18-7A-15, and §18-7A-17 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-7B-2 and §18-7B-17 of said code, all relating to retirement systems for teachers and certain other educational employees; defining terms; requiring certain notifications; providing for public charter schools as employer in systems; and limiting eligibility for certain transfers of service from the Public Employees Retirement System to the Teachers Retirement System.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

As used in this article, unless the context clearly requires a different meaning:

"Accumulated contributions" means all deposits and all deductions from the gross salary of a contributor plus regular interest.

"Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member.

"Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

"Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.

"Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last 15 fiscal years of total service credit, including military service as provided in this article, or if total service is less than 15 years, the average annual salary for the period on which contributions were made: Provided, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

"Beneficiary" means the recipient of annuity payments made under the retirement system.

"Contributor" means a member of the retirement system who has an account in the Teachers Accumulation Fund.

"Deposit" means a voluntary payment to his or her account by a member.

"Electing charter school" means a public charter school established pursuant to §18-5G-1 et seq. of this code which has elected to participate in this retirement system as permitted in the definitions of "Nonteaching member" and "Teacher member" in this section.

"Employer" means the agency of and within the state which has employed or employs a member, a county board of education which has employed or employs a member, or an electing charter school which has employed or employs a member. "Participating public employer" or "participating employer" means "employer" unless the context clearly requires otherwise.

"Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, or the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

"Employment term" means employment for at least 10 months, a month being defined as 20 employment days.

"Gross salary" means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the work was done. Gross salary also includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member's rights to employment or wages, with all retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary does not include lump sum payments for bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

"Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the

board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

"Member" means any person who has accumulated contributions standing to his or her credit in the State Teachers Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to §18-7A-13 of this code.

"Members of the administrative staff of the public schools" means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

"Members of the extension staff of the public schools" means every agricultural agent, boys and girls club agent, and every member of the agricultural extension staff whose work is not primarily stenographic, clerical, or secretarial.

"New entrant" means a teacher who is not a present teacher.

"Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education or educational services cooperative; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; (E) a governing board, as defined in §18B-1-2 of this code; or (F) a 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 retirement systems under this article and §18-7B-1 et seq. of this code, subject to §18-7B-7a of this code: Provided, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

"Plan year" means the 12-month period commencing on July 1 and ending the following June 30 of any designated year.

"Present member" means a present teacher or nonteacher who is a member of the retirement system.

"Present teacher" means any person who was a teacher within the 35 years beginning July 1, 1934, and whose membership in the retirement system is currently active.

"Prior service" means all service as a teacher completed prior to July 1, 1941, and all service of a present member who was employed as a teacher and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

"Public schools" means all publicly supported schools, including colleges and universities in this state. Unless the context clearly requires otherwise, "public school" may not include a public charter school which is not an "electing charter school" as defined herein.

"Refund beneficiary" means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

"Regular interest" means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

"Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

"Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which the member retires, or ceases covered employment under the retirement system.

"Retirant" means any member who commences an annuity payable by the retirement system.

"Retirement board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1 et seq. of this code.

"Retirement system" means the State Teachers Retirement System established by this article.

"Teacher member" means the following persons, if regularly employed for full-time service: (A) Any person employed by a public school for instructional service in the public schools of West Virginia; (B) principals employed by a public school; (C) librarians employed by a public school; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education,

or the State Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and Rehabilitation, the Division of Health, or the Division of Human Services; (K) an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; (L) employees of an educational services cooperative who are performing services of an educational nature; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the State Teachers Retirement System provided in this article; and (N) any person employed for instructional service or as a principal or librarian by a 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 retirement systems under this article and §18-7B-1 et seq. of this code.

"Total service" means all service as a teacher or nonteacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any. Age more than 70 years shall be considered to be 70 years.

§18-7A-13a. Resumption of service by retired teachers.

(a) For the purpose of this section, reemployment of a former or retired teacher as a teacher may in no way impair the teacher's eligibility for a prior service pension or any other benefit provided by this article.

(b) Retired teachers who qualified for an annuity because of age or service may not receive prior service allowance from the retirement board when employed as a teacher and when regularly employed by the State of West Virginia. The payment of the allowance shall be discontinued on the first day of the month within which the employment begins and shall be resumed on the first day of the month succeeding the month within which the employment ceases. The annuity paid the teacher on first retirement resulting from the Teachers' Accumulation Fund and the Employers' Accumulation Fund shall continue throughout the governmental service and thereafter according to the option selected by the teacher upon first retirement.

(c) Retired teachers who qualified for an annuity because of disability may receive no further retirement payments if the retirement board finds that the disability of the teacher no longer exists; payment shall be discontinued on the first day of the month within which the finding is made. If the retired teacher returns to service as a teacher, he or she shall

contribute to the Teachers' Accumulation Fund as a member of the system. His or her prior service eligibility, if any, shall not be impaired because of his or her disability retirement. His or her accumulated contributions which were transferred to the benefit fund upon his or her retirement shall be returned to his or her individual account in the Teachers' Accumulation Fund, minus retirement payments received which were not supported by such contributions and interest. Upon subsequent retirement, he or she shall receive credit for all contributory experience, anything to the contrary in this article notwithstanding.

(d) Notwithstanding any provision of this code to the contrary, a person who retires under the system provided by this article may subsequently become employed on either a full-time basis, part-time basis, or contract basis by any institution of higher education without any loss of retirement annuity or retirement benefits if the person's retirement commences between the effective date of the enactment of this section in 2002 and December 31, 2002: Provided, That the person may not be eligible to participate in any other state retirement system provided by this code.

(e) The retirement board may require of the retired teachers and their employers such reports as it deems necessary to effectuate the provisions of this section.

(f) Prior to any retirant subsequently becoming employed with an employer on a permanent (regularly employed for full-time service), substitute, or temporary basis, the employer shall notify the retirement board and the retirant, in writing, when the retirant's potential permanent, substitute, or temporary employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of either permanent, substitute, or temporary employment, the employer shall notify the retirement board, in writing, of the retirant's subsequent employment.

§18-7A-15. Collection of membership contributions.

Each employer shall each month deduct six percent from the salary of each employee who is a member of the retirement system, in an amount not to exceed the amount named in §18-7A-14 of this code, and shall at the end of each month remit to the retirement board the amounts so deducted, and shall transmit therewith a list of all new members employed and the name and number of members transferring from another county. At such times as the retirement board may deem advisable each employer shall report to the retirement board the total amount so deducted from the salary of each employee. The monthly payments which members would receive from employers as compensation for service in the absence of this article shall be decreased by the amount of the contribution due hereunder.

Each employer shall be held accountable for the sum composing the contributions made by its member employees. Whenever any county board of education or electing charter school fails to make timely remittance of the member contributions deducted as provided in this section, the retirement board may take such steps as are necessary and authorized pursuant to § 5-10D-13 of this code.

§18-7A-17. Statement and computation of teachers' service.

(a) Under rules adopted by the retirement board, each teacher and nonteaching member shall file a detailed statement of his or her length of service as a teacher or nonteacher for which he or she claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing the service, however, it shall credit no period of more than a month's duration during which a member was absent without pay, nor shall it credit for more than one year of service performed in any calendar year.

(b) For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of that state or territory, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system 12 percent of that member's gross salary earned during the first full year of current employment whether a member of the Teachers Retirement System or the Teachers' Defined Contribution Retirement System, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service credit granted at the time of retirement may not exceed the lesser of 10 years or 50 percent of the member's total service as a teacher in West Virginia. Any purchase of out-of-state service, as provided in this article, may not be used to establish eligibility for a retirement allowance and the retirement board shall grant credit for the purchased service as additional service only: Provided, however, That a purchase of out-of-state service is prohibited if the service is used to obtain a retirement benefit from another retirement system: Provided further, That salaries paid to members for service prior to entrance into the retirement system may not be used to compute the average final salary of the member under the retirement system.

(c) No members may be considered absent from service while serving as a member or employee of the Legislature of the State of West Virginia during any duly constituted session of that body or while serving as an elected member of a county commission during any duly constituted session of that body.

(d) No member may be considered absent from service as a teacher or nonteacher while serving as an officer with a statewide professional teaching association, or who has served in that capacity, and no retirant, who served in that capacity while a member, may be considered to have been absent from service as a teacher by reason of that service: Provided, That the period of service credit granted for that service may not exceed 10 years: Provided, however, That a member or retirant who is serving or has served as an officer of a statewide professional teaching association shall make deposits to the Teachers Retirement System, for the time of any absence, in an amount double the amount which he or she would have contributed in his or her regular assignment for a like period of time.

(e) The Teachers Retirement System shall grant service credit to any former or present member of the West Virginia Public Employees Retirement System who has been a contributing member of the Teachers Retirement System for more than three years, for service previously credited by the Public Employees Retirement System upon his or her written request and: (1) Shall require the transfer of the member's Public Employees Retirement System accumulated contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn from the Public Employees Retirement System, plus interest at a rate to be determined by the retirement board, compounded annually from the date of withdrawal to the date of payment, any time prior to the member's effective retirement date: Provided, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the Public Employees Retirement System, plus interest at a rate determined by the retirement board, compounded annually from the date the additional contribution would have been made had the member been under the Teachers Retirement System to the date of payment: Provided, however, That members of the Public Employees Retirement System who first became a member of the Public Employees Retirement System on or after July 1, 2023, may only transfer service credit to the Teachers Retirement System if they first became a member of the Teachers Retirement System on or after July 1, 2015. All interest paid or transferred shall be deposited in the reserve fund.

(f) For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia Department of Education, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system 12 percent of that member's gross salary earned during the first full year of current

employment whether a member of the Teachers Retirement System or the Teachers' Defined Contribution Retirement System, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service granted at the time of retirement may not exceed the lesser of 10 years or 50 percent of the member's total service as a teacher in the West Virginia public school system. Any purchase of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and retirement board shall grant credit for the purchase as additional service only: Provided, however, That a purchase of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system.

(g) Active members who previously worked in Comprehensive Employment and Training Act (CETA) may receive service credit for time served in that capacity: Provided, That in order to receive service credit under the provisions of this subsection the following conditions shall be met: (1) The member shall have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within 120 days following the termination of the member's CETA employment; (2) the retirement board shall receive evidence that establishes to a reasonable degree of certainty as determined by the retirement board that the member previously worked in CETA; and (3) the member shall pay to the retirement board an amount equal to the employer and employee contribution plus interest at the amount set by the retirement board for the amount of service credit sought pursuant to this subsection: Provided, however, That the maximum service credit that may be obtained under the provisions of this subsection is two years: Provided further, That a member shall apply and pay for the service credit allowed under this subsection and provide all necessary documentation by March 31, 2003: And provided further, That the retirement board shall exercise due diligence to notify affected employees of the provisions of this subsection.

(h) If a member is not eligible for prior service credit or pension as provided in this article, then his or her prior service may not be considered a part of his or her total service.

(i) A member who withdrew from membership may regain his or her former membership rights as specified in §18-7A-13 of this code only in case he or she has served two years since his or her last withdrawal.

(j) Subject to the provisions of subsections (a) through (k), inclusive, of this section, the retirement board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible for the certificates

under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed 40 years.

(k) Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit: Provided, That the retirement board may not require any additional contributions from that member in order for the retirement board to credit him or her with the contributing service credit earned while discharging official legislative duties: Provided, however, That nothing in this section may be construed to relieve the employer from making the employer contribution at the member's regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of June 1, 2000: Provided further, That any member to which the provisions of this subsection apply may elect to pay to the retirement board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature. The periods of time upon which the member paid his or her contribution shall then be included for purposes of determining his or her final average salary as well as for determining years of service: And provided further, That a member using the provisions of this subsection is not required to pay interest on any contributions he or she may decide to make.

(l) The Teachers Retirement System shall grant service credit to any former member of the State Police Death, Disability and Retirement System who has been a contributing member for more than three years for service previously credited by the State Police Death, Disability and Retirement System; and: (1) Shall require the transfer of the member's contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn any time prior to the member's retirement: Provided, That the member shall add to the amounts transferred or repaid under this paragraph an amount which is sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the State Police Death, Disability and Retirement System plus interest at a rate to be determined by the retirement board compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:

"Annual addition" means, for purposes of the limitations under Section 415(c) of the Internal Revenue Code, the sum credited to a member's account for any limitation year of: (A) Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cash-outs or contributions as described in Section 415(k)(3) of the Internal Revenue Code, rollover contributions and picked-up employee contributions to a defined benefit plan may not be treated as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1.

"Annuity account" or "annuity" means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends, or other accumulations credited on behalf of the member.

"Compensation" means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions: Provided, That annual compensation for determining contributions during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code: Provided, however, That solely for purposes of applying the limitations of Section 415 of the Internal Revenue Code to any annual addition, "compensation" has the meaning given it in §18-7B-13(d) of this code.

"Consolidated board" or "board" means the Consolidated Public Retirement Board created and established pursuant to §5-10D-1 et seq. of this code.

"Defined contribution system" or "system" means the Teachers' Defined Contribution Retirement System created and established by this article.

"Electing charter school" means a public charter school established pursuant to § 18-5G-1 et seq. of this code which has elected to participate in this retirement system as permitted in the definition of "Member" or "employee" in this section.

"Employer" means the agency of and within the State of West Virginia which has employed or employs a member, a county board of education which has employed or employs a member, or an electing charter school which has employed or employs a member.

"Participating public employer" or "participating employer" means "employer" unless the context clearly requires otherwise.

"Employer contribution" means an amount deposited into the member's individual annuity account on a periodic basis coinciding with the employee's regular pay period by an employer from its own funds.

"Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

"Employment term" means employment for at least 10 months in any plan year with a month being defined as 20 employment days.

"Existing employer" means any employer who employed or employs a member of the system.

"Existing retirement system" means the State Teachers Retirement System established in §18-7A-1 et seq. of this code.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

"Member" or "employee" means the following persons, if regularly employed for full-time service: (A) Any person employed by a public school for instructional service in the public schools of West Virginia; (B) principals employed by a public school; (C) librarians employed by a public school; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, an electing charter school, or the State Department of Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education, electing charter school, educational services cooperative, or the State Board of Education; (L) the administrative staff of the public schools including deans of

instruction, deans of men and deans of women, and financial and administrative secretaries; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers' Defined Contribution Retirement System established by this article; and (N) any person employed by a 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 retirement systems under this article, subject to §18-7B-7a and §18-7A-1 et seq. of this code.

"Member contribution" means an amount reduced from the employee's regular pay periods and deposited into the member's individual annuity account within the Teachers' Defined Contribution Retirement System.

"Permanent, total disability" means a mental or physical incapacity requiring absence from employment service for at least six months: Provided, That the incapacity is shown by an examination by a physician or physicians selected by the board: Provided, however, That for employees hired on or after July 1, 2005, "permanent, total disability" means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness.

"Plan year" means the 12-month period commencing on July 1 of any designated year and ending on the following June 30.

"Public schools" means all publicly supported schools, including normal schools, colleges, and universities in this state. Unless the context clearly requires otherwise, "public school" shall not include a public charter school which is not an "electing charter school" as defined herein.

"Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

"Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which the member retires or otherwise ceases employment with a participating employer.

"Retirement" means a member's withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement.

"Year of employment service" means employment for at least 10 months, with a month being defined as 20 employment days: Provided, That no more than one year of service may be accumulated in any 12-month period.

§18-7B-17. Deposits to the members' annuity accounts.

Beginning on July 1, 1991 and thereafter, each county board of education or electing charter school shall deposit in the member's annuity account created pursuant to §18-7B-9 of this code an amount equal to seven and one-half percent of all compensation paid to members of the defined contribution system in excess of that authorized for minimum salaries in §18A-4-2 and §§18A-4-8a of this code to the extent that the excess exceeds the amount distributed for salary equity to the county.

Senate Bill 453: Ensuring retirement contributions and delinquency charges of charter school employees be paid upon school closure or by successor.

Effective: Passed March 6, 2023; Effective June 4, 2023

Code Reference: W. Va. Code §18-5G-6 (Amended)
W. Va. Code §18-5G-10 (Amended)

WVDE Contact: Legal Services

Summary: In the event of a public charter school closure, this Act mandates the school authorizer to ensure that required payments to retirement systems on behalf of the employees are paid by the school or its successor.

Enrolled Bill: ENROLLED Committee Substitute for Senate Bill 453
BY SENATORS NELSON AND HUNT

AN ACT to amend and reenact §18-5G-6 and §18-5G-10 of the Code of West Virginia, 1931, as amended, all relating to public charter schools; providing for successor liability and delinquent retirement contributions; and including retirement contribution payments as payroll obligation in distribution of assets.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5G. PUBLIC CHARTER SCHOOLS.

§18-5G-6. Authorizer powers and duties.

(a) Each authorizing authority is responsible for exercising in accordance with this article the following 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 this article, and on the basis of their application satisfying all requirements of §18-5G-8 of this code, that demonstrate the ability to operate the school in an educationally and fiscally sound manner, and that are likely to improve student achievement through the program detailed in the charter application;

(5) Decline to approve charter applications that fail to meet the requirements of §18-5G-8 of this code;

(6) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(7) Monitor the performance and compliance of public charter schools according to the terms of the charter contract; and

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

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(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 a 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.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-8 of this code;

(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.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.

(f) An authorizer shall conduct or require oversight activities that enable it to fulfill its responsibilities under this article, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of this article, adhere to the terms of the charter contract, and do not unduly inhibit the autonomy granted to charter schools. In the event that a public charter school's performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify, in writing, the public charter school governing board of perceived problems and provide reasonable opportunity for the school to remedy the problems.

(g) An authorizer shall 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;

(h) An authorizer shall 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 statutory requirements of this act and the charter contract.

(i) To cover authorizer costs for overseeing public charter schools, each public charter school shall remit to its respective authorizer an oversight fee drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school as established by the state board by rule pursuant to §18-5G-5 of this code.

(j) An authorizer may receive and expend appropriate gifts, grants, and donations of any kind from any public or private entity to carry out the purposes of this act, subject to all lawful terms and conditions under which the gifts, grants, or donations are given, and may apply for any federal funds that may be available for the implementation of public charter school programs;

(k) Notwithstanding any provision of this code to the contrary, 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. Except to the extent the provisions of §5-10D-11 or §5-10D-13 of this code may be applicable relating to successor liability for, and collection of, delinquent retirement contributions, 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.

(l) 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 this article and general supervision consistent with the spirit and intent of this article.

§18-5G-10. Charter contract renewal; performance report by authorizer and renewal guidance; renewal application; renewal term; nonrenewal; closure and dissolution.

(a) No later than June 30 of a public charter school's fourth year of operation under each five-year term of a charter contract, the authorizer shall issue a performance report on the public charter school. The performance report shall summarize the public charter school's performance record to date, based on the data collected under the statutory requirements of this act and the charter contract, and shall provide notice of any weaknesses or concerns perceived by the authorizer concerning the school that may jeopardize its position in seeking renewal if not timely rectified. The school and the authorizer shall mutually agree to a reasonable time period for the public charter school to respond to the performance report and submit any corrections for the report.

(b) No later than June 30 of the school year before a public charter school's final year of operation under terms of a charter contract, the authorizer shall issue contract renewal application guidance to the school. The renewal application guidance required by this subsection shall include or refer explicitly to the criteria and standards that will guide the authorizer's renewal decisions as it pertains to the named public charter school. These criteria and standards shall be based on the statutory requirements of this act and the charter contract. The renewal application guidance shall, 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.

(c) 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 shall submit a renewal application to the authorizer pursuant to the renewal application guidance offered by the authorizer under subsection (b) of this section. The authorizer shall rule in a public meeting and by resolution on the renewal application no later than 45 days after the filing of the renewal application. In making charter renewal decisions, the authorizer shall:

(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 set forth in the charter contract, annual performance reports, and any required financial audits;

(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) Renew the charter contract for another term of up to five years based on the school's performance data and demonstrated capacities of the public charter school; or

(B) Decline to renew the charter contract. The authorizer shall clearly state in a resolution the reasons for the nonrenewal. The governing board of the school shall be granted 30 days to respond in writing to the decision and public report before that decision becomes final. The governing board shall be allowed to provide the authorizer with such arguments and supporting information as it sees fit, and shall be granted an opportunity for a recorded public hearing, at the request of the governing board. The governing board may be represented by counsel at the hearing and may call witnesses to testify. 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 renewal of the charter contract. The authorizer shall render its final determination within 10 days of the close of the 30-day period. Any nonrenewal of a charter contract may be appealed to the state board pursuant to §18-5G-13 of this code.

(d) The failure of the authorizer to act on a renewal application within the designated time frames shall be deemed an approval of the renewal application.

(e) Within 10 days of taking final action to renew or not renew a charter under this section, the authorizer shall report the action taken and reasons for the decision to the

school's governing board and the state board or affected county board, as applicable. A copy of the report shall be submitted at the same time to the state superintendent.

(f) Renewal of a charter contract may be denied if the authorizer determines that the health and safety of students attending the public charter school is threatened or, at such time following the process set forth in this section, if the public charter school has:

(A) Failed to substantially comply with the provisions of this article:

(B) Committed a material violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;

(C) Failed to substantially meet the performance expectations set forth in the charter contract;

(D) Failed to substantially meet generally accepted standards of fiscal management; or

(E) Violated any provision of law from which the school was not exempted.

(g) If an authorizer revokes or does not renew a charter contract, the authorizer shall close the school: Provided, That when the charter is revoked or not renewed for a school that began as a conversion public charter school or program conversion public charter school, the county board of the district in which the school is located may return it to noncharter public school status.

(h) A charter contract may be revoked at any time if the authorizer determines that the health and safety of students attending the public charter school is threatened, if an administrator employed by or member of the governing board over the charter school is convicted of fraud or misappropriation of funds, if there is a failure to meet generally accepted standards of financial management, if there is a material breach of the charter contract, there is a substantial violation of any provision of law from which the public charter school is not exempted, or if there are dire and chronic academic deficiencies.

(i) In the event of a public charter school closure for any reason, the authorizer shall 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 this chapter; and

(2) Distributing the assets of the public charter school first to satisfy outstanding payroll obligations to and required payments to retirement systems on behalf of employees of the public charter school and then to creditors of the public charter school. Any remaining funds shall be paid to the county board. 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.

(j) 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. 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.

Senate Bill 46I: **Relating to WV public employees grievance procedure.**

Effective: Passed March 11, 2023; Effective June 9, 2023

Code Reference: W. Va. Code §6C-2-1 (Amended)
W. Va. Code §6C-2-2 (Amended)
W. Va. Code §6C-2-3 (Amended)
W. Va. Code §6C-2-4 (Amended)
W. Va. Code §6C-2-6 (Amended)

WVDE Contact: Legal Services

Summary: This Act amended the WV Public Employees Grievance Procedure as follows:

- 1) Provides that “grievance” does not mean any matter related to protected classes under W. Va. Code §5-11-1 et. seq. (Human Rights Commission).
- 2) Requires each grievant to file a form, signed by the grievant; however, if more than one grievant is party to the grievance, they are permitted to submit one form initiating the grievance.
- 3) Grievant representatives filing on behalf of one or more grievants are required to include the name of each grievant being represented and his or her work location. The failure to properly sign the form will result in immediate dismissal of the grievance, without prejudice.
- 4) The grievant has five days from receipt of an order dismissing the grievance, without prejudice, to refile the grievance.
- 5) Authorizes the grievance evaluator, mediator or administrative law judge (ALJ) to extend time limits to a date certain at the request of any party for cause when an agency representative, intervenor or grievant is not working because of accident, sickness, death in the immediate family, or other cause for which the agency representative or grievant has approved leave from employment.
- 6) Includes a stipulation that either party may prevail if a required response is not made within the established time limits. Additionally, either party has ten days to file with the chief administrator a written notice to proceed directly to the next level or enforce the default. The ALJ is authorized to deny the

default, or modify the remedy, to comply with law or make the grievant or employer whole.

7) Establishes procedure for failing to adhere to filing timelines. Specifically, a grievance must be filed within the times established in W. Va. Code §6C-2-4 (Grievance procedural levels). The Level 1 evaluator has the authority to dismiss a grievance if it was not timely filed; however, motions to dismiss cannot be held in abeyance while other proceedings take place. A decision to dismiss may be appealed to an ALJ. If the dismissal is upheld, an order shall issue and the grievance must be removed from the docket. If an ALJ overturns the dismissal, an order must be entered with particular facts and the law found to be in error in the order below, and the grievance returns to Level 1 for disposition. An ALJ is required to decide an appeal for timeliness within 30 days. If the grievant proceeds directly to Level 3, an ALJ is required to make a determination on timeliness prior to scheduling the Level 3 hearing.

8) Provides that any party may file a motion to dismiss, at any time, for lack of jurisdiction, failure to state a claim upon which relief may be granted, or timeliness. If a motion to dismiss is filed, the chief administrator or the ALJ is required to hold in abeyance all other proceedings and issue a ruling on the motion or schedule the motion for hearing within 10 days of receipt of the filing.

9) Provides that a grievance that has been dismissed for timeliness or failure to state a claim upon which relief may be granted is prohibited from being revived or consolidated with another grievance.

10) Requires grievant to provide the names and contact information if he or she designates an individual or organization to represent them.

11) Requires the Grievance Board to provide downloadable forms on its website.

12) Authorizes the Grievance Board to record conferences for the sole use of aiding in issuing a decision or report. The recording is prohibited from being shared with the parties or being made a part of the record. The recording must be destroyed promptly after the decision has been issued.

13) Includes the chief administrator as a person with authority to decide disagreements between the parties.

- 14) Prohibits a grievant or an intervenor from being on any type of leave or workers' compensation at the time of the conference, mediation, hearing or other proceeding.
- 15) Requires proceedings to be held in abeyance until the grievant returns to work; however, in cases where the grievant is unable to return to work and the grievant's inability to return to work does not render the grievance moot, the grievance proceedings are required to be resumed and the grievance resolved on its merits.
- 16) Clarifies 158 CSR 13 (West Virginia Ethics Commission's Code of Conduct for Administrative Law Judges) is applicable to chief administrators and ALJ's.
- 17) Authorizes ALJ's to reschedule hearings at the request of either party for good cause.
- 18) Removed Kanawha County Circuit Court and established the West Virginia Intermediate Court of Appeals as the court of jurisdiction for appeals.
- 19) Grievance procedure timelines were changed as follows:
 - a) To hold a Level 1 hearing was increased from 15 days to 20 days;
 - b) For a grievant to file a written request for mediation or arbitration increased from 10 days to 15 days;
 - c) For the mediation reports to be completed increased from 15 days to 20 days;
 - d) For an arbitrator to file a written decision increased from 10 days to 15 days; and,
 - e) For an ALJ to schedule a Level 3 hearing and any other proceedings or deadline was changed from "reasonable time" to "within 30 days of receipt of the appeal from a lower-level decision."

Enrolled Bill:

ENROLLED Committee Substitute for Senate Bill 461
BY SENATORS CLEMENTS AND RUCKER

AN ACT to amend and reenact §6C-2-1, §6C-2-2, §6C-2-3, §6C-2-4, and §6C-2-6 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Public Employees Grievance Procedure; defining terms; clarifying actions or any matter relating to protected classes are not subject to grievances; providing that Division of Personnel

may not be a party in certain circumstances; providing for multiple grievant parties; providing a grievance must be filed within the time limits specified or it may be dismissed; extending certain time limits; providing for grievance dismissal for untimeliness, lack of jurisdiction, or failure to state a claim, and appeals of such dismissal; updating default process to include employer; providing the grievance evaluator and the administrative law judge may not hold a motion to dismiss in abeyance while other proceedings take place; clarifying that grievances may be consolidated as long as the initial grievance has not been dismissed; providing that proceedings may be rescheduled for good cause shown; requiring grievant representatives provide the names and work location of employees being represented; requiring that employees provide the name and contact information of his or her representative; directing Grievance Board to make available certain forms; providing that employee annual leave will be charged for work hours used in preparing for and attending the grievance hearing in excess of certain limits; providing for the chief administrator's resolution of certain disputes and further providing for discretionary recording of conference; limiting annual number of grievances an employee may serve as a representative; providing for conference recordings; requiring grievance to be held in abeyance under certain circumstances; clarifying employee representation is limited by work requirements; requiring grievant to provide copies of grievance in certain cases; updating appellate procedure from level three decision; and providing for award of costs and attorney's fees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES' GRIEVANCE PROCEDURE.

§6C-2-1. Purpose.

(a) The purpose of this article is to provide a procedure for the resolution of employment grievances raised by the public employees of the State of West Virginia, except as otherwise excluded in this article.

(b) Resolving grievances in a fair, efficient, cost-effective, and consistent manner will maintain good employee morale, enhance employee job performance, and better serve the citizens of the State of West Virginia.

(c) Nothing in this article prohibits the informal disposition of grievances by stipulation or settlement agreed to in writing by the parties, nor the exercise of any hearing right provided

in chapter 18 or 18A of this code. Parties to grievances shall always act in good faith and make every possible effort to resolve disputes at the lowest level of the grievance procedure.

§6C-2-2. Definitions.

For the purpose of this article and article three of this chapter:

(a) "Board" means the West Virginia Public Employees Grievance Board created in article three of this chapter.

(b) "Chief administrator" means, in the appropriate context, the commissioner, chancellor, director, president, secretary or head of any state department, board, commission, agency, state institution of higher education, commission or council, the state superintendent, the county superintendent, the executive director of a regional educational service agency or the director of a multicounty vocational center who is vested with the authority to resolve a grievance. A "chief administrator" includes a designee, with the authority delegated by the chief administrator, appointed to handle any aspect of the grievance procedure as established by this article.

(c) "Days" means working days exclusive of Saturday, Sunday, official holidays, and any day in which the employee's workplace is legally closed under the authority of the chief administrator due to weather or other causes provided for by statute, rule, policy or practice.

(d) "Discrimination" means any differences in the treatment of similarly situated employees unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees.

(e)(1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

(2) A substitute education employee is considered an "employee" only on matters related to days worked or when there is a violation, misapplication, or misinterpretation of a statute, policy, rule, or written agreement relating to the substitute.

(3) "Employee" does not mean a member of the West Virginia State Police employed pursuant to §15-2-1 et seq. of this code but does include civilian employees hired by the superintendent of the State Police. "Employee" does not mean an employee of a Constitutional officer unless he or she is covered under the civil service system, an employee of the Legislature, or a patient or inmate employed by a state institution.

(f) "Employee organization" means an employee advocacy organization with employee members that has filed with the board the name, address, chief officer, and membership criteria of the organization.

(g) "Employer" means a state agency, department, board, commission, college, university, institution, State Board of Education, Department of Education, county board of education, regional educational service agency or multicounty vocational center, or agent thereof, using the services of an employee as defined in this section.

(h) "Favoritism" means unfair treatment of an employee as demonstrated by preferential, exceptional, or advantageous treatment of a similarly situated employee unless the treatment is related to the actual job responsibilities of the employee or is agreed to in writing by the employee.

(i)(1) "Grievance" means a claim by an employee alleging a violation, a misapplication, or a misinterpretation of the statutes, policies, rules, or written agreements applicable to the employee including:

(i) Any violation, misapplication, or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status, or discrimination;

(ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices of his or her employer;

(iii) Any specifically identified incident of harassment;

(iv) Any specifically identified incident of favoritism; or

(v) Any action, policy, or practice constituting a substantial detriment to or interference with the effective job performance of the employee or the health and safety of the employee.

(2) "Grievance" does not mean:

(A) Any pension matter or other issue relating to public employees' insurance, in accordance with §5-16-1 et seq. of this code, retirement, or any other matter in which the authority to act is not vested with the employer;

(B) Any matter relating to the protected classes set forth in §5-11-1 et seq. of this code.

(j) "Grievance proceeding", "proceeding" or the plural means a conference, level one hearing, mediation, private mediation, private arbitration or level three hearing, or any combination, unless the context clearly indicates otherwise.

(k) "Grievant" means an employee or group of similarly situated employees filing a grievance.

(l) "Harassment" means repeated or continual disturbance, irritation, or annoyance of an employee that is contrary to the behavior expected by law, policy, and profession.

(m) "Party" or the plural, means the grievant, intervenor, employer, and the Director of the Division of Personnel or his or her designee, for most state government employee

grievances. The Division of Personnel shall not be a party to grievances involving higher education or Department of Transportation employees.

(n) "Representative" means any employee organization, fellow employee, attorney, or other person designated by the grievant or intervenor as his or her representative, and may not include a supervisor who evaluates the grievant.

(o) "Reprisal" means the retaliation of an employer toward a grievant, witness, representative, or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.

§6C-2-3. Grievance procedure generally.

(a) Filing. -

(1) Each grievant shall file a grievance form, signed by the grievant, within the time limits specified in this article. If more than one grievant is a party to the grievance, they may submit one signed form initiating the grievance. Grievant representatives who file on behalf of one or more grievants shall provide, as part of the grievance form, the name of each grievant being represented and his or her work location. Failure to properly sign the form will result in immediate dismissal of a grievance, without prejudice. If the initial grievance was timely filed and then dismissed without prejudice, the grievant has five days from receipt of the order of dismissal to refile the grievance. The refiled grievance must meet the requirements of this article and applicable rules of procedure.

(2) The specified time limits may be extended to a date certain by mutual written agreement or the grievance evaluator, mediator, or administrative law judge at the request of any party. The specified time limits shall be extended for cause whenever an agency representative, intervenor, or a grievant is not working because of accident, sickness, death in the immediate family, or other cause for which the agency representative or grievant has approved leave from employment.

(b) Default. -

(1) The grievant or the employer prevails by default if a required response is not made by the grievant or the employer representative within the time limits established in this article, unless the employer representative or grievant is prevented from doing so directly as a result of injury, illness, or a justified delay not caused by negligence or intent to delay the grievance process.

(2) Within 10 days of the default, the grievant or employer may file with the chief administrator a written notice of intent to proceed directly to the next level or to enforce the

default. If the chief administrator objects to the default, then the chief administrator may, within five days of the filing of the notice of intent, request a hearing before an administrative law judge for the purpose of stating a defense to the default, as permitted by subdivision (1) of this subsection, or showing that the remedy requested by the prevailing grievant is contrary to law or contrary to proper and available remedies. The administrative law judge shall determine whether the remedy is proper, available, and not contrary to law.

(3) If the administrative law judge finds that the grievant or the employer has a defense to the default, as permitted by subdivision (1) of this subsection, or that the remedy is contrary to law or not proper or available at law, the administrative law judge may deny the default or modify the remedy to be granted to comply with the law or otherwise make the grievant or employer whole.

(c) Defenses and limitations. -

(1) Timeliness. - A grievance must be filed within the time frames established in §6C-2-4 of this code. If the level one evaluator determines that the grievance was not timely filed, an order dismissing the grievance shall be issued. In no event shall a motion to dismiss be held in abeyance while other proceedings take place. This decision may be appealed to level three, and an administrative law judge shall review the order. If the dismissal is upheld an order shall be issued and the grievance shall be removed from the grievance board's docket. If the dismissal is overturned an order shall be entered stating with particularity the facts and the law found to be in error in the order below. The grievance will be returned to level one for disposition. An administrative law judge will decide an appeal of a dismissal for untimeliness within 30 days. If the grievant proceeds directly to level three, the administrative law judge shall make a determination on timeliness prior to scheduling the level three hearing.

(2) Motion to dismiss. - Any party may, at any time, file a motion to dismiss asserting that the board lacks jurisdiction under §6C-2-2(i) of this code, that the grievant has otherwise failed to state a claim under this article upon which relief may be granted, or that the grievance was not timely filed. Upon filing of such a motion, the chief administrator or administrative law judge shall immediately hold in abeyance all other proceedings, and within 10 days of receipt of filing, issue a ruling on the motion or schedule the motion for a hearing.

(3) Back pay. - When it is a proper remedy, back pay may only be granted for one year prior to the filing of a grievance, unless the grievant shows, by a preponderance of the evidence, that the employer acted in bad faith in concealing the facts giving rise to the claim for back pay, in which case an 18-month limitation on back pay applies.

(4) Statutory defense. - If a party intends to assert the application of any statute, policy, rule, or written agreement as a defense at any level, then a copy of the materials shall be forwarded to all parties.

(d) Withdrawal and reinstatement of grievance. - An employee may withdraw a grievance at any time by filing a written notice of withdrawal with the chief administrator or the administrative law judge. The grievance may not be reinstated by the grievant unless reinstatement is granted by the chief administrator or the administrative law judge. If more than one employee is named as a grievant, the withdrawal of one employee does not prejudice the rights of any other employee named in the grievance.

(e) Consolidation and groups of similarly situated employees. -

(1) Grievances may be consolidated at any level by agreement of all parties or at the discretion of the chief administrator or administrative law judge: Provided, That a grievance that has been dismissed under the provisions of subdivisions (1) or (2) of this subsection may not be revived or consolidated with another grievance.

(2) Class actions are not permitted. However, a grievance may be filed by one or more employees on behalf of a group of similarly situated employees. Any similarly situated employee shall complete a grievance form stating his or her intent to join the group of similarly situated employees. Only one employee filing a grievance on behalf of similarly situated employees shall be required to participate in the conference or level one hearing.

(f) Intervention. - Upon a timely request, any employee may intervene and become a party to a grievance at any level when the employee demonstrates that the disposition of the action may substantially and adversely affect his or her rights or property and that his or her interest is not adequately represented by the existing parties.

(g) Representation and disciplinary action. -

(1) An employee may designate and shall provide the name and contact information for the individual or organization of the representative who may be present at any step of the procedure, as well as at any meeting that is held with the employee for the purpose of discussing or considering disciplinary action.

(2) An employee may not be compelled to testify against himself or herself in a disciplinary grievance hearing.

(h) Reprisal. - No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in a grievance proceeding by reason of his or her

participation. Reprisal or retaliation constitutes a grievance and any person held responsible is subject to disciplinary action for insubordination.

(i) Improper classification. - A supervisor or administrator responsible for a willful act of bad faith toward an employee or who intentionally works an employee out of classification may be subject to disciplinary action, including demotion or discharge.

(j) Forms. - The board shall create the forms for filing grievances, giving notice, taking appeals, making reports and recommendations, and all other necessary documents and provide them on the Grievance Board's website to be downloaded for completion and submission and for chief administrators to make available to any employee upon request.

(k) Discovery. - The parties are entitled to copies of all material submitted to the chief administrator or the administrative law judge by any party.

(l) Notice. - Reasonable notice of a proceeding shall be sent at least five days prior to the proceeding to all parties and their representatives and shall include the date, time, and place of the proceeding. If an employer causes a proceeding to be postponed without adequate notice to employees who are scheduled to appear during their normal workday, the employees may not suffer any loss in pay for work time lost.

(m) Record. -- Conferences may be recorded at the discretion of the chief administrator for the sole use of aiding in issuing a decision or report. The recording shall not be transcribed, nor will the recording be shared with the parties, or made part of the record. The recording shall be destroyed promptly after the decision has been issued. All documents admitted, and the decision, agreement, or report become part of the record. All the testimony at a level one and level three hearing shall be recorded by mechanical means and a copy of the recording or transcript will be provided to any party upon request. The board is responsible for paying for and promptly providing a certified transcript of a level three hearing to the court for a mandamus or appellate proceeding.

(n) Grievance decisions and reports. -

(1) Any party may propose findings of fact and conclusions of law within 20 days of an arbitration or a level three hearing.

(2) A decision, agreement, or report shall be dated, in writing, setting forth the reasons for the decision or outcome, and transmitted to the parties and, in a private arbitration, to the board, within the time limits prescribed. If the grievance is not resolved, the written decision or report shall include the address and procedure to appeal to the next level.

(o) Scheduling. - All proceedings shall be scheduled during regular work hours in a convenient location accessible to all parties in accommodation to the parties' normal operations and work schedules. By agreement of the parties, a proceeding may be scheduled at any time or any place. Disagreements shall be decided by the chief administrator or administrative law judge presiding in the case.

(p) Attendance and preparation. -

(1) The grievant, witnesses, and an employee representative shall be granted reasonable and necessary time off during working hours to attend grievance proceedings without loss of pay and without charge to annual or compensatory leave credits. A grievant or an intervenor may not be on any type of leave time or worker compensation at the time of the conference, mediation, hearing, or other proceeding. The proceedings shall be held in abeyance until the grievant returns to work: Provided, That, where the grievant has been determined to be unable to return to work, and the grievant's inability to return to work does not render the grievance moot, the grievance proceedings shall be resumed and the grievance resolved upon its merits.

(2) In addition to actual time spent attending grievance proceedings, the grievant and an employee representative shall be granted time off during working hours, not to exceed four hours per grievance, for the preparation of the grievance without loss of pay and without charge to annual or compensatory leave credits. However, the first responsibility of any employee is the work assigned to the employee. An employee may not allow grievance preparation and representation activities to seriously affect the overall productivity of the employee as determined by the employer. An employee may be the representative in no more than five grievances per year. Time spent in preparing for and attending grievance proceeding will be accounted for on leave request forms by stating the amount of time expended in such activities. Each employee representative shall request annual leave for any time in excess of four hours per grievance spent in grievance preparation.

(3) The grievant and an employee representative shall have access to the employer's equipment for purposes of preparing grievance documents subject to the reasonable rules of the employer governing the use of the equipment for nonwork purposes.

(4) Disagreements regarding preparation time shall be decided by the chief administrator or administrative law judge presiding in the case.

(q) Grievance files. -

(1) All grievance forms decisions, agreements, and reports shall be kept in a file separate from the personnel file of the employee and may not become a part of the personnel file, but shall remain confidential except by mutual written agreement of the parties.

(2) The grievant may file a written request to have his or her identity removed from any files kept by the employer one year following the conclusion of the grievance.

(r) Number of grievances. - The number of grievances filed against an employer by an employee is not, per se, an indication of the employer's or the employee's job performance.

(s) Procedures and rules. - The board shall prescribe rules and procedures in compliance with this article, article three of this chapter and the state Administrative Procedures Act under chapter 29A of this code for all proceedings relating to the level three grievance procedure. Chief administrators may adopt procedural rules to govern level one proceedings. Chief administrators and administrative law judges are governed by the West Virginia Ethics Commission's legislative Code of Conduct for Administrative Law Judges, rule 158 CSR 13.

§6C-2-4. Grievance procedural levels.

(a) Level one: Chief administrator. -

(1) Within 15 days following the occurrence of the event upon which the grievance is based, within 15 days of the date upon which the event became known to the employee, or within 15 days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing. The employee shall also file a copy of the grievance with the board. State government employees using the services of the Division of Personnel shall further file a copy of the grievance with the Director of the Division of Personnel. Employees of the Department of Transportation shall file a copy of the grievance with the chief administrator or designated grievance evaluator.

(2) Conference. - The chief administrator shall hold a conference within 20 days of receiving the grievance. A conference is a private, informal meeting between the grievant and the chief administrator to discuss the issues raised by the grievance, exchange information, and attempt to resolve the grievance. The chief administrator may permit other employees and witnesses to attend and participate in a conference to reach a resolution. The chief administrator shall issue a written decision within 20 days of the conference.

(3) Level one hearing. - The chief administrator shall hold a level one hearing within 20 days of receiving the grievance. A level one hearing is a recorded proceeding conducted in

private in which the grievant is entitled to be heard and to present evidence; the formal rules of evidence and procedure do not apply, but the parties are bound by the rules of privilege recognized by law. The parties may present and cross-examine witnesses and produce documents, but the number of witnesses, motions and other procedural matters may be limited by the chief administrator. The chief administrator shall issue a written decision within 20 days of the level one hearing.

(4) An employee may proceed directly to level three upon the agreement of the parties or when the grievant has been discharged, suspended without pay, demoted or reclassified resulting in a loss of compensation or benefits. Level one and level two proceedings are waived in these matters.

(b) Level two: Alternative dispute resolution. -

(1) Within 15 days of receiving an adverse written decision at level one, the grievant shall file a written request for mediation, private mediation, or private arbitration.

(2) Mediation. - The board shall schedule the mediation between the parties within 20 days of the request. Mediation shall be conducted by an administrative law judge pursuant to standard mediation practices and board procedures at no cost to the parties. Parties may be represented, and the representative shall have the authority to resolve the dispute. The report of the mediation shall be documented in writing within 20 days. Agreements are binding and enforceable in this state by a writ of mandamus.

(3) Private mediation. - The parties may agree in writing to retain their choice of a private mediator and share the cost. The mediator shall schedule the mediation within 20 days of the written request and shall follow standard mediation practices and any applicable board procedures. Parties may be represented and shall have the authority to resolve the dispute. The report of the mediation shall be documented in writing within 20 days. Agreements are binding and enforceable in this state by a writ of mandamus.

(4) Private arbitration. - The parties may agree, in writing, to retain their choice of a private arbitrator and share the cost. The arbitrator shall schedule the arbitration within 20 days of the written request and shall follow standard arbitration practices and any applicable board procedures. The arbitrator shall render a decision in writing to all parties, setting forth findings of fact and conclusions of law on the issues submitted within 30 days following the arbitration. An arbitration decision is binding and enforceable in this state by a writ of mandamus. The arbitrator shall inform the board, in writing, of the decision within 15 days.

(c) Level three hearing. -

(1) Within 10 days of receiving a written report stating that level two was unsuccessful, the grievant may file a written appeal with the employer and the board requesting a level three hearing on the grievance. State government employees who use the services of the Division of Personnel shall further file a copy of the grievance with the Director of the Division of Personnel. Employees of the Department of Transportation shall file a copy of the grievance with the chief administrator or designated grievance evaluator.

(2) The administrative law judge shall conduct all proceedings in an impartial manner and shall ensure that all parties are accorded procedural and substantive due process.

(3) The administrative law judge shall schedule the level three hearing and any other proceedings or deadlines within 30 days of receipt of the appeal from a lower-level decision in consultation with the parties. The location of the hearing and whether the hearing is to be made public are at the discretion of the administrative law judge. Hearings may be rescheduled at the request of either party for good cause shown or by the administrative law judge.

(4) The administrative law judge may issue subpoenas for witnesses, limit witnesses, administer oaths, and exercise other powers granted by rule or law.

(5) Within 30 days following the hearing or the receipt of the proposed findings of fact and conclusions of law, the administrative law judge shall render a decision in writing to all parties setting forth findings of fact and conclusions of law on the issues submitted.

(6) The administrative law judge may make a determination of bad faith and, in extreme instances, allocate the cost of the hearing to the party found to be acting in bad faith. The allocation of costs shall be based on the relative ability of the party to pay the costs.

§6C-2-6. Allocation of expenses and attorney's fees.

(a) Any expenses incurred relative to the grievance procedure at levels one, two, or three shall be borne by the party incurring the expenses.

(b) In the event a grievant or employer appeals an adverse level three decision to the Intermediate Court of Appeals, or an adverse Intermediate Court of Appeals decision to the Supreme Court of Appeals of West Virginia, and the appellant substantially prevails upon the appeal, the appellant may recover court costs and reasonable attorney's fees for the appeal to be set by the court: Provided, That the provisions of this subsection shall only allow the discretionary recovery of court costs and reasonable attorney's fees from a grievant if he or she has not substantially prevailed at any level of the grievance process or in any appeal to the Intermediate Court of Appeals or the Supreme Court of Appeals of West Virginia.

Senate Bill 469: Providing funding for CPR instruction to high school students.

Effective: Passed March 10, 2023; Effective July 1, 2023

Code Reference: **W. Va. Code §18-5-50 (New)**

WVDE Contact: Instructional Leadership and School Improvement

Summary: This Act creates the Cardiopulmonary Resuscitation (CPR) Instruction Fund in the State Treasury that is administered by the WVDE. The purpose of this special revenue fund is to support CPR instruction in public high schools. The fund may consist of money derived from legislative appropriations, grants, gifts, devises, and donations from any public or private source and be distributed to the county boards of education and multicounty vocational centers. The funding amount per school is determined by multiplying the number of projected regular public school graduates by \$5. Any remaining balance at the end of each fiscal year, including any earned interest, remains in the fund.

Enrolled Bill: ENROLLED Committee Substitute for Senate Bill 469
BY SENATORS GRADY, JEFFRIES, DEEDS, QUEEN, CAPUTO, TAKUBO, TARR,
WOELFEL, NELSON, WOODRUM, OLIVERIO, TAYLOR AND PHILLIPS

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-50, relating to providing funding for Cardiopulmonary Resuscitation Instruction Fund for instruction of public high school students.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-50. Cardiopulmonary Resuscitation Instruction Fund.

There is hereby created in the State Treasury a special revenue fund designated and known as the Cardiopulmonary Resuscitation Instruction Fund which is an interest- and earnings-accumulating account. The fund is established to support cardiopulmonary instruction for public high schools and all moneys must be spent to support the school for which the funding was derived. The fund consists of moneys appropriated by the Legislature, grants, gifts, devises, and donations from any public or private source. Funds shall be distributed to the county boards of education and multicounty vocational centers, with the

funding amount per school determined by multiplying the number of projected regular public school graduates by \$5. All interest and other returns derived from the deposit and investment of moneys in the Cardiopulmonary Resuscitation Instruction Fund shall be credited to the fund. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided in this section. The West Virginia Department of Education shall administer the fund.

Senate Bill 495: Providing correctional institutions and juvenile facilities video and audio records be confidential.

Effective: Passed March 11, 2023; Effective March 11, 2023

Code Reference: W. Va. Code §15A-4-8a (Amended)

WVDE Contact: Schools of Diversion & Transition

Summary: This Act completely rewrote W. Va. Code §15A-4-8a (Facility video and security records confidential; exceptions) as follows:

- 1) Provides that the contents of all records necessary for the safe and secure management of inmates and residents committed to state correctional and juvenile facilities are confidential.
- 2) Defines “records necessary for the safe and secure management of inmates and residents.”
- 3) Provides instances when such records may be disclosed or released.
- 4) Provides a list of persons authorized to receive and/or view records protected under the provisions of this Act.
- 5) Specifies that anyone receiving records protected under the provisions of this Act must keep the information confidential but is also prohibited from using the information for an unauthorized purpose without an order of a court or administrative tribunal.

Enrolled Bill: ENROLLED Committee Substitute for Senate Bill 495
BY SENATORS TRUMP, TAKUBO, CLEMENTS, WOELFEL, DEEDS AND RUCKER

AN ACT to amend and reenact §15A-4-8a of the Code of West Virginia, 1931, as amended, relating generally to correctional institutions and juvenile facilities; deeming certain video and audio recordings records and reports to be confidential; creating exceptions to confidentiality; requiring court or administrative tribunal orders directing disclosure to contain a provision limiting disclosure to the purposes necessary to the proceeding and prohibiting unauthorized use and publication; requiring the Commissioner of the

Division of Corrections and Rehabilitation to permit the viewing of certain records to licensed attorneys under certain conditions; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. CORRECTIONS MANAGEMENT.

§15A-4-8a. Facility video and security records confidential; exceptions.

(a) The contents of all records necessary for the safe and secure management of inmates and residents committed to state correctional and juvenile facilities are confidential and may only be disclosed or released:

- (1) Pursuant to this section;
- (2) As required by the provisions of §29B-1-1 et seq. of this code;
- (3) In accordance with the discovery provisions of the West Virginia Rules of Civil Procedure or the West Virginia Rules of Criminal Procedure; or
- (4) In accordance with the provisions of §49-5-101 of this code.

(b) As used in this section, "records necessary for the safe and secure management of inmates and residents" means:

- (1) Video and audio recordings produced in a correctional or juvenile facility;
- (2) Incident reports and attachments thereto;
- (3) Investigation reports and any attachments thereto, including, but not limited to, witness statements; and
- (4) Any document or recording generated within a facility containing information which would reasonably place the safety of an employee, inmate, or resident in jeopardy.

(c) Records protected pursuant to the provisions of this section may be disclosed:

- (1) To the Secretary of the Department of Homeland Security, his or her designees, and the commissioner or his or her designees for official use;
- (2) To law enforcement when release is determined by the commissioner or his or her designees to be necessary for the investigation, prevention, or prosecution of a crime or crimes;
- (3) To the Juvenile Justice Commission and its designees acting in the course of their official duties; and
- (4) Pursuant to a lawful order of a court of record or an administrative tribunal for use in a civil, criminal, or administrative matter: Provided, That the order shall contain a provision limiting disclosure or publication of the records to purposes necessary to the proceeding and prohibiting its unauthorized use and reproduction.

(5) The commissioner shall authorize an attorney, licensed to practice law in this state and who is representing a person with a potential claim for personal injury or a violation of the United States Constitution or West Virginia Constitution allegedly caused by the division, to view facility video, incident reports, or investigation reports related to the safe and secure management of inmates and residents for purposes of determining the validity of a claim against the division: Provided, That such video, incident reports, or investigation reports related to the safe and secure management of inmates and residents shall not be released to the licensed attorney prior to institution of a suit or petition for pre-suit discovery in the appropriate forum and after the entry of an appropriate protective order prohibiting the misuse and reproduction of disclosed records.

(d) The commissioner shall authorize an attorney, licensed to practice in this state and who is representing a person related by consanguinity or affinity to an inmate or resident who has suffered an alleged injury or death while in the custody of the division to view facility video, incident reports, or investigation reports related to the safe and secure management of inmates and residents under the conditions set forth in subdivision (5), subsection (c) of this section.

(e) The confidentiality provisions of this section extend to any person receiving such records and may not be used for any unauthorized purpose except upon order of a court of record or administrative tribunal.

Senate Bill 625: Requiring certain transcripts to be accepted as record of student’s performance for placement in microschool programs.

Effective: Passed March 11, 2023; Effective June 9, 2023

Code Reference: W. Va. Code §18-8-1a (Amended)

WVDE Contact: Instructional Leadership and School Improvement

Summary: This Act provides that a transcript from a microschool program must be accepted by a public school in this state as a record of a student’s previous academic performance for the purposes of placement and credit assignment.

Additionally, references to the HOPE Scholarship Kindergarten Program relating to attendance and the HOPE Scholarship Program regarding acceptance as a record of student’s previous academic performance for the purpose of determining appropriate grade level placement were removed from law.

Enrolled Bill: ENROLLED Senate Bill 625
BY SENATOR RUCKER

AN ACT to amend and reenact §18-8-1a of the Code of West Virginia, 1931, as amended, relating to regarding certain transcripts or credentials of microschool programs to be accepted as record of student's previous performance for placement and credit assignment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1A. Commencement and termination of compulsory school attendance; public school entrance requirements; exceptions.

(a) Notwithstanding the provisions of section one of this article, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to July 1 of such year or upon enrolling in a full-time publicly funded kindergarten program, and continues to the 17th birthday or for as long as the student continues to be enrolled in a school system after the 17th birthday.

(1) A child may be removed from such kindergarten program when the parent or guardian determines that the best interest of the child would not be served by requiring

further attendance: Provided, That the principal shall make the final determination with regard to compulsory school attendance in a publicly supported kindergarten program.

(2) The compulsory school attendance provision of this article shall be enforced against a person 18 years of age or older for as long as the person continues to be enrolled in a school system and may not be enforced against the parent, guardian, or custodian of the person.

(3) Notwithstanding the provisions of section one of this article, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to September 1 of such year or upon enrolling in a publicly supported kindergarten program and continues to the seventeenth birthday or for as long as the student continues to be enrolled in a school system after the 17th birthday: Provided, That beginning in the school year 2019-2020, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to July 1 of such year or upon enrolling in a publicly supported kindergarten program.

(b) A parent, as defined in §18-31-2 of this code, shall have the option, prior to enrolling in a publicly supported kindergarten program, to apply for a Hope Scholarship on behalf of his or her child as set forth in §18-31-1 et seq. of this code. Every year thereafter, a parent shall have the option to renew his or her child's enrollment in the Hope Scholarship Program pursuant to §18-31-8 of this code.

(c) Attendance at a state-approved, nonpublic kindergarten program, including a Montessori kindergarten program as provided in §18-5-18 of this code, homeschool kindergarten program, Hope Scholarship kindergarten program, or private, parochial, or church kindergarten program recognized under §18-8-1(k) of this code is deemed school attendance for the purposes of this section. Students entering the public school system after such kindergarten program shall be placed in the developmentally and academically appropriate grade level.

(d) Notwithstanding the provisions of this section and §18-5-18 of this code, a county board may provide for advanced entrance or placement under policies adopted by said board for any child who has demonstrated sufficient mental and physical competency for such entrance or placement.

(e) A student from another state, or who is eligible to enroll in a public school in this state, shall be enrolled in the same grade in a public school in West Virginia as the student was enrolled at the school or program from which the student transferred. A transcript or

other credential provided by a public school program, private school program, homeschool program, microschoo! program, or HOPE scholarship program shall be accepted by a public school in this state as a record of a student's previous academic performance for the purposes of placement and credit assignment.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-50. West Virginia Tutoring Program.

(a) Purpose. - County boards of education may contract with an independent contractor who is a retired teacher to provide tutoring services as that term is defined in this section. The purpose of the contract is to provide additional support to students who necessitate additional one-on-one instruction in the core subjects of reading and math. Any county board of education may contract with as many independent contractors as the county school board considers necessary.

(b) Definitions. - For purposes of this section the following words have the following meanings:

"Contract" means an agreement between a county board of education and an independent contractor relating to the procurement of tutoring services;

"County school board" means the same as that term is used in §18-5-1 et seq. of this code;

"Independent contractor" means the same as that term is used in §21-51-4 of this code;

"Tutoring services" means academic support provided by an expert teacher who has a deep knowledge or defined expertise in a particular subject or set of subjects;

"Tutor" means an independent contractor who is a retired teacher that provides tutoring services in the area of reading or math; and

"Retired teacher" means the same as that term is used in §18A-2-3 of this code.

(c) Requirements for participation. - Prior to entering into a contract with a tutor, the county school board shall require an applicant to provide proof that he or she:

(1) Is a citizen of the United States;

(2) Has retired from his or her employment as a teacher;

(3) Meets any other requirements imposed by the county school board that apply to current teachers, which may include, but are not limited to, a background check or training; and

(4) Carries appropriate liability insurance at his or her expense: Provided, That the imposition of this requirement is at the discretion of the county school board.

(d) Exclusions from participation. - Any of the following disqualifying criminal offenses shall preclude a county board from engaging the services of a tutor:

(1) Any sex offense;

(2) Crimes against persons, which include, but are not limited to, manslaughter, murder, child abuse, domestic violence, stalking, kidnapping, or aggravated assault or battery;

(3) Unlawful manufacture, delivery, or possession with intent to deliver any controlled substance; and

(4) Any other misdemeanor or felony conviction deemed exclusionary for contracting with the independent contractor by the county school board.

(e) Liability. - A county school board may not be held civilly liable or be criminally prosecuted for any action of an independent contractor tutor acting within the scope of the duties for which their services were contracted unless the county school board can be shown to be grossly negligent or committed willful misconduct.

(f) Miscellaneous. -

(1) In contracting for the services set forth in this section, county school boards may not be subject to purchasing requirements set forth in in §5A-3-1 et seq. of this code.

(2) Nothing in this section requires a county board of education to contract with a tutor pursuant to this section. Participation by a county board of education is voluntary and subject to the availability of county funds. Any county board of education that opts to participate shall do so at its own expense. The provisions of this section place no obligation for the state to appropriate moneys for the purposes set forth in this section.

(3) An independent contractor tutor is not eligible for participation in the public employee insurance plan, workers' compensation, additional state retirement credited to employment as a West Virginia tutor, or any other state-sponsored or offered state benefit plan.

(4) Participation in the West Virginia Tutoring Program shall not affect the retired teacher's retirement benefits in any manner.

House Bill 2005: Establishing the dual enrollment pilot program to be administered by the Higher Education Policy Commission and the Council for Community and Technical College Education in conjunction with the State Board of Education.

Effective: Passed March 10, 2023; Effective March 10, 2023

Code Reference: **W. Va. Code §18B-14-4 (New)**

WVDE Contact: Instructional Leadership and School Improvement

Summary: In conjunction with the West Virginia Board of Education (WVBOE) and under the supervision of the Higher Education Policy Commission (HEPC) and the West Virginia Council for Community and Technical Education (WVCCTE), the State Superintendent and the State Chancellor are required to establish the Dual Enrollment Pilot Program as follows:

- 1) The pilot program must be established for four years and designed for eligible institutions to offer dual enrollment courses that will comprise individualized pathways for career and post-secondary educational opportunities for secondary school students; and,
- 2) The eligible courses are required to be designed in a manner that leads secondary school students into certain career pathways including direct care health professions; information technology; STEM fields; education; advanced manufacturing; welding and fabrication; construction; agriculture; and any other program determined necessary by the Department of Commerce to meet workforce needs in the State.

Additionally, the Act provides definitions for “dual credit course,” “dual enrollment,” “eligible course,” and “eligible institution.”

The pilot program will be funded by legislative appropriations to the HEPC and WVCCTE for costs associated with implementation and administration. The HEPC and the WVCCTE are authorized to pay eligible institutions directly for tuition and academic fees incurred by eligible program participants.

The WVBOE, HEPC, and WVCCTE are authorized to propose legislative and emergency rules necessary to implement the provisions of this Act.

Finally, the Act provides that beginning December 1, 2024, the Chancellor is required to report statistical information regarding the progress of the pilot program to the Legislative Oversight Commission on Education Accountability. The Chancellor is required to make this report annually for the duration of the pilot program.

Enrolled Bill:

ENROLLED Committee Substitute for House Bill 2005
BY DELEGATES WORRELL, ELLINGTON, SMITH, CLARK, DEAN, BARNHART,
STATLER, FEHRENBACHER, RILEY, DITTMAN AND HILLENBRAND

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-14-4, all relating to the dual enrollment pilot program; providing definitions; establishing the program to be administered by the Higher Education Policy Commission and the Council for Community and Technical College Education in conjunction with the State Board of Education; providing for funding; providing for rulemaking; and requiring annual reporting.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. MISCELLANEOUS.

§18B-14-4. Dual enrollment pilot program established; definitions; funding; annual reporting.

(a) Definitions. - As used in this section, unless used in a context that clearly requires a different meaning, the term:

"Dual credit course" means a credit-bearing college-level course offered by an eligible institution to secondary school students in which the students receive credit at both the secondary and post-secondary levels.

"Dual enrollment" means the registration of an eligible secondary student in a post-secondary course creditable toward high school completion and a career technical certificate, associate degree, or baccalaureate degree. A student who is enrolled in post-secondary instruction that is not creditable toward a high school diploma may not be classified as a dual enrollment student.

"Eligible course" means any class or program of instruction offered at an eligible institution for which the student receives credit toward both high school completion and a post-secondary certificate or degree. Applied academics for adult education instruction, developmental education, physical education courses, and recreation and leisure studies courses are not eligible courses for dual enrollment purposes.

"Eligible institution" means a state institution of higher education as that term is defined in §18B-1-2 of this code.

"Eligible student" means any secondary school student, including a homeschool, charter school, microschool, learning pod, or private school student, who meets minimum criteria established by the state school board and the commission or the council, as appropriate, for the purpose of enrolling in a dual credit course.

(b) Dual enrollment pilot program established. - In conjunction with the state board and under the supervision of the commission and the council, the chancellor and the state superintendent shall establish a four-year pilot program whereby eligible institutions shall offer dual enrollment courses that will comprise individualized pathways for career and post-secondary educational opportunities for the state's secondary school students. These students shall be enrolled in eligible courses leading to careers in certain designated career pathways, namely direct care health professions; information technology; science, technology, engineering, and math (STEM) fields; education; advanced manufacturing; welding and fabrication; construction; agriculture; and any other program that meets a workforce need in the state as determined by the Department of Commerce.

(c) Funding. - From appropriations to the commission and the council for the purposes of implementing and administering the dual enrollment pilot program established in this section, the commission or the council, as appropriate, shall pay directly to the eligible institutions from such appropriations the cost of the tuition and academic fees incurred by eligible students taking dual credit courses in accordance with the dual enrollment pilot program established in this section.

(d) Rulemaking. - In consultation with the state board, the commission and council may propose legislative and emergency rules pursuant to §29A-3A-1 et seq. of this code to implement the provisions of this section.

(e) Annual reports. - By December 1, 2024, and annually thereafter for the duration of the pilot program, the chancellor shall report to the Legislative Oversight Commission on Education Accountability on:

- (1) The number of students participating in the program;
- (2) The number and type of credits and certifications or credentials earned by students who have participated in the program;
- (3) The dollar amount expended associated with this program;
- (4) Projected growth in the program and funding needs for the next year;

(5) The job status of students who have participated in the program;

(6) Any issues with the program reported by students, parents, secondary schools, and institutions of higher education; how these issues are being addressed; and whether the issues require legislative action; and

(7) A recommendation from the chancellor and the state superintendent on whether the program should continue beyond its four-year pilot period.

**House Bill 2018: Permitted the managed care case coordinator
to attend the multidisciplinary team meeting.**

Effective: Passed February 1, 2023; Effective February 1, 2023

Code Reference: W. Va. Code §49-4-405 (Amended)
W. Va. Code §49-4-406 (Amended)

WVDE Contact: Federal Programs and Support

Summary: This Act designates managed care case coordinators as members of multidisciplinary treatment teams assigned to cases involving child abuse and neglect, status offenders and juvenile delinquents.

Enrolled Bill: ENROLLED Committee Substitute for House Bill 2018
BY DELEGATES SUMMERS, TULLY, AND ROHRBACH

AN ACT to amend and reenact §49-4-405 and §49-4-406 of the Code of West Virginia, 1931, as amended, all relating to designating the managed care case coordinator as a member of the multidisciplinary team.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-405. Multidisciplinary treatment planning process involving child abuse and neglect; team membership; duties; reports; admissions.

(a) Within thirty days of the initiation of a judicial proceeding pursuant to part six, of this article, the department shall convene a multidisciplinary treatment team to assess, plan and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families. The multidisciplinary team shall obtain and utilize any assessments for the children or the adult respondents that it deems necessary to assist in the development of that plan.

(b) In a case initiated pursuant to part six of this article, the treatment team consists of:

- (1) The child or family’s case manager in the department;
- (2) The adult respondent or respondents;
- (3) The child’s parent or parents, guardians, any copetitioners, custodial relatives of the child, foster or preadoptive parents;

- (4) Any attorney representing an adult respondent or other member of the treatment team;
- (5) The child's counsel or the guardian ad litem;
- (6) The prosecuting attorney or his or her designee;
- (7) A member of a child advocacy center when the child has been processed through the child advocacy center program or programs or it is otherwise appropriate that a member of the child advocacy center participate;
- (8) Any court-appointed special advocate assigned to a case;
- (9) Any other person entitled to notice and the right to be heard;
- (10) An appropriate school official;
- (11) The managed care case coordinator; and
- (12) Any other person or agency representative who may assist in providing recommendations for the particular needs of the child and family, including domestic violence service providers.

The child may participate in multidisciplinary treatment team meetings if the child's participation is deemed appropriate by the multidisciplinary treatment team. Unless otherwise ordered by the court, a party whose parental rights have been terminated and his or her attorney may not be given notice of a multidisciplinary treatment team meeting and does not have the right to participate in any treatment team meeting.

(c) Prior to disposition in each case which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement with appropriate relatives then with foster care homes, facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(d) The multidisciplinary treatment team shall submit written reports to the court as required by the rules governing this type of proceeding or by the court, and shall meet as often as deemed necessary but at least every three months until the case is dismissed from the docket of the court. The multidisciplinary treatment team shall be available for status conferences and hearings as required by the court.

(e) If a respondent or copetitioner admits the underlying allegations of child abuse or neglect, or both abuse and neglect, in the multidisciplinary treatment planning process, his or her statements may not be used in any subsequent criminal proceeding against him or her, except for perjury or false swearing.

§49-4-406. Multidisciplinary treatment process for status offenders or delinquents;

requirements; custody; procedure; reports; cooperation; inadmissibility of certain statements.

(a) When a juvenile is adjudicated as a status offender pursuant to §49-4-711 of this code, the department shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile.

(b) When a juvenile is adjudicated as a delinquent or has been granted a pre-adjudicatory community supervision period pursuant to §49-4-708 of this code, the court, either upon its own motion or motion of a party, may require the department to convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. A referral to the department to convene a multidisciplinary treatment team and to conduct such an assessment shall be made when the court is considering placing the juvenile in the department's custody or placing the juvenile out-of-home at the department's expense pursuant to §49-4-714 of this code. In any delinquency proceeding in which the court requires the department to convene a multidisciplinary treatment team, the probation officer shall notify the department at least 15 working days before the court proceeding in order to allow the department sufficient time to convene and develop an individualized service plan for the juvenile.

(c) When a juvenile has been adjudicated and committed to the custody of the Director of the Division of Corrections and Rehabilitation, including those cases in which the juvenile has been committed for examination and diagnosis, or the court considers commitment for

examination and diagnosis, the Division of Corrections and Rehabilitation shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile, which shall be provided in writing to the court and team members. In cases where the juvenile is committed as a post-sentence disposition to the custody of the Division of Corrections and Rehabilitation, the plan shall be reviewed quarterly by the multidisciplinary treatment team. Where a juvenile has been detained in a facility operated by the Division of Corrections and Rehabilitation without an active service plan for more than 60 days, the director of the facility may call a multidisciplinary team meeting to review the case and discuss the status of the service plan.

(d)(1) The rules of juvenile procedure shall govern the procedure for obtaining any assessment of a juvenile, preparing an individualized service plan and submitting the plan and any assessment to the court.

(2) In juvenile proceedings conducted pursuant to §49-4-701 et seq. of this code, the following representatives shall serve as members and attend each meeting of the multidisciplinary treatment team, so long as they receive notice at least seven days prior to the meeting:

- (A) The juvenile;
- (B) The juvenile's case manager in the department or the Division of Corrections and Rehabilitation;
- (C) The juvenile's parent, guardian or custodian;
- (D) The juvenile's attorney;
- (E) Any attorney representing a member of the multidisciplinary treatment team;
- (F) The prosecuting attorney or his or her designee;
- (G) The county school superintendent or the superintendent's designee;
- (H) A treatment or service provider with training and clinical experience coordinating behavioral or mental health treatment;
- (I) The managed care case coordinator; and
- (J) Any other person or agency representative who may assist in providing recommendations for the particular needs of the juvenile and family, including domestic

violence service providers. In delinquency proceedings, the probation officer shall be a member of a multidisciplinary treatment team. When appropriate, the juvenile case manager in the department and the Division of Corrections and Rehabilitation shall cooperate in conducting multidisciplinary treatment team meetings when it is in the juvenile's best interest.

(3) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement at facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child. The multidisciplinary treatment team shall also determine and advise the court as to the individual treatment and rehabilitation plan recommended for the child for either out-of-home placement or community supervision. The plan may focus on reducing the likelihood of reoffending, requirements for the child to take responsibility for his or her actions, completion of evidence-based services or programs or any other relevant goal for the child. The plan may also include opportunities to incorporate the family, custodian or guardian into the treatment and rehabilitation process.

(4) The multidisciplinary treatment team shall submit written reports to the court as required by applicable law or by the court, shall meet with the court at least every three months, as long as the juvenile remains in the legal or physical custody of the state, and shall be available for status conferences and hearings as required by the court. The multidisciplinary treatment team shall monitor progress of the plan identified in subdivision (3) of this subsection and review progress of the plan at the regular meetings held at least every three months pursuant to this section, or at shorter intervals, as ordered by the court, and shall report to the court on the progress of the plan or if additional modification is necessary.

(5) In any case in which a juvenile has been placed out of his or her home except for a temporary placement in a shelter or detention center, the multidisciplinary treatment team shall cooperate with the state agency in whose custody the juvenile is placed to develop an after-care plan. The rules of juvenile procedure and §49-4-409 of this code govern the

development of an after-care plan for a juvenile, the submission of the plan to the court and any objection to the after-care plan.

(6) If a juvenile respondent admits the underlying allegations of the case initiated pursuant to §49-4-701 through §49-4-725 of this code, in the multidisciplinary treatment planning process, his or her statements may not be used in any juvenile or criminal proceedings against the juvenile, except for perjury or false swearing.

House Bill 2346: Declaring a shortage of qualified bus operators and allowing retired bus operators to accept employment.

Effective: Passed March 9, 2023; Effective July 1, 2023

Code Reference: **W. Va. Code §18A-4-15a (New)**

WVDE Contact: School Operations

Summary: This Act provides a method to utilize retired bus operators as substitute drivers in areas of critical need and shortage as follows:

- 1) Defines “Area of critical need and shortage for substitute bus operators.”
- 2) Provides that bus operators entitled to retirement benefits during the fiscal year in which that person retired, may accept employment as a critical need substitute bus operator for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retiree is entitled to receive, if the following conditions are satisfied:
 - a) The county board adopts a policy recommended by the superintendent to address a critical need and shortage of school bus operators in compliance with this section.
 - b) The county superintendent submits the policy to the West Virginia Board of Education (WVBOE) for approval in the first year of its utilization.
 - c) The policy contains a provision that a retired bus operator may be employed as a substitute bus operator in an area of critical need and shortage for substitute bus operators on an expanded basis only when no other qualified bus operator who is not retired is available and accepts the substitute assignment.
- 3) Prior to the employment of a retired bus operator beyond the post-retirement employment limitations established by the Consolidated Public Retirement Board (CPRB) as permitted under this section, the superintendent is required to submit to the WVBOE in a form approved by CPRB and WVBOE, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy pursuant to the provisions of this section, the names of the persons employed,

the date the person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. Upon verification, the WVBOE is required to submit the affidavit to the CPRB.

4) Any person who retires and begins work under the provisions of this section within the same fiscal year in which that person retired loses retirement benefits attributed to the annuity reserve.

5) Retired bus operators employed to perform expanded substitute service are considered day-to-day, temporary, part-time employees and are not eligible for additional pension or other benefits paid to regular employees and are prohibited from accruing seniority.

6) A retired bus operator is eligible for employment to fill a vacant position without any loss of retirement benefits attributed to the annuity reserve under this section only if the retired bus operator's retirement became effect before July 1 of the preceding fiscal year.

7) The county board is retired to continue to post a vacant position filled by a retired bus operator until it is filled with a fully qualified regular employed bus operator.

8) This initiative is set to expire on June 30, 2028, unless extended by an Act of the Legislature.

Enrolled Bill:

ENROLLED Committee Substitute for House Bill 2346
BY DELEGATES TONEY

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-4-15a, relating to retired bus operators as substitutes in areas of critical need and shortage.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-15a. Employment of retired bus operators as substitutes in areas of critical need and shortage.

(a) The Legislature hereby finds and declares that due to a shortage of qualified substitute bus operators a compelling state interest exists in expanding the use of retired bus operators to provide service as substitute bus operators in an area of critical need and shortage.

(b) The Legislature further finds and declares that this shortage is significant and overarching, and in order to comply with §18-5-13(f)(1) of this code, this need supersedes any preclusion of modification of rights codified in §18-7A-28e of this code.

(1) For the purposes of this subsection: “Area of critical need and shortage for substitute bus operators” means that the number of available qualified substitute bus operators in the county who are not retired and are available and willing to accept substitute bus operator assignments is insufficient to meet the projected need for qualified substitute bus operators.

(2) A person receiving retirement benefits under §18-7A-1 et seq. of this code, or who is entitled to retirement benefits during the fiscal year in which that person retired, may accept employment as a critical need substitute bus operator for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled, subject to satisfaction of the following conditions:

(A) The county board adopts a policy recommended by the superintendent to address a critical need and shortage for substitute bus operators;

(B) The superintendent of the county board submits the policy to the State Board of Education for approval in the first year of its utilization. After initial approval by the State Board of Education, the county board must annually renew the policy at the local level and provide confirmation to the State Board of Education of its intent to utilize the policy in the subsequent year;

(C) The policy sets forth the critical need and shortage for substitute bus operators in the county in accordance with the definition of area of critical need and shortage for substitute bus operators as provided in subdivision (1) of this subsection;

(D) The policy provides for the employment of retired bus operators as critical need substitute bus operators during the school year on an expanded basis in areas of critical need and shortage for substitute bus operators as provided in this subsection;

(E) The policy provides that a retired bus operator may be employed as a substitute bus operator in an area of critical need and shortage for substitute bus operators on an expanded basis as provided in this subsection only when no other qualified bus operator who is not retired is available and accepts the substitute assignment; and

(F) Prior to employment of a retired bus operator as a critical need substitute bus operator beyond the post-retirement employment limitations established by the Consolidated Public Retirement Board, the superintendent of the affected county submits to the state board

in a form approved by the Consolidated Public Retirement Board and the state board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired bus operators as substitutes to address its critical need and shortage, the name or names of the person or persons to be employed as a critical need substitute pursuant to the policy, the date that the person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. Upon verification of compliance with this section and the eligibility of the critical need substitute bus operator for employment beyond the post-retirement limit, the state board shall submit the affidavit to the Consolidated Public Retirement Board.

(3) Any person who retires and begins work as a critical need substitute bus operator within the same fiscal year in which that person retired shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree critical need substitute bus operator in that fiscal year and ending with the month following the date the retiree ceases to perform service as a critical need substitute bus operator.

(4) Retired bus operators employed to perform expanded substitute service pursuant to this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and may not accrue seniority.

(5) A retired bus operator is eligible to be employed as a critical need substitute bus operator to fill a vacant position without any loss of retirement benefits attributed to the annuity reserve only if the retired bus operator's retirement became effective before the first day of July preceding at least the fiscal year during which he or she is employed as a critical need substitute bus operator.

(6) When a retired bus operator is employed as a critical need substitute to fill a vacant position, the county board shall continue to post the vacant position until it is filled with a regularly employed bus operator who is fully qualified for the position.

(7) When a retired bus operator is employed as a critical need substitute to fill a vacant position, the position vacancy shall be posted electronically and easily accessible to prospective employees as determined by the state board.

(8) The provisions of this subsection shall expire on June 30, 2028.

House Bill 2596: To modify when a nonresident student’s transfer may be denied.

Effective: Passed February 22, 2023; Effective May 23, 2023

Code Reference: W. Va. Code §18-5-16 (Amended)

WVDE Contact: Instructional Leadership and School Improvement

Summary: This Act provides that a county board may permit eligible elementary, middle, or high school student to apply for enrollment in any school with grade level capacity, existing programs, and services currently outside any established attendance zone in which the student resides. This Act also prohibits a county board of education from denying a student’s transfer for any reason other than a lack of grade level capacity, lack of programs, or services due to areas identified in the county board critical need policy or the commission of Level 3 or Level 4 inappropriate behavior as defined by the West Virginia Board of Education (WVBOE) Policy 4373 in the last year.

The application and consideration process are as follows:

- 1) The parent, guardian, or person legally responsible for the student is required to submit a written request to the superintendent.
- 2) The superintendent has the discretion to permit the student’s transfer from one school or program to another within the county if grade level capacity, programs, and services exist to accommodate the student’s transfer.
- 3) Counties with a critical need shortage policy may further review the request to determine if appropriate staffing is available in the requested grade, program, service, or content area.
- 4) Superintendents are prohibited from transferring a resident student from one school to another within the county for reasons affecting the best interest of the school without the consent of the student’s parent or legal guardian.
- 5) Aggrieved persons may appeal a transfer, or denial of a transfer, by the county superintendent to the county board of education.
- 6) County superintendents and county boards of education are prohibited from making enrollment decisions based on the residential address or potential disability status of a student; however, they may make such decisions based on the level of

appropriate staff, resources, services, and programs that are available at the requested school to meet the disability needs of the student.

7) Any decisions rendered by a county board of education under the provisions of this section may be appealed to the State Superintendent of Schools.

Additionally, this Act amended the policy requirements for county boards of education relating to the enrollment of nonresident students as follows:

1) The policy must include an open enrollment process and application period for nonresident students to enroll in any school within the district.

2) The policy must include a process for nonresident students to enroll in any school within the district on a case-by-case basis at any time during the academic year so long as all other requirements are met, including that the student had not previously transferred within the same school year.

3) The policy cannot be discriminatory toward nonresident students based on their residential address or any potential disability status.

4) The established process in the policy regarding enrollment applications must be clearly publicized, include the dates and timelines, and be available on the county board of education's website.

This Act also provides if a county board of education denies a nonresident's enrollment request, the denial must be reduced to writing, sent to the parent or guardian of the nonresident student and the West Virginia Department of Education (WVDE) within three business days of the decision being rendered and must include the reason and explanation for the denial, and the process for appealing the decision.

Additionally, if a county board of education receives an open enrollment application that is filled out incorrectly, the county board is required to provide an explanation of ways in which the application may be corrected and resubmitted for approval.

Finally, this Act requires county boards of education to report annually to the West Virginia Department of Education (WVDE) the number of resident and nonresident transfers approved by the county board for the preceding school year, the number of resident and nonresident student transfer

applications that were denied, and the reasons for the denials. Such information is required to be posted on the county board's website. Upon receipt of the information, the WVDE is required to compile the information and report it annually to the Legislative Oversight Commission on Education Accountability Information on or before June 30.

Enrolled Bill:

ENROLLED Committee Substitute for House Bill 2596
BY DELEGATES TONEY, STATLER, VANCE, ELLINGTON, COOPER, SHAMBLIN,
FOGGIN, AND HECKERT

AN ACT to amend and reenact §18-5-16 of the Code of West Virginia, 1931, as amended, relating to open enrollment; clarifying the circumstances in which a county board of education shall permit the transfer of resident students; allowing appeal to State Superintendent of Schools; amending provisions pertaining to the contents of county board of education policies for open enrollment; requiring process for enrollment application to be clearly publicized and made available on the county board's website; modifying reasons for which an application can be denied; and requiring county boards and the State Department of Education to report annually on the number of transfer approvals and denials made pursuant to open enrollment policies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-16. Student transfers; definitions; appeals; calculating net enrollment; fees for transfer.

(a) Establishment of attendance zones within counties. - The county board may establish attendance zones within the county to designate the schools within its district that resident students typically attend: Provided, That a county board may permit any eligible elementary, middle or high school resident student to apply for enrollment in any school with grade level capacity and existing programs and services currently outside any established attendance zone in which the student resides. Upon the written request of any parent or guardian, or person legally responsible for any resident student, the superintendent may grant a resident student's transfer request from one school or program to another within the county so long as grade level capacity and the program and services exist at the time of the request. Counties with a critical need shortage policy may further review the request to determine if appropriate staffing is available in the requested grade, program, service, or content area. A superintendent may not transfer a resident student from one school to another within the county for reasons affecting the best interests of the schools without the consent of the

student's parent or legal guardian. Any aggrieved person may appeal a transfer or denial of transfer by the county superintendent to the county board. When making enrollment decisions, a county superintendent or county board may not distinguish between students on the basis of residential or potential disability status. A county superintendent or county board may determine if appropriate staff, resources, services and programs are in place to meet the disability needs of the student at the requested school. A decision of the county board may be appealed to the state superintendent of schools, whose decision shall be final.

(b) Definitions. - For the purposes of this section, unless a different meaning clearly appears from the context:

(1) "Nonresident student" means a student who resides in this state and who is enrolled in or is seeking enrollment in a county school district other than the county school district in which the student resides.

(2) "Open enrollment" means a policy adopted and implemented by a county board to allow nonresident students to enroll in any school within the district. Open enrollment is distinct from a mutual agreement of two county boards regarding mass transfer of students, as contemplated in §18-5-13(f)(1)(C) of this code.

(c) Enrollment policies for nonresident students. - County boards shall establish and implement an open enrollment policy for nonresident students without charging tuition and without obtaining approval from the board of the county in which a student resides and transfers. This policy shall clearly establish an open enrollment process and enrollment application period for nonresident students to enroll in any school within the district. The process for enrollment application shall be clearly publicized to parents and the general public, including dates and timelines, and shall be made available on the board's website. As part of the open enrollment policy, county boards shall also establish a process for nonresident students to enroll in any school within the district on a case-by-case basis at any time during the academic year so long as all other requirements are met including that the student has not previously transferred within the same school year. The open enrollment policy shall not discriminate against nonresident students on the basis of their residential address or any potential disability status. Enrollment policies are subject to the following:

- (1) A county board may give enrollment preference to:
 - (A) Siblings of students already enrolled through the open enrollment policy;

(B) Secondary students who have completed 10th grade and, due to family relocation, become nonresident students, but express the desire to remain in a specific school to complete their education;

(C) Students who are children, grandchildren, or legal wards of employees;

(D) Students whose legal residences, though geographically within another county, are more proximate to a school within the receiving county, whether calculated by miles or transportation time;

(E) Students who reside in a portion of a county where topography, impassable roads, long bus rides, or other conditions prevent the practicable transportation of the student to a school within the county, and a school within a contiguous county is more easily accessible; and

(F) The county board to which the student wishes to be transferred may not refuse a transfer by virtue of the student transferring from a private, parochial, church, or religious school holding an exemption approved pursuant to §18-8-1(k) of this code: Provided, That nothing in this paragraph shall be construed to allow a county board to give an enrollment preference to a student transferring from a private, parochial, church, or religious school holding an exemption approved pursuant to §18-8-1(k) of this code.

(2) A county shall comply with all enrollment requirements for children who are in foster care or who meet the definition of unaccompanied youth prescribed in the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(6)).

(3) The county board for the county educating the nonresident student may provide an adequate means of transportation to nonresident students when students have complied with the procedure for obtaining authorization to attend school outside their county of residence, subject to the following:

(A) County boards of education are not required to uniformly provide nonresident student transportation, and may consider whether a nonresident student meets the eligibility criteria for free or reduced price lunch and milk established within the Richard B. Russell National School Lunch Act (42 U.S.C. § 1758); and

(B) The county board for the county educating the nonresident student shall provide transportation to and from the school of attendance, 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 of enrollment if the nonresident student is a student with

disabilities and has an individualized education program that specifies that transportation is necessary for fulfillment of the program.

(4) An application may only be denied by a county board of education due to lack of grade level capacity, lack of programs or services due to areas identified in the county board critical need policy, or the commission of Level 3 or Level 4 inappropriate behavior as defined by West Virginia Board of Education Policy 4373 in the last year. The denial shall be in writing, sent to the parent or guardian of the nonresident student and the West Virginia Department of Education within three business days of the decision, and include the reason and explanation for the denial and information on appealing the denial of the application. If a nonresident student fails to fill out or submit an open enrollment application correctly, a county board shall provide an explanation of ways in which the application may be corrected and submitted for necessary approval.

(d) Appeal. - The State Board of Education shall establish a process whereby a parent or guardian of a student may appeal to the State Superintendent the refusal of a county board to accept the transfer of the student. If during the appeal process, the State Superintendent discovers that the education and the welfare of the student could be enhanced, the State Superintendent may direct that the student may be permitted to attend a school in the receiving county.

(e) Net enrollment. - For purposes of net enrollment as defined in §18-9A-2 of this code, whenever a student is transferred on a full-time basis from one school district to another district pursuant to the provisions of this section, the county to which the student is transferred shall include the student in its net enrollment, subject to the following:

(1) If a student transfers after the second month of any school year, the county to which the student transferred may issue, in the following fiscal year, an invoice to the county from which the student transferred for the amount, determined on a pro rata basis, that the county now responsible for educating the student otherwise would have received under the state basic foundation program established in §18-9A-1 et seq. of this code had such student been included in the county's prior year's net enrollment;

(2) If a student in grades kindergarten through 12 transfers after the second month of any school year, the county to which the student transferred may issue, in the following fiscal year, an invoice to the county from which the student transferred for the amount the county now responsible for educating the student otherwise would have received under aid to

exceptional students had such student been included in the county's prior year's child count enrollment;

(3) If a student in prekindergarten transfers after the child count of exceptional students is certified for any school year, the county to which the student transferred may issue, in the following fiscal year, an invoice to the county from which the student transferred for the amount the county now responsible for educating the student otherwise would have received under aid to exceptional students had such student been included in the county's prior year's child count enrollment; and

(4) The county from which the student transferred shall reimburse the county to which the student transferred for the amount of the invoice.

(f) Transfers between states. - Transfer of students from this state to another state shall be upon such terms, including payment of tuition, as shall be mutually agreed upon by the board of the receiving county and the authorities of the school or district from which the transfer is made.

(g) No parent, guardian, or person acting as parent or guardian is required to pay for the transfer of a student or for the tuition of the student after the transfer when the transfer is carried out under the terms of this section.

(h) Nothing in this section supersedes the eligibility requirements for participation in extra-curricular activities established by the Secondary School Activities Commission.

(i) Each county board shall report annually to the State Department of Education the number of resident and nonresident student transfers approved by the county board for the preceding school calendar year, as well as the number of resident and nonresident student transfer applications denied and the reasons for those denials. On or before June 30 of each year, the State Department of Education shall compile the information from the county boards and report the information to the Legislative Oversight Commission on Education Accountability. Information regarding the annual number of resident and nonresident student transfer approvals and denials shall also be made available on each county board's website.

House Bill 2597: Amending performance evaluations of professional personnel.

Effective: Passed March 3, 2023; Effective June 1, 2023

Code Reference: W. Va. Code §18A-3C-2 (Amended)

WVDE Contact: Instructional Leadership and School Improvement

Summary: This Act requires an explanation and data be included in a performance evaluation conducted for a teacher, a principal, or an assistant principal when the evaluation indicates the employee’s performance is less than accomplished in any area, quality, skill or level of performance.

Enrolled Bill: ENROLLED House Bill 2597
BY DELEGATES TONEY, VANCE, ELLINGTON, COOPER, BROOKS, SHAMBLIN, FOGGIN, HECKERT, KIRBY AND HARDY

AN ACT to amend and reenact §18A-3C-2 of the Code of West Virginia, 1931, as amended, relating to performance evaluations of professional educational personnel; requiring that performance evaluations provide an explanation and data in support of any measure or criterion in which the employee is rated less than accomplished.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. IMPROVING TEACHING AND LEARNING.

§18A-3C-2. Performance evaluations of professional personnel.

(a) The provisions of this section govern the performance evaluation of classroom teachers, principals and assistant principals employed in public schools and school systems. To the extent that this section conflicts with the provisions of §18A-2-12 of this code relating to professional personnel performance evaluations, this section shall govern.

(b) Before July 1, 2018, the state board shall adopt a legislative rule in accordance with §29A-3B-1 et seq. of this code, for annually evaluating the performance of each professional person. The rule shall provide for performance evaluations of professional personnel to be conducted in accordance with this section in each school and school system.

(c)(1) The process adopted by the state board for evaluating the performance of classroom teachers shall incorporate at least the following:

(A) Alignment with the West Virginia Professional Teaching Standards adopted by the state board that establish the foundation for educator preparation, teacher assessment, and professional development throughout the state;

(B) Employment of the professional teaching standards to provide explicit and extensive measures of the work of teaching and what teachers must know and be able to do and provide evaluative measures of educator performance; and

(C) The use of two pieces of evidence at two points in time over the instructional term to demonstrate student learning as an indicator of educator performance.

(2) Eighty percent of the evaluation shall be based on an appraisal of the educator's ability to perform the critical standard elements of the professional teaching standards. The appraisal shall include conferences with the evaluator reinforced through observation. Twenty percent of the evaluation shall be based on evidence of the learning of the students assigned to the educator in accordance with paragraph (C), subdivision (1) of this subsection.

(d)(1) The process adopted by the state board for evaluating the performance of principals and assistant principals shall include at least the following:

(A) Alignment with the West Virginia Professional Leadership Standards adopted by the state board establishing the responsibility of principals for the collective success of their school including the learning, growth, and achievement of students, staff, and self;

(B) Employment of the professional leadership standards to provide explicit and extensive measures of the work of school leadership focused on the continuous improvement of teaching and learning. The process shall include conferences and goal setting with the superintendent or his or her designee and the use of a survey of stakeholders to assist in identifying the needs and establishing the goals for the school and the principal. The survey shall be distributed to at least the following stakeholders: Students, parents, teachers, and service personnel. The evaluative measures shall include the use of data, evidence, and artifacts to confirm the principal's performance on achieving the goals established by the principal and superintendent; and

(C) The use of two pieces of evidence at two points in time over the instructional term to demonstrate the growth in student learning at the school.

(2) Eighty percent of the evaluation shall be based on an appraisal of the principal's or the assistant principal's ability to perform the critical standard elements of the professional leadership standards and achieve the goals established for the principal and the school.

Twenty percent of the evaluation shall be based on evidence of the learning of the students assigned to the school in accordance with paragraph (C), subdivision (1) of this subsection.

(e) Evaluations of the performance of professional personnel shall serve the following purposes:

(1) Serve as a basis for the improvement of the performance of the professional personnel in their assigned duties;

(2) Serve as the basis for providing professional development specifically targeted on the area or areas identified through the evaluation process as needing improvement. If possible, this targeted professional development should be delivered at the school site using collaborative processes, mentoring or coaching or other approaches that maximize use of the instructional setting;

(3) Serve as the basis for establishing priorities for the provision of county-level professional development when aggregate evaluation data from the county's schools indicates an area or areas of needed improvement;

(4) Serve as a basis for informing the teacher preparation programs in this state of an area or areas of needed improvement in the programs, or informing a specific program of needed improvement, when state-level aggregate evaluation data indicates that beginning teachers who have graduated from the program have specific weaknesses;

(5) Provide an indicator of level of performance of the professional personnel and, if the evaluation indicates any area, quality, skill, or level of performance is less than accomplished, provide an explanation and data to support the evaluation;

(6) Serve as a basis for programs to increase the professional growth and development of professional personnel; and

(7) Serve as documentation for a dismissal on the grounds of unsatisfactory performance.

(f) The rule adopted by the state board shall include standards for the performance of professional personnel and the criteria to be used to determine whether their performance meets the standards. The rule also shall include guidance on best practices for providing time within the school day for teachers and leaders subject to performance evaluations under this section to participate in the collaborative mentoring or coaching and planning processes necessary for execution of the performance evaluation process and achieving advanced levels of performance.

(g) The rule adopted by the state board shall include provisions for written improvement plans when necessary to improve the performance of the professional personnel. The written improvement plan shall be specific as to what improvements are needed in the performance of the professional personnel and shall clearly set forth recommendations for improvements including recommendations for additional education and training of professionals subject to recertification. Professional personnel whose performance evaluation includes a written improvement plan shall be given an opportunity to improve his or her performance through the implementation of the plan.

(h) A professional person whose performance is considered to be unsatisfactory shall be given written notice of his or her deficiencies. A written improvement plan to correct these deficiencies shall be developed by the employing county board and the employee. The professional person shall be given a reasonable period of time, not exceeding 12 months, to accomplish the requirements of the improvement plan and shall receive a written statement of the resources and assistance available for the purposes of correcting the deficiencies. If the next performance evaluation shows that the professional is now performing satisfactorily, no further action may be taken concerning the original performance evaluation. If the evaluation shows that the professional is still not performing satisfactorily, the evaluator either shall make additional written recommendations for improvement or may recommend the dismissal of the professional personnel in accordance with the provisions of §18A-2-8 of this code.

(i) No person may evaluate professional personnel for the purposes of this section unless the person has an administrative certificate issued by the state superintendent and has successfully completed education and training in evaluation skills approved by the state board which will enable the person to make fair, professional, and credible evaluations of the personnel whom the person is responsible for evaluating.

(j) Prior to implementation of the evaluation process pursuant to this section at a school, each affected employee shall be given training to ensure that the employees have a full understanding of the purposes, instruments, and procedures used in evaluating their performance. Thereafter, this training shall be held annually at the beginning of the employment term.

House Bill 2602: Reestablishing certain specialized school service personnel classifications.

Effective: Passed February 10, 2023; Effective February 10, 2023

Code Reference: W. Va. Code §18A-4-8 (Amended)

WVDE Contact: School Operations

Summary: This Act adds Aide V (Special Education Assistant Teacher) and Aide VI (Behavioral Support Assistant Teacher) to the list of classifications for school service personnel in the state minimum pay scale. These titles were inadvertently omitted during the 2022 Regular Legislative Session by the passage of House Bill No. 4829.

Enrolled Bill: ENROLLED House Bill 2602
BY DELEGATES TONEY, STATLER, VANCE, ELLINGTON, COOPER, SHAMBLIN AND KIRBY.

AN ACT to amend and reenact §18A-4-8 of the Code of West Virginia, 1931, as amended, relating to adding special teaching assistants Aide V and Aide VI to the class titles of service personnel of the state minimum pay scale and class titles that are set forth in §18A-4-8a of this code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

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

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may not be less than 10 months. A month is defined as 20 employment days. The county board may contract with all or part of these service personnel for a longer term.

(b) Service personnel employed on a yearly or 12-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the 200-day minimum employment term are paid for additional employment at a daily rate of not less than the daily rate paid for the 200-day minimum employment term.

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

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

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

(1) A maintenance person means a person who holds a classification title other than in a custodial, aide, school lunch, office or transportation category as provided in §18A-1-1 of this code.

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

(3) The additional compensation provided in this subsection:

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

(B) Is payable entirely from county board funds.

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

(h) A service person's contract, as provided in §18A-2-5 of this code, shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and on any county salary schedule in excess of the minimum requirements of this article.

(i) The column heads of the state minimum pay scale and class titles, set forth in §18A-4-8a of this code, are defined as follows:

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

(2) "Years of employment" means the number of years which an employee classified as a service person has been employed by a county board in any position prior to or subsequent to the effective date of this section and includes service in the armed forces of the United States, if the employee was employed at the time of his or her induction. For the purpose of §18A-4-8a of this code, years of employment is limited to the number of years shown and allowed under the state minimum pay scale as set forth in §18A-4-8a of this code;

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

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

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

(6) "Accountant III" means a person employed in the county board office to manage and supervise accounts payable, payroll procedures, or both;

(7) "Accounts payable supervisor" means a person employed in the county board office who has primary responsibility for the accounts payable function and who either has completed 12 college hours of accounting courses from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(8) "Aide I" means a person selected and trained for a teacher-aide classification such as monitor aide, clerical aide, classroom aide or general aide;

(9) "Aide II" means a service person referred to in the "Aide I" classification who has completed a training program approved by the state board, or who holds a high school diploma or has received a general educational development certificate. Only a person classified in an Aide II class title may be employed as an aide in any special education program;

(10) "Aide III" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed six semester hours of college credit at an institution of higher education; or

(B) Is employed as an aide in a special education program and has one year's experience as an aide in special education;

(11) "Aide IV" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed 18 hours of State Board-approved college credit at a regionally accredited institution of higher education, or

(B) Has completed 15 hours of State Board-approved college credit at a regionally accredited institution of higher education; and has successfully completed an in-service training program determined by the State Board to be the equivalent of three hours of college credit;

(12) "Aide V (Special Education Assistant Teacher) - Temporary Authorization" means 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. No service person shall be entitled to receive the paygrade associated with this classification unless he or she has applied for and 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. The determination as to whether a position will be posted requiring this classification is solely at the discretion of the county;

"Aide V (Special Education Assistant Teacher)" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate and who has completed the requirements and experience to be prescribed by the state board of education. No service person shall be entitled to receive the paygrade associated with this classification unless he or she has applied for and 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. The determination as to whether a position will be posted requiring this classification is solely at the discretion of the county;

(13) "Aide VI (Behavioral Support Assistant Teacher - Temporary Authorization)" means 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 of education. No service person shall be entitled to receive the paygrade associated with this classification unless he or she has applied for and 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. The determination as to whether a position will be posted requiring this classification is solely at the discretion of the county;

"Aide VI (Behavioral Support Assistant Teacher)" means 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 of education. No service person shall be entitled to receive the paygrade associated with this classification unless he or she has applied for and 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. The determination as to whether a position will be posted requiring this classification is solely at the discretion of the county;

(14) "Audiovisual technician" means a person employed to perform minor maintenance on audiovisual equipment, films, and supplies and who fills requests for equipment;

(15) "Auditor" means a person employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;

(16) "Autism mentor" means a person who works with autistic students and who meets standards and experience to be determined by the State Board. A person who has held or holds an aide title and becomes employed as an autism mentor shall hold a multiclassification status that includes both aide and autism mentor titles, in accordance with §18A-4-8b of this code;

(17) "Braille specialist" means a person employed to provide braille assistance to students. A service person who has held or holds an aide title and becomes employed as a braille specialist shall hold a multiclassification status that includes both aide and braille specialist title, in accordance with §18A-4-8b of this code;

(18) "Bus operator" means a person employed to operate school buses and other school transportation vehicles as provided by the State Board;

(19) "Buyer" means a person employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs;

(20) "Cabinetmaker" means a person employed to construct cabinets, tables, bookcases and other furniture;

(21) "Cafeteria manager" means a person referred to in the Cook III classification who is employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, monitoring freezers and

temperatures on equipment, communicating with the food service supervisor or food service director, preparing financial reports, keeping records pertinent to food services of a school and maintaining that an appropriate time per day will be for ordering/emailing and paper work as needed;

(22) "Carpenter I" means a person classified as a carpenter's helper;

(23) "Carpenter II" means a person classified as a journeyman carpenter;

(24) "Chief mechanic" means a person employed to be responsible for directing activities which ensure that student transportation or other county board-owned vehicles are properly and safely maintained;

(25) "Clerk I" means a person employed to perform clerical tasks;

(26) "Clerk II" means a person employed to perform general clerical tasks, prepare reports and tabulations, and operate office machines;

(27) "Computer operator" means a qualified person employed to operate computers;

(28) "Cook I" means a person employed as a cook's helper;

(29) "Cook II" means a person employed to prepare and serve meals in a food service program of a school. This definition includes a service person who has been employed as a "Cook I" for a period of four years;

(30) "Cook III" means a person employed to assist the cafeteria manager, interpret menus and to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system, and act as the cafeteria manager if that employee is absent;

(31) "Crew leader" means a person employed to organize the work for a crew of maintenance employees to carry out assigned projects;

(32) "Custodian I" means a person employed to keep buildings clean and free of refuse;

(33) "Custodian II" means a person employed as a watchman or groundsman;

(34) "Custodian III" means a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;

(35) "Custodian IV" means a person employed as a head custodian. In addition to providing services as defined in "Custodian III" duties may include supervising other custodian personnel;

(36) "Director or coordinator of services" means an employee of a county board who is assigned to direct a department or division.

(A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title;

(B) Professional personnel holding this class title may not be defined or classified as service personnel unless the professional person held a service personnel title under this section prior to holding the class title of "director or coordinator of services;"

(C) The director or coordinator of services is classified either as a professional person or a service person for state aid formula funding purposes;

(D) Funding for the position of director or coordinator of services is based upon the employment status of the director or coordinator either as a professional person or a service person; and

(E) A person employed under the class title "director or coordinator of services" may not be exclusively assigned to perform the duties ascribed to any other class title as defined in this subsection: Provided, That nothing in this paragraph prohibits a person in this position from being multi-classified;

(37) "Draftsman" means a person employed to plan, design and produce detailed architectural/engineering drawings;

(38) "Early childhood classroom assistant teacher I" means a person who does not possess minimum requirements for the permanent authorization requirements, but is enrolled in and pursuing requirements;

(39) "Early childhood classroom assistant teacher II" means a person who has completed the minimum requirements for a state-awarded certificate for early childhood classroom assistant teachers as determined by the State Board;

(40) "Early childhood classroom assistant teacher III" means a person who has completed permanent authorization requirements, as well as additional requirements comparable to current paraprofessional certificate;

(41) "Educational sign language interpreter I" means a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing, and who holds the Initial Paraprofessional Certificate - Educational Interpreter pursuant to State Board policy;

(42) "Educational sign language interpreter II" means a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing, and who holds the Permanent Paraprofessional Certificate - Educational Interpreter pursuant to State Board policy;

(43) "Electrician I" means a person employed as an apprentice electrician helper or one who holds an electrician helper license issued by the State Fire Marshal;

(44) "Electrician II" means a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the State Fire Marshal;

(45) "Electronic technician I" means a person employed at the apprentice level to repair and maintain electronic equipment;

(46) "Electronic technician II" means a person employed at the journeyman level to repair and maintain electronic equipment;

(47) "Executive secretary" means a person employed as secretary to the county school superintendent or as a secretary who is assigned to a position characterized by significant administrative duties;

(48) "Food services supervisor" means a qualified person who is not a professional person or professional educator as defined in §18A-1-1 of this code. The food services supervisor is employed to manage and supervise a county school system's food service program. The duties include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;

(49) "Foreman" means a skilled person employed to supervise personnel who work in the areas of repair and maintenance of school property and equipment;

(50) "General maintenance" means a person employed as a helper to skilled maintenance employees, and to perform minor repairs to equipment and buildings of a county school system;

(51) "Glazier" means a person employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;

(52) "Graphic artist" means a person employed to prepare graphic illustrations;

(53) "Groundsman" means a person employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings;

(54) "Handyman" means a person employed to perform routine manual tasks in any operation of the county school system;

(55) "Heating and air conditioning mechanic I" means a person employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(56) "Heating and air conditioning mechanic II" means a person employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(57) "Heavy equipment operator" means a person employed to operate heavy equipment;

(58) "Inventory supervisor" means a person employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;

(59) "Key punch operator" means a qualified person employed to operate key punch machines or verifying machines;

(60) "Licensed practical nurse" means a nurse, licensed by the West Virginia Board of Examiners for Licensed Practical Nurses, employed to work in a public school under the supervision of a school nurse;

(61) "Locksmith" means a person employed to repair and maintain locks and safes;

(62) "Lubrication man" means a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;

(63) "Machinist" means a person employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. A person holding this class title also should have the ability to work from blueprints and drawings;

(64) "Mail clerk" means a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

(65) "Maintenance clerk" means a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

(66) "Mason" means a person employed to perform tasks connected with brick and block laying and carpentry tasks related to these activities;

(67) "Mechanic" means a person employed to perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

(68) "Mechanic assistant" means a person employed as a mechanic apprentice and helper;

(69) "Multiclassification" means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale is the higher pay grade of the class titles involved;

(70) "Office equipment repairman I" means a person employed as an office equipment repairman apprentice or helper;

(71) "Office equipment repairman II" means a person responsible for servicing and repairing all office machines and equipment. A person holding this class title is responsible for the purchase of parts necessary for the proper operation of a program of continuous maintenance and repair;

(72) "Painter" means a person employed to perform duties painting, finishing and decorating wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

(73) "Paraprofessional" means a person certified pursuant to §18A-3-2a of this code to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of students under the direction of a principal, a teacher or another designated professional educator.

(A) A person employed on the effective date of this section in the position of an aide may not be subject to a reduction in force or transferred to create a vacancy for the employment of a paraprofessional;

(B) A person who has held or holds an aide title and becomes employed as a paraprofessional shall hold a multiclassification status that includes both aide and paraprofessional titles in accordance with §18A-4-8b of this code; and

(C) When a service person who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

(74) "Payroll supervisor" means a person employed in the county board office who has primary responsibility for the payroll function and who either has completed 12 college hours of accounting from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(75) "Plumber I" means a person employed as an apprentice plumber and helper;

(76) "Plumber II" means a person employed as a journeyman plumber;

(77) "Printing operator" means a person employed to operate duplication equipment, and to cut, collate, staple, bind and shelve materials as required;

(78) "Printing supervisor" means a person employed to supervise the operation of a print shop;

(79) "Programmer" means a person employed to design and prepare programs for computer operation;

(80) "Roofing/sheet metal mechanic" means a person employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

(81) "Sanitation plant operator" means a person employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection;

(82) "School bus supervisor" means a qualified person:

(A) Employed to assist in selecting school bus operators and routing and scheduling school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promote good relationships with parents, students, bus operators and other employees; and

(B) Certified to operate a bus or previously certified to operate a bus;

(83) "Secretary I" means a person employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;

(84) "Secretary II" means a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational, or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes; stenotype, mechanical equipment or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. Nothing in this subdivision prevents a service person from holding or being elevated to a higher classification;

(85) "Secretary III" means a person assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities in purchasing and financial control or any person who has served for eight years in a position which meets the definition of "Secretary II" or "Secretary III";

(86) "Sign support specialist" means a person employed to provide sign supported speech assistance to students who are able to access environments through audition. A person who has held or holds an aide title and becomes employed as a sign support specialist shall hold a multiclassification status that includes both aide and sign support specialist titles, in accordance with §18A-4-8b of this code.

(87) "Supervisor of maintenance" means a skilled person who is not a professional person or professional educator as defined in §18A-1-1 of this code. The responsibilities include directing the upkeep of buildings and shops, and issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a county board;

(88) "Supervisor of transportation" means a qualified person employed to direct school transportation activities properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system. After July 1, 2010, all persons employed for the first time in a position with this classification title or in a multiclassification position that includes this title shall have five years of experience working in the transportation department of a county board. Experience working in the transportation department consists of serving as a bus operator, bus aide, assistant mechanic, mechanic, chief mechanic or in a clerical position within the transportation department;

(89) "Switchboard operator-receptionist" means a person employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

(90) "Truck driver" means a person employed to operate light or heavy duty gasoline and diesel-powered vehicles;

(91) "Warehouse clerk" means a person employed to be responsible for receiving, storing, packing and shipping goods;

(92) "Watchman" means a person employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties;

(93) "Welder" means a person employed to provide acetylene or electric welding services for a school system; and

(94) "WVEIS data entry and administrative clerk" means a person employed to work under the direction of a school principal to assist the school counselor or counselors in the

performance of administrative duties, to perform data entry tasks on the West Virginia Education Information System, and to perform other administrative duties assigned by the principal.

(j) Notwithstanding any provision in this code to the contrary, and in addition to the compensation provided for service personnel in §18A-4-8a of this code, each service person is entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to the employee's hours of employment or the methods or sources of compensation.

(k) A service person whose years of employment exceeds the number of years shown and provided for under the state minimum pay scale set forth in §18A-4-8a of this code may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he or she is employed.

(l) Each county board shall review each service person's job classification annually and shall reclassify all service persons as required by the job classifications. The state superintendent may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order a county board to correct immediately any improper classification matter and, with the assistance of the Attorney General, shall take any legal action necessary against any county board to enforce the order.

(m) Without his or her written consent, a service person may not be:

(1) Reclassified by class title; or

(2) Relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year; or for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

(n) Any county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.

(o) Notwithstanding any provision of this code to the contrary, a service person who holds a continuing contract in a specific job classification and who is physically unable to perform the job's duties as confirmed by a physician chosen by the employee, shall be given priority status over any employee not holding a continuing contract in filling other service

personnel job vacancies if the service person is qualified as provided in §18A-4-8e of this code.

(p) Any person employed in an aide position on the effective date of this section may not be transferred or subject to a reduction in force for the purpose of creating a vacancy for the employment of a licensed practical nurse.

(q) Without the written consent of the service person, a county board may not establish the beginning work station for a bus operator or transportation aide at any site other than a county board-owned facility with available parking. The workday of the bus operator or transportation aide commences at the bus at the designated beginning work station and ends when the employee is able to leave the bus at the designated beginning work station, unless he or she agrees otherwise in writing. The application or acceptance of a posted position may not be construed as the written consent referred to in this subsection.

(r) Itinerant status means a service person who does not have a fixed work site and may be involuntarily reassigned to another work site. A service person is considered to hold itinerant status if he or she has bid upon a position posted as itinerant or has agreed to accept this status. A county board may establish positions with itinerant status only within the aide and autism mentor classification categories and only when the job duties involve exceptional students. A service person with itinerant status may be assigned to a different work site upon written notice 10 days prior to the reassignment without the consent of the employee and without posting the vacancy. A service person with itinerant status may be involuntarily reassigned no more than twice during the school year. At the conclusion of each school year, the county board shall post and fill, pursuant to §18A-4-8b of this code, all positions that have been filled without posting by a service person with itinerant status. A service person who is assigned to a beginning and ending work site and travels at the expense of the county board to other work sites during the daily schedule, is not considered to hold itinerant status.

(s) Any service person holding a classification title on June 30, 2013, that is removed from the classification schedule pursuant to amendment and reenactment of this section in the year 2013, has his or her employment contract revised as follows:

(1) Any service person holding the braille or sign language specialist classification title has that classification title renamed on his or her employment contract as either braille specialist or sign support specialist. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the braille or sign language specialist

classification prior to July 1, 2013, continues to be credited as seniority earned in the braille specialist or sign support specialist classification;

(2) Any service person holding the paraprofessional classification title and holding the initial paraprofessional certificate - educational interpreter has the title educational sign language interpreter I added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the educational sign language interpreter I classification; and

(3) Any service person holding the paraprofessional classification title and holding the permanent paraprofessional certificate - educational interpreter has the title educational sign language interpreter II added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the educational sign language interpreter II classification;

(t) Any person employed as an aide in a kindergarten program who is eligible for full retirement benefits before the first day of the instructional term in the 2020-2021 school year, may not be subject to a reduction in force or transferred to create a vacancy for the employment of a less senior early childhood classroom assistant teacher;

(u) A person who has held or holds an aide title and becomes employed as an early childhood classroom assistant teacher shall hold a multiclassification status that includes aide and/or paraprofessional titles in accordance with §18A-4-8b of this code.

House Bill 2607: Clarify that vehicles with a capacity larger than 10 passengers may be used to transport students provided that no more than 10 passengers may be transported at one time.

Effective: Passed March 2, 2023; Effective My 31, 2023

Code Reference: W. Va. Code §18-5-13 (Amended)

WVDE Contact: School Operations

Summary: This Act permits county boards of education to authorize professional or service employees to be certified to drive county board-owned and insured vehicles, including 10 passenger vehicles, within the following provisions:

- 1) A maximum of 10 passengers, including the driver, may be transported.
- 2) A maximum of two vehicles can be used for any school-sponsored event.
- 3) The vehicles are limited to transporting students to school-sponsored events and cannot be utilized to transport students between school and home.

Enrolled Bill: ENROLLED House Bill 2607
BY DELEGATES STATLER AND ELLINGTON

AN ACT to amend and reenact §18-5-13 of the Code of West Virginia, 1931, as amended, relating to the transportation of students and passengers for school-sponsored activities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

Subject to the provisions of this chapter and the rules of the state board, each county board may:

(a) Control and manage all of the schools and school interests for all school activities and upon all school property owned or leased by the county, including:

(1) Requiring schools to keep records regarding funds connected with the school or school interests, including all receipts and disbursements of all funds collected or received by:

(A) Any principal, teacher, student or other person in connection with the schools and school interests;

(B) Any program, activity or other endeavor of any nature operated or conducted by or in the name of the school; and

(C) Any organization or body directly connected with the school;

(2) Allowing schools to expend funds for student, parent, teacher and community recognition programs. A school may use only funds it generates through a fund-raising or donation-soliciting activity. Prior to commencing the activity, the school shall:

(A) Publicize the activity as intended for this purpose; and

(B) Designate for this purpose the funds generated;

(3) Auditing the records and conserving the funds, including securing surety bonds by expending board moneys. The funds described in this subsection are quasipublic funds, which means the moneys were received for the benefit of the school system as a result of curricular or noncurricular activities;

(b) Establish:

(1) Schools, from preschool through high school;

(2) Vocational schools; and

(3) Schools and programs for post-high school instruction, subject to approval of the state board;

(c) Close any school:

(1) Which is unnecessary and assign the students to other schools. The closing shall occur pursuant to official action of the county board. Except in emergency situations when the timing and manner of notification are subject to approval by the state superintendent, the county board shall notify the affected teachers and service personnel of the county board action not later than the first Monday in April. The board shall provide notice in the same manner as set forth in section four of this article; or

(2) Pursuant to subsection (e) of this section;

(d) Consolidate schools;

(e) Close any elementary school whose average daily attendance falls below twenty students for two consecutive months. The county board may assign the students to other schools in the district or to schools in adjoining districts. If the teachers in the closed school are not transferred or reassigned to other schools, they shall receive one month's salary;

(f) Provide transportation according to rules established by the county board, as follows:

(1) To provide at public expense adequate means of transportation:

(A) For all children of school age who live more than two-miles distance from school by the nearest available road;

(B) For school children participating in county board-approved curricular and extracurricular activities;

(C) Across county lines for students transferred from one district to another by mutual agreement of both county boards. The agreement shall be recorded in the meeting minutes of each participating county board and is subject to subsection (h) of this section; and

(D) Within available revenues, for students within two-miles distance of the school; and

(2) To provide transportation for participants in projects operated, financed, sponsored or approved by the Bureau of Senior Services. This transportation shall be provided at no cost to the county board. All costs and expenses incident in any way to this transportation shall be borne by the bureau or the local or county affiliate of the bureau;

(3) Any school bus owned by the county board may be operated only by a bus operator regularly employed by the county board, except as provided in subsection (g) of this section;

(4) Notwithstanding any other provision of this code to the contrary and pursuant to rules established by the state board, the county board may provide for professional or service employees to be certified to drive county board-owned and insured vehicles: Provided, That:

(A) No more than 10 passengers including the driver may be transported at one time;

(B) Not more than two of these vehicles may be used for any school-sponsored activity;

and

(C) The certified employees may use the vehicles to transport students for school-sponsored activities, but may not use the vehicles to transport students between school and home.

(5) Notwithstanding any other provision of this code to the contrary, students may be transported to a school-sponsored activity in a county-owned or leased vehicle that does not meet school bus or public transit ratings: Provided, That no more than 10 passengers including the driver may be transported at one time: Provided, however, That this section does not prohibit a parent, guardian, or other adult approved in writing by the parent or guardian from transporting students in a privately-owned vehicle;

(6) Students may be transported to a school-sponsored activity in a vehicle that has a seating capacity of 16 or more passengers which is not owned and operated by the county board only as follows:

(A) The state board shall promulgate a rule to establish requirements for:

(i) Automobile insurance coverage;

(ii) Vehicle safety specifications;

(iii) School bus or public transit ratings; and

(iv) Driver training, certification and criminal history record check; and

(B) The vehicle owner shall provide to the county board proof that the vehicle and driver satisfy the requirements of the state board rule; and

(7) Buses shall be used to transport 19 or more passengers for extracurricular activities as provided in this section only when the insurance coverage required by this section is in effect;

(g) Lease school buses pursuant to rules established by the county board.

(1) Leased buses may be operated only by bus operators regularly employed by the county board, except that these buses may be operated by bus operators regularly employed by another county board in this state if bus operators from the owning county are unavailable.

(2) The lessee shall bear all costs and expenses incurred by, or incidental to the use of, the bus.

(3) The county board may lease buses to:

(A) Public and private nonprofit organizations and private corporations to transport school-age children for camps or educational activities;

(B) Any college, university or officially recognized campus organization for transporting students, faculty and staff to and from the college or university. Only college and university students, faculty and staff may be transported pursuant to this paragraph. The lease shall include provisions for:

(i) Compensation for bus operators;

(ii) Consideration for insurance coverage, repairs and other costs of service; and

(iii) Any rules concerning student behavior;

(C) Public and private nonprofit organizations, including education employee organizations, for transportation associated with fairs, festivals and other educational and cultural events. The county board may charge fees in addition to those charges otherwise required by this subsection;

(h) To provide at public expense for insurance coverage against negligence of the drivers of school buses, trucks or other vehicles operated by the county board. Any contractual agreement for transportation of students shall require the vehicle owner to maintain insurance coverage against negligence in an amount specified by the county board;

(i) Provide for the full cost or any portion thereof for group plan insurance benefits not provided or available under the West Virginia Public Employees Insurance Act. Any of these benefits shall be provided:

(1) Solely from county board funds; and

(2) For all regular full-time employees of the county board;

(j) Employ teacher aides; to provide in-service training for the aides pursuant to rules established by the state board; and, prior to assignment, to provide a four-clock-hour program of training for a service person assigned duties as a teacher aide in an exceptional children program. The four-clock-hour program shall consist of training in areas specifically related to the education of exceptional children;

(k) Establish and operate a self-supporting dormitory for:

(1) Students attending a high school or participating in a post high school program; and

(2) Persons employed to teach in the high school or post high school program;

(l) At the county board's discretion, employ, contract with or otherwise engage legal counsel in lieu of using the services of the prosecuting attorney to advise, attend to, bring, prosecute or defend, as the case may be, any matters, actions, suits and proceedings in which the county board is interested;

(m) Provide appropriate uniforms for school service personnel;

(n) Provide at public expense for payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by the county board, subject to rules established by the county board;

(o) Allow designated employees to use publicly provided carriage to travel from their residences to their workplace and return. The use:

(1) Is subject to the supervision of the county board; and

(2) Shall be directly connected with, required by and essential to the performance of the employee's duties and responsibilities;

(p) Provide at public expense adequate public liability insurance, including professional liability insurance, for county board employees;

(q)(1) Enter into cooperative agreements with one or more county boards or educational services cooperative to provide improvements to the instructional needs of each district. The cooperative agreements may be used to employ specialists in a field of academic study or for support functions or services for the field.

(2) Enter into cooperative agreements with one or more county boards to facilitate coordination and cooperation in areas of service to reduce administrative and/or operational costs, including the consolidation of administrative, coordinating, and other county level functions into shared functions to promote the efficient administration and operation of the public school systems including, but not limited to:

- (A) Purchasing;
- (B) Operation of specialized programs for exceptional children;
- (C) Employment of any school personnel as defined in §18A-1-1 of this code;
- (D) Professional development;
- (E) Technology including, but not limited to WVEIS; and
- (F) Billing for school-based Medicaid services in schools throughout the state.

Each such cooperative agreement shall be in writing and agreed to by each county board participating in the cooperative agreement. Each cooperative agreement that is an employment agreement may be entered into on a case-by-case basis. Notwithstanding the geographic quadrants as provided in §18-5-13b of this code, school systems may enter into cooperative agreements with any school system in the state.

(3) Enter into a cooperative agreement with other county boards to establish educational services cooperatives as provided in §18-5-13c of this code.

(r) Provide information about vocational and higher education opportunities to exceptional students. The county board shall provide in writing to the students and their parents or guardians information relating to programs of vocational education and to programs available at state institutions of higher education. The information may include sources of available funding, including grants, mentorships and loans for students who wish to attend classes at institutions of higher education;

(s) Enter into agreements with other county boards for the transfer and receipt of any funds determined to be fair when students are permitted or required to attend school in a district other than the district of their residence. These agreements are subject to the approval of the state board; and

(t) Enter into job-sharing arrangements, as defined in section one, article one, chapter eighteen-a of this code, with its employees, subject to the following provisions:

(1) A job-sharing arrangement shall meet all the requirements relating to posting, qualifications and seniority, as provided in §18A-4-1 et seq. of this code;

(2) Notwithstanding any contrary provision of this code or legislative rule and specifically §5-16-1 et seq. of this code, a county board that enters into a job-sharing arrangement:

(A) Shall provide insurance coverage to the one employee mutually agreed upon by the employees participating in that arrangement; and

(B) May not provide insurance benefits of any type to more than one of the job-sharing employees, including any group plan available under the State Public Employees Insurance Act;

(3) Each job-sharing agreement shall be in writing on a form prescribed and furnished by the county board. The agreement shall designate specifically one employee only who is entitled to the insurance coverage. Any employee who is not designated is not eligible for state public employees insurance coverage regardless of the number of hours he or she works;

(4) All employees involved in the job-sharing agreement shall meet the requirements of §5-16-2 (3) of this code; and

(5) When entering into a job-sharing agreement, the county board and the participating employees shall consider issues such as retirement benefits, termination of the job-sharing agreement and any other issue the parties consider appropriate. Any provision in the agreement relating to retirement benefits may not cause any cost to be incurred by the retirement system that is more than the cost that would be incurred if a single employee were filling the position; and

(u) Under rules it establishes for each child, expend an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

House Bill 2820: To provide HOPE Scholarship recipients with the ability to play sports.

Effective: Passed March 11, 2023; Effective June 9, 2023

Code Reference: W. Va. Code §18-2-25 (Amended)
W. Va. Code §18-2-25e (New)

WVDE Contact: Instructional Leadership and School Improvement

Summary: This Act extends public school interscholastic athletics and extracurricular activities eligibility to participants in the Hope Scholarship Program and students attending a microschool or learning pod. This legislation limits students enrolled in a private school to extracurricular activities in a public secondary school in the attendance zone where the private school student lives and only if the activity is not offered at the student’s private school. Additionally, private school students opting to participate in activities offered by a public school are required to adhere to the same disciplinary rules established by the West Virginia Secondary School Activities Commission (WVSSAC) as public school students.

The Act also requires the WVSSAC to modify its rule prior to the 2023-2024 school year to allow students in 9th – 12th grades to transfer schools and retain athletic eligibility at least one time during a student’s four years of secondary school attendance. However, the WVSSAC has the authority to allow a student to transfer more than once without losing eligibility on a case-by-case basis after reviewing the student’s circumstances.

Enrolled Bill: ENROLLED Committee Substitute for House Bill 2820
BY DELEGATES CROUSE, STEELE, BURKHAMMER, KIMBLE, WORRELL, CANNON, DILLION, BUTLER, MAYNOR, LUCAS, AND PINSON.

AN ACT to amend and reenact §18-2-25 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18-2-25e, all relating to eligibility for participation in extracurricular activities under control of the West Virginia Secondary Schools Activities Commission; permitting students enrolled in private schools, the Hope Scholarship Program, microschools and learning pods access to participate in extracurricular activities; modifying eligibility requirements for students enrolled in private schools, home school, the Hope Scholarship Program, microschools, and learning pods to participate in extracurricular activities; prohibiting private school

student from participating in public school sport if sport is offered at private school; clarifying students enrolled in private schools, the Hope Scholarship Program, microschoools and learning pods are subject to same transfer protocols that apply to member-to-member transfers; clarifying when students may transfer schools and retain eligibility to participate in extracurricular activities under control of the West Virginia Secondary Schools Activities Commission; and requiring the West Virginia Secondary Schools Activities Commission to promulgate rules, including emergency rules if necessary.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-25. Authority of county boards to regulate athletic and other extracurricular activities of secondary schools; delegation of authority to West Virginia Secondary School Activities Commission; authority of commission; approval of rules by state board; incorporation; funds; participation by private and parochial schools and by home-schooled students and participants in the Hope Scholarship Program or in a Microschool or Learning Pod.

(a) The county boards of education shall exercise the control, supervision, and regulation of all interscholastic athletic events, and other extracurricular activities of the students in public secondary schools, and of those schools of their respective counties. The county board of education may delegate control, supervision, and regulation of interscholastic athletic events and band activities to the West Virginia Secondary School Activities Commission.

(b) The West Virginia Secondary School Activities Commission is composed of the principals, or their representatives, of those secondary schools whose county boards of education have certified in writing to the State Superintendent of Schools that they have elected to delegate the control, supervision, and regulation of their interscholastic athletic events and band activities of the students in the public secondary schools in their respective counties to the commission. The West Virginia Secondary School Activities Commission may exercise the control, supervision, and regulation of interscholastic athletic events and band activities of secondary schools, delegated to it pursuant to this section. The rules of the West Virginia Secondary School Activities Commission shall contain a provision for a proper review procedure and review board and be promulgated in accordance with the provisions of chapter 29A of this code, but shall, in all instances, be subject to the prior approval of the state board. The West Virginia Secondary School Activities Commission, may, with the consent of the State

Board of Education, incorporate under the name of West Virginia Secondary School Activities Commission, Inc., as a nonprofit, nonstock corporation under the provisions of chapter 31 of this code. County boards of education may expend moneys for and pay dues to the West Virginia Secondary School Activities Commission, and all moneys paid to the commission, as well as moneys derived from any contest or other event sponsored by the commission, are quasi-public funds as defined in §18-5-1 et seq. of this code, and the funds of the commission are subject to an annual audit by the State Tax Commissioner.

(c) The West Virginia Secondary School Activities Commission shall promulgate reasonable rules providing for the control, supervision, and regulation of the interscholastic athletic events and other extracurricular activities of private and parochial secondary schools as elect to delegate to the commission control, supervision, and regulation, upon the same terms and conditions, subject to the same rules and requirements and upon the payment of the same fees and charges as those provided for public secondary schools. Any such private or parochial secondary school shall receive any monetary or other benefits in the same manner and in the same proportion as any public secondary school.

(d) Notwithstanding any other provision of this section, or the commission's rules, the commission shall consider eligible for participation in interscholastic athletic events and other extracurricular activities of secondary schools a student who is receiving home instruction pursuant to §18-8-1(c) of this code, is a participant in the Hope Scholarship Program, pursuant to §18-8-1(m) of this code and as provided for in §18-31-1, et seq. of this code, or participates in a microschool or learning pod, pursuant to §18-8-1(n) of this code, and who:

(1) Has demonstrated satisfactory evidence of academic progress for each year in compliance with the provisions of that subsection: Provided, That the student's average test results are within or above the fourth stanine in all subject areas;

(2) Has not reached the age of 19 by August 1 of the current school year;

(3) Is an amateur who receives no compensation but participates solely for the educational, physical, mental and social benefits of the activity;

(4) Agrees to comply with all disciplinary rules of the West Virginia Secondary School Activities Commission and the county board in which the student lives; and

(5) Agrees to obey all rules of the West Virginia Secondary School Activities Commission governing awards, all-star games, parental consents, physical examinations, and vaccinations applicable to all high school athletes.

Eligibility is limited to participation in interscholastic athletic events and other extracurricular activities at the public secondary school serving the attendance zone in which the student lives: Provided, That students who leave a school during the school year are subject to the same transfer protocols that apply to member-to-member transfers. Reasonable fees may be charged to the student to cover the costs of participation in interscholastic athletic events and other extracurricular activities.

(e) Students enrolled in a private school shall be eligible to participate in extracurricular activities at the public secondary school serving the attendance zone in which the student lives if the extracurricular activity is not offered at the student's private school: Provided, The student meets the requirements of subsection (d)(4) and (d)(5) of this section.

(f) The West Virginia Secondary School Activities Commission shall recognize preparatory athletic programs, whose participants attend a secondary school in West Virginia for academic instruction, as nonparticipating members of the commission solely for the purpose of competing on the national level: Provided, That the preparatory athletic program shall pay the same fees as member schools. Such recognition does not entitle the preparatory athletic program to compete against a member school during the regular season or in any commission state championship events. The commission may promulgate an emergency rule pursuant to subsection (b) of this section, if necessary, to carry out the intent of this subsection.

§18-2-25e. Athletic eligibility of transfer students.

(a) The West Virginia Secondary School Activities Commission shall modify its rule, prior to the 2023-2024 school year, to allow students to transfer schools and retain athletic eligibility at least one time during a student's four years of secondary school, inclusive of grades nine through 12. The West Virginia Secondary School Activities Commission may promulgate an emergency rule, if necessary, to modify its rule prior to the 2023-2024 school year.

(b) Nothing in this section is intended to limit or restrict a student transferring more than one time for the following reasons:

(1) The West Virginia Secondary School Activities Commission's ability to make eligibility determinations on a case-by-case basis when warranted by a student's circumstances in accordance with the West Virginia Secondary School Activities Commission's rules; or

(2) For any other reason permitted under the rules of the West Virginia Secondary School Activities Commission.

Funds shall be distributed first to meet the special education video requirements, then safe school entry way needs, and when met, on the basis of need; providing that any moneys distributed from the Safe Schools Fund for facility improvements shall only be expended on facilities owned by a county board of education, public charter school or multicounty vocational center, unless the improvements to such facilities may be removed with minimal effort; and, providing that the West Virginia Board of Education shall promulgate rules to govern the process by which county boards of education, public charter schools and multicounty vocational centers may apply for needs-based funding from the Safe Schools Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-48. Safety and security measures for school facilities; Safe Schools Fund created.

(a) Each county board of education, public charter school, and multicounty vocational center shall annually assess the safety and security of each of the school facilities for which they are responsible. Safety and security measures of each facility shall be upgraded when necessary to ensure, to the best of the county board's, public charter school governing board's or multicounty vocational center administrative council's ability, the safety of the students within each facility. Each county board of education, public charter school governing board, and multicounty vocational center administrative council shall report annually the safety and security measures it has put in place, including upgrades thereto, to the State Department of Education. Annually, the State Department of Education shall compile the information received and report it to the Legislative Oversight Commission on Education Accountability.

(b) As used in this section, "safety and security measures" means action taken by a county board of education, a public charter school, or multicounty vocational center that improves the security of a school facility and the safety of the students within such facility, including, but not limited to, hiring a school resource officer, installing weapon detection systems, upgrading facility doors or windows.

(c) There is hereby created in the State Treasury a special revenue fund to be known as the Safe Schools Fund. The fund shall consist of all moneys received from legislative appropriations and other sources to further the purpose of this section: Provided, That annually, the West Virginia Department of Education shall request an appropriation based on the requests of the county boards of education, public charter school governing boards and multicounty vocational center administrative councils. Subject to legislative appropriation, the

funds appropriated annually to the School Safety Fund shall be distributed to the county boards of education, public charter schools, and multicounty vocational centers, on the basis of need. Moneys distributed from this fund shall not be used to make permanently affixed improvements, alterations or additions to a physical facility that a county board of education, public charter school or multicounty vocational center does not own. If the West Virginia Department of Education distributes any moneys from this fund for the purpose of making safety improvements on or in a facility that is not owned, it shall require that the improvements be accomplished in such a manner that they may be removed with minimal effort. All moneys distributed from this fund shall be used to support the purpose and intent of this section and all moneys must be spent to support the school for which the funding was derived: Provided, however, That moneys distributed from this fund also may be used for the purposes of §18-20-11 of this code, relating to video cameras in certain special education classrooms: Until such time as all school facilities are in full compliance with the special education video requirements, the West Virginia Department of Education shall first allocate the funding appropriated for the Safe Schools Fund based on the remaining need for video cameras in public school facilities. After all public school facilities have been provided sufficient funds to meet the special education video camera requirements, the funds shall be distributed by the West Virginia Department of Education to meet the needs of school facilities to have safe school entry ways. After safe school entry way needs have been met, the West Virginia Department of Education shall distribute funds based upon a determination of need. Any moneys remaining in the fund at the close of the fiscal year shall be carried forward for use in the next fiscal year. Fund balances shall be invested with the state's Consolidated Investment Fund and any and all interest shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to this article.

(d) The West Virginia Board of Education shall promulgate rules pursuant to §29A-3B-1 et seq. of this code to establish a process by which county boards of education, public charter school governing boards and multicounty vocational center administrative councils may submit requests to obtain needs-based funding from the Safe Schools Fund. Such rules shall address:

- (1) The manner, timeline and process for the submission of a request;
- (2) The criteria by which requests shall be evaluated and prioritized; and
- (3) Any other matters deemed necessary to further the goals of this article.

House Bill 2890: **Modifying student discipline.**

Effective: Passed March 11, 2023; Effective June 9, 2023

Code Reference: W. Va. Code §18-5-1 (Amended)

WVDE Contact: Instructional Leadership and School Improvement

Summary: This Act includes that a teacher may remove a student from his or her classroom or school bus if the student is exhibiting disorderly conduct that obstructs the teaching and learning process of other students in the classroom. A student removed from a classroom is required to be placed under the control of the school principal or his or her designee. The student may be admitted back into the classroom or on the school bus only when the principal, or a designee provides written certification to the teacher that the student may be readmitted and what specific type of disciplinary action was taken, if any.

This Act includes additional disciplinary remedies specifically for 6th through 12th grade teachers responsible for students who are engaging in disorderly conduct to a degree that the behavior is interfering with an orderly education process and/or obstructing the teaching or learning process of others in the classroom. In these instances, the student may be excluded from the teacher's classroom and may not return to that teacher's classroom for at least the remainder of the instructional day.

The following process is provided when students are excluded from a classroom or school bus for disorderly conduct:

- 1) The principal is required to communicate with the teacher within 24 hours of the student being excluded from the teacher's classroom;
- 2) The teacher has 24 hours to create an electronic record and place the report of this action into the West Virginia Education Information System (WVEIS), without any repercussions to the teacher; and,
- 3) If the student is removed from a classroom a total of three times in a month, the principal is required to place the student on in-school suspension, out-of-school suspension, or may consider the student be placed in an alternative learning center if one is available within the school district.

Additionally, the Act requires county boards of education to adopt policies to encourage the use of alternatives to discipline practices, provide training of school personnel in alternative discipline practices, and encourage the involvement of parents, guardians and/or custodians of students in the maintenance of

school discipline. Each county board is also required to ensure that each school implements a tier system policy, with teacher input, to provide a framework for student behaviors and punishments designed to promote a teaching and learning environment free from substantial classroom disturbances. The policy is required to be clear and concise, include specific guidelines and examples, and include an appeal procedure where teachers may appeal to the county superintendent if a school principal refuses to allow the exclusion of a student from the classroom or if a teacher believes the school principal has prematurely ended the exclusion of a student from his or her classroom.

School principals are required to support teachers in disciplining students if proper cause and documentation is provided pursuant to the school's discipline policy. Teachers may not be reprimanded for disciplining students if their actions are legal and within the structure of the county board of education's policy for student behavior and punishment.

Enrolled Bill:

ENROLLED Committee Substitute for House Bill 2890
BY DELEGATES GEARHEART, ELLINGTON, WESTFALL, STORCH, BRIDGES, FOSTER,
BUTLER, HOUSEHOLDER, COOPER, DEAN AND HECKERT

AN ACT to amend and reenact §18A-5-1 of the Code of West Virginia, 1931, as amended, relating to authority of teachers and other school personnel for discipline of students; allowing student that behaves in a manner that obstructs the teaching or learning process of others in the classroom to be excluded; limiting application of certain discipline provisions to grades six through 12 and excluding application to elementary schools; mandating minimum duration of exclusion for certain behaviors; requiring principal to communicate with teacher within 24 hours about exclusion for certain behaviors; establishing time limit for teacher to report exclusion for certain behaviors to the West Virginia Education Information System; providing consequences for student removed for certain behaviors three times in one month; requiring county board policies to encourage the use of alternatives to discipline practices; requiring each county school board to ensure that each school implements a tier system policy to provide a framework for student behaviors and punishments; requiring principal to support the teacher in discipline of the students under certain conditions; prohibiting teacher from being reprimanded under certain conditions; and requiring procedure for teachers to appeal certain exclusion related actions of principal.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.

(a) The teacher shall stand in the place of the parent(s), guardian(s), or custodian(s) in exercising authority over the school and has control of all students enrolled in the school from the time they reach the school until they have returned to their respective homes, except where transportation of students is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the students while they are in transit to and from the school.

(b) Subject to the rules of the state Board of Education, the teacher shall exclude from the school any student known to have, or who is suspected of having, any infectious disease, or any student who has been exposed to any infectious disease and shall immediately notify the proper health officer or medical inspector of the exclusion. Any student so excluded may not be readmitted to the school until he or she has complied with all the requirements of the rules governing those cases or has presented a certificate of health signed by the medical inspector or other proper health officer.

(c) The teacher, may exclude from his or her classroom or school bus any student who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who behaves in a manner that obstructs the teaching or learning process of others in the classroom; who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a student; who willfully disobeys a school employee; or who uses abusive or profane language directed at a school employee. Any student excluded shall be placed under the control of the principal of the school or a designee. The excluded student may be admitted to the classroom or school bus only when the principal, or a designee, provides written certification to the teacher that the student may be readmitted and specifies the specific type of disciplinary action, if any, that was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of the action to the parent(s), guardian(s), or custodian(s). When a student is excluded from a classroom or a school bus two times in one semester, and after exhausting all reasonable methods of classroom discipline provided in the school discipline plan, the student may be readmitted to the classroom or the school bus only after the principal, teacher and, if possible,

the parent(s), guardian(s), or custodian(s) of the student have held a conference to discuss the student's disruptive behavior patterns, and the teacher and the principal agree on a course of discipline for the student and inform the parent(s), guardian(s), or custodian(s) of the course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting. The Legislature finds that isolating students or placing them in alternative learning centers may be the best setting for chronically disruptive students. The county board shall create more alternative learning centers or expand its capacity for alternative placements, subject to funding, to correct these students' behaviors so they can return to a regular classroom without engaging in further disruptive behavior.

(d) When a grade six through 12 teacher, excluding an elementary school teacher, determines that the behavior of the student is disorderly conduct, is interfering with an orderly educational process, or obstructs the teaching or learning process of others in the classroom:

(1) The student may be excluded from that teacher's classroom and if excluded may not re-enter that teacher's classroom for at least the remainder of the instructional day;

(2) If the student is excluded pursuant to subdivision (1) of this subsection;

(A) The principal shall communicate with the teacher within 24 hours of the student being excluded from the teacher's classroom about the exclusion;

(B) The teacher has 24 hours to create an electronic record and place the report of this action into the West Virginia Education Information System (WVEIS), without any repercussion to the teacher; and

(C) If the student is removed from a classroom a total of three times in one month for one or more of the behaviors set forth in this subsection, the student shall receive as determined by the principal an in-school suspension, an out-of-school suspension, or may be considered for placement in an alternative learning center if one is available within the school district.

(e) The Legislature finds that suspension from school is not appropriate solely for a student's failure to attend class. Therefore, a student may not be suspended from school solely for not attending class. Other methods of discipline may be used for the student which may include, but are not limited to, detention, extra class time, or alternative class settings.

(f) Corporal punishment of any student by a school employee is prohibited.

(g) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions. These policies shall encourage the use of alternatives to discipline practices, provide for the training of school personnel in alternatives to discipline practices, and provide for encouraging the involvement of parent(s), guardian(s) or custodian(s) in the maintenance of school discipline. To promote a teaching and learning environment free from substantial classroom disturbances, each county board shall ensure that each school implements a tier system policy, with teacher input, to provide a framework for student behaviors and punishments. The policy shall be clear and concise with specific guidelines and examples. The principal shall support the teacher in the discipline of the students if proper cause and documentation is provided following the schoolwide discipline policy. The teacher may not be reprimanded if their actions are legal and within the structure of the county board's policy for student behavior and punishment. The county board policies shall also include an appeal procedure whereby a teacher may appeal to the county superintendent if a school principal refuses to allow the exclusion of a student from the classroom or if a teacher believes the school principal has prematurely ended the exclusion of a student from the classroom. The county boards shall provide for the immediate incorporation and implementation in schools of a preventive discipline program which may include the responsible student program and a student involvement program, which may include the peer mediation program, devised by the West Virginia Board of Education. Each county board may modify those programs to meet the particular needs of the county. The county boards shall provide in-service training for teachers and principals relating to assertive discipline procedures and conflict resolution. The county boards also may establish cooperatives with private entities to provide middle educational programs, which may include programs focusing on developing individual coping skills, conflict resolution, anger control, self-esteem issues, stress management and decision making for students, and any other program related to preventive discipline.

(h) For the purpose of this section:

(1) "Student" includes any child, youth or adult who is enrolled in any instructional program or activity conducted under board authorization and within the facilities of, or in connection with, any program under public school direction: Provided, That, in the case of adults, the student-teacher relationship shall terminate when the student leaves the school or other place of instruction or activity;

(2) "Teacher" means all professional educators as defined in §18A-1-1 of this code and includes the driver of a school bus or other mode of transportation; and

(3) "Principal" means the principal, assistant principal, vice principal or the administrative head of the school, or a professional personnel designee of the principal or the administrative head of the school.

(i) Teachers shall exercise other authority and perform other duties prescribed for them by law or by the rules of the state board not inconsistent with the provisions of this chapter and chapter 18 of this code.

House Bill 3035: Third Grade Success Act.

Effective: Passed March 11, 2023; Effective June 9, 2023

Code Reference: W. Va. Code §18-2E-10 (Amended)
W. Va. Code §18-5-18a (Amended)
W. Va. Code §18-9A-5 (Amended)
W. Va. Code §18-20-10 (Amended)

WVDE Contact: Instructional Learning and School Improvement

Summary: This Act creates a statewide comprehensive approach to early literacy and numeracy in kindergarten through third grade by including components related to pre- and in-service teacher training, providing for additional support personnel in first through third grade classrooms, benchmark assessments to identify students struggling with literacy and numeracy including indicators for dyslexia and dyscalculia, multi-tiered systems of support, intervention, parent notification and extended year programs. Key components of the bill are as follows:

Science of Reading Components:

- 1) Codifies the definition of “Science of Reading” as evidenced-based reading instruction including phonemic awareness, phonics, fluency, vocabulary and comprehension plus writing.
- 2) Requires assistance be provided to county boards for training and implementation for all K-3 teachers, ECCATs, paraprofessionals, aides, and interventionist in the Science of Reading.
- 3) Requires county boards to adopt high-quality instructional materials aligned to the science of reading and content standards.

Benchmark Assessment/Screeners Components:

- 1) Establishes an approved list of screeners/benchmarks in English Language Arts, dyslexia, and mathematics for K-3 students which must be given in the first 30 days of school then repeated at mid-year and end-of-year.

Multi-Tiered Systems of Support Components:

- 1) Creates individualized reading or mathematics improvement plans for students identified as having a deficiency in grades K-4 with input from school personnel and parents/guardians.

- 2) Provides intensive support to students with a substantial reading or mathematics deficiency.
- 3) Requires an extended year program in literacy and numeracy for students in K-3 who have not met certain criteria.

Parent Notification and Involvement Components:

- 1) Notification of parents or guardians are included in the creation and implementation of the reading or mathematics improvement plans.
- 2) Provide regular updates to parents or guardians receive as well as ongoing communication on child's reading and math progress.
- 3) Provide strategies for parents or guardians to use at home to help their child succeed in reading or math.

Teacher Preparation Program Components:

- 1) Ensure educator preparation programs prepare candidates to implement reading and math instruction using high-quality instructional materials, effective instruction and intervention, data driven decision making, and characteristics of dyslexia and dyscalculia.

School Personnel Training Components:

- 1) Instruction regarding the administration and analysis of data from benchmark assessment or screener tools.
- 2) Participation in comprehensive training on the science of reading and numeracy instruction
- 3) Understanding the characteristics of dyslexia and dyscalculia in students.
- 4) Implementing effective instructional strategies that benefit students with indicators of dyslexia or dyscalculia.
- 5) Understanding the roles and responsibilities of classroom assistant teachers, aides, paraprofessionals, and interventionists in supporting literacy and numeracy alongside the classroom teacher.

Dyslexia and Dyscalculia Components:

- 1) Establishing a list of dyslexia screeners to be administered no less than twice per year in kindergarten through third grade and any time students with identified deficiencies are not responding to intervention.
- 2) Providing annual professional development for educators to ensure students are screened and provided appropriate evidence-based instruction and intervention strategies for

students at risk for academic difficulty including students who exhibit possible indicators of risk for dyslexia or dyscalculia.

- 3) Ensuring appropriate accommodation for students who are at risk for or may be diagnosed with dyslexia or dyscalculia.
- 4) Using the terms dyslexia and dyscalculia in IEPs and evaluation reports by professionals qualified to render a diagnosis of dyslexia or dyscalculia.
- 5) Require a list of screeners, assessments, instructional resources, informational materials, and professional development to address the identification of students with dyslexia or dyscalculia be made publicly available.
- 6) Provide resources regarding dyslexia and dyscalculia must be provided to parents annually.
- 7) Conduct literacy screenings for students transferring in grades 3 – 5 from another school that does not utilize screeners.

Implementation and Reporting Components:

- 1) Phase in ratios for classroom aides or interventionist (more than 12 students) beginning in 2023 for first grade classrooms then second and third grade in the following two years unless other funds are already supporting 1st grade aides in the county.
- 2) Submit a proposed implementation to LOCEA by July 1, 2023.
- 3) Provide a report on literacy and numeracy to LOCEA, Joint Committee on Government and Finance, and the Governor by November 1, 2023, and annually thereafter.
- 4) Require the retention of third grade students not meeting standards in English Language Arts and Math to begin July 1, 2026, with a few exceptions.

Enrolled Bill:

ENROLLED Committee Substitute for House Bill 3035
BY DELEGATES HANSHAW AND SKAFF (BY REQUEST OF THE EXECUTIVE)

AN ACT to amend and reenact §18-2E-10 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-5-18a of said code; to amend and reenact §18-9A-5 of said code; and to amend and reenact §18-20-10 of said code, all relating to enhancing academic achievement of students including those with learning disabilities;

establishing the Third Grade Success Act; replacing transformative system of support for early literacy with multi-tiered system of support for early literacy and numeracy in kindergarten through grade three; revising findings; defining “science of reading”; revising inclusions in West Virginia Board of Education rules required to effectuate Third Grade Success Act section; requiring each county board to adopt high-quality instructional materials; specifying data to be used to inform the classroom teacher’s recommendation on grade level retention; requiring county boards of education to provide in-service training for early childhood classroom assistant teachers, aides, paraprofessionals, classroom teachers, and in certain instances, interventionists in grades kindergarten through three; updating deadlines for West Virginia Board of Education multi-tiered system of support for early literacy and numeracy reports; modifying provisions pertaining to funding for Third Grade Success Act section; requiring retention in the third grade in certain circumstances; specifying exceptions to third grade retention requirement; adding maximum early childhood classroom assistant teacher or aide-pupil ratio for kindergarten; adding maximum early childhood classroom assistant teacher, paraprofessional, or aide-pupil ratio for grades one through three; requiring ratios to be by grade level with flexibility once grade level requirement is met for full implementation by 2026; allowing county boards to employ an interventionist instead of an early childhood assistant teacher, paraprofessional or aide; removing requirement for survey of districts on class overcrowding and report to the Legislative Oversight Commission on Education Accountability a tailored plan for reducing class overcrowding; phasing in increased ratios of service personnel per 1,000 students for the purpose of determining the basic foundation allowance for service personnel; revising findings pertaining to standards to guide the preparation, certification, and professional development for teachers of reading and related literacy skills and appropriate measures for recognizing characteristics of dyslexia and dyscalculia; replacing responsibilities of the West Virginia Board of Education pertaining to specific learning disabilities, including dyslexia and dyscalculia, with duties of the state board and the local education agencies; requiring state board rule to implement section pertaining to dyslexia and dyscalculia; stating minimum inclusions for rule; requiring report of certain information to the Legislative Oversight Commission on Education Accountability.

Be it enacted by the Legislature of West Virginia:

§18-2E-10. Third Grade Success Act; multi-tiered system of support for early literacy and numeracy in kindergarten through grade three; pre-service and in-service teacher training; notice to parent or guardian; third grade retention policy with exceptions; interventions continuing in fourth grade for students below proficient.

(a) This section shall be known and may be cited as the Third Grade Success Act.

(b) The Legislature finds that:

(1) In the early learning years, ensuring that each student masters the content and skills needed for mastery at the next grade level is critically important for student success;

(2) Students who do not demonstrate grade-level proficiency in reading and mathematics by the end of third grade become increasingly less likely to succeed at each successive grade level and often drop out of school prior to graduation;

(3) State board policy requires every school to establish a process for ensuring the developmental and academic progress of all students. This process is to be coordinated by a school student assistance team that reviews student developmental and academic needs that have persisted despite being addressed through instruction, multi-tiered system of support for intervention, and as applicable, supports for personalized learning. Ensuring the developmental and academic success of all students requires every school to implement, in an equitable manner, programs during and after the instructional day at the appropriate instructional levels that contribute to the success of students; and

(4) To ensure that all students read and perform mathematics proficiently by the end of third grade, a statewide comprehensive approach to early literacy and numeracy is required. This approach shall focus on intensive supports during the early learning years which include schools and engaged communities mobilized to remove barriers, expand opportunities, and assist parents in fulfilling their roles and responsibilities to serve as full partners in the success of their children.

(c) "Science of reading" means evidence-based reading instruction practices that address the acquisition of language, phonological and phonemic awareness, phonics and spelling, fluency, vocabulary, oral language, comprehension, and writing that can be differentiated to meet the needs of individual students.

(d) The state board shall, in accordance with §29A-3B-1 et seq. of this code, promulgate legislative rules as necessary to effectuate the provisions of this section. The rules shall provide for at least the following:

(1) Development of a statewide comprehensive, systemic approach to close the reading and mathematics achievement gaps by third grade, which targets school readiness, the attendance gap, science of reading instruction (phonics, phonemic awareness, vocabulary, fluency, comprehension, and writing), summer learning loss, the use of screeners and/or benchmark assessments in English language arts and mathematics for students in grades kindergarten through three, and a multi-tiered system of support for students exhibiting a substantial reading or mathematics deficiency;

(2) Ensuring all West Virginia children have access to high-quality early learning experiences that focus on healthy learners as part of the school readiness model, resulting in increased populations of children on target for healthy development prior to entering first grade;

(3) Closing the attendance gap to certify West Virginia children attend school regularly and limit chronic absenteeism in the early grades;

(4) Providing assistance to county boards with the training and implementation of the science of reading training for all kindergarten through grade three educators, early childhood classroom assistant teachers, aides, paraprofessionals and any interventionists that a county board may choose to employ instead of an early childhood classroom assistant teacher, aides, or paraprofessionals pursuant to §18-5-18a(b) of this code;

(5) Assisting county boards in establishing and operating targeted, sustained extended day and extended year reading and mathematics programs to ensure grade level proficiency and battle summer learning loss;

(6) Establishing an approved list of screeners and/or benchmark assessments in English language arts and mathematics for students in grades kindergarten through three for the purpose of identifying students with a significant reading and/or mathematics deficiency. The screener and/or benchmark assessments shall be given in the first 30 days of the school year and repeated at mid-year and at the end of the school year to determine student progression in reading and mathematics in kindergarten through third grade;

(7) Establishing an approved list of dyslexia screeners to be administered to students no less than twice per year in kindergarten through third grade and any time students with identified deficiencies are not responding to interventions;

(8) Any student in kindergarten or grades one through three who exhibits a deficiency in reading at any time, based upon the screeners and/or benchmark assessments, and/or the comprehensive statewide student assessment, and any fourth-grade student promoted for

good cause shall receive an individual reading improvement plan no later than 30 days after the identification of the reading deficiency. The reading improvement plan shall be created by the teacher, principal, other pertinent school personnel, and the parent(s) or guardians, and shall describe the research-based reading intervention services the student will receive to remedy the reading deficit. Each student shall receive intensive reading intervention until the student no longer has a deficiency in reading. Reading interventions may include evidence-based strategies frequently used to remediate reading deficiencies and includes, but is not limited to, individual instruction, small-group instruction, tutoring, mentoring, or the use of technology that targets specific reading skills and abilities;

(9) Maximizing family engagement to result in the development of a culture of literacy and numeracy, which shall at least include:

(A) Providing parents or guardians with regular updates to inform them of their child's progress toward proficiency in reading and mathematics;

(B) Ensuring parents or guardians are informed of and have access to resources which they may utilize to improve their child's literacy and numeracy skills;

(C) Ensuring the parent or guardian is informed of the importance of their child being able to demonstrate grade level reading and mathematics skills by the end of the third grade and the measures that will be employed pursuant to this section to improve the reading and mathematics skills of children who are not meeting the standards; and

(D) The parent or guardian of any student in kindergarten through grade three who exhibits a deficiency in reading or mathematics at any time during the school year must be notified in writing no later than 15 days after the identification of the deficiency, and the written notification must include the following:

(i) That the student has been identified as having a deficiency in reading and/or mathematics;

(ii) A description of the proposed research-based reading and/or mathematics interventions and/or supplemental instructional services and supports that will be provided to the child to address the identified area(s) of deficiency;

(iii) Strategies for the parent or guardian to use at home to help their child succeed in reading and/or mathematics; and

(iv) That if the child's reading or mathematics deficiency is not corrected by the end of grade three, the child may not be promoted to grade four unless an exemption is met;

(10) Supporting high-quality schools and a workforce prepared to address early literacy and numeracy by the provision of professional development for administrators, kindergarten, first, second, and third grade teachers including, but not limited to, the following:

(A) The approved benchmark assessment and/or screener tools to ensure teachers have the knowledge and skill to administer the assessment and/or screener, analyze the data to inform instruction, and identify students exhibiting substantial deficiencies in reading or mathematics;

(B) Comprehensive training on the science of reading and numeracy instruction to ensure all kindergarten through grade three teachers, early childhood classroom assistant teachers, aides and paraprofessionals, have the knowledge and skill to teach and/or support all students to read and perform mathematics at grade level. The rules also shall provide that any interventionist a county chooses to employ instead of an early childhood classroom assistant teacher, aides or paraprofessionals pursuant to §18-5-18a(b) receives this comprehensive training;

(C) Training and materials to inform classroom teachers of the characteristics of dyslexia and dyscalculia in students, components of benchmarks and screeners that may indicate dyslexia or dyscalculia, and strategies for instruction; and

(D) Job-embedded, on-site teacher training on evidence-based reading and mathematics instruction and data-driven decision-making that provides kindergarten through grade three teachers with immediate feedback for improving instruction;

(11) Ensuring the employment of qualified teachers and service personnel in accordance with §18-5-39 and §18A-4-7c of this code to provide instruction to students enrolled in early literacy and numeracy support programs including, but not limited to, ensuring that educator preparation programs prepare candidates seeking licensure for elementary education with training and instruction to:

(A) Include instruction in state-adopted grade-level content standards, foundational reading and mathematics skills, and how to implement reading instruction using high-quality instructional materials;

(B) Provide effective instruction and intervention for students with reading and math deficiencies, including students with characteristics of dyslexia or dyscalculia; and

(C) Understand and use student data to make instructional decisions;

(12) Creating a formula or grant-based program for the distribution of funds appropriated specifically for the purposes of this section or otherwise available for the

support of a targeted, multi-tiered system of support intervention for early literacy and numeracy;

(13) Providing support for transportation and healthy foods for students required to attend after-school and extended year early literacy and numeracy instructional support programs and supervision at the school that accommodates the typical work schedules of parents; and

(14) Receiving from county boards any applications and annual reports required by rule of the state board.

(e) A student in grades kindergarten through grade three shall be required to attend an extended year early literacy and numeracy instructional support program as a condition for promotion if:

(1) The student has been provided additional academic assistance through interventions offered during the school day or after-school in early literacy and numeracy and, prior to the end of the school year, the student assistance team or the student's classroom teacher recommends that further additional academic help is needed for the student to be successful at the next grade level; and

(2) The county board has established a literacy and numeracy instructional support program during the extended year for the student's grade level.

(f) County boards shall provide high-quality educational facilities, equipment, and services to support literacy and numeracy instructional support programs established pursuant to this section. Extended year programs may be provided at a central location for kindergarten through third graders who qualify for the program.

(g) Each county board shall adopt high-quality instructional materials grounded in scientifically-based reading research and aligned to state standards to be used as the core curriculum. The instructional materials shall not include practices that are aligned with the Three-Cueing Systems Model of teaching reading.

(h) This section may not be construed to prohibit a classroom teacher from recommending the grade level retention of a student in any of the grades kindergarten through grade three based upon the student's lack of mastery of the subject matter and preparation for the subject matter at the next grade level. Benchmark and/or screener data shall be used to inform the classroom teacher's recommendation.

(i) This section may not be construed to affect the individualized education plans of exceptional students.

(j) This section may not be construed to limit the authority of the county board to establish an extended year program in accordance with §18-5-39 of this code. County boards may not charge tuition for enrollment in early literacy and numeracy instructional support programs established pursuant to this section.

(k) Each county board shall implement the provisions of this section and the provisions of the state board rule required by subsection (b) of this section. The county board shall establish a process for ensuring the developmental and academic progress of all students through the auspices of student assistance teams as currently required by state board policy and perform a needs assessment to determine the potential capacity requirements for the multi-tiered system of support for early learners. Each county board also shall provide in-service training:

(1) For kindergarten through grade three early childhood classroom assistant teachers, aides and paraprofessionals, specifically related to literacy, numeracy, and their responsibilities and appropriate measures for exercising authority and control over students. The county board shall also provide this training to any interventionists it chooses to employ instead of an early childhood classroom assistant teacher, aide or professional pursuant to §18-5-18a(b) of this code; and

(2) For classroom teachers in grades kindergarten through three to help the classroom teachers gain a strong understanding of how to best utilize the early childhood classroom assistant teachers, aides, paraprofessionals or interventionists during classroom instruction and during other periods of the day.

(l) The state board shall provide a report describing the proposed implementation of the multi-tiered system of support for early literacy and numeracy to the Legislative Oversight Commission on Education Accountability on or before July 1, 2023.

(m) The state board shall provide a comprehensive report regarding the status of the multi-tiered system of support for literacy and numeracy to the Legislative Oversight Commission on Education Accountability, the Joint Committee on Government and Finance, and the Governor on or before November 1, 2023, and annually on or before November 1 of each year thereafter. The report shall address, at a minimum, the progress of the program throughout the state, its effect on student achievement, and the sources of the funding both available to and used by the program.

(n) Legislative appropriations to the State Board of Education - State Department of Education Elementary Literacy and Numeracy Program shall be used for the implementation of

the provisions of this section along with other funds available for providing a high-quality education.

(o) Effective for the school year beginning July 1, 2026, and thereafter, a public school student who generally demonstrates a minimal understanding of, and ability to apply, grade level English language arts or mathematics knowledge, skills, and abilities, or both, as indicated on the West Virginia General Summative Assessment relative to the West Virginia College and Career Readiness Standards at the end of third grade, shall upon the recommendation of the teacher and the student assistance team, be retained in the third grade for the ensuing school year subject to the following exceptions:

(1) A student with disabilities whose Individual Education Plan indicates participation in the statewide alternate summative assessment;

(2) A student identified as an English language learner who has had less than three years instruction in English as a second language;

(3) A student with disabilities who participates in the statewide summative assessment, has an Individual Education Plan or Section 504 plan that reflects that the student has received intensive intervention for more than two years and still demonstrates a deficiency or who was previously retained in any of the grades kindergarten through grade three;

(4) A student who is in the process of a special education referral or evaluation for placement in special education, has been diagnosed as having a significant impairment, including dyslexia or dyscalculia, or is a child with a disability if the student's individualized education program team and the student's parent or guardian agree that promotion is appropriate based on the student's Individualized Education Plan;

(5) A student who has received intensive intervention for two or more years, still demonstrates a deficiency, and who was previously retained in any of the grades kindergarten through grade three for a total of two years: Provided, That the student shall continue to receive intensive intervention in grade four;

(6) A student who demonstrates an acceptable level of performance on an alternative standardized assessment approved by the state board;

(7) A student who attends an extended year learning program following the third grade and has attained proficiency; and

(8) A student whose parent or guardian has requested a good cause exemption within the time period established by the county board and the superintendent, or his or her designee, determines that the good cause exemption is in the best interests of the child:

Provided, That a good cause exemption may not prohibit the grade level retention of a student by a classroom teacher based upon the student's lack of mastery of the subject matter and preparation for the subject matter at the next grade level.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18a. Maximum teacher-pupil ratio.

(a) County boards of education shall provide sufficient personnel, equipment, and facilities as will ensure that each classroom, or classrooms having two or more grades that include one or more of the kindergarten through sixth grades shall not have more pupils for each teacher as follows, unless the state superintendent has excepted a specific classroom upon application therefor by a county board as provided in this section:

(1) For kindergarten, not more than 20 pupils for each teacher and one early childhood classroom assistant teacher or aide in classrooms with more than 10 pupils;

(2) For first, second, and third grades, not more than 25 pupils for each teacher and one early childhood classroom assistant teacher, aide or paraprofessional in classrooms with more than 12 pupils: Provided, That the early childhood classroom assistant teacher/aide/paraprofessional requirement for classrooms with more than 12 pupils shall be effective beginning the 2023-2024 school year, for first grade classrooms; shall be effective beginning the 2024-2025 school year, for second grade classrooms; and shall be effective beginning the 2025-2026 school year, for third grade classrooms: Provided however, That if all grade level classrooms are already being served by an early childhood classroom assistant teacher/aide/paraprofessional by the school year required, the county board has the discretion to add the assistant teachers/ aides/paraprofessionals in first, second and third grade classrooms of the greatest need beginning July 1, 2023 and completing full implementation by July 1, 2026; and

(3) For grades four, five, and six, not more than 25 pupils for each teacher.

(b) County boards may satisfy the requirements of subsection (a) of this section by employing a full-time interventionist instead of an early childhood assistant teacher, aide or paraprofessional, subject to the following:

(1) If no full-time interventionist is available, a county board may satisfy the requirements of subsection (a) of this section by employing a part-time interventionist; and

(2) County boards are not required to employ an interventionist even if there are an insufficient number of early childhood assistant teachers, aides and paraprofessionals available to fill all the positions required by subsection (a) of this section.

(c) County school boards may not maintain a greater number of classrooms having two or more grades that include one or more of the grade levels referred to in this section than were in existence in said county as of January 1, 1983.

(d) The state superintendent is authorized, consistent with sound educational policy, to:

(1) Permit on a statewide basis, in grades four through six, more than 25 pupils per teacher in a classroom for the purposes of instruction in physical education; and

(2) Permit more than 20 pupils per teacher in a specific kindergarten classroom and 25 pupils per teacher in a specific classroom in grades four through six during a school year in the event of extraordinary circumstances as determined by the state superintendent after application by a county board of education.

(e) The state board shall establish guidelines for the exceptions authorized in this section, but in no event shall the superintendent except classrooms having more than three pupils above the pupil-teacher ratio as set forth in this section.

(f) The requirement for approval of an exception to exceed the 20 pupils per kindergarten teacher per session limit or the 25 pupils per teacher limit in grades four through six is waived in schools where the schoolwide pupil-teacher ratio is 25 or less in grades four through six: Provided, That a teacher shall not have more than three pupils above the teacher/pupil ratio as set forth in this section. Any kindergarten teacher who has more than 20 pupils per session and any classroom teacher of grades four through six who has more than 25 pupils, shall be paid additional compensation based on the affected classroom teacher's average daily salary divided by 20 for kindergarten teachers, or 25 for teachers of grades four through six, for every day times the number of additional pupils enrolled up to the maximum pupils permitted in the teacher's classroom. All such additional compensation shall be paid from county funds exclusively.

Notwithstanding any other provision of this section to the contrary, commencing with the school year beginning on July 1, 1996, a teacher in grades one, two, or three, or classrooms having two or more such grade levels, shall not have any pupils above the teacher/pupil ratio as set forth in this section.

(g) No provision of this section is intended to limit the number of pupils per teacher in a classroom for the purpose of instruction in choral, band, or orchestra music.

(h) Each school principal shall assign students equitably among the classroom teachers, taking into consideration reasonable differences due to subject areas and/or grade levels.

(i) The state board shall collect from each county board of education information on class size and the number of pupils per teacher for all classes in grades seven through 12. The state board shall report such information to the Legislative Oversight Commission on Education Accountability before January 1, of each year.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-5. Foundation allowance for service personnel.

(a) The basic foundation allowance to the county for service personnel shall be the amount of money required to pay the annual state minimum salaries in accordance with the provisions of §18A-4-1 et seq. of this code to such service personnel employed, subject to the following:

(1) A county shall receive an allowance for state aid eligible service personnel positions per 1,000 students in net enrollment, as follows:

(A) For each high-density county, 43.97 service personnel per 1,000 students in net enrollment: Provided, That this ratio of service personnel per 1,000 students in net enrollment shall increase to 47.39 beginning July 1, 2023; 50.65 beginning July 1, 2024; and 53.79 beginning July 1, 2025;

(B) For each medium-density county, 44.53 service personnel per 1,000 students in net enrollment: Provided, That this ratio of service personnel per 1,000 students in net enrollment shall increase to 47.95 beginning July 1, 2023; 51.21 beginning July 1, 2024; and 54.35 beginning July 1, 2025;

(C) For each low-density county, 45.10 service personnel per 1,000 students in net enrollment: Provided, That this ratio of service personnel per 1,000 students in net enrollment shall increase to 48.52 beginning July 1, 2023; 51.78 beginning July 1, 2024; and 54.92 beginning July 1, 2025;

(D) For each sparse-density county, 45.68 service personnel per 1,000 students in net enrollment: Provided, That this ratio of service personnel per 1,000 students in net enrollment shall increase to 49.10 beginning July 1, 2023; 52.36 beginning July 1, 2024; and 55.50 beginning July 1, 2025; and

(E) For any service personnel positions, or fraction thereof, determined for a county pursuant to subdivision (1) of this subsection that exceed the number employed, the county's

allowance for these positions shall be determined using the average state funded minimum salary of service personnel for the county;

(2) The number of and the allowance for personnel paid in part by state and county funds shall be prorated; and

(3) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the service personnel for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and that the personnel shall be considered within the above-stated limit.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-10. Dyslexia and dyscalculia defined.

(a) The Legislature finds as follows:

(1) Reading difficulties are the most common cause of academic failure and underachievement;

(2) There are many students who demonstrate significant weaknesses with reading, writing and mathematics that are influenced by specific learning disabilities, including dyslexia, dyscalculia, and related learning difficulties. Of those who are referred to special education services in public schools, the majority are referred because of problems with language, reading, writing, or a combination of each;

(3) Teaching reading effectively, especially to students experiencing difficulty, requires considerable knowledge and skill. Informed and effective classroom instruction, especially in the early grades, can prevent and relieve the severity of language difficulties, and significantly improve literacy development;

(4) For those students with specific learning disabilities, including dyslexia and dyscalculia, who need specialized instruction, competent intervention can lessen the impact of the disorder and help the student overcome the most debilitating symptoms;

(5) While programs for specific learning disabilities, including dyslexia and dyscalculia, that certify or support teachers, clinicians or specialists differ in their preparation methodologies, teaching approaches and organizational purposes, they should ascribe to a common set of professional standards for the benefit of the students they serve. Compliance with such standards can assure the public that individuals who serve students with specific learning disabilities in public schools are prepared to implement scientifically based and clinically proven practices;

(6) The International Dyslexia Association (IDA) offers widely-adopted and consistent standards to guide the preparation, certification, and professional development for teachers of reading and related literacy skills in classroom, remedial and clinical settings; and

(7) The basis of ascribing to common standards to benefit students with specific learning disabilities, including dyslexia and dyscalculia, requires recognizing common characteristics of the disabilities. The Legislature finds that the definitions of dyslexia and dyscalculia prescribed by the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR) are the appropriate measures for recognizing characteristics of dyslexia and dyscalculia in students.

(b) The Legislature recognizes the following regarding dyslexia and dyscalculia:

(1) Dyslexia and dyscalculia are conditions that may be considered under the specific learning disability category, and their definitions are consistent with IDEA and state board policy. State board policy provides that "specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia;

(2) Dyslexia is an alternative term used to refer to a pattern of learning difficulties characterized by problems with accurate or fluent word recognition, poor decoding, and poor spelling abilities. If dyslexia is used to specify this particular pattern of difficulties, it is important also to specify any additional difficulties that are present, such as difficulties with reading comprehension or math reasoning; and

(3) Dyscalculia is an alternative term used to refer to a pattern of learning difficulties characterized by problems processing numerical information, learning arithmetic facts, and performing accurate or fluent calculations. If dyscalculia is used to specify this particular pattern of mathematic difficulties, it is important also to specify any additional difficulties that are present, such as difficulties with math reasoning or word reasoning accuracy.

(c) The state board shall:

(1) Develop a list of appropriate screeners, early assessments, and professional development that address and ensure that all students receive the necessary and appropriate screenings, evaluations, and early assessments for specific learning disabilities, including dyslexia and dyscalculia which contain information related to the following:

(A) Appropriate literacy and numeracy screening tools for identifying students who are at risk for academic difficulty in reading and/or math, including dyslexia and dyscalculia, and who require tiered intervention;

(B) Appropriate diagnostic assessment components that can be used to help identify and diagnose;

(C) Appropriate evidence-based instruction and intervention strategies for students who are at risk for academic difficulty in reading and/or mathematics, including students who exhibit possible indicators of risk for dyslexia and/or dyscalculia;

(D) Appropriate accommodations for students who exhibit possible indicators of risk for, or who have been diagnosed with, dyslexia, dyscalculia, and/or other specific learning disabilities;

(E) Connecting a multi-tiered system of support framework to specific learning disability identification; and

(F) The use of the terms “dyslexia” and “dyscalculia” in Individualized Education Programs, and in evaluation reports by professionals qualified to render these diagnoses; and

(2) Explore options to assist any LEA with acquiring approved literacy and/or numeracy screening tools: Provided, That the local educational agency is unable to acquire its own literacy and/or numeracy screening tools that are consistent with state educational agency recommendations;

(3) Adopt and make publicly available guidelines for including dyslexia diagnostic evaluation components in comprehensive assessments for special education and related services. These guidelines shall:

(A) Recommend at least one person on each multidisciplinary evaluation team be knowledgeable about dyslexia and be able to recognize when a dyslexia diagnostic component should be requested in the evaluation process;

(B) Recommend that a diagnosis of dyslexia be given when the data from the comprehensive evaluation components indicate such a diagnosis is appropriate;

(C) Include recommendations for how to document a dyslexia diagnosis in an IEP; and

(D) Include that a Section 504 Plan be considered if a student has a dyslexia diagnosis but does not qualify for special education services;

(4) Adopt and make publicly available a list of approved diagnostic assessment components that can be used to help identify and diagnose dyslexia during comprehensive multidisciplinary evaluations;

(5) Adopt and make publicly available guidelines and a list of resources for dyslexia intervention practices that are evidence-based, including practices consistent with the Science of Reading and Structured Literacy, that are explicit, direct, sequential, systematic, and multisensory;

(6) Adopt and make publicly available a list of recommended accommodations and instructional practices to be used with students who exhibit signs of dyslexia or have been diagnosed with dyslexia. These shall reflect contemporary research and guidelines of the Science of Reading related to dyslexia. These recommendations shall include, but are not limited to, structured literacy approaches that are explicit, direct, sequential, systematic, and multisensory;

(7) Adopt and make publicly available a list of available professional development resources that support evidence-based intervention for struggling readers, including the Science of Reading and Structured Literacy. This list shall be made publicly available and include resources endorsed or espoused by technical assistance centers, research organizations, and professional associations that support the Science of Reading and Structured Literacy regarding dyslexia, including the International Dyslexia Association; and

(8) Develop and make publicly available informational materials related to dyslexia for parents and guardians that include information about the multidisciplinary evaluation process, updated regularly.

(d) The local education agency shall:

(1) Develop a system for parents and guardians to annually receive digital and print informational materials related to dyslexia;

(2) Ensure at least one educator at each school is trained to administer, score, and interpret the data from the literacy screening instrument or instruments, and to recognize signs of dyslexia;

(3) Notify parents of the results of these literacy screeners while emphasizing that not all students who perform poorly on these screening instruments have dyslexia. Also, not all students with dyslexia will perform poorly on the screeners;

(4) Provide evidence-based reading intervention to students who exhibit academic risk in future reading performance, including indicators of dyslexia;

(5) Conduct comprehensive assessments to determine eligibility for special education services when a child does not respond or only minimally responds to intervention strategies and/or when there is a suspected disability of dyslexia. If a determination is made through the

evaluation process that a student needs assessed for dyslexia, provide assessment and diagnosis as necessary per West Virginia Department of Education guidelines;

(6) Employ appropriate accommodations and instructional practices recommended by the West Virginia Department of Education based upon the students' needs. When those needs are related to dyslexia, these accommodations and instructional techniques or strategies shall also meet the West Virginia Department of Education-approved guidelines for dyslexia accommodations and instructional practices;

(7) Require all elementary educators, special educators, reading interventionists or specialists, and other personnel determined appropriate by the local education agency to receive professional development on the possible signs of dyslexia and the related classroom accommodations and instructional practices approved by the West Virginia Department of Education;

(8) Administer a literacy screening instrument or instruments to students in grades 3-5 who transfer from a local education agency where literacy screening instruments were not administered. If the literacy screening instrument indicates a deficit in reading, the school will provide intervention according to current policy. If a student does not respond or only minimally responds to intervention, a referral for multidisciplinary evaluation shall be made; and

(9) Require all appropriate personnel, as determined by the local education agency, to annually receive professional development relating to the possible indicators for dyslexia and dyscalculia, accommodations and modifications in the classroom environment, proper instructional practices for educating students who exhibit possible indicators of risk for, or who have been, diagnosed with dyslexia, dyscalculia, and/or other specific learning disabilities. Local education agencies may create more than one module to satisfy the requirements of this subdivision.

(e) The state board shall promulgate a rule pursuant to §29A-3B-1 et seq. of this code to implement this section. In addition to other provisions to implement this section, the rule shall at least include the following:

(1) If a student is reading substantially below grade level according to formal and/or informal assessments, including benchmark assessments, and has never been evaluated for special education, a request may be made by a school, parent, or teacher for the administration of an age- or grade-appropriate West Virginia Department of Education-approved literacy screening instrument or instruments. These points of data may be used to

either start intervention and progress monitoring per West Virginia Department of Education guidance, or make a referral for a special education evaluation;

(2) Acknowledgement that each local education agency may have one certified Literacy and Numeracy Specialist in each local education agency, or another appropriate professional designated by relevant local education agency leadership, to be appropriately trained, or be seeking appropriate training, in intervention, accommodations, and instructional strategies for students with dyslexia or a related disorder. The trained individual(s) shall serve as an advisor and trainer for dyslexia and related disorders for the local education agency. The reading specialist(s) or other designated professional(s) shall have an understanding of the definition of dyslexia and a working knowledge of:

(A) Techniques to help a student on the continuum of skills with dyslexia;

(B) Dyslexia characteristics that may manifest at different ages and levels;

(C) The basic foundation of the keys to reading, including multisensory, explicit, systematic, and structured literacy instruction; and

(D) Appropriate interventions, accommodations, and assistive technology supports for students with dyslexia.

(f) Legislative Oversight Commission on Education Accountability (LOCEA):

(1) The final draft of the state board's literacy and numeracy rule shall be submitted to the Legislative Oversight Commission on Education Accountability (LOCEA) by August 1, 2023.

(2) The following shall be submitted to the Legislative Oversight Commission on Education Accountability (LOCEA) annually:

(A) Disaggregated data concerning literacy and numeracy patterns statewide;

(B) Statewide interventions implemented; and

(C) The statewide professional development plan.

(3) Progress monitoring regarding K-2 screening and 3-8 formative assessments shall be presented to the Legislative Oversight Commission on Education Accountability (LOCEA) after data is collected for the beginning, middle, and end of the school year.

House Bill 3055: To create a vocational math class for students interested in careers in the trades.

Effective: Passed March 22, 2023; Effective May 23, 2023

Code Reference: **W. Va. Code §18-2E-13 (New)**

WVDE Contact: Technical and Adult Innovation

Summary: This Act restructures vocational math programming to assist with preparing students for a career in the trades. The program is required to include math curriculum in the fields of fractions, conversion from fractions to decimals, application of measurement, reading blueprints, geometry pertaining to workforce math and other math skills necessary to succeed in the trades. Students are eligible to participate in this math program upon entering high school. This class can be taken as a personalized math credit to meet graduation requirements.

Additionally, instructors assigned to this math program are required to meet the same qualifications necessary to teach current trade classes and specific content in public schools.

Enrolled Bill: ENROLLED Committee Substitute for House Bill 3055
BY DELEGATES WILLIS, FOSTER, FOGGIN, CHIARELLI, HECKERT, STORCH, YOUNG, SHEEDY, HORNBUCKLE, REYNOLDS AND ELLINGTON

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-13, relating to restructuring technical transition math for students interested in careers in the trades; making findings; describing class; qualifications of instructors; use to meet graduation requirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-13. Establishment of vocational math class.

(a) Legislative findings and purpose. - The Legislature find that empowering students to enter the trades is of paramount importance. Restructuring current math programming to assist students for a career in the trades is the best way to achieve this goal. The restructuring of the technical transition math class to help students with workforce math will provide students with the opportunity to prepare themselves for a career in the trades.

(b) Enactment. - There is hereby established for all public-school curriculum in West Virginia a technical transition math class geared towards students interested in careers in the

trades. This class will pertain to math curriculum in the fields of fractions, conversion from fractions to decimals, application of measurement, reading blueprints, geometry pertaining to workforce math and other math skills needed to succeed in the trades.

(c) Qualifications. - In order to be able to teach this class, an instructor must meet the same qualifications as needed to teach current trade classes and specific content in the public schools. Students shall be eligible for this class once entering high school. This class can be taken as a personalized math credit to meet graduation requirements.

House Bill 3084: Relating to revising provisions related to public charter schools.

Effective: Passed March 11, 2023; Effective July 1, 2023

Code Reference: W. Va. Code §18-5-48 (Amended)
W. Va. Code §18-5G-1 (Amended)
W. Va. Code §18-5G-2 (Amended)
W. Va. Code §18-5G-3 (Amended)
W. Va. Code §18-5G-4 (Amended)
W. Va. Code §18-5G-5 (Amended)
W. Va. Code §18-5G-7 (Amended)
W. Va. Code §18-5G-12 (Amended)
W. Va. Code §18-5G-15 (Amended)
W. Va. Code §18-9A-15 (Amended)

WVDE Contact: Legal Services

Summary: This Act includes multiple changes to West Virginia law regarding public charter schools as follows:

- 1) Incorporates provisions of House Bill No. 2827—Making public charter schools eligible for Safe School Fund, a summary of which is included in this publication.
- 2) Incorporates provisions of House Bill No. 3271—Relating to increased monitoring in special education classrooms, a summary of which is included in this publication.
- 3) Includes a legislative intent statement that public charter school students be considered as important as all other school students in the state; therefore, comparable funding levels from existing and future sources should be maintained for public charter school students.
- 4) Permits state higher education institutions to apply to operate a public charter school and exempts employees of state higher education institutions from the requirement that prohibits public charter school governing board members from being employed by an education service provider providing services to the public charter school. Additionally, if a state higher education institution applies, and is approved by an authorizer, the public charter school governing board may be an administrative unit of the state institution of higher education and has the authority to enter into the charter contract on behalf of the state institution of higher education.

- 5) Prohibits higher education institutions from imposing any requirements on public charter schools that are not required of noncharter public schools regarding post-secondary embedded credit, dual credit, and industry and workforce credential programs a charter school may incorporate into its educational program.
- 6) Permits public charter schools to include before school and after school programs which are not subject to childcare facility regulations.
- 7) Provides that students enrolled in public charter schools are eligible to participate in extracurricular athletic and/or academic interscholastic activities at a noncharter public school serving the attendance area where the student lives if the public charter school in which the student is enrolled does not offer the activity.
- 8) Stipulates that the public charter school governing board is responsible for establishing a staffing plan that includes requisite qualifications, certifications and/or licensures that it determines necessary for teachers and instructional staff.
- 9) Clarifies that public charter schools are exempt from West Virginia Board of Education (WVBOE) policies and rules unless otherwise provided by law.
- 10) Authorizes virtual public charter schools to administer any required state assessment, if available, in a virtual setting utilizing remote proctoring that best meets the educational needs of the students.
- 11) Empowers both the WVBOE and the West Virginia Public Charter School Board (WVPCSB) to consult with nationally recognized charter school organizations to establish and maintain a catalogue of best practices for public charter schools. Additionally, both Boards are authorized to work with national organizations to establish a framework and procedures for interactions between public charter schools, noncharter public schools and county boards of education to facilitate cooperation for shared services, training and information to ensure the prompt transfer of student records.
- 12) Requires the WVBOE rule be revised to reflect the per pupil enrollment for basic state aid funding increase from 90% to 99% for public charter school students. Additionally, the rule is required to reflect the process established in W. Va. Code §18-5G-5 (a)(3) of this Act that permits one school to invoice, on a pro rata basis, another school for students included in the second

month of net enrollment and requiring invoices be paid within 30 days of receipt.

13) Authorizes the WVPCSB to receive and expend appropriate gifts, grants and donations of any kind from any public or private entity, subject to all lawful terms and conditions under which they were given, to apply for federal funds available for public school programs, and award start-up grants to public charter schools.

14) Requires the WVBOE to establish an objective method for projecting the increase in net enrollment for each school district that does not include the net enrollment of public charter schools physically located in the school district.

Enrolled Bill:

ENROLLED Committee Substitute for House Bill 3084
BY DELEGATES ELLINGTON, STATLER, TONEY, CLARK, MAZZOCCHI, LONGANACRE
AND FOGGIN

AN ACT to amend and reenact §18-5-48 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-5G-1, §18-5G-2, §18-5G-3, §18-5G-4, §18-5G-5, §18-5G-7, §18-5G-12 and §18-5G-15 of said code; and to amend and reenact §18-9A-15 of said code; all relating to revising provisions related to public charter schools; providing public charter school access to funding from School Safety Fund; modifying priorities for funds use; requiring rule on process for needs-based funding requests and requiring rules; removing prohibition on elected public official profiting from or receiving monetary consideration from public charter school; expressing legislative intent on comparable levels of funding for public charter school students; authorizing state institution of higher education as applicant; prohibiting imposition of requirements on public charter schools choosing to incorporate post-secondary, industry and workforce program that are not required of noncharter public schools; authorizing public charter schools to include before and after school programs in their education program; excluding public charter school programs from regulation as child care facility; authorizing public charter school students to participate on the same basis as other public school students in extracurricular athletic and academic interscholastic activities sponsored by noncharter public school serving attendance area if not sponsored by charter school; emphasizing that charter school determines certification and licensure for teachers and instructional staff employed by it; clarifying public

charter schools are exempt from state board policies unless otherwise specifically provided; excluding requirement that charter school employees be certified or licensed as condition of employment and providing that charter school may require employees be certified or licensed as condition of employment but is not required to; requiring professional charter school board to consult with nationally recognized organizations along with the state board; providing for administering required state assessments in virtual setting; requiring state board to establish framework and procedures for interaction between public charter schools, public noncharter schools and county boards to facilitate cooperation and ensure prompt transfer of records; providing for invoicing of certain funding when student transfers from and to certain entities after the beginning of the school year; allowing member of charter school governing board to be employee of education service provider if services are provided by state institution of higher education; providing conditions for charter school governing board to be administrative unit of state institution of higher education and authorizing contract; authorizing professional charter school board to receive and expend gifts, grants and donations to carry out purposes of act, to apply for federal funds to implement programs, and to make start-up grants to public charter schools; and requiring for state board rule on method for providing increased enrollment funding for public charter schools.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-48. Safety and security measures for school facilities; Safe Schools Fund created.

(a) Each county board of education, public charter school, and multicounty vocational center shall annually assess the safety and security of each of the school facilities for which they are responsible. Safety and security measures of each facility shall be upgraded when necessary to ensure, to the best of the county board's, public charter school governing board's or multicounty vocational center administrative council's ability, the safety of the students within each facility. Each county board of education, public charter school governing board, and multicounty vocational center administrative council shall report annually the safety and security measures it has put in place, including upgrades thereto, to the State Department of Education. Annually, the State Department of Education shall compile the information received and report it to the Legislative Oversight Commission on Education Accountability.

(b) As used in this section, "safety and security measures" means action taken by a county board of education, a public charter school, or multicounty vocational center that improves the security of a school facility and the safety of the students within such facility, including, but not limited to, hiring a school resource officer, installing weapon detection systems, upgrading facility doors or windows.

(c) There is hereby created in the State Treasury a special revenue fund to be known as the Safe Schools Fund. The fund shall consist of all moneys received from legislative appropriations and other sources to further the purpose of this section: Provided, That annually, the West Virginia Department of Education shall request an appropriation based on the requests of the county boards of education, public charter school governing boards and multicounty vocational center administrative councils. Subject to legislative appropriation, the funds appropriated annually to the School Safety Fund shall be distributed to the county boards of education, public charter schools, and multicounty vocational centers, on the basis of need. Moneys distributed from this fund shall not be used to make permanently affixed improvements, alterations or additions to a physical facility that a county board of education, public charter school or multicounty vocational center does not own. If the West Virginia Department of Education distributes any moneys from this fund for the purpose of making safety improvements on or in a facility that is not owned, it shall require that the improvements be accomplished in such a manner that they may be removed with minimal effort. All moneys distributed from this fund shall be used to support the purpose and intent of this section and all moneys must be spent to support the school for which the funding was derived: Provided, however, That moneys distributed from this fund also may be used for the purposes of § 18-20-11 of this code, relating to video cameras in certain special education classrooms. Until such time as all school facilities are in full compliance with the special education video requirements, the West Virginia Department of Education shall first allocate the funding appropriated for the Safe Schools Fund based on the remaining need for video cameras in public school facilities. After all public school facilities have been provided sufficient funds to meet the special education video camera requirements, the funds shall be distributed by the West Virginia Department of Education to meet the needs of school facilities to have safe school entry ways. After safe school entry way needs have been met, the West Virginia Department of Education shall distribute funds based upon a determination of need. Any moneys remaining in the fund at the close of the fiscal year shall be carried forward for use in the next fiscal year. Fund balances shall be invested with the state's Consolidated

Investment Fund and any and all interest shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to this article.

(d) The West Virginia Board of Education shall promulgate rules pursuant to § 29A-3B-1 et seq. of this code to establish a process by which county boards of education, public charter school governing boards and multicounty vocational center administrative councils may submit requests to obtain needs-based funding from the Safe Schools Fund. Such rules shall address:

- (1) The manner, timeline and process for the submission of a request;
- (2) The criteria by which requests shall be evaluated and prioritized; and
- (3) Any other matters deemed necessary to further the goals of this article.

ARTICLE 5G. PUBLIC CHARTER SCHOOLS.

§18-5G-1. Legislative purpose and intent; liberal interpretation; prohibiting conversion of private schools; prohibiting profit or monetary consideration by elected officials; limiting authorization of public charter schools; legislative auditor report.

(a) The purpose of this article is to establish a process for the creation, governance and oversight accountability of public charter schools with a renewed commitment to the mission, goals, and diversity of public education that benefits students, parents, teachers, and community members.

(b) Public charter schools are intended to empower new, innovative, and more flexible ways of educating all children within the public school system to:

- (1) Improve student learning by creating more diverse public schools with high standards for student performance;
- (2) Allow innovative educational methods, practices and programs that engage students in the learning process, thus resulting in higher student achievement;
- (3) Enable schools to establish a distinctive school curriculum, a specialized academic or technical theme, or method of instruction;
- (4) Provide expanded opportunities within the public schools for parents to choose among the school curricula, specialized academic or technical themes, and methods of instruction that best serve the interests or needs of their child;
- (5) Provide students, parents, community members, and local entities with expanded opportunities for involvement in the public school system;

(6) Allow authorized public schools and programs within public schools exceptional levels of self-direction and flexibility in exchange for exceptional levels of results-driven accountability for student learning; and

(7) Encourage the replication of successful strategies for improving student learning.

(c) All public charter schools established under this article are public schools and are part of the state's public education system.

(d) The provisions of this article shall be interpreted liberally to support the purpose and intent of this section and to advance a renewed commitment by the state to the mission, goals and diversity of public education.

(e) No provision of this article may be interpreted to allow the conversion of private schools into public charter schools.

(f) The total number of public charter schools authorized and in operation under an approved contract in this state shall be limited to 10 pilot public charter schools until July 1, 2023. The State Board shall report to the Legislative Oversight Commission on Education Accountability by November 1, 2022, and every 3 years thereafter, on the status of the state's public charter schools. LOCEA shall report its findings and recommendations, if any, to the Legislature during its next Regular Session. Beginning July 1, 2023, and every 3 years thereafter, an additional 10 public charter schools may be authorized and in operation under an approved contract in this state. The Mountaineer Challenge Academy, if converted to a public charter school, shall not count towards the limitation established by this subsection.

(g) Two years after the first public charter school commences operations under the provisions of this article, the Legislative Auditor shall conduct an audit of the public charter school program and report the findings to the Legislative Oversight Commission on Education Accountability.

(h) It is the intent of the Legislature that public charter school students be considered as important as all other school students in the state and, to that end, comparable funding levels from existing and future sources should be maintained for public charter school students.

§18-5G-2. Definitions.

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) "Applicant" means 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:

(A) Have obtained 501(c)(3) tax-exempt status or have submitted an application for 501(c)(3) tax-exempt status, or be a state institution of higher education as defined in §18B-1-2 of this code; and

(B) Have developed and submitted an application to an authorizer to establish a public charter school;

(2) "Authorizer" means the entity empowered under this article to review applications, decide whether to approve or reject applications, enter into charter contracts with applicants, oversee public charter schools, and decide whether to renew or not renew charter contracts. Authorizers include:

(A) A county school 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;

(B) Two or more county school boards who must act together and function as a single authorizer in all respects under the law when the public charter school or application to form a public charter school includes a primary recruitment area that encompasses territory in the two or more counties over which the respective boards have jurisdiction: Provided, That if such two or more school boards functioning together as authorizer reject the application, then one or more of the individual county boards may approve the application, but in such instance the charter school site must be located in one of the counties where the application was approved.

(C) The West Virginia Professional Charter School Board created pursuant to §18-5G-15 of this code; or

(D) The West Virginia Board of Education in the following instances:

(i) 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 pursuant to §18-2E-5 of this code; and

(ii) The application to form a public charter school or to renew a charter contract is approved by the affected county board or boards and is forwarded it to the West Virginia Board of Education with a request that it perform to the authorizer function.

(3) "Charter application" means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) "Charter contract" or "contract" means 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, consistent with the requirements of this article;

(5) "Conversion public charter school" means a public charter school that existed as a noncharter public school before becoming a public charter school;

(6) "County board" means a board exercising management and control of a school district. A county board's management and control of a public charter school is limited to only that granted under this article. In the case of a school district in which the state board has intervened and limited the authority of the county board to act pursuant to §18-2E-5 of this code, "county board" means the state board. In the case of a multicounty vocational or technical center, "county board" means the administrative council of the multicounty center;

(7) "Education service provider" means a public or private nonprofit or for-profit education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(8) A "full-time virtual public charter school" means a public charter school that offers educational services predominantly through an online program.

(9) "Governing board" means a public charter school governing board that meets the requirements §18-5G-3 and §18-5G-7 of this code and is party to the charter contract with the authorizer;

(10) "Noncharter public school" means a public school or multicounty vocational center other than a public charter school established pursuant to this article;

(11) "Parent" means a parent, guardian, or other person or entity having legal custody over a child;

(12) "Public charter school" means a public school or program within a public school that is authorized in accordance with the provisions of this article and meets the general criteria, governance structure and statutory compliance requirements described in §18-5G-3 of this code, and other provisions of this article;

(13) "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 in accordance with this article within the noncharter public school;

(14) "Start-up public charter school" means a public charter school that did not exist as a noncharter public school prior to becoming a public charter school.

(15) "State board" means the West Virginia Board of Education;

(16) "Student" means any person that is eligible for attendance in a public school in West Virginia; and

(17) "West Virginia Professional Charter School Board" means the board created pursuant to §18-5G-15 of this code.

§18-5G-3. Public charter school criteria, governance structure and statutory compliance requirements; applicable federal and state laws.

(a) Public charter schools authorized pursuant to this article shall meet the following general criteria:

(1) Are part of the state's system of public schools and are subject to general supervision by the West Virginia Board of Education for meeting the student performance standards required of other public school students under §18-2E-5(d) and (e) of this code;

(2) Are subject to the oversight of the school's authorizer for operating in accordance with its approved charter contract and for meeting the terms and performance standards established in the charter contract;

(3) Are not home school-based;

(4) Are not affiliated with or espouse any specific religious denomination, organization, sect, or belief and do not promote or engage in any religious practices in their educational program, admissions, employment policies, or operations;

(5) Are not affiliated with any organized group whose espoused beliefs attack or malign an entire class of people, typically for immutable characteristics, as identified through listings of such groups as may be made by the U. S. Department of Justice, the Federal Bureau of Investigation, or officials having similar jurisdiction in this state;

(6) Are public schools to which parents or legal guardians choose to send their child or children;

(7) Do not charge tuition and may only charge such fees as may be imposed by noncharter public schools in this state; and

(8) Have no requirements that would exclude any child from enrollment who would not be excluded at a noncharter public school.

(b) A public charter school authorized pursuant to this article shall be governed by a board that meets the requirements established in §18-5G-7 of this code and:

(1) Has autonomy over key decisions, including, but not limited to, decisions concerning finance, personnel, scheduling, curriculum, and instruction except as provided in this article;

(2) Has no power to levy taxes;

(3) Operates in pursuit of a specific set of educational objectives as defined in its charter contract;

(4) Provides a program of public education that:

(A) Includes one or more of the following: Prekindergarten and any grade or grades from kindergarten to grade 12 including any associated post-secondary embedded credit, dual credit, advanced placement, internship, and industry or workforce credential programs that the public charter school chooses to incorporate into its programs. If a public charter school chooses to incorporate post-secondary embedded credit, dual credit, and industry and workforce credential programs into its educational program, institutions of higher education may not impose any requirements on the public charter school that are not required of noncharter public schools;

(B) May include in its mission a specific focus on students 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;

(C) May include a specific academic approach or theme including, but not limited to, approaches or themes such as STEM education, mastery-based education, early college, or fine and performing arts; and

(D) May include before school and/or after school programs as a part of the public charter school's education program. No part of the education program of a public charter school is subject to regulation as a childcare facility;

(5) Provides programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, regulations, rules and policies. A charter school shall deliver the services directly or contract with a county board or another provider to deliver the services as set forth in its charter contract;

(6) Is eligible to participate in state-sponsored or district-sponsored athletic and academic interscholastic leagues, competitions, awards, scholarships, and recognition programs for students, educators, administrators, and schools to the same extent as

noncharter public schools. If a public charter school does not sponsor an extracurricular athletic and/or academic interscholastic activity for the students enrolled in the public charter school, the public charter school students may participate on the same basis as other public school students in those activities that are sponsored by the noncharter public school serving the attendance area in which the student resides;

(7) Employs its own personnel as employees of the public charter school and is ultimately responsible for processing employee paychecks, managing its employees' participation in the applicable retirement system, and managing its employees' participation in insurance plans: Provided, That nothing in this subdivision prohibits the public charter school from contracting with another person or entity to perform services relating to managing its employees' participation in the retirement system or insurance plan. A county board may not require any employee of its school system to be employed in a public charter school. A county board 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 as authorized under this section. 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 for purposes of employment in noncharter public schools; and

(8) Is responsible for establishing a staffing plan that includes the requisite qualifications and any associated certification and/or licensure that it determines necessary for teachers and other instructional staff to be employed at the public charter school and for verifying that these requirements are met.

(c) A public charter school authorized pursuant to this article is exempt from all statutes, state board policies and rules applicable to a noncharter public school or board of education except the following unless otherwise specifically provided in this article:

(1) All federal laws and authorities applicable to noncharter public schools in this state including, but not limited to, the same federal nutrition standards, the same civil rights, disability rights and health, life and safety requirements applicable to noncharter public schools in this state;

(2) The provisions of §29B-1-1 et seq. of this code relating to freedom of information and the provisions of §6-9A-1 et seq. of this code relating to open governmental proceedings;

(3) The same immunization requirements applicable to noncharter public schools;

(4) The same compulsory school attendance requirements applicable to noncharter public schools;

(5) The same minimum number of days or an equivalent amount of instructional time per year as required of noncharter public school students under §18-5-45 of this code;

(6) The same student assessment requirements applicable to noncharter public schools in this state, but only to the extent that will allow the state board to measure the performance of public charter school students pursuant to §18-2E-5(d) and (e) of this code. Any virtual public charter school may administer any required state assessment, if available, in a virtual setting utilizing remote proctoring that best meets the educational needs of the student. Nothing precludes a public charter school from establishing additional student assessment measures that go beyond state requirements;

(7) The Student Data Accessibility, Transparency and Accountability Act pursuant to §18-2-5h of this code;

(8) Use of the electronic education information system established by the West Virginia Department of Education for the purpose of reporting required information;

(9) 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 West Virginia Department of Education. Nothing precludes a public charter school from utilizing additional measures for reporting information on student and school performance that go beyond state requirements;

(10) All applicable accounting and financial reporting requirements as prescribed for public schools, including adherence to generally accepted accounting principles. A public charter school shall annually engage an external auditor to perform an independent audit of the school's finances. The public charter school shall submit the audit to its authorizer and to the state superintendent of schools within nine months of the end of the fiscal year for which the audit is performed;

(11) A criminal history check pursuant to §18A-3-10 of this 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 that section. Governing board members and other public charter school personnel are subject to criminal history record checks and fingerprinting requirements applicable to noncharter public schools in this state. Contractors and service providers or their employees are prohibited from making direct, unaccompanied contact with students and 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 §18-5-15c of this code: Provided, That nothing in this subdivision, including the reference to §18A-3-10 of this code, requires public charter school employees to be certified or licensed as a condition of employment in a public charter school. A public charter school may, but is not required to, establish certification or licensure as a condition of employment by the school;

(12) The same zoning rules for its facilities that apply to noncharter public schools in this state;

(13) The same building codes, regulations and fees for its facilities that apply to noncharter public schools in this state, including any inspections required for noncharter public schools under this chapter and the West Virginia State Fire Marshal for inspection and issuance of a certificate of occupancy for any facility used by the public charter school; and

(14) The same student transportation safety laws applicable to public schools when transportation is provided.

§18-5G-4. West Virginia Board of Education; powers and duties for implementation, general supervision and support of public charter schools.

(a) The state board along with the West Virginia Public Charter School Board established in §18-5G-15 of this code shall consult with nationally recognized charter school organizations and establish and maintain a catalogue of best practices for public charter schools applicable for all applicants, authorizers, governing board members, and administrators that are consistent with this article and nationally recognized principles and professional standards for quality public charter school authorizing and governance in all major areas of authorizing and governance responsibility in the following areas:

- (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 public charter school oversight and evaluation; and
- (7) Charter approval and renewal decision-making;

(b) The state board is responsible for exercising, in accordance with this article, the following powers and duties with respect to the 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. The forms shall be available for use and solicitations made not later than the beginning of February, 2020. The forms shall include an application deadline of August 31st of the year prior to the beginning of operations for the proposed school year. No public charter school may begin operation prior to the beginning of the proposed school year following the previous year August application;

(2) Provide training programs for public charter school applicants, administrators and governing board members, as applicable, that include, but are not limited to:

(i) Pre-application training programs and forms to assist in the development of high quality public charter school applications;

(ii) The required components and the necessary information of the public charter school application and the charter contract as set forth in this article;

(iii) The public charter school board's statutory role and responsibilities;

(iv) Public charter school employment policies and practices; and

(v) Authorizer responsibilities for public 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 this act, 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;

(6) Establish a framework and procedures for interactions between public charter schools, public noncharter schools and county boards of education to facilitate cooperation for shared services, training and information and to ensure the prompt transfer of student records, including IEP's, so as to minimize the interruption of a student's education when transferring between noncharter public schools and public charter schools; and

(7) 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; and

(B) The authorization status of all public charter schools within the last school year, identifying all public charter schools as:

- (i) Application pending;
- (ii) Application denied and reasons for denial;
- (iii) Application approved, but not yet operating;
- (iv) Operating and years of operation;
- (v) Renewed and years of operation;
- (vi) Terminated;
- (vii) Closed;
- (viii) Never opened; and

(ix) Any successful innovations applied in authorized public charter schools which may be replicated in other schools. The report shall provide information about how noncharter public schools may implement these innovations.

(c) The state board shall be the authorizer of a public charter school when a county board or boards approve the application for a public charter school and requests the state board to perform the authorizer duties and responsibilities or when an application to form a public charter school or to renew a charter contract is submitted from an applicant within a county in which the state board has intervened and limited the power of the county board to act pursuant to §18-2E-5 of this code. §18-5G-5. State board rule relating to funding for public charter school enrollment and other necessary provisions; local education agency status; authorizer oversight fee.

(a) The state board shall promulgate a rule pursuant to the provisions of §29A-3B-1 et seq. of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 99 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 et seq. of this code, the rule may provide for modifications to the calculations set forth in §18-9A-7 of this code regarding the allowance for student transportation and in §18-9A-9(1) of this code regarding the allowance for current expense for the purpose of making appropriate adjustments to those allowances to account for student transportation and current expense related funding a school district loses in situations where it pays money to a public charter school pursuant to this subsection without a corresponding decrease in the county's transportation and current expense related expenditures;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school, and notwithstanding the terms in the definition of "net enrollment" in §18-9A-2 of this code, shall provide that the county school district paying for the student attending a public charter school have that student included in its net enrollment for the purposes of §18-9A-1 et seq. of this code;

(3) When a student in grades kindergarten through 12 transfers on a full-time basis after the beginning of the school year from a school district to a public charter school, or vice versa, or to another public charter school, hereinafter referred to as entities, the following apply:

(A) If the student is included in the second month net enrollment for the purposes of §18-9A-2 of this code, of the entity from which the student transferred, the entity to which the student transfers may invoice the entity from which the student transferred for the amount, determined on a pro rata basis, based on the amount required pursuant to subdivision (2) of this subsection for a student attending a public charter school;

(B) If the student is included in the second month net enrollment for the purposes of §18-9A-2 of this code, of the entity from which the student transferred and is eligible for aid to exceptional students, the entity to which the student transfers may invoice the entity from which the student transferred for the amount, determined on a pro rata basis, of the aid to exceptional students due for that student;

(C) If the student is included in the certified child count of exceptional students for the school year of the entity from which the student transferred, the entity to which the student transfers may invoice the entity from which the student transferred for the amount, determined on a pro rata basis, due for that student in the certified child count of exceptional students; and

(D) Invoices issued pursuant to paragraphs (A), (B) and (C) of this subdivision shall be paid by the entity from which the student transferred within 30 days of receipt of the invoice; and

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

(b) The state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this code, if necessary, for ensuring the accountability of public charter schools for meeting the standards for student performance required of other public school students under §18-2E-5 of this code and the accountability of authorizers for ensuring that those standards are met in

the schools authorized by it. If an authorizer fails to close a public charter school that does not meet the standards, the authorizer shall appear before the state board to justify its decision. The state board may uphold or overturn the authorizer's decision and may revoke the authority of the authorizer to authorize public charter schools.

(c) Any public charter school authorized pursuant to this article shall be treated and act as its own local education agency for all purposes except as needed under the provisions of the Public School Support Plan for funding purposes.

(d) To cover authorizer costs for overseeing public charter schools, the state board shall establish a statewide formula for authorizer oversight funding, which shall apply uniformly to every authorizer in the state. Each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per pupil basic foundation allowance as provided pursuant to state board rule promulgated in accordance with this section, 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 the 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 shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time public charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

(e) The state board shall promulgate a rule in accordance with §29A-3B-1 et seq. of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article: Provided, That nothing in this rule may conflict with this code. The rule also shall include a provision prohibiting a county board from discrimination against any district employee involved directly or indirectly with an application to establish a public charter school under this article.

(f) All state board rules required to be promulgated by this article shall be promulgated on or before July 1, 2021. The state board may file emergency rules if necessary to meet the July 1, 2021, deadline.

§18-5G-7. Public Charter school governing board.

(a) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members elected or selected in a manner specified in the charter application, including at least the following:

(1) Two parents of students attending the public charter school operating under the governing board; and

(2) Two members who reside in the community served by the public charter school.

(b) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school, unless the services are provided by a state institution of higher education;

(C) File a full disclosure report to 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;

(D) Collectively possess expertise in leadership, curriculum and instruction, law, and finance; and

(E) Be considered an officer of a school district under the provisions of §6-6-7 of this code and removal from office shall be in accordance with the provisions of that section.

(c) 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 §18-5G-11 of this code;

(4) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the 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.

(d) A public charter school authorized under this article may:

(1) Negotiate and contract with its authorizer 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. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(e) The public charter school governing board is responsible for the operation of its public charter school, including, but not limited to, ensuring compliance with the public charter school criteria, governance and statutory compliance set forth §18-5G-3 of this code, 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.

(f) The public charter school governing board shall comply with the provisions of §29B-1-1 et seq. of this code relating to freedom of information and the provisions of §6-9A-1 et seq. of this code relating to open governmental proceedings.

(g) Notwithstanding anything else in this Code, when a state institution of higher education is an applicant and after its application is approved by an authorizer, the governing board of the public charter school may be an administrative unit of the state institution of higher education, and the governing board may enter into the charter contract on behalf of the state institution of higher education.

§18-5G-12. Access to public facilities.

(a) 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 shall make facilities available to the charter school that are either not used, in whole or in part, for classroom instruction at the time the charter school seeks to use or lease the public facility.

(b) 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.

(c) 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 for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

§18-5G-15. West Virginia Professional Charter School Board; members; appointments; meetings.

(a) There is hereby created the West Virginia Professional Charter School Board which shall report directly to and be responsible to the state board, separate from the Department of Education, for carrying out its duties in accordance with this article. The mission of the board is to authorize high-quality public charter schools throughout the state that provide more options for students to attain a thorough and efficient education, particularly through schools designed to expand the opportunities for at-risk students. The Professional Charter School Board and public charter schools authorized in accordance with this article are subject to the general supervision of the state board solely for the purposes of accountability for meeting the standards for student performance required of other public school students under §18-2E-5 of this code.

(b) The Professional Charter School Board shall consist of five voting members, appointed by the Governor, with the advice and consent of the Senate.

(c) The chair of the House Committee on Education and the chair of the Senate Committee on Education shall serve as nonvoting ex officio members of the Professional Charter School Board.

(d) Each appointed member shall represent the public interest and must satisfy the following requirements:

(1) Be a citizen of the state;

(2) Possess experience and expertise in public or nonprofit governance, management and finance, public school leadership, assessment, curriculum or instruction, or public education law; and

(3) Have demonstrated an understanding of, and commitment to, charter schooling as a strategy for strengthening public education.

(e) No more than three of the appointed members of the Professional Charter School Board may be of the same political party. The members shall reside in geographically diverse areas of the state, with no more than two members residing in the same county. No person may be appointed who holds any other public office or public employment under the government of this state or any of its political subdivisions, or who is an appointee or employee of any charter school governing board or an immediate family member of an employee under the jurisdiction of the Professional Charter School Board or any charter school governing board. No person may be appointed who is engaged in or employed by a person or company whose primary function involves, the sale of services and activities to public charter schools or charter school governing boards.

(f) The initial appointments made pursuant to this section shall be for staggered one- and two-year terms. Three of the initial members appointed by the Governor shall serve two-year terms; and two of the initial members appointed by the Governor shall serve one-year terms. Thereafter, all appointments shall be for a term of two years. The initial appointments shall be made before August 1, 2021. The Professional Charter School Board shall meet as soon as practical after August 1, 2021, upon the call of the Governor, and shall organize for business by selecting a chairman and adopting bylaws. Subsequent meetings shall be called by the chairman.

(g) An appointed member of the Professional Charter School Board may be removed from office by the Governor for official misconduct, incompetence, neglect of duty, or gross immorality. A member may also be removed if the member's personal incapacity renders the member incapable or unfit to discharge the duties of the office or if the member is absent from a number of meetings of the Professional Charter School Board as determined and specified by the commission in its bylaws. Whenever an appointed member vacancy on the

Professional Charter School Board exists, the Governor shall appoint a qualified person for the remainder of the vacated term.

(h) Except in the case of gross negligence or reckless disregard of the safety and well-being of another person, the Professional Charter School Board and members of that board in their official capacity are immune from civil liability with respect to all activities related to a public charter school approved by the Public Charter School Board. The official actions of the members of the Professional Charter School Board who are serving in a nonvoting ex officio capacity by virtue of their designation as chair of the House Committee on Education or chair of the Senate Committee on Education are Professional Charter School Board member actions only, and may not be construed as official actions or positions of such member's committee or legislative body.

(i) The Professional Charter School Board may appoint an executive director and may employ such additional staff as may be necessary. The executive director shall serve at the will and pleasure of the Professional Charter School Board. The executive director must demonstrate an understanding of and commitment to charter schooling as a strategy for strengthening public education and must possess an understanding of state and federal education law.

(j) The Professional Charter School Board shall meet as needed, but at least bi-annually. From funds appropriated or otherwise made available for such purpose, its members shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of official duties upon submission of an itemized statement in a manner consistent with guidelines of the Travel Management Office of the Department of Administration.

(k) The Professional Charter School Board shall investigate official complaints submitted to it that allege serious impairments in the quality of education in a public charter school or virtual public charter school it has authorized pursuant to this article, or that allege such schools are in violation of the policies or laws applicable to them. The Professional Charter School Board also may at its own discretion conduct or cause to be conducted audits of the education and operation of public charter schools or virtual public charter schools it has authorized pursuant to this article that it determines necessary to achieve its mission of authorizing high-quality public charter schools. Upon a determination that serious impairments or violations exist, the Professional Charter School Board shall promptly notify in writing the public charter school governing board of the perceived serious impairments or

violations and provide reasonable opportunity for the school to remedy the serious impairments or violations. The Professional Charter School Board shall take corrective actions or exercise sanctions in response to apparent serious impairments or violations. 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.

(l) The Professional Charter School Board may receive and expend appropriate gifts, grants and donations of any kind from any public or private entity to carry out the purposes of this act, subject to all lawful terms and conditions under which the gifts, grants or donations are given; may apply for any federal funds that may be available for the implementation of public charter school programs; and may make start-up grants to public charter schools from funds appropriated or otherwise available to it from federal, state, or other sources.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-15. Allowance for increased enrollment; extraordinary sustained increased enrollment impact supplement.

(a) To provide for the support of increased net enrollments in the counties and public charter schools in a school year over the net enrollments used in the computation of total state aid for that year, there shall be appropriated for that purpose from the General Revenue Fund an amount to be determined as follows:

(1) The state board shall promulgate a rule pursuant to §29A-3B-1 et seq. of this code that establishes an objective method for projecting the increase in net enrollment for each school district, exclusive of the net enrollment of public charter schools physically locate in the district. The state superintendent shall use the method prescribed by the rule to project the increase in net enrollment for each school district.

(2) The state superintendent shall multiply the average total state aid per net pupil by the sum of the projected increases in net enrollment for all school districts and report this amount to the Governor for inclusion in his or her proposed budget to the Legislature. The Legislature shall appropriate to the West Virginia Department of Education the amount calculated by the state superintendent and proposed by the Governor.

(3) The state superintendent shall calculate each school district's share of the appropriation by multiplying the increase in net enrollment for the school district by the average total state aid per net pupil and shall distribute each school district's share to the school district on or before December 31, of each year.

Nothing in this subsection prohibits, however, the state superintendent, at the request of a school district, before the actual increase in net enrollment is available, from advancing a partial distribution to the school district of up to 60 percent of its estimated share based on its projected increased enrollment, subject to the following:

(A) If the amount of the advanced partial distribution to a school district is greater than the total amount to which a district is entitled to receive for the year, the district shall refund the difference to the Department of Education prior to June 30 of the fiscal year in which the excess distribution is made; and

(B) The Department of Education shall notify the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability whenever an advanced partial distribution is made.

(4) If the amount of the appropriation for increased enrollment is not sufficient to provide payment in full for the total of these allocations, each county allocation shall be reduced to an amount which is proportionate to the appropriation compared to the total of the allocations and the allocations as thus adjusted shall be distributed to the counties as provided in this section: Provided, That the Governor shall request a supplemental appropriation at the next legislative session for the reduced amount.

(b) To help offset the budgetary impact of extraordinary and sustained increases in net enrollment in a county, there shall be included in the basic state aid of any county whose most recent three-year average growth in second month net enrollment is two percent or more, an amount equal to one fourth of the state average per pupil state aid multiplied by the increase in the county's second month net enrollment in the latest year.

(c) No provision of this section shall be construed to in any way affect the allocation of moneys for educational purposes to a county under other provisions of law.

(d) The state board shall promulgate a rule pursuant to §29A-3B-1 et seq. of this code that establishes an objective method for calculating the increase in net enrollment for each public charter school based on the school's net enrollment for the current year compared to the prior year. Increased enrollment funding calculated for a public charter school shall be paid directly to the school by the Department of Education no later than December 31st.

House Bill 3113: Requiring high school students to complete course of study in personal finance.

Effective: Passed March 3, 2023; Effective June 1, 2023

Code Reference: W. Va. Code §18-2-7c (Amended)

WVDE Contact: Instructional Leadership and School Improvement

Summary: This Act provides, beginning with the 2024-2025 school year, high school students must complete a one-half credit course of study in personal finance during the 11th or 12th grade as a requirement for graduation.

Enrolled Bill: ENROLLED Committee Substitute for House Bill 3113
BY DELEGATES MARTIN, CLARK, FERRELL, PHILLIPS, HARDY, TONEY, ELLINGTON, BARNHART, TULLY, MAZZOCCHI AND HOWELL

AN ACT to amend and reenact §18-2-7c of the Code of West Virginia, 1931, as amended, relating to requiring each high school student to complete a one-half credit course of study in personal finance as a requirement for high school graduation; providing beginning class of students and grade level requirement; requiring implementation guidance by State Board and specifying guidance content.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7c. Program in personal finance.

(a) The Legislature finds and declares that persons with an understanding of personal finance are better prepared to manage their money and that providing a personal finance program in secondary schools in West Virginia will prepare students to handle their finances.

(b) To provide students a basic understanding of personal finance, the state board shall develop a program of instruction on personal finance which may be integrated into the curriculum of an appropriate existing course or courses for students in secondary schools.

(c) Beginning with the class of students entering 9th grade in the 2024-2025 school year and thereafter, each high school student shall complete one-half credit course of study in personal finance during their 11th or 12th grade year as a requirement for high school graduation. The State Board of Education shall develop and issue implementation guidance to local school boards and other education agencies as to curriculum, content matter standards,

eligible teacher certification(s), and graduation requirements the course may fulfill before July 1, 2024.

(d) Every student shall complete a course in personal finance prior to high school graduation.

House Bill 3218: Relating to requiring suicide prevention resources be printed on student identification cards.

Effective: Passed March 1, 2023; Effective May 30, 2023

Code Reference: [W. Va. Code §18-2-40b \(New\)](#)
W. Va. Code §18-1B-7 (Amended)

WVDE Contact: Federal Programs and Support

Summary: This Act requires student identification cards to include instructional information regarding how to utilize the Suicide & Crisis Lifeline and the Crisis Text line. This requirement is limited to public schools serving students in 6th through 12th grade and must be implemented within one year of the effective date of this Act. Please note, this section does not apply to public schools that do not issue student identification cards but would be applicable if a public school opts to issue student ID’s after the reenactment of this section.

Additionally, similar provisions for students attending an institute of higher learning are also incorporated in the provisions of this Act.

Enrolled Bill: ENROLLED House Bill 3218
BY DELEGATES REYNOLDS, TULLY, FERRELL, SHEEDY, ZATEZALO, JEFFRIES, WILLIS, HOTT, HITE, KIMBER AND MAZZOCCHI

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-40b; and to amend and reenact §18B-1B-7 of said code, all relating to student suicide prevention; requiring suicide prevention resources be printed on student identification cards for students in grades 6-12 in public schools that issue student identification cards; and requiring suicide prevention resources be printed on student identification cards for students in a public or private institution of higher education that issues student identification cards.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-40b. Dissemination of information on suicide prevention.

Commencing one year from the date of reenactment of this section in the 2023 regular session of the Legislature, a public school that serves students in grades 6 to 12, inclusive, and that issues student identification cards shall have printed on either side of the student identification cards the information for the Suicide & Crisis Lifeline, which can be reached by calling or texting 988; and shall have printed on either side of the student identification cards the information for the Crisis Text line, which can be accessed by texting HOME to 741741.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-7. Student mental health policies; suicide prevention.

(a) Each public and private institution of higher education shall develop and implement a policy to advise students and staff on suicide prevention programs available on and off campus that includes, but is not limited to:

(1) Crisis intervention access, which includes information for suicide prevention hotlines;

(2) Mental health program access, which provides information on the availability of local mental health clinics, student health services and counseling services;

(3) Multimedia application access, which includes crisis hotline contact information, suicide warning signs, resources offered and free-of-cost applications;

(4) Student communication plans, which consist of creating outreach plans regarding educational and outreach activities on suicide prevention; and

(5) Post-intervention plans which include creating a strategic plan to communicate effectively with students, staff, and parents after the loss of a student to suicide.

(b) Each public and private institution of higher education shall provide all incoming students with information about depression and suicide prevention resources available to students. The information provided to students shall include available mental health services and other support services, including student-run organizations for individuals at risk of or affected by suicide.

(c) The information prescribed by subsection (a), subdivisions (1) through (4) of this section shall be posted on the website of each institution of higher education in this state.

(d) Any applicable free-of-cost prevention materials or programs shall be posted on the websites of the public and private institutions of higher education, the Higher Education Policy Commission, and the West Virginia Council for Community and Technical College Education.

(e) Commencing one year from the date of reenactment of this section by the 2023 regular session of the Legislature, a public or private institution of higher education that issues student identification cards shall have printed on either side of the student identification cards the information described in both subdivisions (1) and (2) of this subsection:

(1) The information for the Suicide & Crisis Lifeline, which can be reached by calling or texting 988;

(2) The information for the Crisis Text Line, accessible by texting HOME to 741741.

House Bill 3271: **Relating to increasing monitoring of special education classrooms.**

Effective: Passed March 9, 2023; Effective June 7, 2023

Code Reference: W. Va. Code §18-20-11 (Amended)

WVDE Contact: Federal Programs and Support

Summary: This Act requires county boards of education to provide audio recording devices to public schools to be utilized in every bathroom of a self-contained classroom prior to August 1, 2023. However, if a school is not able to receive the audio equipment required under this section, the public school may apply to the West Virginia Department of Education (WVDE) for a waiver to extend the date to August 1, 2024.

Additionally, the Act requires that each restroom of a self-contained classroom shall post a notice on the door that states “Pursuant to state law, this restroom is equipped with an audio recording device for the protection of students.”

This Act also affords the parent or guardian of a student assigned to a self-contained classroom the opportunity to opt out of bathroom audio monitoring for their student; however, the student’s IEP or 504 Plan must include the decision to opt out of the restroom audio records and any alternative arrangements made to address the student’s or parent’s needs and/or requested accommodations.

The same requirements for retaining and reviewing video established in current law are applicable to the restroom audio recordings required by this section.

Enrolled Bill: ENROLLED Committee Substitute for House Bill 3271
BY DELEGATES MAZZOCCHI, KIMBLE, HOLSTEIN, FAST, ELLINGTON,
LONGANACRE, HORST, WALKER, STATLER, KEATON AND WARNER

AN ACT to amend and reenact §18-20-11 of the Code of West Virginia, 1931, as amended, relating to increasing monitoring of special education classrooms; adding that an audio recording device be present in the restroom of a self-contained classroom; requiring that notice of audio recording device be placed on bathroom door; requiring county to monitor school audio recordings for at least 15 minutes every 90 days; and setting forth other review parameters for audio recordings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-11. Video cameras required in certain special education classrooms; audio recording devices required in restroom of a self-contained classroom.

(a) A county board of education shall ensure placement of video cameras in self-contained classrooms and audio recording devices in the restrooms of self-contained classrooms as defined in state board policy.

(b) As used in this section:

(1) "Incident" means a raised suspicion by a teacher, aide, parent, or guardian of a child, of bullying, abuse, or neglect of a child or of harm to an employee of a public school by:

(A) An employee of a public school or school district; or

(B) Another student;

(2) "Self-contained classroom" means a classroom at a public school in which a majority of the students in regular attendance are provided special education instruction and as further defined in state board policy; and

(3) "Special education" means the same as defined in §18-20-1 et seq. of this code.

(c) (1) A county board of education shall provide a video camera to a public school for each self-contained classroom that is a part of that school which shall be used in every self-contained classroom.

(2) Prior to August 1, 2023, a county board of education shall provide an audio recording device to a public school to be used in the restroom of each self-contained classroom that is a part of that school. If the public school is not able to receive the audio recording device by August 1, 2023, the public school may apply to the state Department of Education for a waiver to extend that date to August 1, 2024.

(3) The principal of the school or other school administrator whom the principal assigns as a designee shall be the custodian of the video camera and audio recording device, all recordings generated by the video camera and audio recording device, and access to those recordings pursuant to this section.

(d)(1) Every public school that receives a video camera under this section shall operate and maintain the video camera in every self-contained classroom that is part of that school.

(2) Every public school that receives an audio recording device under this section shall operate and maintain the audio recording device in every restroom that is a part of a self-contained classroom that is part of that school: Provided, That each restroom of a self-

contained classroom shall have posted on its door a notice that states: "Pursuant to state law, this restroom is equipped with an audio recording device for the protection of the students."

(3) If there is an interruption in the operation of the video camera or audio recording device for any reason, a written explanation should be submitted to the school principal and the county board explaining the reason and length for which there was no recording. The explanation shall be maintained at the county board office for at least one year.

(e)(1) A video camera placed in a self-contained classroom shall be capable of:

(A) Monitoring all areas of the self-contained classroom, including, without limitation, a room attached to the self-contained classroom and used for other purposes; and

(B) Recording audio from all areas of the self-contained classroom, including, without limitation, a room attached to the self-contained classroom and used for other purposes.

(2) A video camera placed in a self-contained classroom shall not monitor a restroom or any other area in the self-contained classroom where a student changes his or her clothes except, for incidental monitoring of a minor portion of a restroom or other area where a student changes his or her clothes because of the layout of the self-contained classroom.

(3) An audio recording device shall be placed in the restroom of the self-contained classroom and notice provided pursuant to §18-20-11(d)(2) of this code.

(4) A video camera or audio recording device required by this section is not required to be in operation during the time in which students are not present in the self-contained classroom.

(f) Before a public school initially places a video camera in a self-contained classroom or an audio recording device in the restroom of a self-contained classroom pursuant to this section, the county board of education shall provide written notice of the placement to:

(1) The parent or legal guardian of a student who is assigned to the self-contained classroom: Provided, That the parent or guardian be allowed the opportunity to opt out of the bathroom audio monitoring for their student. An Individual Education Plan or 504 plan shall outline the opt out and an alternative arrangement for the student or parent needs and requested accommodation; and

(2) The school employee(s) who is assigned to work with one or more students in the self-contained classroom.

(g)(1) Except as provided in subdivision (2) of this subsection, a public school shall retain video and audio recorded pursuant to this section for at least three months after the date of the recording, subject to the following:

(A) If the minimum three-month period overlaps the summer break occurring between the last day of one instructional term and the first day of the next instructional term, the minimum three-month period shall be extended by the number of days occurring between the two instructional terms;

(B) For any school-based camera system or audio device recording device that is installed or replaced after April 1, 2022, the public school shall retain video recorded from a camera or audio device recording for at least 365 days after the date the video or audio was recorded and no extension of this time period during the summer break is required.

(2) If a person requests to review a recording under subsection (k) or subsection (l) of this section, the public school shall retain the recording from the date of the request until:

(A) The earlier of the person reviewing the recording or 60 days after the person who requested the video or audio recording was notified by the public school that the video or audio recording is available; and

(B) Any investigation and any administrative or legal proceedings that result from the recording have been completed, including, without limitation, the exhaustion of all appeals.

(3) In no event may the recording be deleted or otherwise made unretrievable before the time period set forth in subdivision (1) of this subsection elapses.

(h) This section does not:

(1) Waive any immunity from liability of a public school district or employee of a public school district;

(2) Create any liability for a cause of action against a public school or school district or employee of a public school or school district; or

(3) Require the principal or other designated school administrator to review the recording absent an authorized request pursuant to this code section or suspicion of an incident except as otherwise provided in subsection (j) of this section.

(i) A public school or school district shall not use video or audio recorded under this section for:

(1) Teacher evaluations; or

(2) Any purpose other than the promotion and protection of the health, wellbeing, and safety of students receiving special education and related services in a self-contained classroom or restroom of a self-contained classroom.

(j) Except as provided under subsections (k) and (l) of this section, a recording made under this section is confidential and shall not be released or reviewed by anyone except the

school principal, other school administration designee, or county designee if the school principal or other school administration designee is unable to review the video or audio recording pursuant to this subsection. The school principal, other school administration designee, or county designee shall review no less than 15 minutes of the video and no less than 15 minutes of audio of each self-contained classroom and restroom at the school no less than every 90 days. The state board shall include in its rule authorized by this section requirements for documentation of compliance with the video and audio reviewing requirements of this subsection.

(k) Within seven days of receiving a request, a public school or school district shall allow review of a recording by:

(1) A public school or school district employee who is involved in an alleged incident that is documented by the recording and has been reported to the public school or school district;

(2) A parent or legal guardian of a student who is involved in an alleged incident that is documented by the recording and has been reported to the public school or school district; or

(3) An employee of a public school or school district as part of an investigation into an alleged incident that is documented by the recording and has been reported to the public school or school district.

(l) Within seven days of receiving a request, a public school or school district shall allow review of a recording by and comply with all subsequent requests for review or release of the recording by:

(1) A law-enforcement officer or employee of the Department of Health and Human Resources, as part of an investigation into an alleged incident that is documented by the recording and has been reported to the agency: Provided, That if a release of the recording is requested pursuant to this subdivision, the agency receiving a copy of the recording shall maintain strict confidentiality of the recording and not further release the recording without authorization from the public school district through its superintendent; or

(2) A judge, counsel, or other legal entity that is charged with deciding or representing either the school board, students, or employees in any matters related to legal issues arising from an incident: Provided, That the recording may only be released pursuant to an appropriate protective order or under seal.

(m) If an incident is discovered while initially reviewing a recording that requires a report to be made under §49-2-803 of this code, that report shall be made by the reviewer pursuant to that section within 24 hours of viewing the incident.

(n) When a recording is under review as part of the investigation of an alleged incident, and the recording reveals a student violating a disciplinary code or rule of the school, which violation is not related to the alleged incident for which the review is occurring, and which violation is not already the subject of a disciplinary action against the student, the student is not subject to disciplinary action by the school for such unrelated violation unless it reveals a separate incident as described in §18-20-11(b)(1) of this code.

(o) It is not a violation of subsection (j) of this section if a contractor or other employee of a public school or school district incidentally reviews a recording under this section if the contractor or employee of a public school or school district is performing job duties related to the:

- (1) Installation, operation, or maintenance of video or audio equipment; or
- (2) Retention of video or audio recordings.

(p) This section applies solely to cameras and audio recording devices installed pursuant to this code section and does not limit the access of a student's parent or legal guardian to a recording reviewable under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, or any other law.

(q) A public school or school district shall:

(1) Take necessary precautions to conceal the identity of a student who appears in a video recording but is not involved in the alleged incident documented by the video recording for which the public school allows viewing under subsection (j) of this section, including, without limitation, blurring the face of the uninvolved student; and

(2) Provide procedures to protect the confidentiality of student records contained in a recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, or any other law.

(r) (1) Any aggrieved person may appeal to the State Board of Education an action by a public school or school district that the person believes to be in violation of this section.

(2) The state board shall grant a hearing on an appeal under this subsection within 45 days of receiving the appeal.

(s) (1) A public school or school district may use funds distributed from the Safe Schools Fund created in §18-5-48 of this code or any other available funds to meet the requirements of this section.

(2) A public school or school district may accept gifts, grants, or donations to meet the requirements of this section.

(t) The state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this code to clarify the requirements of this section and address any unforeseen issues that might arise relating to the implementation of the requirements of this section.

establish a division within the Department of Homeland Security for the purpose of providing safety and security to individuals who visit, conduct business or work at the capitol complex and other state facilities. The legislature further finds there is a compelling interest in the safety of school facilities throughout the state and that it is in the public interest to dedicate within the West Virginia Department of Homeland Security a law enforcement unit focused on primary and secondary school safety matters.

§15-2D-2. Duties and powers of the director and officers.

(a) The state facilities protection division within the Department of Homeland Security shall hereafter be designated the Division of Protective Services. The purpose of the division is to provide safety and security at the capitol complex and other state facilities: Provided, That nothing in this section shall be construed as limiting the law-enforcement authority of the division set forth in §15-2d-3 of this code.

(b) The Governor shall appoint, with the advice and consent of the Senate, the director of the division whose qualifications shall include at least 10 years of service as a law-enforcement officer with at least three years in a supervisory law-enforcement position, the successful completion of supervisory and management training, and the professional training required for police officers at the West Virginia state police academy or an equivalent professional law-enforcement training at another state, federal or United States Military institution.

§15-2D-3. Duties and powers of the director and officers.

The director is responsible for the control and supervision of the division. The director and any officer of the division may carry designated weapons and have the same powers of arrest and law enforcement in Kanawha County as members of the West Virginia State Police as set forth in §15-2-12(b) and §15-2-12(d) of this code. The director and any officer of the division shall also have such powers throughout the State of West Virginia in investigating and performing law-enforcement duties for offenses committed on the Capitol Complex or related to the division's security and protection duties at the Capitol Complex and throughout the state relating to offenses and activities occurring on any property owned, leased, or operated by the State of West Virginia when undertaken at the request of the agency occupying the property: Provided, That nothing in this article shall be construed as to obligate the director or the division to provide, or be responsible for providing, security at state facilities outside the Capitol Complex.

(b) The director shall establish a School Safety Unit within the Division of Protective Services. Officers shall be assigned to the School Safety Unit at the discretion of the director. The officers assigned to the School Safety Unit shall primarily be charged to make school safety inspections and to make recommendations to appropriate county school superintendents, principals, or other school administrators, regarding school safety. The officers assigned to the School Safety Unit shall also be authorized to respond to and investigate all school safety matters, in consultation with county boards of education: Provided, That any officer of the School Safety Unit shall have statewide jurisdiction and powers of general law enforcement and arrest for violations of law committed in their presence.

(c) Any officer of the division shall be certified as a law-enforcement officer by the Governor's Committee on Crime, Delinquency, and Correction or may be conditionally employed as a law-enforcement officer until certified in accordance with the provisions of §30-29-5 of this code.

(d) The director may:

(1) Employ necessary personnel, all of whom shall be classified exempt, assign them the duties necessary for the efficient management and operation of the division, and specify members who may carry, without license, weapons designated by the director;

(2) Contract for security and other services;

(3) Purchase equipment as necessary to maintain security at the Capitol Complex and other state facilities. The provisions of §5A-3-3 of this code do not apply to purchases made pursuant to this subdivision;

(4) Establish and provide standard uniforms, arms, weapons, and other enforcement equipment authorized for use by members of the division and shall provide for the periodic inspection of the uniforms and equipment. All uniforms, arms, weapons, and other property furnished to members of the division by the State of West Virginia is and remains the property of the state;

(5) Appoint security officers to provide security on premises owned or leased by the State of West Virginia;

(6) Consistent with the provisions in §15-2D-5 of this code, provide security for the Speaker of the House of Delegates, the President of the Senate, the Governor, or a justice of the Supreme Court of Appeals;

(7) Gather information from a broad base of employees at and visitors to the Capitol Complex to determine their security needs and develop a comprehensive plan to maintain and improve security at the Capitol Complex based upon those needs;

(8) Assess safety and security needs and make recommendations for safety and security at any proposed or existing state facility as determined by the Secretary of the Department of Homeland Security, upon request of the secretary of the department to which the facility is or will be assigned: Provided, That records of such assessments, and any other records determined by the Secretary of the Department of Homeland Security to compromise the safety and security at any proposed or existing state facility, including primary and secondary schools, are not public records and are not subject to disclosure in response to a Freedom of Information Act request under §29B-1-1 et seq. of this code; and

(9) Enter into an interagency agreement with the Secretary of the Department of Homeland Security and the Secretary of the Department of Administration, which delineates their respective rights and authorities under any contracts or subcontracts for security personnel. A copy of the interagency agreement shall be delivered to the Governor, the President of the Senate, and the Speaker of the House of Delegates, and a copy shall be filed in the office of the Secretary of State and shall be a public record.

(e) The director shall:

Propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 et seq. of this code. The rules shall, at a minimum, establish ranks and the duties of officers within the membership of the division.

(2) Consistent with subsection (b) of this section, provide services to all public primary and secondary schools in furtherance of the purposes of the School Safety Unit: Provided, That the director may provide services to any private primary and secondary schools in the state upon request.

(3) Deliver a monthly status report to the Speaker of the House of Delegates and the President of the Senate.

(4) Require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol Complex, or who have access to sensitive or critical information, to have its employees submit to a fingerprint-based state and federal background inquiry through the state repository, and require a new employee who is employed to provide services on the grounds or in the building of the Capitol Complex to submit to an employment eligibility check through E-verify.

(i) After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol Complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol Complex for purposes of verifying compliance with this section.

(ii) All current service providers shall, within 90 days of the amendment and reenactment of this section by the 80th Legislature, ensure that all of its employees who are providing services on the grounds or in the buildings of the Capitol Complex or who have access to sensitive or critical information submit to a fingerprint-based state and federal background inquiry through the state repository.

(iii) Any contract entered into, amended, or renewed by an agency or entity of state government with a service provider shall contain a provision reserving the right to prohibit specific employees thereof from accessing sensitive or critical information or to be present at the Capitol Complex based upon results addressed from a criminal background check.

(iv) For purposes of this section, the term "service provider" means any person or company that provides employees to a state agency or entity of state government to work on the grounds or in the buildings that make up the Capitol Complex or who have access to sensitive or critical information.

(v) In accordance with the provisions of Public Law 92-544 the criminal background check information will be released to the Director of the Division of Protective Services.

(5) Be required to provide his or her approval prior to the installation of any and all electronic security systems purchased by any state agency which are designed to connect to the division's command center.

(f) Effective July 1, 2017, the Director of Security and security officers of the Department of Arts, Culture, and History shall be made part of, and be under the supervision and direction of, the Division of Protective Services. Security for all Capitol Complex properties of the Department of Arts, Culture, and History shall be the responsibility of the Division of Protective Services.

parents or child, or other cause authorized or approved by the board, shall be paid the full salary from his or her regular budgeted salary appropriation during the period which the employee is absent, but not to exceed the total amount of leave to which the employee is entitled.

(3) Each employee is permitted to use four days of leave annually without regard to the cause for the absence: Provided, That effective July 1, 2023, each employee is permitted to use five days of leave annually without regard to the cause for the absence. Personal leave without cause may not be used on consecutive work days unless authorized or approved by the employee's principal or immediate supervisor, as appropriate, or the employee may provide 14 days notice. For non-consecutive days, the employee shall give notice of leave without cause to the principal or immediate supervisor at least 24 hours in advance, except that in the case of sudden and unexpected circumstances, notice shall be given as soon as reasonably practicable. The principal or immediate supervisor may deny use of the day if, at the time notice is given, either 15 percent of the employees or three employees, whichever is greater, under the supervision of the principal or immediate supervisor, have previously given notice of their intention to use that day for leave. Personal leave may not be used in connection with a concerted work stoppage or strike. Where the cause for leave originated prior to the beginning of the employment term, the employee shall be paid for time lost after the start of the employment term. If an employee uses personal leave which the employee has not yet accumulated on a monthly basis and subsequently leaves the employment, the employee is required to reimburse the board for the salary or wages paid for the unaccumulated leave.

(4) The State Board shall maintain a rule to restrict the payment of personal leave benefits and the charging of personal leave time used to an employee receiving a workers' compensation benefit from a claim filed against and billed to the county board by which the person is employed. If an employee is awarded this benefit, the employee shall receive personal leave compensation only to the extent the compensation is required, when added to the workers' compensation benefit, to equal the amount of compensation regularly paid the employee. If personal leave compensation equal to the employee's regular pay is paid prior to the award of the workers' compensation benefit, the amount which, when added to the benefit, is in excess of the employee's regular pay shall be deducted from the employee's subsequent pay. The employee's accrued personal leave days shall be charged only for such days as equal the amount of personal leave compensation required to compensate the employee at the employee's regular rate of pay.

(5) The county board may establish reasonable rules for reporting and verification of absences for cause. If any error in reporting absences occurs, the county board may make necessary salary adjustments:

(A) In the next pay after the employee has returned to duty; or

(B) In the final pay if the absence occurs during the last month of the employment term.

(b) Leave Banks.

(1) Each county board shall establish a personal leave bank that is available to all school personnel. The board may establish joint or separate banks for professional personnel and school service personnel. Each employee may contribute up to two days of personal leave per school year. An employee may not be coerced or compelled to contribute to a personal leave bank.

(2) The personal leave bank shall be established and operated pursuant to a rule adopted by the county board. The rule:

(A) May limit the maximum number of days used by an employee;

(B) Shall limit the use of leave bank days to an active employee with fewer than five days accumulated personal leave who is absent from work due to accident or illness of the employee; and

(C) Shall prohibit the use of days to:

(i) Qualify for or add to service for any retirement system administered by the State; or

(ii) Extend insurance coverage pursuant to §5-16-13 of this code.

(D) Shall require that each personal leave day contributed:

(i) Is deducted from the number of personal leave days to which the donor employee is entitled by this section;

(ii) Is not deducted from the personal leave days without cause to which a donor employee is entitled if sufficient general personal leave days are otherwise available to the donor employee;

(iii) Is credited to the receiving employee as one full personal leave day;

(iv) May not be credited for more or less than a full day by calculating the value of the leave according to the hourly wage of each employee; and

(v) May be used only for an absence due to the purpose for which the leave was transferred. Any transferred days remaining when the catastrophic medical emergency ends revert back to the leave bank.

(3) The administration, subject to county board approval, may use its discretion as to the need for a substitute where limited absence may prevail, when an allowable absence does not:

(i) Directly affect the instruction of the students; or

(ii) Require a substitute employee because of the nature of the work and the duration of the cause for the absence.

(4) If funds in any fiscal year, including transfers, are insufficient to pay the full cost of substitutes for meeting the provisions of this section, the remainder shall be paid on or before August 31 from the budget of the next fiscal year.

(5) A county board may supplement the leave provisions in any manner it considers advisable in accordance with applicable rules of the State Board and the provisions of this chapter and chapter 18 of this code.

(c) Effective July 1, 2019, a classroom teacher who has not utilized more than four days of personal leave during the 200-day employment term shall receive a bonus of \$500 at the end of the school year. If the appropriations to the Department of Education for this purpose are insufficient to compensate all applicable classroom teachers, the Department of Education shall request a supplemental appropriation in an amount sufficient to compensate all eligible classroom teachers. This bonus may not be counted as part of the final average salary for the purpose of calculating retirement.



David L. Roach
West Virginia Superintendent of Schools