


West Virginia Association of School  
Business Officials

Spring Conference

# Legal Update for the School District's Business Office

Attorney Howard E. Seufer, Jr.  
Bowles Rice  
May 5, 2023



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## The Education Law Group at Bowles Rice, LLP



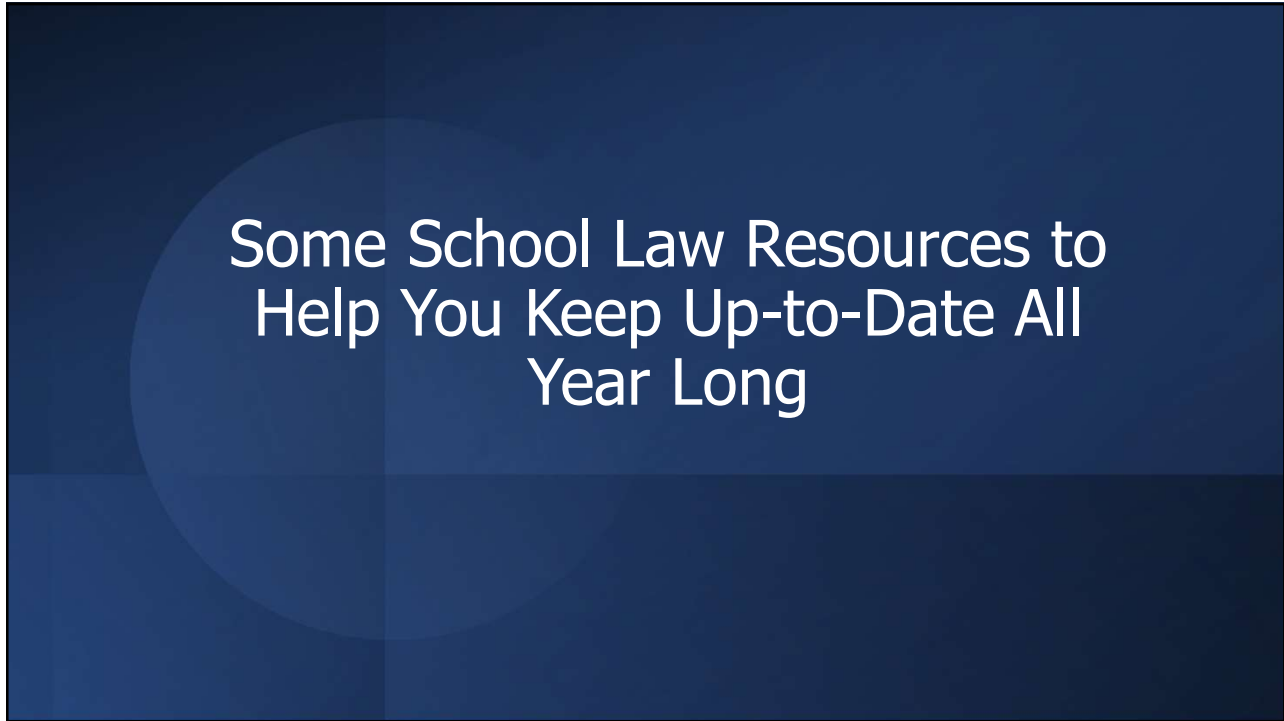
Rick Boothby   Kayla Cook   Josh Cottle   Kim Croyle   Roger Hunter   Julie Moore

Trey Morrone   Howard Seufer   Leigh Anne Wilson

Top Ranked in Education Law



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## *Education Law Updates*

The Education Law Group at Bowles Rice PRESENTS

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## Join the Mailing List



### Send an email to Sarah Plantz:

splantz@bowlesrice.com



### Tell Sarah:

Who you are  
 Your position in public education  
 Your school board's name  
 That you want to be added to the mailing lists

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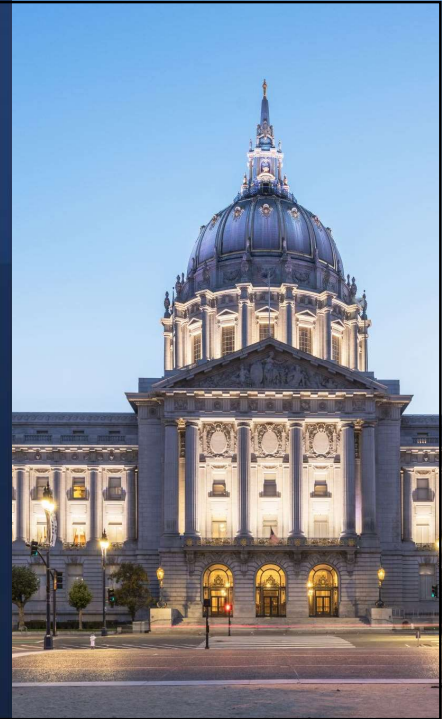
## A Word About This Presentation

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- Due to the rapidly changing nature of the law, information in this presentation may become outdated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



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## Legislation Affecting Public Education from the 2023 Regular Session of the West Virginia Legislature



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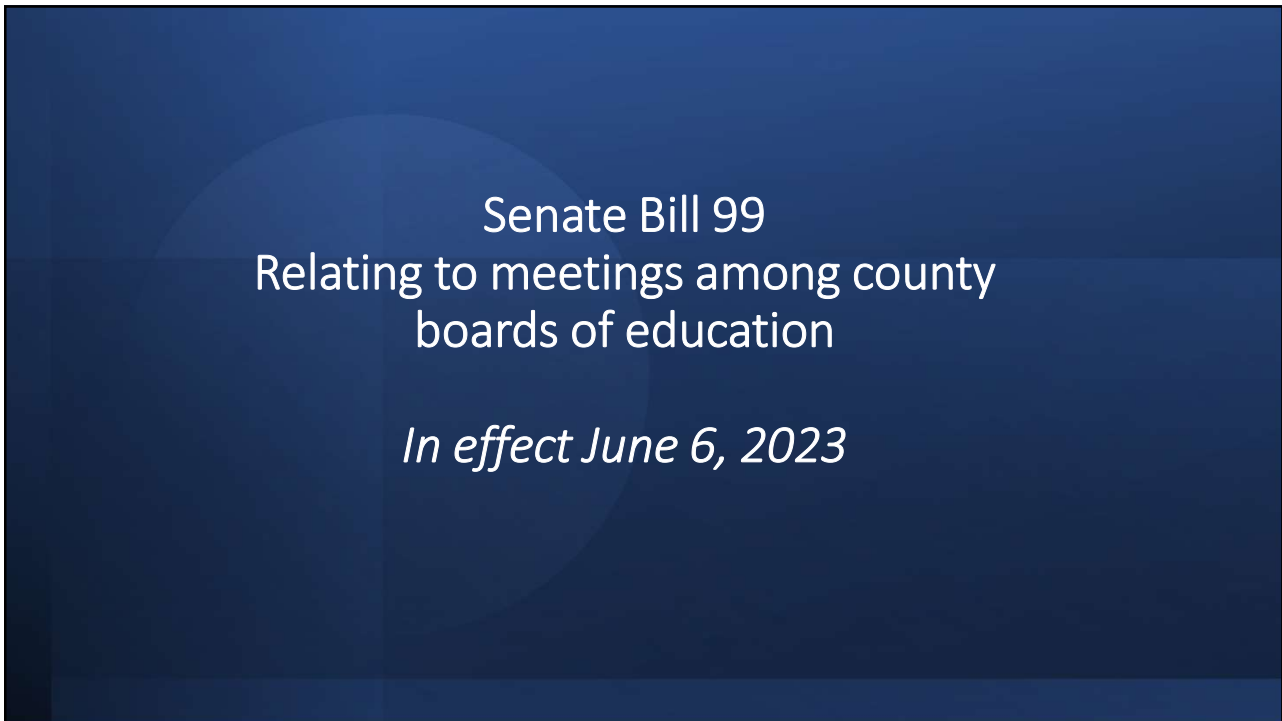
## The Categories

- *Governance*
- *Health & Safety*
- *Student Rights & Responsibilities*
- *Curriculum*
- *Personnel*
- *Business Office*
- *Facilities*
- *Alternatives to Public Education*
- *Miscellaneous*

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## Senate Bill 99

- Authorizes, but doesn't require, 2 or more boards to meet together in public to discuss operational efficiencies & cost savings possible by consolidating boards or sharing services & functions
- Prescribes the process to follow, including a facilitator

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## Senate Bill 99

- May lead to a second meeting if any participating board wants one, and to a final report
  - identifying existing laws that may enable or complicate consolidation of boards or sharing services, and
  - suggesting new legislation
- Any participating board may share the report with the Legislature, which may then elect to consolidate participating county boards as a pilot project

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House Bill 3146  
Establishing in West Virginia Code,  
the contents of the Uniform Public  
Meetings During Emergencies Act

*In effect June 7, 2023*

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HB 3146

- During a state of emergency declared by the Governor or Legislature, a public body may conduct meetings virtually if
  - the declaration forbids or limits in-person meetings, or
  - the body's presiding officer determines an in-person meeting is not practical or prudent due to the emergency and informs the public

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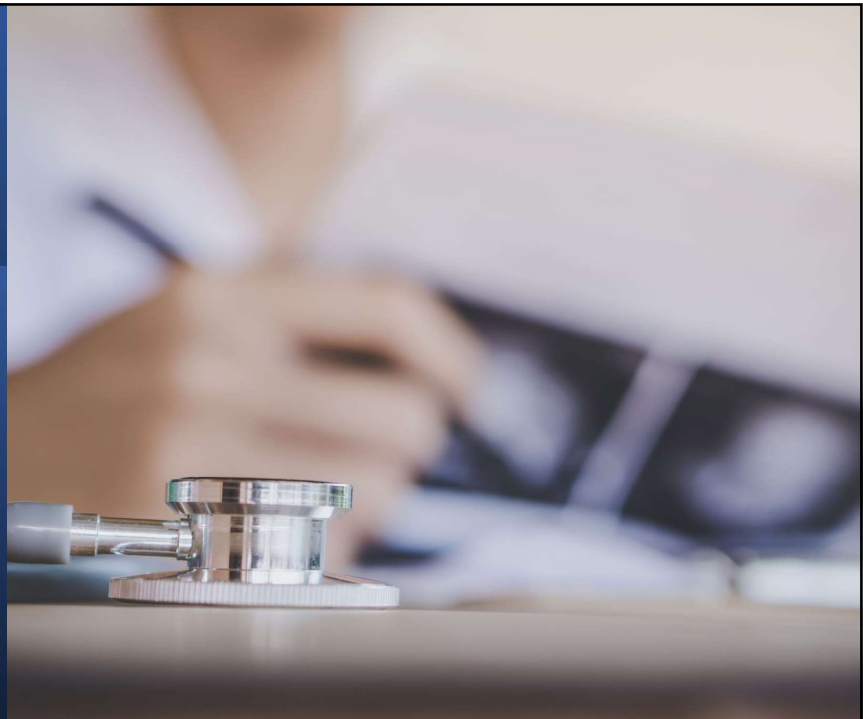
## HB 3146

- Public bodies may adopt rules for conducting virtual meetings if the rules are consistent with this Act
  - The public must be able to see or hear the open part of meetings
  - If documents would be made available to the public for an in-person meeting, they must be made available, as practicable, during virtual meetings
- The virtual meeting platform must be compatible with assistive technology for disabled persons
- Members of the body must be able to see & hear each other

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Student  
Health and  
Safety  
Whole School  
Safety  
Crimes

*Health &  
Safety*



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## House Bill 3271 Relating to increasing monitoring of special education classrooms

*In effect June 7, 2023*

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## HB 3271

- Before August 1, 2023, counties must install audio recording devices in restrooms that are part of all self-contained special education classrooms
  - One-time, one-year WVDE waivers may be available if devices are unavailable by that deadline
- Notice to students' parents must precede installation
- A sign must be placed on all such restrooms

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## HB 3271

- Parents must be allowed to opt out of audio monitoring
  - IEPs and 504 plans must cover the opt out procedure and any alternative arrangement for a student (Act before this school year ends!)
- The recordings - their retention, review and monitoring - are subject to many of the same rules as video recordings of self-contained special education classrooms

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Student Health  
and Safety



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# Student Health and Safety

**Senate Bill 674:** Providing statutory recognition and appointment of board members for WV First Foundation *(In effect March 10, 2023)*

**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 *(In effect June 7, 2023)*

**House Bill 3218:** Relating to requiring suicide prevention resources be printed on student identification cards *(In effect May 30, 2023)*

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# Whole School Safety

22

# Whole School Safety

A horizontal timeline with an orange arrow pointing to the right. Two events are marked: one on the left with an orange circle and one on the right with a grey circle. A vertical dashed line connects the grey circle to the text of House Bill 3369.

**18 May 2023**  
**Senate Bill 275:** Adding State Fire Marshalls be included with law enforcement and first responders that receive information on school safety requirements (In effect May 18, 2023)

**7 June 2023**  
**House Bill 3369:** Creating a School Safety Unit within the Division of Protective Services (In effect June 7, 2023)

23

# Crimes

The slide features a dark blue background with a large, semi-transparent blue circle. On the right side, there is a vertical image of a spotlight beam illuminating a dark surface.

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# Crimes

- **Senate Bill 132:** Clarifying criminal offense of harassment (*In effect May 2, 2023*)
- **Senate Bill 187:** Making it a felony offense for school employee or volunteer to engage in sexual contact with students (*In effect June 9, 2023*)
- **Senate Bill 546:** Adding and removing certain compounds from controlled substance list (*In effect June 8, 2023*)

25

# Crimes

- **Senate Bill 608:** Correcting list of items which are considered deadly weapons (*In effect June 9, 2023*)
- **House Bill 2218:** Distracted Driving Act (*In effect June 7, 2023*)
- **House Bill 3190:** Amending the definition of "minor" (*In effect June 9, 2023*)

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# **Student Rights & Responsibilities**

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**Senate Bill 121  
Creating Student Journalist  
Press Freedom Protection Act**

*In effect June 9, 2023*

28

## SB 121

- Purpose: To safeguard & encourage
  - freedom of expression by student journalists
  - freedom of the press in "school-sponsored media" of public high schools and higher education
- Forbids censorship unless the material violates law or
  - is libelous or slanderous, or
  - invades privacy that is protected by law, or
  - is obscene, vulgar, pornographic or has sensual or illicit sexual content
  - expressly incites student conduct that violates law or school policy, or that will likely cause substantial disruption of school operations

29

## SB 12

- Every county board must adopt a written policy that includes an appeal/administrative review process for student journalists and employee advisors, and that is prerequisite to litigation
- Advisors cannot be disciplined for complying with this law
- Schools are not responsible for student expression that complies with this law

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House Bill 2596  
To modify when a nonresident student's  
transfer may be denied

*In effect May 23, 2023*

31

## In-County Student Transfers

Parental consent is needed for in-county student transfers made by the superintendent "for reasons affecting the best interests of the schools"

Parents' in-county student transfer requests may be denied based on lack of grade level capacity or appropriate staffing

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## In-County Student Transfers

Parents may appeal to the county board and then the State Superintendent from denials of in-county requests and the superintendent's involuntary transfers

In-county enrollment decisions cannot distinguish between students based on their "potential disability" status, but can consider whether a school has appropriate staff, resources, services and programs

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## Open Enrollment

- County boards must have a policy on their website and publicly available by other means that
  - allows students who reside in any county to enroll in the county's schools, tuition free
  - explains the process, application period & deadlines
  - allows requests outside the application period, to be considered on a "case by case" basis

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## Open Enrollment

- disallows enrollment if the student previously transferred schools in the same school year
- does not discriminate on the basis of residential status or "potential disability"
- allows enrollment to be denied due to
  - lack of programs or services identified in the board's critical need policy, or
  - the student's commission of a Level 3 or 4 offense under State Board Policy 4373

35

## House Bill 2890 Modifying student discipline

*In effect June 9, 2023*

36

## HB 2890

- Adds “behavior that obstructs the teaching or learning process” to existing law covering exclusions from class at all grade levels
- Grades 6-12 students may now also be excluded for behavior that in the teacher’s opinion
  - constitutes disorderly conduct, or
  - interferes with an orderly educational process, or
  - obstructs teaching or learning of others in the room
- Exclusion
  - bars return to the classroom for at least the rest of the day
  - places the student under control of the principal/designee
  - requires principal/teacher communication within 24 hrs

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## HB 2890

- After 3 exclusions from a classroom, the principal must impose
  - in- or out-of-school suspension, or
  - placement in the county’s alternative learning center, if any
- Boards must have policies that include a “tier system” and
  - encourage alternatives to discipline and parental involvement
  - have an appeals process for teachers regarding principals’ handling of exclusions
- Principals cannot reprimand teachers for exclusions that follow policy

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House Bill 3042  
 Relating to forbidding excessive  
 government limitations on exercise of  
 religion

*In effect May 31, 2023*

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HB 3042

- Boards and employees are forbidden to
  - substantially burden a person's exercise of religion unless doing so is necessary and the least restrictive way to further some compelling government interest, and
  - treat religious conduct more restrictively than other non-religious conduct of comparable risk or because of the latter's economic need or benefit
- Remedies for substantial violations or "impending violations" of the law are limited to orders declaring the action to violate the law and enjoining continuing violations
  - A prevailing plaintiff is entitled to reimbursed attorney fees and costs

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## HB 2018

- **House Bill 2018:** Permitting the managed care case coordinator to attend the multidisciplinary team meeting (*In effect February 1, 2023*)

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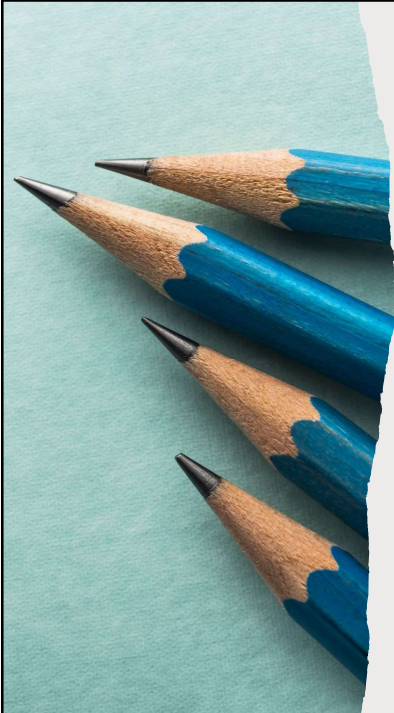
## Curriculum

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

*In effect June 9, 2023*

43



- Each public school must post its current “class curriculum,” as adopted by the school board, on the school’s website
  - at the start of each school year or
  - within 30 days of the adoption of any new or revised curriculum
- Lacking a website, a school must post on the board’s website or another website authorized by the State BOE

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**“Class curriculum” means programs and methods developed by the school’s curriculum team to implement the curriculum base don state-approved content standards**



**Only students, parents and guardians must be given login information**

**A person designated by a parent to have such login information is not entitled to login information**

45

## House Bill 3035 Relating generally to high-quality education programs and school operations

*In effect June 9, 2023*

46

## Dyslexia, Dyscalculia & Other Specific Learning Disabilities

- A State Board of Education policy must list tools and training resources for assessment, evaluation & screening, including on the use of “dyslexia” and “dyscalculia” in IEPs and evaluation reports
- County boards and the State Board of Education must take dozens of other actions to meet the needs of students who have or may have specific learning disabilities, dyslexia and dyscalculia in particular
- The county actions include parental involvement & notification, interventions, assessment, accommodations, instructional practices, professional development, and staffing


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## Classroom Personnel Grades K-3

- Kindergarten classrooms
  - No more than 20 pupils per teacher
  - 1 “ECCAT or aide” in classrooms with more than 10 pupils
- Grades 1, 2, 3
  - No more than 25 pupils per teacher
  - 1 ECCAT/aide/paraprofessional in classrooms with more than 12 pupils, beginning with
    - School year 2023-2024 for 1st grade classrooms
    - School year 2024-2025 for 2nd grade classrooms
    - School year 2025-2026 for 3rd grade classrooms


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- If all classrooms at a grade level are already served by the required ECCATs, aides or paraprofessionals by the required school year, the county board in its discretion may add such employees to other of the K-3 grade levels with the greatest need, beginning July 1, 2023, and completing full implementation by July 1, 2026
- A county board has discretion, but is not required, to assign an interventionist instead of an ECCAT, aide or paraprofessional in grade K-3 classrooms, even if there are insufficient ECCATs, aides or paraprofessionals to meet the requirements of the new law
- The funding formula has been adjusted for the additional service employee staff required by this bill, but not for professionals


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## Third Grade Success


- Purpose: To ensure student mastery of reading and math skills and close any skills gaps by the end of 3rd grade
- As of the start of school year 2026-2027, students showing minimal understanding of grade level English language arts or math on the annual 3rd grade summative assessment shall be retained in 3rd grade for the next school year *if recommended by the student's teacher and the student assistance team*

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- Exceptions for:
  - Students whose IEP includes participation in the statewide alternate summative assessment
  - Students identified as English language learners with less than 3 years of English as a second language instruction
  - Students with disabilities who participate in the statewide summative assessment and have an IEP or 504 plan reflecting that they received intensive interventions for more than 2 years and still show a deficiency
  - Students currently referred or evaluated for special education
  - Students diagnosed with a significant impairment, including dyslexia or dyscalculia

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- Students whose IEP team and parents agree that promotion is appropriate based on the IEP
- Students who have received intensive intervention for 2 years or more, still show a deficiency, were previously retained in any of grades K-3, and will continue to receive intensive intervention in 4th grade
- Students who demonstrate an acceptable level of performance on an alternative standardized assessment
- Students who attend an extended year learning program following 3rd grade and attain proficiency
- Students whose parent has requested a good cause exemption

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- The superintendent or designee may grant a good cause exemption to retention upon determining that the exemption is in the best interests of the student, unless the classroom teacher recommends retention due to the student's lack of mastery of the subject matter and lack of preparation for the subject matter in 4th grade

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## Curriculum

### **Senate Bill 469**

Providing funding for CPR instruction to high school students  
*(In effect July 1, 2023)*

### **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 in conjunction with the State Board of Education *(In effect June 8, 2023)*

54

# Curriculum



**House Bill 3055:** To create a vocational math class for students interested in careers in the trades *(In effect May 23, 2023)*



**House Bill 3113:** Requiring high school students to complete course of study in personal finance *(In effect June 1, 2023)*

55

# Personnel

56

## Senate Bill 461 Relating to WV Public employees grievance procedure

*In effect June 9, 2023*

57

## SB 461

- Level One conferences & hearings must be conducted by impartial decision makers with no interest in the outcome
- Employees likely can no longer grieve matters related to discrimination based on race, religion, color, national origin, ancestry, sex, age (40 and above), blindness or other disability
  - However, they may file complaints with the WV Human Rights Commission or the federal EEOC
- Employers are given more time in some instances to process and decide employee grievances

58

## SB 461

- Employers have more opportunity to get employees' grievances and appeals dismissed for missing deadlines
- Employers have more control over scheduling the time off an employee and their representative may take to prepare a grievance
- An employee who serves as other employees' representative in the grievance procedure may do so for only 5 grievances per school year
- In some instances, the employer may recover its reasonable attorney fees and court costs from a grievant whose frivolous grievance has been denied at all levels of the grievance procedure

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## Senate Bill 688 Allowing BOE to hire retired teachers to assist with tutoring

*In effect June 6, 2023*

60

## SB 688

- At their own expense and subject to conditions, boards may engage retired teachers as *independent contractors* to provide student tutoring services without impacting the retirees' retirement benefits
- Retired teachers are ineligible for such contracts if they have been convicted of a number of identified crimes or any other misdemeanor or felony designated by the board
- These independent contractors are not eligible for PEIA, workers compensation benefits, or other state-sponsored benefits, and their service does not enhance their retirement benefits

61

House Bill 2346  
Declaring a shortage of qualified bus  
operators and allowing retired bus  
operators to accept employment

*In effect July 1, 2023*

62

## SB 2346

- To address the shortage of qualified substitute bus operators, boards may employ certain retired bus operators as substitutes for an unlimited number of days without jeopardizing their retirement benefits, subject to certain conditions
  - This is possible only if the number of available substitute bus operators who are willing to accept assignments does not meet the board's need for subs
- Before doing so, a board must enact a policy recommended by its superintendent and approved by the State Board of Education that, among other things, permits a retiree sub to work only when no other qualified, non-retired and available sub bus operators accepts the assignment



63

## SB 2346

- A bus operator cannot retire and start work as a retiree sub bus operator in the same fiscal year
- When a retiree sub bus operator fills a vacant bus operator position, the county board must continue to post the position until it is awarded to a qualified regularly employed bus operator
- Retiree sub bus operators do not accrue seniority and are considered day-to-day, temporary, part-time employees ineligible for additional pension or other benefits of regular employment

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## Personnel

**HB 2597**

- House Bill 2597: Amending performance evaluations of professional personnel (In effect June 1, 2023)

**HB 2602**

- House Bill 2602: Reestablishing certain specialized school service personnel classifications In effect February 10, 2023)

**HB 3261**

- House Bill 3261: Relating to Social Workers Qualifications (In effect June 9, 2023)

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# Business Office

66

House Bill 3547  
Increasing the number of personal  
days that county board of education  
employees may use

*In effect July 1, 2023*

67

HB 3547

- Regular school employees will now be able to use five, rather than just four, days of accrued personal leave for absences each school year without regard to cause (but not for a concerted work stoppage or strike)
- If taking such leave on consecutive days, they no longer need the principal's or supervisor's permission, as long as they give 14 days' advance notice of such use

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**Senate Bill 268:** Relating to PEIA *(In effect March 6, 2023)*

**Senate Bill 423:** Increasing salary for certain state employees *(In effect July 1, 2023)*

**Senate Bill 734:** Requiring adoption of cloud computing services by state agencies *(In effect June 8, 2023)*

69

**Senate Bill 237:** Relating to Public Employees Retirement System and State Teachers Retirement System *(In effect July 1, 2023)*

**Senate Bill 450:** Defining medical examination for disability purposes in retirement plans administered by Consolidated Public Retirement Board *(In effect June 5, 2023)*

**Senate Bill 458:** Setting rate of interest on delinquent retirement contribution submissions *(In effect June 4, 2023)*

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# Facilities

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## FACILITIES

- **Senate Bill 51:** Requiring impact statement in certain instances of school closing or consolidation (*In effect March 7, 2023*)
- **House Bill 2380:** Relating to School Building Authority (*In effect June 5, 2023*)

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# Alternatives to Public Education

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House Bill 2820  
To provide HOPE Scholarship  
recipients with the ability to  
play sports

*In effect June 9, 2023*

74

## HB 2820

- Despite the reference to HOPE scholarship recipients, this bill enacts a rule that applies to all students: Before the 2023-2024 school year, the WVSSAC must amend its student transfer and eligibility policy
- The amendment must allow students to transfer schools and retain their athletic eligibility at least one time during the student's 4 years of secondary school (grades 9-12)
- WVSSAC may also, under its rules and on a case-by-case basis, allow a student to transfer schools more than one time and retain eligibility

75

## HB 2820

- Students participating in microschoools, learning pods and the HOPE scholarship program are now eligible for interscholastic athletics and other extracurricular activities regulated by WVSSAC
  - Their eligibility is conditioned on meeting 5 requirements related to academic proficiency, age, amateur status and compliance with WVSSAC and school board rules
  - The bill makes clear that the students do not need to be enrolled in at least one virtual instructional course per semester

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## HB 2820

- Private school students are eligible for extracurricular activities in the secondary school located in their residential attendance zone
  - But only if their private school does not offer the same activity
- These extracurricular activities are defined by WVSSAC regulations as nonacademic activities such as interscholastic athletics, student government, class officer, marching band that is not part of the curricular band, and clubs which are not closely related to identifiable programs/areas of study
- The private school students must comply with WVSSAC and school board rules, but not the academic proficiency, age or amateur status requirements that apply to other students

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## Alternatives to Public Education

### Senate Bill 47

Creating Charter Schools Stimulus Fund *(In effect June 8, 2023)*

### Senate Bill 453

Ensuring retirement contributions and delinquency charges of charter school employees be paid upon school closure or by successor *(In effect June 4, 2023)*

### House Bill 2827

Make public charter schools eligible for Safe Schools Funds *(In effect June 4, 2023)*

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## Alternatives to Public Education

- **Senate Bill 449:** Updating terms for Natural Resources Police Officers Retirement System and retirement systems for charter schools (*In effect June 5, 2023*)
- **Senate Bill 451:** Relating to Teachers Retirement System and Teachers' Defined Contribution Retirement System (*In effect June 7, 2023*)
- **House Bill 3084:** Relating to revising provisions related to public charter schools (*In effect July 1, 2023*)

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## Alternatives to Public Education

- **Senate Bill 149:** Exempting certain organizations from property taxation (*In effect June 7, 2023*)
- **Senate Bill 625:** Requiring certain transcripts to be accepted as record of student's performance for placing in micro school programs (*In effect June 9, 2023*)

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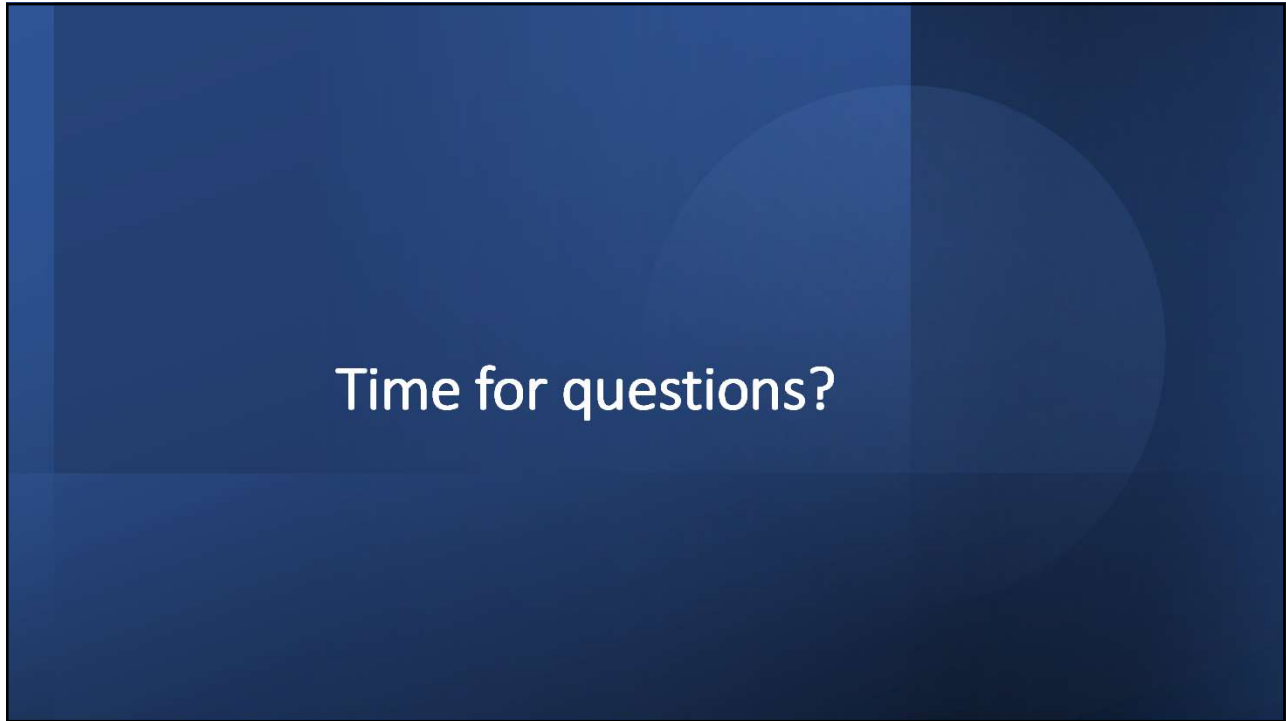
# Miscellaneous

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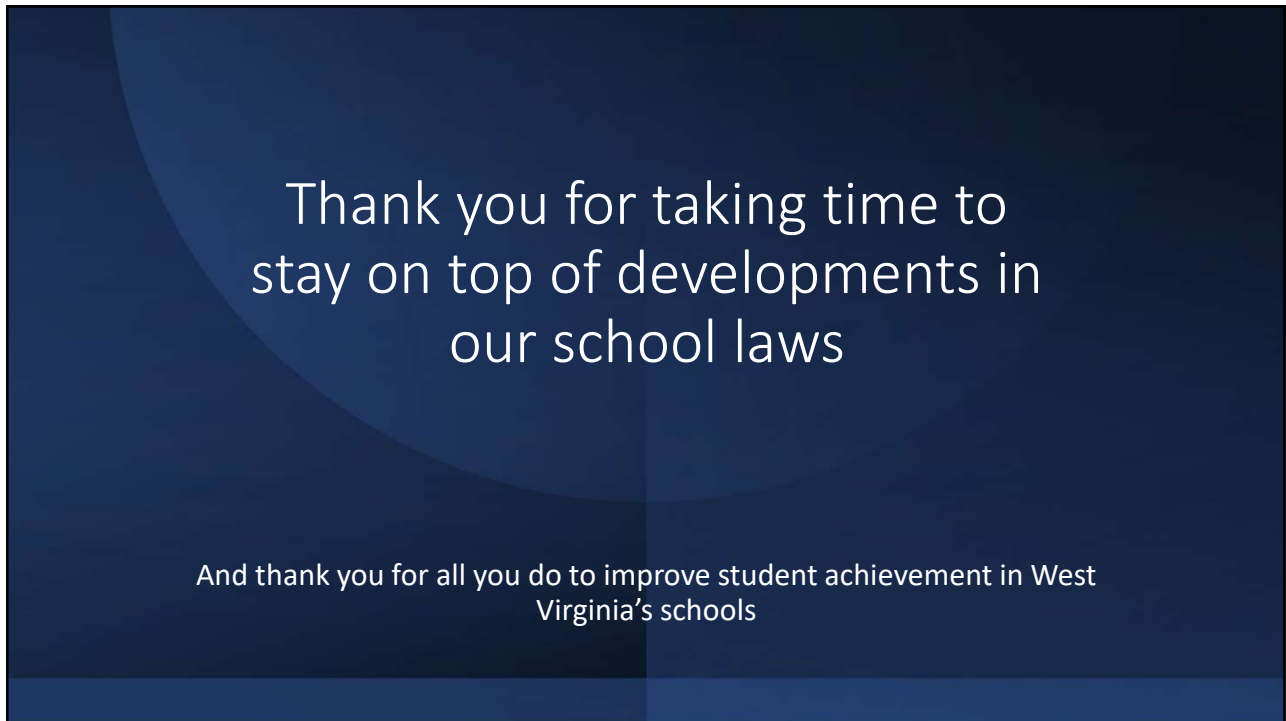
- **Senate Bill 478:**  
Relating to  
Jumpstart Savings  
Program (*In effect  
March 10, 2023*)
- **House Bill 2008:**  
Requiring local  
entities to enforce  
immigration laws (*In  
effect June 9, 2023*)



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