

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4838

By Delegates Holstein, Statler, Dittman, Shamblin,
Barnhart, E. Pritt, Householder, Hornby, Mazzocchi,
Forsht, and Cannon

[Introduced January 17, 2024; Referred to the
Committee on Education]

1 A BILL to amend and reenact §18A-2-3 if the Code of West Virginia, 1931, as amended, relating to
 2 requiring county boards of education to inform persons, who are employed as a long-term
 3 substitute teacher, about completing IEP and 504 plans.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-3. Employment of substitute teachers; and employment of retired teachers as substitutes in areas of critical need and shortage.

1 (a) The county superintendent, subject to approval of the county board, may employ and
 2 assign substitute teachers to any of the following duties:

3 (1) Fill the temporary absence of any teacher or an unexpired school term made vacant by
 4 resignation, death, suspension or dismissal;

5 (2) Fill a teaching position of a regular teacher on leave of absence; and

6 (3) Perform the instructional services of any teacher who is authorized by law to be absent
 7 from class without loss of pay, providing the absence is approved by the board of education in
 8 accordance with the law.

9 The substitute shall be a duly certified teacher.

10 (b) Notwithstanding any other provision of this code to the contrary, a substitute teacher
 11 who has been assigned as a classroom teacher in the same classroom continuously for more than
 12 one half of a grading period and whose assignment remains in effect two weeks prior to the end of
 13 the grading period, shall remain in the assignment until the grading period has ended, unless the
 14 principal of the school certifies that the regularly employed teacher has communicated with and
 15 assisted the substitute with the preparation of lesson plans and monitoring student progress or has
 16 been approved to return to work by his or her physician. For the purposes of this section, teacher
 17 and substitute teacher, in the singular or plural, mean professional educator as defined in section
 18 one, article one of this chapter.

19 (c) (1) The Legislature hereby finds and declares that due to a shortage of qualified

20 substitute teachers, a compelling state interest exists in expanding the use of retired teachers to
21 provide service as substitute teachers in areas of critical need and shortage. The Legislature
22 further finds that diverse circumstances exist among the counties for the expanded use of retired
23 teachers as substitutes.

24 (2) For the purposes of this subsection:

25 (A) "Area of critical need and shortage for substitute teachers" means an area of
26 certification and training in which the number of available substitute teachers in the county who
27 hold certification and training in that area and who are not retired is insufficient to meet the
28 projected need for substitute teachers; and

29 (B) "Teacher or substitute teacher" includes speech pathologists, school nurses and
30 school counselors.

31 (3) A person receiving retirement benefits under article seven-a, chapter eighteen of this
32 code or who is entitled to retirement benefits during the fiscal year in which that person retired may
33 accept employment as a critical needs substitute teacher for an unlimited number of days each
34 fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled
35 if the following conditions are satisfied:

36 (A) The county board adopts a policy recommended by the superintendent to address
37 areas of critical need and shortage for substitute teachers;

38 (B) The policy sets forth the areas of critical need and shortage for substitute teachers in
39 the county in accordance with the definition of area of critical need and shortage for substitute
40 teachers set forth in subdivision (2) of this subsection;

41 (C) The policy provides for the employment of retired teachers as critical needs substitute
42 teachers during the school year on an expanded basis in areas of critical need and shortage for
43 substitute teachers as provided in this subsection;

44 (D) The policy provides that a retired teacher may be employed as a substitute teacher in
45 an area of critical need and shortage for substitute teachers on an expanded basis as provided in

46 this subsection only when no other teacher who holds certification and training in the area and who
47 is not retired is available and accepts the substitute assignment;

48 (E) The policy is effective for one school year only and is subject to annual renewal by the
49 county board;

50 (F) The state board approves the policy and the use of retired teachers as substitute
51 teachers on an expanded basis in areas of critical need and shortage for substitute teachers as
52 provided in this subsection; and

53 (G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond
54 the post-retirement employment limitations established by the Consolidated Public Retirement
55 Board, the superintendent of the affected county submits to the state board in a form approved by
56 the Consolidated Public Retirement Board and the state board, an affidavit signed by the
57 superintendent stating the name of the county, the fact that the county has adopted a policy to
58 employ retired teachers as substitutes to address areas of critical need and shortage, the name or
59 names of the person or persons to be employed as a critical needs substitute pursuant to the
60 policy, the critical need and shortage area position filled by each person, the date that the person
61 gave notice to the county board of the person's intent to retire, and the effective date of the
62 person's retirement. Upon verification of compliance with this section and the eligibility of the
63 critical needs substitute teacher for employment beyond the post-retirement limit, the state board
64 shall submit the affidavit to the Consolidated Public Retirement Board.

65 (4) Any person who retires and begins work as a critical needs substitute teacher within the
66 same fiscal year in which that person retired shall lose those retirement benefits attributed to the
67 annuity reserve, effective from the first day of employment as a retiree critical needs substitute
68 teacher in that fiscal year and ending with the month following the date the retiree ceases to
69 perform service as a critical needs substitute teacher.

70 (5) Retired teachers employed to perform expanded substitute service pursuant to this
71 subsection are considered day-to-day, temporary, part-time employees. The substitutes are not

72 eligible for additional pension or other benefits paid to regularly employed employees and may not
73 accrue seniority.

74 (6) A retired teacher is eligible to be employed as a critical needs substitute teacher to fill a
75 vacant position without any loss of retirement benefits attributed to the annuity reserve only if the
76 retired teacher's retirement became effective before the first day of July preceding at least the
77 fiscal year during which he or she is employed as a critical needs substitute teacher.

78 (7) When a retired teacher is employed as a critical needs substitute to fill a vacant
79 position, the county board shall continue to post the vacant position until it is filled with a regularly
80 employed teacher who is fully certified or permitted for the position.

81 (8) When a retired teacher is employed as a critical needs substitute to fill a vacant
82 position, the position vacancy shall be posted electronically and easily accessible to prospective
83 employees as determined by the state board.

84 (9) Persons who are hired as long-term substitute teachers shall be provided information
85 by the county board relating to an IEP plan and 504 plan, detailing their uses and what those long-
86 term substitute teachers should do to complete these documents upon their hiring.

87 ~~(9)~~ (10) Until this subsection is expired pursuant to subdivision (10) of this subsection, the
88 state board shall report to the Joint Committee on Government and Finance, prior to February 1 of
89 each year, information indicating the effectiveness of the provisions of this subsection on reducing
90 the critical need and shortage of substitute teachers including, but not limited to, the number of
91 retired teachers, by critical need and shortage area position filled and by county, employed beyond
92 the post-retirement employment limit established by the Consolidated Public Retirement Board,
93 the date that each person gave notice to the county board of the person's intent to retire, and the
94 effective date of the person's retirement. A copy of the report shall also be provided to the
95 Legislative Oversight Commission on Education Accountability.

96 ~~(40)~~ (11) The provisions of this subsection shall expire on June 30, 2025.

NOTE: The purpose of this bill is to require county boards of education to inform persons, who are employed as a long-term substitute teacher, about completing IEP and 504 plans.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.