

Senate Bill No. 236

(By Senators Kessler (Acting President) and Hall,

By Request of the Executive)

[Introduced January 21, 2011; referred to the Committee on
Education.]

11 A BILL to amend and reenact §18A-2-12 and §18A-2-12a of the Code
12 of West Virginia, 1931, as amended, all relating to providing
13 for evaluation of professional personnel in the public
14 schools; specifying certain professional personnel who must be
15 evaluated; requiring evaluations to be at least annual;
16 providing certain processes for evaluations and applicable
17 dates; requiring State Board of Education to revise
18 professional personnel evaluations; requiring State Board of
19 Education to establish task force to address rule changes
20 regarding professional personnel evaluations; requiring state
21 board study of duties and responsibilities of certain
22 professional employees and time required to accomplish
23 evaluations; requiring use and reporting of study results;
24 establishing task force reporting and recommendations;
25 requiring state board report to Legislative Oversight
26 Commission on Education Accountability; establishing dates
27 certain for submission of proposed rule and adopted rule and

1 effective date of rule; requiring certain rule provisions;
2 requiring provision of written evaluation results to persons
3 evaluated; modifying related evaluation provisions to comport
4 with changes; and making technical corrections and removing
5 obsolete provisions throughout.

6 *Be it enacted by the Legislature of West Virginia:*

7 That §18A-2-12 and §18A-2-12a of the Code of West Virginia,
8 1931, as amended, be amended and reenacted, all to read as follows:

9 **ARTICLE 2. SCHOOL PERSONNEL.**

10 **§18A-2-12. Performance evaluations of school personnel;**
11 **professional personnel evaluation process.**

12 (a) The state board shall adopt a written system for the
13 evaluation of the employment performance of personnel, which system
14 shall be applied uniformly by county boards of education in the
15 evaluation of the employment performance of personnel employed by
16 the board.

17 (b) The system adopted by the state board for evaluating the
18 employment performance of professional personnel shall be in
19 accordance with the provisions of this section.

20 (c) For purposes of this section, "professional personnel",
21 "professional" or "professionals", means professional personnel as
22 defined in section one, article one of this chapter.

23 (d) In developing the professional personnel performance
24 evaluation system, and amendments thereto, the state board shall
25 consult with the Center for Professional Development created in
26 article three-a of this chapter. The center shall participate
27 actively with the state board in developing written standards for

1 evaluation which clearly specify satisfactory performance and the
2 criteria to be used to determine whether the performance of each
3 professional meets such standards.

4 (e) The performance evaluation system shall contain, but shall
5 not be limited to, the following information:

6 (1) The professional personnel positions to be evaluated, at
7 least including classroom teachers, principals and county
8 superintendents, and any other professional personnel to be
9 evaluated, whether they be teachers professional educators or other
10 professional employees or, substitute teachers; administrators,
11 principals or others

12 (2) The frequency and duration of the evaluations, ~~which~~ shall
13 be on ~~a regular~~ at least an annual basis and of such frequency and
14 duration as to insure the collection of a sufficient amount of data
15 from which reliable conclusions and findings may be drawn:
16 ~~Provided, That for school personnel with five or more years of~~
17 ~~experience, who have not received an unsatisfactory rating,~~
18 ~~evaluations shall be conducted no more than once every three years~~
19 ~~unless the principal determines an evaluation for a particular~~
20 ~~school employee is needed more frequently: Provided, however, That~~
21 ~~for classroom teachers with five or more years of experience who~~
22 ~~have not received an unsatisfactory rating, an evaluation shall be~~
23 ~~conducted or professional growth and development plan required only~~
24 ~~when the principal determines it to be necessary for a particular~~
25 ~~classroom teacher, or when a classroom teacher exercises the option~~
26 ~~of being evaluated at more frequent intervals;~~

27 (3) Effective on the effective date of this section and until

1 a revised state board rule on professional personnel evaluations is
2 adopted as provided in subdivision (4) of this subsection and
3 becomes effective, the processes for evaluating teachers,
4 professional support personnel and athletic coaches shall be as
5 follows:

6 (A) Teachers in their first or second year of employment shall
7 be evaluated two times per year including a minimum of two
8 observations of thirty minutes duration per evaluation;

9 (B) Teachers in their third year of employment shall have one
10 evaluation per year including two observations of thirty minutes
11 duration each;

12 (C) Additional observations and evaluations may be scheduled
13 for teachers in their first, second or third year at the discretion
14 of the principal to address deficiencies;

15 (D) Teachers in their fourth or subsequent year of employment
16 who have not received an unsatisfactory evaluation rating shall be
17 informally evaluated by the principal or assistant principal. The
18 principal or assistant principal shall record the names of the
19 teachers informally evaluated by him or her whose performance he or
20 she determines to be satisfactory and for whom no further
21 evaluative measures are required: *Provided*, That teachers in their
22 fourth or subsequent year of employment who have not received an
23 unsatisfactory evaluation rating shall be evaluated in accordance
24 with paragraphs (B) and (C) of this subdivision or using a
25 professional growth and development plan method of evaluation if
26 requested in writing by the teacher or if the principal or

1 assistant principal determines that it is necessary;

2 (E) Teachers in their fourth or subsequent year of employment
3 who have received an unsatisfactory evaluation rating shall be
4 evaluated using the processes specified in paragraphs (B) and (C)
5 of this subdivision and as may be provided in a plan of
6 improvement;

7 (F) The evaluation of professional support personnel and
8 athletic coaches shall be conducted under a similar process; and

9 (G) The state board shall promulgate an emergency rule, as
10 necessary, to implement the provisions of this subdivision;

11 (4) The state board shall promulgate a legislative rule in
12 accordance with article three-b, chapter twenty-nine-a of this
13 code, revising the professional personnel evaluation process in
14 accordance with the following:

15 (A) The state board shall conduct a study of the duties and
16 responsibilities required of principals, and assistant principals
17 in schools where they are present, and the time required to perform
18 these duties and responsibilities. The state board shall present
19 the study and its findings to the Legislative Oversight Commission
20 on Education Accountability;

21 (B) The state board shall form a task force on professional
22 personnel evaluations to advise it on needed revisions to the state
23 board rule on professional personnel evaluations. The task force
24 shall be comprised of at least the following representatives of the
25 relevant stakeholders: county boards, superintendents, principals,
26 teachers, parents and the Legislature;

1 (C) The task force shall be provided a copy of the study and
2 its findings required in paragraph (A) of this subdivision and
3 shall consider them in making its recommendations to the state
4 board for the revision of the state board rule on professional
5 personnel evaluations. The recommendations of the task force also
6 shall include recommendations related to the personnel time
7 required to accomplish the process and purposes of the professional
8 personnel evaluations at each level of personnel;

9 (D) The state board shall report to the Legislative Oversight
10 Commission on Education Accountability as requested on its progress
11 on revising its rule related to professional personnel evaluations
12 and shall submit its proposed rule to the commission not later than
13 December 1, 2011, along with any additional recommendations it may
14 have on related changes necessary to accomplish the process and
15 purposes of the professional personnel evaluations at each level of
16 personnel. The state board shall submit the final rule adopted by
17 the state board not later than February 1, 2012;

18 (E) The rule shall at least include annual evaluation
19 procedures for classroom teachers, principals and county
20 superintendents;

21 (F) The rule shall provide for the informal evaluation by the
22 principal or assistant principal of teachers in their fourth or
23 subsequent year of employment who have not received an
24 unsatisfactory evaluation rating and for the recording by the
25 principal of those teachers whose performance he or she determines
26 to be satisfactory and for whom no further evaluative measures are

1 required;

2 (G) Each person evaluated under the provisions of subsections
3 (3) and (4) of this subsection shall be provided written results of
4 their evaluation; and

5 (H) The rule shall include an effective date of July 1, 2012.

6 ~~(3)~~ (5) The evaluation shall serve the following purposes:

7 (A) Serve as a basis for the improvement of the performance of
8 the personnel in their assigned duties;

9 (B) Provide an indicator of satisfactory performance for
10 individual professionals;

11 (C) Serve as documentation for a dismissal on the grounds of
12 unsatisfactory performance; and

13 (D) Serve as a basis for programs to increase the professional
14 growth and development of professional personnel;

15 ~~(4)~~ (6) The standards for satisfactory performance for
16 professional personnel and the criteria to be used to determine
17 whether the performance of each professional meets such standards
18 and other criteria for evaluation for each professional position
19 evaluated. Effective July 1, 2003 and thereafter, professional
20 personnel, as appropriate, shall demonstrate competency in the
21 knowledge and implementation of the technology standards adopted by
22 the state board. If a professional fails to demonstrate
23 competency, in the knowledge and implementation of these standards,
24 he or she will be subject to an improvement plan to correct the
25 deficiencies; and

26 ~~(5)~~ (7) Provisions for a written improvement plan, which shall

1 be specific as to what improvements, if any, are needed in the
2 performance of the professional and shall clearly set forth
3 recommendations for improvements, including recommendations for
4 additional education and training during the professional's
5 recertification process.

6 (f) A professional whose performance is considered to be
7 unsatisfactory shall be given notice of deficiencies. A
8 remediation plan to correct deficiencies shall be developed by the
9 employing county board of education and the professional. The
10 professional shall be given a reasonable period of time for
11 remediation of the deficiencies and shall receive a statement of
12 the resources and assistance available for the purposes of
13 correcting the deficiencies.

14 (g) No person may evaluate professional personnel for the
15 purposes of this section unless the person has an administrative
16 certificate issued by the state superintendent and has successfully
17 completed education and training in evaluation skills through the
18 center for professional development, or equivalent education
19 training approved by the state board, which will enable the person
20 to make fair, professional, and credible evaluations of the
21 personnel whom the person is responsible for evaluating. ~~After~~
22 ~~July 1, 1994,~~ No person may be issued an administrative certificate
23 or have an administrative certificate renewed unless the state
24 board determines that the person has successfully completed
25 education and training in evaluation skills through the center for
26 professional development, or equivalent education and training

1 approved by the state board.

2 (h) Any professional whose performance evaluation includes a
3 written improvement plan shall be given an opportunity to improve
4 his or her performance through the implementation of the plan. If
5 the next performance evaluation shows that the professional is now
6 performing satisfactorily, no further action may be taken
7 concerning the original performance evaluation. If the evaluation
8 shows that the professional is still not performing satisfactorily,
9 the evaluator either shall make additional recommendations for
10 improvement or may recommend the dismissal of the professional in
11 accordance with the provisions of section eight of this article.

12 (i) Lesson plans are intended to serve as a daily guide for
13 teachers and substitutes for the orderly presentation of the
14 curriculum. Lesson plans may not be used as a substitute for
15 observations by an administrator in the performance evaluation
16 process. A classroom teacher, as defined in section one, article
17 one of this chapter, may not be required to post his or her lesson
18 plans on the Internet or otherwise make them available to students
19 and parents or to include in his or her lesson plans any of the
20 following:

- 21 (1) Teach and reteach strategies;
- 22 (2) Write to learn activities;
- 23 (3) Cultural diversity;
- 24 (4) Color coding; or
- 25 (5) Any other similar items which are not required to serve as
26 a guide to the teacher or substitute for daily instruction. ~~and~~

1 (j) The Legislature finds that classroom teachers must be free
2 of unnecessary paper work so that they can focus their time on
3 instruction. Therefore, classroom teachers may not be required to
4 keep records or logs of routine contacts with parents or guardians.

5 (k) Nothing in this section may be construed to prohibit
6 classroom teachers from voluntarily posting material on the
7 Internet.

8 **§18A-2-12a. Statement of policy and practice for the county**
9 **boards and school personnel to minimize possible**
10 **disagreement and misunderstanding.**

11 (a) The Legislature makes the following findings:

12 (1) The effective and efficient operation of the public
13 schools depends upon the development of harmonious and cooperative
14 relationships between county boards and school personnel;

15 (2) Each group has a fundamental role to perform in the
16 educational program and each has certain separate, distinct and
17 clearly defined areas of responsibility as provided in chapters
18 eighteen and eighteen-a of this code; and

19 (3) There are instances, particularly involving questions of
20 wages, salaries and conditions of work, that are subject to
21 disagreement and misunderstanding between county boards and school
22 personnel and may not be so clearly set forth.

23 (b) The purpose of this section is to establish a statement of
24 policy and practice for the county boards and school personnel, as
25 follows, in order to minimize possible disagreement and
26 misunderstanding:

1 (1) County boards, subject to the provisions of this chapter,
2 chapter eighteen of this code and the policies and rules of the
3 state board, are responsible for the management of the schools
4 within their respective counties. The powers and responsibilities
5 of county boards in setting policy and in providing management are
6 broad, but not absolute;

7 (2) The school personnel shares the responsibility for putting
8 into effect the policies and practices approved by the county board
9 that employs them and the school personnel also have certain rights
10 and responsibilities as provided in statute, and in their
11 contracts;

12 (3) School personnel are entitled to meet together, form
13 associations and work in concert to improve their circumstances and
14 the circumstances of the schools;

15 (4) County boards and school personnel can most effectively
16 discharge their total responsibilities to the public and to each
17 other by establishing clear and open lines of communication.
18 School personnel should be encouraged to make suggestions,
19 proposals and recommendations through appropriate channels to the
20 county board. Decisions of the county board concerning the
21 suggestions, proposals and recommendations should be communicated
22 to the school personnel clearly and openly;

23 (5) Official meetings of county boards are public meetings.
24 School personnel are free to attend the meetings without fear of
25 reprisal and should be encouraged to attend;

26 (6) All school personnel are entitled to know how well they

1 are fulfilling their responsibilities and should be offered the
2 opportunity of open and honest evaluations of their performance ~~on~~
3 ~~a regular basis~~ and in accordance with the provisions of section
4 twelve of this article. All school personnel are entitled to
5 opportunities to improve their job performance prior to the
6 termination or transfer of their services. Decisions concerning
7 the promotion, demotion, transfer or termination of employment of
8 school personnel, other than those for lack of need or governed by
9 specific statutory provisions unrelated to performance, should be
10 based upon the evaluations, and not upon factors extraneous
11 thereto. All school personnel are entitled to due process in
12 matters affecting their employment, transfer, demotion or
13 promotion; and

14 (7) All official and enforceable personnel policies of a
15 county board must be written and made available to its employees.

NOTE: The purpose of this bill is to provide for annual evaluations of professional personnel in schools.

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