

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 280

(By Senators Plymale, Barnes, Foster, Wells and Beach)

[Originating in the Committee on Education;
reported February 9, 2011.]

A BILL to amend and reenact §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of the Code of West Virginia, 1931, as amended, all relating to changing certain deadlines associated with the termination, resignation and transfer of school personnel and rehiring of probationary employees.

Be it enacted by the Legislature of West Virginia:

That §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need;

released time; failure of teacher to perform contract or violation thereof; written notice bonus for teachers and professional personnel.

1 (a) Before entering upon their duties, all teachers shall
2 execute a contract with their county boards, which shall
3 state the salary to be paid and shall be in the form prescribed
4 by the state superintendent. Each contract shall be signed by
5 the teacher and by the president and secretary of the county
6 board and shall be filed, together with the certificate of the
7 teacher, by the secretary of the office of the county board:
8 *Provided*, That when necessary to facilitate the employment
9 of employable professional personnel and prospective and
10 recent graduates of teacher education programs who have
11 not yet attained certification, the contract may be signed
12 upon the condition that the certificate is issued to the
13 employee prior to the beginning of the employment term in
14 which the employee enters upon his or her duties.

15 (b) Each teacher's contract, under this section, shall be
16 designated as a probationary or continuing contract. A
17 probationary teacher's contract shall be for a term of not less
18 than one nor more than three years, one of which shall be for
19 completion of a beginning teacher internship pursuant to the

20 provisions of section two-b, article three of this chapter, if
21 applicable. If, after three years of such employment, the
22 teacher who holds a professional certificate, based on at least
23 a bachelor's degree, has met the qualifications for a bache-
24 lor's degree and the county board enter into a new contract
25 of employment, it shall be a continuing contract, subject to
26 the following:

27 (1) Any teacher holding a valid certificate with less than a
28 bachelor's degree who is employed in a county beyond the
29 three-year probationary period shall upon qualifying for the
30 professional certificate based upon a bachelor's degree, if
31 reemployed, be granted continuing contract status; and

32 (2) A teacher holding continuing contract status with one
33 county shall be granted continuing contract status with any
34 other county upon completion of one year of acceptable
35 employment if the employment is during the next succeeding
36 school year or immediately following an approved leave of
37 absence extending no more than one year.

38 (c) The continuing contract of any teacher shall remain in
39 full force and effect except as modified by mutual consent of
40 the school board and the teacher, unless and until termi-
41 nated, subject to the following:

42 (1) A continuing contract may not be terminated except:

43 (A) By a majority vote of the full membership of the county
44 board on or before ~~February 1~~ May 1 of the then current
45 year, after written notice, served upon the teacher, return
46 receipt requested, stating cause or causes and an opportunity
47 to be heard at a meeting of the board prior to the board's
48 action on the termination issue; or

49 (B) By written resignation of the teacher on or before
50 ~~February 1~~ May 1 to initiate termination of a continuing
51 contract;

52 (2) The termination shall take effect at the close of the
53 school year in which the contract is terminated;

54 (3) The contract may be terminated at any time by mutual
55 consent of the school board and the teacher;

56 (4) This section does not affect the powers of the school
57 board to suspend or dismiss a principal or teacher pursuant
58 to section eight of this article;

59 (5) A continuing contract for any teacher holding a certifi-
60 cate valid for more than one year and in full force and effect
61 during the school year 1984-1985 shall remain in full force
62 and effect;

63 (6) A continuing contract does not operate to prevent a
64 teacher's dismissal based upon the lack of need for the
65 teacher's services pursuant to the provisions of law relating
66 to the allocation to teachers and pupil-teacher ratios. The
67 written notification of teachers being considered for dis-
68 missal for lack of need shall be limited to only those teachers
69 whose consideration for dismissal is based upon known or
70 expected circumstances which will require dismissal for lack
71 of need. An employee who was not provided notice and an
72 opportunity for a hearing pursuant to this subsection may
73 not be included on the list. In case of dismissal for lack of
74 need, a dismissed teacher shall be placed upon a preferred
75 list in the order of their length of service with that board. No
76 teacher may be employed by the board until each qualified
77 teacher upon the preferred list, in order, has been offered the
78 opportunity for reemployment in a position for which he or
79 she is qualified, not including a teacher who has accepted a
80 teaching position elsewhere. The reemployment shall be
81 upon a teacher's preexisting continuing contract and has the
82 same effect as though the contract had been suspended
83 during the time the teacher was not employed.

84 (d) In the assignment of position or duties of a teacher
85 under a continuing contract, the board may provide for
86 released time of a teacher for any special professional or
87 governmental assignment without jeopardizing the contrac-
88 tual rights of the teacher or any other rights, privileges or
89 benefits under the provisions of this chapter. Released time
90 shall be provided for any professional educator while serving
91 as a member of the Legislature during any duly constituted
92 session of that body and its interim and statutory committees
93 and commissions without jeopardizing his or her contractual
94 rights or any other rights, privileges, benefits or accrual of
95 experience for placement on the state minimum salary
96 schedule in the following school year under the provisions of
97 this chapter, board policy and law.

98 (e) Any teacher who fails to fulfill his or her contract with
99 the board, unless prevented from doing so by personal illness
100 or other just cause or unless released from his or her contract
101 by the board, or who violates any lawful provision of the
102 contract, is disqualified to teach in any other public school
103 in the state for a period of the next ensuing school year and
104 the state Department of Education or board may hold all
105 papers and credentials of the teacher on file for a period of

106 one year for the violation: *Provided*, That marriage of a
107 teacher is not considered a failure to fulfill, or violation of,
108 the contract.

109 (f) Any classroom teacher, as defined in section one, article
110 one of this chapter, who desires to resign employment with
111 a county board or request a leave of absence, the resignation
112 or leave of absence to become effective on or before July 15
113 of the same year and after completion of the employment
114 term, may do so at any time during the school year by
115 written notification of the resignation or leave of absence
116 and any notification received by a county board shall
117 automatically extend the teacher's public employee insur-
118 ance coverage until August 31 of the same year.

119 (g) (1) A classroom teacher who gives written notice to the
120 county board on or before December 1 of the school year of
121 his or her retirement from employment with the board at the
122 conclusion of the school year shall be paid \$500 from the
123 Early Notification of Retirement line item established for the
124 Department of Education for this purpose, subject to appro-
125 priation by the Legislature. If the appropriations to the
126 Department of Education for this purpose are insufficient to
127 compensate all applicable teachers, the Department of

128 Education shall request a supplemental appropriation in an
129 amount sufficient to compensate all ~~such~~ those teachers
130 giving the written notice. Additionally, if funds are still
131 insufficient to compensate all applicable teachers, the
132 priority of payment is for teachers who give written notice
133 the earliest. This payment shall not be counted as part of the
134 final average salary for the purpose of calculating retire-
135 ment.

136 (2) The position of a classroom teacher providing written
137 notice of retirement pursuant to this subsection may be
138 considered vacant and the county board may immediately
139 post the position as an opening to be filled at the conclusion
140 of the school year. If a teacher has been hired to fill the
141 position of a retiring classroom teacher prior to the start of
142 the next school year, the retiring classroom teacher is
143 disqualified from continuing his or her employment in that
144 position. However, the retiring classroom teacher may be
145 permitted to continue his or her employment in that position
146 and forfeit the early retirement notification payment if, after
147 giving notice of retirement in accordance with this subsec-
148 tion, he or she becomes subject to a significant unforeseen
149 financial hardship, including a hardship caused by the death

150 or illness of an immediate family member or loss of employ-
 151 ment of a spouse. Other significant unforeseen financial
 152 hardships shall be determined by the county superintendent
 153 on a case-by-case basis. This subsection does not prohibit a
 154 county school board from eliminating the position of a
 155 retiring classroom teacher.

§18A-2-6. Continuing contract status for service personnel; termination.

1 (a) After three years of acceptable employment, each
 2 service ~~personnel-employee~~ person who enters into a new
 3 contract of employment with the board shall be granted
 4 continuing contract status: *Provided*, That a service ~~person-~~
 5 ~~nel-employee~~ person holding continuing contract status with
 6 one county shall be granted continuing contract status with
 7 any other county upon completion of one year of acceptable
 8 employment if ~~such~~ the employment is during the next
 9 succeeding school year or immediately following an ap-
 10 proved leave of absence extending no more than one year.
 11 The continuing contract of ~~any-such~~ the employee shall
 12 remain in full force and effect except as modified by mutual
 13 consent of the school board and the employee, unless and
 14 until terminated with written notice, stating cause or causes,

15 to the employee, by a majority vote of the full membership of
16 the board before ~~February~~ May 1 of the then current year, or
17 by written resignation of the employee on or before that
18 date. The affected employee has the right of a hearing before
19 the board, if requested, before final action is taken by the
20 board upon the termination of ~~such~~ his or her employment.

21 (b) Those employees who have completed three years of
22 acceptable employment as of the effective date of this
23 legislation shall be granted continuing contract status.

**§18A-2-7. Assignment, transfer, promotion, demotion, suspension
and recommendation of dismissal of school person-
nel by superintendent; preliminary notice of trans-
fer; hearing on the transfer; proof required.**

1 (a) The superintendent, subject only to approval of the
2 board, may assign, transfer, promote, demote or suspend
3 school personnel and recommend their dismissal pursuant to
4 provisions of this chapter. However, an employee shall be
5 notified in writing by the superintendent on or before
6 ~~February~~ April 1 if he or she is being considered for transfer
7 or to be transferred. Only those employees whose consider-
8 ation for transfer or intended transfer is based upon known
9 or expected circumstances which will require the transfer of

10 employees shall be considered for transfer or intended for
11 transfer and the notification shall be limited to only those
12 employees. Any teacher or employee who desires to protest
13 the proposed transfer may request in writing a statement of
14 the reasons for the proposed transfer. The statement of
15 reasons shall be delivered to the teacher or employee within
16 ten days of the receipt of the request. Within ten days of the
17 receipt of the statement of the reasons, the teacher or
18 employee may make written demand upon the superinten-
19 dent for a hearing on the proposed transfer before the county
20 board. ~~of education~~ The hearing on the proposed transfer
21 shall be held on or before ~~March~~ May 15. At the hearing, the
22 reasons for the proposed transfer must be shown.

23 (b) The superintendent at a meeting of the board on or
24 before ~~March~~ May 15 shall furnish in writing to the board a
25 list of teachers and other employees to be considered for
26 transfer and subsequent assignment for the next ensuing
27 school year. An employee who was not provided notice and
28 an opportunity for a hearing pursuant to subsection (a) of
29 this section may not be included on the list. All other
30 teachers and employees not so listed shall be considered as
31 reassigned to the positions or jobs held at the time of this

32 meeting. The list of those recommended for transfer shall be
33 included in the minute record of the meeting and all those so
34 listed shall be notified in writing, which notice shall be
35 delivered in writing, by certified mail, return receipt re-
36 quested, to the persons' last known addresses within ten days
37 following the board meeting, of their having been so recom-
38 mended for transfer and subsequent assignment and the
39 reasons therefor.

40 (c) The superintendent's authority to suspend school
41 personnel shall be temporary only pending a hearing upon
42 charges filed by the superintendent with the board of
43 Education and the period of suspension may not exceed
44 thirty days unless extended by order of the board.

45 (d) The provisions of this section respecting hearing upon
46 notice of transfer is not applicable in emergency situations
47 where the school building becomes damaged or destroyed
48 through an unforeseeable act and which act necessitates a
49 transfer of the school personnel because of the aforemen-
50 tioned condition of the building.

**§18A-2-8a. Notice to probationary personnel of rehiring or
nonrehiring; hearing.**

1 (a) The superintendent at a meeting of the board on or before

2 ~~March 15~~ May 30 of each year shall provide in writing to the
3 board a list of all probationary teachers that he or she
4 recommends to be rehired for the next ensuing school year.
5 The board shall act upon the superintendent's recommenda-
6 tions at that meeting in accordance with section one of this
7 article. The board at this same meeting also shall ~~also~~ act
8 upon the retention of other probationary employees as
9 provided in sections two and five of this article. Any ~~such~~
10 probationary teacher or other probationary employee who is
11 not rehired by the board at that meeting shall be notified in
12 writing, by certified mail, return receipt requested, to ~~such~~
13 the persons' last known addresses within ten days following
14 ~~said the~~ board meeting, of their not having been rehired or
15 not having been recommended for rehiring.

16 (b) Any probationary teacher who receives notice that he
17 or she has not been recommended for rehiring or other
18 probationary employee who has not been reemployed may
19 within ten days after receiving the written notice request a
20 statement of the reasons for not having been rehired and may
21 request a hearing before the board. The hearing shall be held
22 at the next regularly scheduled county board ~~of education~~
23 meeting or a special meeting of the board called within thirty

24 days of the request for hearing. At the hearing, the reasons
25 for the nonrehiring must be shown.