



1       That §18A-5-1a of the Code of West Virginia, 1931, as amended,  
2 be amended and reenacted; and that said code be amended by adding  
3 thereto a new section, designated §18A-5-1d, all to read as  
4 follows:

5 **ARTICLE 5.   AUTHORITY; RIGHTS; RESPONSIBILITY.**

6 **§18A-5-1a.   Possessing deadly weapons on premises of educational**  
7               **facilities; possessing a controlled substance on**  
8               **premises of educational facilities; assaults and**  
9               **batteries committed by pupils upon teachers or**  
10              **other school personnel; temporary suspension,**  
11              **hearing; procedure, notice and formal hearing;**  
12              **extended suspension; sale of narcotic; expulsion;**  
13              **exception; alternative education.**

14       (a) A principal shall suspend a pupil from school or from  
15 transportation to or from the school on any school bus if the  
16 pupil, in the determination of the principal after an informal  
17 hearing pursuant to subsection (d) of this section, has: (i)  
18 Violated the provisions of subsection (b), section fifteen, article  
19 two, chapter sixty-one of this code; (ii) violated the provisions  
20 of subsection (b), section eleven-a, article seven of said chapter;  
21 or (iii) sold a narcotic drug, as defined in section one hundred  
22 one, article one, chapter sixty-a of this code, on the premises of

1 an educational facility, at a school-sponsored function or on a  
2 school bus. If a student has been suspended pursuant to this  
3 subsection, the principal shall, within twenty-four hours, request  
4 that the county superintendent recommend to the county board that  
5 the student be expelled. Upon such a request by a principal, the  
6 county superintendent shall recommend to the county board that the  
7 student be expelled. Upon such recommendation, the county board  
8 shall conduct a hearing in accordance with subsections (e), (f) and  
9 (g) of this section to determine if the student committed the  
10 alleged violation. If the county board finds that the student did  
11 commit the alleged violation, the county board shall expel the  
12 student.

13 (b) A principal shall suspend a pupil from school, or from  
14 transportation to or from the school on any school bus, if the  
15 pupil, in the determination of the principal after an informal  
16 hearing pursuant to subsection (d) of this section, has: (i)  
17 Committed an act or engaged in conduct that would constitute a  
18 felony under the laws of this state if committed by an adult; or  
19 (ii) unlawfully possessed on the premises of an educational  
20 facility or at a school-sponsored function a controlled substance  
21 governed by the uniform controlled substances act as described in  
22 chapter sixty-a of this code. If a student has been suspended  
23 pursuant to this subsection, the principal may request that the

1 superintendent recommend to the county board that the student be  
2 expelled. Upon such recommendation by the county superintendent,  
3 the county board may hold a hearing in accordance with the  
4 provisions of subsections (e), (f) and (g) of this section to  
5 determine if the student committed the alleged violation. If the  
6 county board finds that the student did commit the alleged  
7 violation, the county board may expel the student.

8 (c) A principal may suspend a pupil from school, or  
9 transportation to or from the school on any school bus, if the  
10 pupil, in the determination of the principal after an informal  
11 hearing pursuant to subsection (d) of this section: (i) Threatened  
12 to injure, or in any manner injured, a pupil, teacher,  
13 administrator or other school personnel; (ii) willfully disobeyed  
14 a teacher; (iii) possessed alcohol in an educational facility, on  
15 school grounds, a school bus or at any school-sponsored function;  
16 (iv) used profane language directed at a school employee or pupil;  
17 (v) intentionally defaced any school property; (vi) participated in  
18 any physical altercation with another person while under the  
19 authority of school personnel; or (vii) habitually violated school  
20 rules or policies. If a student has been suspended pursuant to  
21 this subsection, the principal may request that the superintendent  
22 recommend to the county board that the student be expelled. Upon  
23 such recommendation by the county superintendent, the county board

1 may hold a hearing in accordance with the provisions of subsections  
2 (e), (f) and (g) of this section to determine if the student  
3 committed the alleged violation. If the county board finds that  
4 the student did commit the alleged violation, the county board may  
5 expel the student.

6 (d) The actions of any pupil which may be grounds for his or  
7 her suspension or expulsion under the provisions of this section  
8 shall be reported immediately to the principal of the school in  
9 which the pupil is enrolled. If the principal determines that the  
10 alleged actions of the pupil would be grounds for suspension, he or  
11 she shall conduct an informal hearing for the pupil immediately  
12 after the alleged actions have occurred. The hearing shall be held  
13 before the pupil is suspended unless the principal believes that  
14 the continued presence of the pupil in the school poses a  
15 continuing danger to persons or property or an ongoing threat of  
16 disrupting the academic process, in which case the pupil shall be  
17 suspended immediately and a hearing held as soon as practicable  
18 after the suspension.

19 The pupil and his or her parent(s), guardian(s) or  
20 custodian(s), as the case may be, shall be given telephonic notice,  
21 if possible, of this informal hearing, which notice shall briefly  
22 state the grounds for suspension.

23 At the commencement of the informal hearing, the principal

1 shall inquire of the pupil as to whether he or she admits or denies  
2 the charges. If the pupil does not admit the charges, he or she  
3 shall be given an explanation of the evidence possessed by the  
4 principal and an opportunity to present his or her version of the  
5 occurrence. At the conclusion of the hearing or upon the failure  
6 of the noticed student to appear, the principal may suspend the  
7 pupil for a maximum of ten school days, including the time prior to  
8 the hearing, if any, for which the pupil has been excluded from  
9 school.

10 The principal shall report any suspension the same day it has  
11 been decided upon, in writing, to the parent(s), guardian(s) or  
12 custodian(s) of the pupil by regular United States mail. The  
13 suspension also shall be reported to the county superintendent and  
14 to the faculty senate of the school at the next meeting after the  
15 suspension.

16 (e) Prior to a hearing before the county board, the county  
17 board shall cause a written notice which states the charges and the  
18 recommended disposition to be served upon the pupil and his or her  
19 parent(s), guardian(s) or custodian(s), as the case may be. The  
20 notice shall state clearly whether the board will attempt at  
21 hearing to establish the student as a dangerous student, as defined  
22 by section one, article one of this chapter. The notice also shall  
23 include any evidence upon which the board will rely in asserting

1 its claim that the student is a dangerous student. The notice  
2 shall set forth a date and time at which the hearing shall be held,  
3 which date shall be within the ten-day period of suspension imposed  
4 by the principal.

5 (f) The county board shall hold the scheduled hearing to  
6 determine if the pupil should be reinstated or should or, under the  
7 provisions of this section, must be expelled from school. If the  
8 county board determines that the student should or must be expelled  
9 from school, it also may determine whether the student is a  
10 dangerous student pursuant to subsection (g) of this section. At  
11 this, or any hearing before a county board conducted pursuant to  
12 this section, the pupil may be represented by counsel, may call his  
13 or her own witnesses to verify his or her version of the incident  
14 and may confront and cross-examine witnesses supporting the charge  
15 against him or her. The hearing shall be recorded by mechanical  
16 means unless recorded by a certified court reporter. The hearing  
17 may be postponed for good cause shown by the pupil but he or she  
18 shall remain under suspension until after the hearing. The state  
19 board may adopt other supplementary rules of procedure to be  
20 followed in these hearings. At the conclusion of the hearing the  
21 county board shall either: (1) Order the pupil reinstated  
22 immediately at the end of his or her initial suspension; (2)  
23 suspend the pupil for a further designated number of days; or (3)

1 expel the pupil from the public schools of the county.

2 (g) A county board that did not intend prior to a hearing to  
3 assert a dangerous student claim, that did not notify the student  
4 prior to the hearing that a dangerous student determination would  
5 be considered and that determines through the course of the hearing  
6 that the student may be a dangerous student shall schedule a second  
7 hearing within ten days to decide the issue. The hearing may be  
8 postponed for good cause shown by the pupil, but he or she remains  
9 under suspension until after the hearing.

10 A county board that expels a student, and finds that the  
11 student is a dangerous student, may refuse to provide alternative  
12 education. However, after a hearing conducted pursuant to this  
13 section for determining whether a student is a dangerous student,  
14 when the student is found to be a dangerous student, is expelled  
15 and is denied alternative education, a hearing shall be conducted  
16 within three months after the refusal by the board to provide  
17 alternative education to reexamine whether or not the student  
18 remains a dangerous student and whether the student shall be  
19 provided alternative education. Thereafter, a hearing for the  
20 purpose of reexamining whether or not the student remains a  
21 dangerous student and whether the student shall be provided  
22 alternative education shall be conducted every three months for so  
23 long as the student remains a dangerous student and is denied



1 alternative education. During the initial hearing, or in any  
2 subsequent hearing, the board may consider the history of the  
3 pupil's conduct as well as any improvements made subsequent to the  
4 expulsion. If it is determined during any of the hearings that the  
5 student is no longer a dangerous student or should be provided  
6 alternative education, the student shall be provided alternative  
7 education during the remainder of the expulsion period.

8 (h) The superintendent may apply to a circuit judge or  
9 magistrate for authority to subpoena witnesses and documents, upon  
10 his or her own initiative, in a proceeding related to a recommended  
11 student expulsion or dangerous student determination, before a  
12 county board conducted pursuant to the provisions of this section.  
13 Upon the written request of any other party, the superintendent  
14 shall apply to a circuit judge or magistrate for the authority to  
15 subpoena witnesses, documents or both on behalf of the other party  
16 in a proceeding related to a recommended student expulsion or  
17 dangerous student determination before a county board. If the  
18 authority to subpoena is granted, the superintendent shall subpoena  
19 the witnesses, documents or both requested by the other party.  
20 Furthermore, if the authority to subpoena is granted, it shall be  
21 exercised in accordance with the provisions of section one, article  
22 five, chapter twenty-nine-a of this code.

23 Any hearing conducted pursuant to this subsection may be

1 postponed: (1) For good cause shown by the pupil; (2) when  
2 proceedings to compel a subpoenaed witness to appear must be  
3 instituted; or (3) when a delay in service of a subpoena hinders  
4 either party's ability to provide sufficient notice to appear to a  
5 witness. A pupil remains under suspension until after the hearing  
6 in any case where a postponement occurs.

7 The county boards are directed to report the number of pupils  
8 determined to be dangerous students to the state Board of  
9 Education. The state board will compile the county boards'  
10 statistics and shall report its findings to the Legislative  
11 Oversight Commission on Education Accountability.

12 (i) Pupils may be expelled pursuant to the provisions of this  
13 section for a period not to exceed one school year, except that if  
14 a pupil is determined to have violated the provisions of subsection  
15 (a) of this section the pupil shall be expelled for a period of not  
16 less than twelve consecutive months: *Provided*, That the county  
17 superintendent may lessen the mandatory period of twelve  
18 consecutive months for the expulsion of the pupil if the  
19 circumstances of the pupil's case demonstrably warrant or if the  
20 pupil meets the requirements of section one-d of this article.

21 Upon the reduction of the period of expulsion, the county  
22 superintendent shall prepare a written statement setting forth the  
23 circumstances of the pupil's case which warrant the reduction of

1 the period of expulsion. The county superintendent shall submit  
2 the statement to the county board, the principal, the faculty  
3 Senate and the local school improvement council for the school from  
4 which the pupil was expelled. The county superintendent may use  
5 the following factors as guidelines in determining whether or not  
6 to reduce a mandatory twelve-month expulsion:

7 (1) The extent of the pupil's malicious intent;

8 (2) The outcome of the pupil's misconduct;

9 (3) The pupil's past behavior history; and

10 (4) The likelihood of the pupil's repeated misconduct.

11 (j) In all hearings under this section, facts shall be found  
12 by a preponderance of the evidence.

13 (k) For purposes of this section, nothing herein may be  
14 construed to be in conflict with the federal provisions of the  
15 Individuals with Disabilities Education Act, 20 U.S.C. §1400 et  
16 seq.

17 (l) Each suspension or expulsion imposed upon a pupil under  
18 the authority of this section shall be recorded in the uniform  
19 integrated regional computer information system (commonly known as  
20 the West Virginia Education Information System) described in  
21 subsection (f), section twenty-six, article two, chapter eighteen  
22 of this code.

23 (1) The principal of the school at which the pupil is enrolled

1 shall create an electronic record within twenty-four hours of the  
2 imposition of the suspension or expulsion.

3       (2) Each record of a suspension or expulsion shall include the  
4 pupil's name and identification number, the reason for the  
5 suspension or expulsion, and the beginning and ending dates of the  
6 suspension or expulsion.

7       (3) The State Board of Education shall collect and disseminate  
8 data so that any principal of a public school in West Virginia can  
9 review the complete history of disciplinary actions taken by West  
10 Virginia public schools against any pupil enrolled or seeking to  
11 enroll at that principal's school. The purposes of this provision  
12 are to allow every principal to fulfill his or her duty under  
13 subsection (b), section fifteen-f, article five, chapter eighteen  
14 of this code to determine whether a pupil requesting to enroll at  
15 a public school in West Virginia is currently serving a suspension  
16 or expulsion from another public school in West Virginia and to  
17 allow principals to obtain general information about pupils'  
18 disciplinary histories.

19       (m) Principals may exercise any other authority and perform  
20 any other duties to discipline pupils consistent with state and  
21 federal law, including policies of the state Board of Education.

22       (n) Each county board is solely responsible for the  
23 administration of proper discipline in the public schools of the

1 county and shall adopt policies consistent with the provisions of  
2 this section to govern disciplinary actions.

3 (o) For the purpose of this section, "principal" means the  
4 principal, assistant principal, vice principal or the  
5 administrative head of the school or a professional personnel  
6 designee of the principal or the administrative head of the school.

7 **§18A-5-1d. Return to school through Juvenile Drug Court for**  
8 **certain juveniles.**

9 (a) When a pupil is expelled from school for a period of not  
10 less than twelve consecutive months pursuant to the provisions of  
11 section one-a of this article, the school board for that county,  
12 the county superintendent of schools or the principal of the school  
13 from which the pupil was expelled, or the parent, guardian or  
14 custodian may refer the pupil to a Juvenile Drug Court, operated  
15 pursuant to section two-b, article five, chapter forty-nine of this  
16 code. Upon a referral to Juvenile Drug Court under the provisions  
17 of this section, the judge assigned to Juvenile Drug Court shall  
18 determine if the pupil is an appropriate candidate for Juvenile  
19 Drug Court.

20 (b) If the pupil is an appropriate candidate for Juvenile Drug  
21 Court, then the court shall have jurisdiction over the pupil in the  
22 same manner as it has jurisdiction over all other persons in  
23 Juvenile Drug Court. The Juvenile Drug Court's jurisdiction over

1 pupils pursuant to this section shall include the ability to issue  
2 any of the various sanctions available to the Juvenile Drug Court  
3 up to, and including, temporary detention.

4       (c) Successful completion of Juvenile Drug Court or  
5 certification by the Juvenile Drug Court judge that the pupil is  
6 making satisfactory progress toward completion of Juvenile Drug  
7 Court, warrants reduction of the period of expulsion, pursuant to  
8 subsection (i) of section one-a of this article. Upon successful  
9 completion, the Juvenile Drug Court shall notify the county  
10 superintendent of schools of completion or certification of  
11 satisfactory progress and the superintendent shall promptly submit  
12 the statement required by subsection (i) of section one-a of this  
13 article. The pupil who successfully completes Juvenile Drug Court,  
14 as provided in this section, shall be permitted to return to school  
15 no later than the third regular school day following notice to the  
16 superintendent of the successful completion of Juvenile Drug Court.

NOTE: The purpose of this bill is to allow school boards,  
superintendents and principals to have the authority to allow  
certain expelled students the opportunity to return to school  
through the Juvenile Drug Court.

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

§18A-5-1d is new; therefore, strike-throughs and underscoring have been omitted.