

1 **COMMITTEE SUBSTITUTE**

2 **FOR**

3 **H. B. 2717**

4  
5 (By Delegates Marcum, Pasdon, Perry, H. White, R. Phillips, Williams,  
6 Eldridge, Rodighiero, Reynolds, Campbell and Moye)

7 (Originating in the House Committee on Education)

8 [February 27, 2015]

9  
10 A BILL to amend and reenact §18-5-15c of the Code of West Virginia, 1931, as amended; to amend  
11 and reenact §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of said code; to amend and  
12 reenact §18A-3-10 of said code; to amend and reenact §18A-4-7a of said code; and to amend  
13 and reenact §18A-4-8b and §18A-4-8e of said code, all relating to hiring employees in the  
14 public schools; expanding the sources from which background checks may be obtained;  
15 modifying certain dates regarding certain actions, notices and hearings; modifying certain  
16 time periods and required methods of providing notice; modifying individuals to whom  
17 certain notice is required; limiting transfers from certain positions and providing exceptions;  
18 specifying certain actions of the county board to be in open, public meetings and authorizing  
19 certain executive sessions; authorizing county board to require certain actions of  
20 superintendent regarding job applicants; and removing requirement of county board to  
21 provide certain training.

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

23 That §18-5-15c of the Code of West Virginia, 1931, as amended, be amended and reenacted;  
24 that §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of said code be amended and reenacted; that

1 §18A-3-10 of said code be amended and reenacted; that §18A-4-7a of said code be amended and  
2 reenacted; and that §18A-4-8b and §18A-4-8e of said code be amended and reenacted, all to read  
3 as follows:

4 **CHAPTER 18. EDUCATION.**

5 **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

6 **§18-5-15c. County boards of education; training in prevention of child abuse and neglect and**  
7 **child assault; regulations; funding.**

8 (a) In recognition of the findings of the Legislature as set forth in section one, article six-c,  
9 chapter forty-nine of this code, the Legislature further finds that public schools are able to provide  
10 a special environment for the training of children, parents and school personnel in the prevention of  
11 child abuse and neglect and child assault and that child abuse and neglect prevention and child  
12 assault prevention programs in the public schools are an effective and cost-efficient method of  
13 reducing the incidents of child abuse and neglect, promoting a healthy family environment and  
14 reducing the general vulnerability of children.

15 (b) County boards ~~of education~~ shall, ~~be required~~ to the extent funds are provided, to  
16 establish programs for ~~the~~ prevention of child abuse and neglect and child assault. Such programs  
17 shall be provided to ~~pupils~~ students, parents and school personnel as deemed appropriate. Such  
18 programs shall be in compliance with regulations to be developed by the State Board of Education  
19 with the advice and assistance of the State Department of Health and Human Resources and the West  
20 Virginia State Police: *Provided*, That any such programs which substantially comply with the  
21 regulations adopted by the board and were in effect prior to the adoption of the regulations may be  
22 continued.

23 (c) Funds for implementing the child abuse and neglect prevention and child assault

1 prevention programs may be allocated to the county boards of education from the children's trust  
2 fund established pursuant to the provisions of article six-c, chapter forty-nine of this code or  
3 appropriated for such purpose by the Legislature.

4 (d) County boards ~~of education~~ shall request from either the state Criminal Identification  
5 Bureau or a company that holds accreditation from the National Association of Professional  
6 Background Screeners, the record of any ~~and all~~ criminal convictions relating to child abuse, sex-  
7 related offenses or possession of controlled substances with intent to deliver same for all of its future  
8 employees. ~~This request shall be made immediately after the effective date of this section, and~~  
9 ~~thereafter as warranted.~~

10 (e) Contractors or service providers or their employees may not make direct, unaccompanied  
11 contact with students or access school grounds unaccompanied when students are present if it cannot  
12 be verified that the contractors, service providers or employees have not previously been convicted  
13 of a qualifying offense, as defined in section two, article twelve, chapter fifteen of this code. For the  
14 purposes of this section, contractor and service provider shall be limited to any vendor, individual  
15 or entity under contract with a county school board. County school boards may require contractors  
16 and service providers to verify the criminal records of their employees before granting the above-  
17 mentioned contact or access. Where prior written consent is obtained, county school boards may  
18 obtain information from the Central Abuse Registry regarding contractors, service providers and  
19 their employees for the purposes of this subsection. Where a contractor or service provider gives  
20 his or her prior written consent, the county school board also may share information provided by the  
21 Central Abuse Registry with other county school boards for the purposes of satisfying the  
22 requirements of this subsection. ~~The requirements of this subsection shall not go into effect until~~  
23 ~~July 1, 2007.~~



1 valid certificate and is employed in a county beyond the three-year probationary period shall be  
2 granted continuing contract status upon qualifying for the professional certificate based upon a  
3 bachelor's degree, if he or she becomes reemployed; ~~be granted continuing contract status~~ and

4 (2) A teacher holding continuing contract status with one county shall be granted continuing  
5 contract status with any other county upon completion of one year of acceptable employment if the  
6 employment is with the other county during the next succeeding school year or immediately  
7 following an approved leave of absence ~~extending~~ which extends no more than one year.

8 (c) The continuing contract of any teacher shall remain in full force and effect except as  
9 modified by mutual consent of the school board and the teacher, unless and until terminated, subject  
10 to the following:

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

12 (A) By a majority vote of the full membership of the county board on or before ~~March~~ May  
13 1 of the current year. ~~after written notice served upon the teacher return receipt requested stating~~  
14 ~~cause or causes and~~ Prior to voting the board shall: (i) Notify the teacher of cause for pending  
15 termination via written receipt notification documented by the superintendent; and (ii) Provide the  
16 teacher with an opportunity to be heard at a meeting of the board prior to the board's action on the  
17 termination issue; or

18 (B) By written resignation of the teacher on or before ~~March~~ May 1 to initiate termination  
19 of a continuing contract;

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

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

1 (4) This section does not affect the powers of the ~~school~~ county board to suspend or dismiss  
2 a principal or teacher pursuant to section eight of this article;

3 (5) A continuing contract for any teacher holding a certificate valid for more than one year  
4 and in full force and effect during the school year 1984-1985 shall remain in full force and effect;

5 (6) A continuing contract does not operate to prevent a teacher's dismissal based upon the  
6 lack of need for the teacher's services pursuant to the provisions of law relating to the allocation to  
7 teachers and ~~pupil-teacher~~ student-teacher ratios. The written notification of teachers being  
8 considered for dismissal for lack of need shall be limited to only those teachers whose consideration  
9 for dismissal is based upon known or expected circumstances which will require dismissal for lack  
10 of need. An employee who was not provided notice and an opportunity for a hearing pursuant to this  
11 subsection may not be included on the list. In case of dismissal for lack of need, a dismissed teacher  
12 shall be placed upon a preferred list in the order of their length of service with that board. ~~No~~ A  
13 teacher may not be employed by the board until each qualified teacher ~~upon~~ on the preferred list, in  
14 order, has been offered the opportunity for reemployment in a position for which he or she is  
15 qualified, not including a teacher who has accepted a teaching position elsewhere. The  
16 reemployment shall be upon a teacher's preexisting continuing contract and has the same effect as  
17 though the contract had been suspended during the time the teacher was not employed.

18 (d) In the assignment of position or duties of a teacher under a continuing contract, the board  
19 may provide for released time of a teacher for any special professional or governmental assignment  
20 without jeopardizing the contractual rights of the teacher or any other rights, privileges or benefits  
21 under the provisions of this chapter. Released time shall be provided for any professional educator  
22 while serving as a member of the Legislature during any duly constituted session of that body and  
23 its interim and statutory committees and commissions. ~~without jeopardizing his or her~~ The released

1 time does not jeopardize the teacher's contractual rights or any other rights, privileges, benefits or  
2 accrual of experience for placement on the state minimum salary schedule in the following school  
3 year under the provisions of this chapter, board policy and law.

4 (e) ~~Any teacher who~~ A teacher is disqualified to teach in any other public school in the state  
5 for the duration of the next ensuing school year, if that teacher:

6 (1) Fails to fulfill his or her contract with the board, unless prevented from doing so by  
7 personal illness or other just cause, or unless released from his or her contract by the board; or who

8 (2) Violates any lawful provision of the contract. is disqualified to teach in any other public  
9 school in the state for a period of the next ensuing school year and

10 (3) The state Department of Education or board may hold all papers and credentials of the  
11 disqualified teacher on file for a period of one year for the violation. ~~Provided, That~~ Marriage of a  
12 teacher is not considered a failure to fulfill, or violation of, the contract.

13 (f) ~~Any~~ A ~~classroom teacher as defined in section one, article one of this chapter who desires~~  
14 ~~to resign employment with a county board or request a leave of absence~~ may provide written notice  
15 of resignation or the request at any time during the school year. The resignation or leave of absence  
16 to shall become effective on or before July 15 of the same year and after completion of the  
17 employment term. ~~may do so at any time during the school year by written notification of the~~  
18 ~~resignation or leave of absence and~~ Any notification received by a county board shall automatically  
19 extend the teacher's public employee insurance coverage until August 31 of the same year.

20 (g) (1) A classroom teacher who gives written notice to the county board on or before ~~January~~  
21 ~~15~~ February 1 of the school year of his or her retirement ~~from employment with the board at the~~  
22 conclusion of the school year shall be paid \$500 from the Early Notification of Retirement line item  
23 established for the Department of Education for this purpose, subject to appropriation by the

1 Legislature. If the appropriations to the Department of Education for this purpose are insufficient  
2 to compensate all applicable teachers, the Department of Education shall request a supplemental  
3 appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are still  
4 insufficient to compensate all applicable teachers, the priority of payment is for teachers who give  
5 written notice the earliest. This payment ~~shall not be~~ is not counted as part of the final average salary  
6 for the purpose of calculating retirement.

7 (2) The position of a classroom teacher providing written notice of retirement pursuant to this  
8 subsection may be considered vacant and the county board may immediately post the position as an  
9 opening to be filled at the conclusion of the school year. If a teacher has been hired to fill the  
10 position of a retiring classroom teacher prior to the start of the next school year, the retiring  
11 classroom teacher is disqualified from continuing his or her employment in that position. However,  
12 the retiring classroom teacher may be permitted to continue his or her employment in that position  
13 and forfeit the early retirement notification payment if, after giving notice of retirement in  
14 accordance with this subsection, he or she becomes subject to a significant unforeseen financial  
15 hardship, including a hardship caused by the death or illness of an immediate family member or loss  
16 of employment of a spouse. Other significant unforeseen financial hardships shall be determined  
17 by the county superintendent on a case-by-case basis. This subsection does not prohibit a county  
18 school board from eliminating the position of a retiring classroom teacher.

19 **§18A-2-6. Continuing contract status for service personnel; termination.**

20 (a) After three years of acceptable employment, each service ~~personnel employee~~ person who  
21 enters into a new contract of employment with the board shall be granted continuing contract status.  
22 ~~Provided, That a service personnel employee~~ A service person holding continuing contract status  
23 with one county shall be granted continuing contract status with any other county upon completion

1 of one year of acceptable employment if such employment with the other county is during the next  
2 succeeding school year or immediately following an approved leave of absence ~~extending~~ which  
3 extends no more than one year. The continuing contract of any such employee shall remain in full  
4 force and effect except as modified by mutual consent of the school board and the employee, unless  
5 and until terminated with written notice, stating cause or causes, to the employee, by a majority vote  
6 of the full membership of the board on or before ~~March~~ May 1 of the current year, or by written  
7 resignation of the employee on or before that date. The affected employee has the right of a hearing  
8 before the board, if requested, before final action is taken by the board upon the termination of such  
9 employment.

10 Those employees who have completed three years of acceptable employment as of the  
11 effective date of this legislation shall be granted continuing contract status.

12 **§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of**  
13 **dismissal of school personnel by superintendent; preliminary notice of transfer;**  
14 **hearing on the transfer; proof required.**

15 (a) The superintendent, subject only to approval of the board, may assign, transfer, promote,  
16 demote or suspend school personnel and recommend their dismissal pursuant to provisions of this  
17 chapter. ~~However~~ An employee shall be notified in writing by the superintendent on or before  
18 ~~March~~ April 1 if he or she is being transferred or considered for transfer. ~~or to be transferred~~ Only  
19 those employees whose transfer or consideration for transfer ~~or intended transfer~~ is based upon  
20 known or expected circumstances which will require the transfer of employees ~~shall~~ may be  
21 transferred or considered for transfer ~~or intended for transfer~~ and the notification shall be limited to  
22 only those employees. Any teacher or employee who desires to protest the proposed transfer may  
23 request in writing a statement of the reasons for the proposed transfer. The statement of reasons shall

1 be delivered to the teacher or employee within ten days of ~~the~~ receipt of the request. Within ten days  
2 of ~~the~~ receipt of the statement of ~~the~~ reasons, the teacher or employee may make written demand  
3 upon the superintendent for a hearing on the proposed transfer before the county board. The hearing  
4 on the proposed transfer shall be held on or before ~~April 15~~ May 1. At the hearing, the reasons for  
5 the proposed transfer must be shown.

6 (b) The superintendent, at a meeting of the board on or before ~~April 15~~ May 1, shall furnish  
7 in writing to the board a list of teachers and other employees to be considered for transfer and  
8 subsequent assignment for the next ensuing school year. An employee who was not provided notice  
9 and an opportunity for a hearing pursuant to subsection (a) of this section may not be included on  
10 the list. All other teachers and employees not so listed shall be considered as reassigned to the  
11 positions or jobs held at the time of this meeting. The list of those recommended for transfer shall  
12 be included in the minute record of the meeting and all those so listed shall be notified in writing,  
13 ~~which~~ The notice shall be delivered ~~in writing, by certified mail, return receipt requested, to the~~  
14 ~~person's last known addresses~~ within ten days following the board meeting with written receipt  
15 notification documented by the superintendent, of their having been so and shall state that the person  
16 been recommended for transfer and subsequent assignment and the reasons therefor.

17 (c) The superintendent's authority to suspend school personnel shall be temporary only  
18 pending a hearing upon charges filed by the superintendent with the county board and the period of  
19 suspension may not exceed thirty days unless extended by order of the board.

20 (d) The provisions of this section respecting hearing upon notice of transfer is not applicable  
21 in emergency situations where the school building becomes damaged or destroyed through an  
22 unforeseeable act and which act necessitates a transfer of the school personnel because of the  
23 aforementioned condition of the building.

1 (e) Notwithstanding this section or any provision of this code, when actual student enrollment  
2 in a grade level or program, unforeseen before March 1 of the preceding school year, permits the  
3 assignment of fewer teachers or service personnel to or within a school under any pupil-teacher ratio,  
4 class size or caseload standard established in section eighteen-a, article five, chapter eighteen of this  
5 code or any policy of the state board, the superintendent, with board approval, may reassign the  
6 surplus personnel to another school or to another grade level or program within the school if needed  
7 there to comply with any such pupil-teacher ratio, class size or caseload standard.

8 (1) Before any reassignment may occur pursuant to this subsection, notice shall be provided  
9 to the employee and the employee shall be provided an opportunity to appear before the county board  
10 to state the reasons for his or her objections, if any, prior to the board voting on the reassignment.

11 (2) Except as otherwise provided in subdivision (1) of this subsection, the reassignment may  
12 be made without following the notice and hearing provisions of this section, and at any time during  
13 the school year when the conditions of this subsection are met: *Provided*, That the reassignment may  
14 not occur after the last day of the second school month.

15 (3) A professional employee reassigned under this subsection shall be the least senior of the  
16 surplus professional personnel who holds certification or licensure to perform the duties at the other  
17 school or at the grade level or program within the school.

18 (4) A service employee reassigned under this subsection shall be the least senior of the  
19 surplus personnel who holds the same classification or multiclassification needed to perform the  
20 duties at the other school or at the grade level or program within the same school.

21 (5) ~~No~~ A school employee's annual contract term, compensation or benefits ~~shall~~ may not be  
22 changed as a result of a reassignment under this subsection.

23 (f) Except as provided in this section, and notwithstanding section eight, article five of this

1 chapter, after the twentieth day prior to the beginning of the instructional school year, a service  
2 person employed and assigned to a position in the county may not transfer during the instructional  
3 school year to another position in the county, subject to the following:

4 (1) A service person who does not have qualifications or valid certification for the position  
5 in which employed and assigned may transfer to a position that becomes vacant for which he or she  
6 is qualified or holds valid certification;

7 (2) Upon return from an approved leave of absence, a service person may fill a vacant  
8 position for which he or she is qualified or holds valid certification;

9 (3) A service person may apply for a posted, vacant position at any time. The successful  
10 applicant for the position may not assume the position until the beginning of the next instructional  
11 term;

12 (4) The county board, upon recommendation of the superintendent that it is in the best  
13 interest of the students, may fill a position before the beginning of the next instructional school year  
14 with an employed and assigned service person who applies for the position;

15 (5) The county superintendent shall notify the state board when a transfer occurs in an aide,  
16 autism mentor, paraprofessional, interpreter, or early childhood classroom assistant teacher position  
17 after the twentieth day prior to the beginning of the instructional school year and before the next  
18 instructional school year; and

19 (6) Extracurricular assignments for school bus operators pursuant to section sixteen, article  
20 four of this chapter are exempt from the requirements of this subsection.

21 **§18A-2-8a. Notice to probationary personnel of rehiring or nonrehiring; hearing.**

22 The superintendent at a meeting of the board on or before ~~April 15~~ May 1 of each year shall  
23 provide in writing to the board a list of all probationary teachers that he or she recommends to be

1 rehired for the next ensuing school year. The board shall act upon the superintendent's  
2 recommendations at that meeting in accordance with section one of this article. The board at this  
3 same meeting shall also act upon the retention of other probationary employees as provided in  
4 sections two and five of this article. Any such probationary teacher or other probationary employee  
5 who is not rehired by the board at that meeting shall be notified in writing, by certified mail, return  
6 receipt requested, to such person's last known addresses within ten days following ~~said~~ the board  
7 meeting, of their not having been rehired or ~~not having been~~ nor recommended for rehiring.

8 Any probationary teacher who receives notice that he or she has not been recommended for  
9 rehiring or other probationary employee who has not been reemployed may within ten days after  
10 receiving the written notice request a statement of the reasons for not having been rehired and may  
11 request a hearing before the board. The hearing shall be held at the next regularly scheduled county  
12 ~~board of Education~~ meeting or a special meeting of the board called within thirty days of the request  
13 for hearing. At the hearing, the reasons for the nonrehiring must be shown.

14 **ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL**  
15 **DEVELOPMENT.**

16 **§18A-3-10. Criminal history check of applicants for licensure by the state Department of**  
17 **Education.**

18 (a) Beginning January 1, 2002 Any applicant for an initial license issued by the West Virginia  
19 Department of Education shall be fingerprinted by the West Virginia State Police in accordance with  
20 state board policy in order to determine the applicant's suitability for licensure. The fingerprints shall  
21 be analyzed by either:

22 (1) The state police for a state criminal history record check through the central abuse registry  
23 and then forwarded to the federal bureau of investigation for a national criminal history record check;

1 or

2 (2) A company that holds accreditation from the National Association of Professional  
3 Background Screeners.

4 (b) Information contained in either the central abuse registry record or the federal bureau of  
5 investigation record may form the basis for the denial of a certificate for just cause. The applicant  
6 for initial certification pays for the cost of obtaining the ~~central abuse registry record and the federal~~  
7 ~~bureau of investigation record~~ checks or screening.

8 (c) Upon written consent to the state department by the applicant and within ninety days of  
9 the ~~state~~ fingerprint analysis, the results of ~~a state analysis~~ may be provided to a county board with  
10 which the applicant is applying for employment without further cost to the applicant.

11 (d) Information maintained by the state department or a county board which was obtained  
12 for the purpose of this section is exempt from the disclosure provisions of chapter twenty-nine-b of  
13 this code. Nothing in this section prohibits disclosure or publication of information in a statistical  
14 or other form which does not identify the individuals involved or provide personal information.

15 **ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

16 **§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.**

17 (a) A county board ~~of education shall make decisions affecting the filling of~~ shall fill  
18 vacancies in professional positions ~~of employment on the basis of~~ based on the applicant with the  
19 highest qualifications: *Provided*, That the county superintendent shall be hired under separate criteria  
20 pursuant to section two, article four, chapter eighteen of this code.

21 (b) In judging qualifications for ~~the filling of~~ vacancies of professional positions, ~~of~~  
22 ~~employment, consideration shall be given to~~ the county board shall consider each of the following:

23 (1) Appropriate certification, licensure or both;

1 (2) Amount of experience relevant to the position or, in the case of a classroom teaching  
2 position, the amount of teaching experience in the required certification area;

3 (3) The amount of course work, degree level or both, in the relevant field and degree level  
4 generally;

5 (4) Academic achievement;

6 (5) In the case of a principal or classroom teaching position, ~~or the position of principal~~  
7 certification by the National Board for Professional Teaching Standards;

8 (6) Specialized training relevant to ~~the performance of the duties of performing~~ the job  
9 duties;

10 (7) Past performance evaluations conducted pursuant to section twelve, article two of this  
11 chapter and section two, article three-c of this chapter or, in the case of a classroom teacher, past  
12 evaluations of the applicant's performance in the teaching profession;

13 (8) Seniority;

14 (9) Other measures or indicators upon which the relative qualifications of the applicant may  
15 fairly be judged;

16 (10) In the case of a classroom teaching position, the recommendation of the principal of the  
17 school at which the applicant will be performing a majority of his or her duties; and

18 (11) In the case of a classroom teaching position, the recommendation, if any, resulting from  
19 the process established pursuant to the provisions of section five, article five-a, chapter eighteen of  
20 this code by the faculty senate of the school at which the employee will be performing a majority of  
21 his or her duties.

22 (c) ~~In considering the~~ When filling of a vacancy pursuant to this section, a county board is  
23 entitled to determine the appropriate weight to apply to each of the criterion when assessing an

1 applicant's qualifications: *Provided*, That if ~~one or more~~ any permanently employed instructional  
2 personnel apply for a classroom teaching position and meet the standards set forth in the job posting,  
3 each criterion ~~under~~ in subsection (b) of this section shall be given equal weight except that the  
4 criterion in subdivisions (10) and (11) ~~shall~~ each shall be double weighted.

5 (d) A county board shall make all decisions regarding filling vacancies at open, public  
6 meetings. The Legislature recognizes that information collected by a county superintendent  
7 regarding job applicants is confidential information of the county board which the county board  
8 rightfully may access. A county board may require the county superintendent to provide such  
9 applicant information as it determines is necessary to properly consider job candidates. The  
10 information includes, but is not limited to, a complete list of all applicants for a position as well as  
11 their qualifications and endorsements. The county board may enter into executive session pursuant  
12 to section four, article nine-a, chapter six of this code to receive and consider the information. The  
13 county superintendent shall retain and maintain the confidentiality of all the information following  
14 conclusion of the executive session.

15 (e) For a classroom teaching position, if the ~~recommendations resulting from the operations~~  
16 ~~of principal and faculty senate recommend the same applicant pursuant to subdivisions (10) and (11),~~  
17 subsection (b) of this section, ~~are for the same applicant~~ and the superintendent concurs with ~~that~~  
18 ~~recommendation~~ those recommendations, then the other provisions of subsections (b) and (c) of this  
19 section do not apply and the county board shall appoint that applicant notwithstanding any other  
20 provision of this code to the contrary.

21 (f) (e) The state board shall promulgate a rule, including an emergency rule if necessary, in  
22 accordance with the provisions of article three-b, chapter twenty-nine-a of this code to implement  
23 and interpret the provisions of this section. The rule including provisions that may provide for the

1 compensation based on the appropriate daily rate of a classroom teacher who directly participates  
2 in making recommendations pursuant to this section for to be compensated at an appropriate daily  
3 rate for participation during periods beyond his or her individual contract.

4 (f) (g) The principal and faculty senate recommendations made pursuant to said subdivisions  
5 (10) and (11) subsection (b) of this section shall be made based on a determination as to which of  
6 the applicants is the highest applicant is most highly qualified for the position. *Provided, That*  
7 nothing in This subsection shall does not require principals or faculty senates to assign any amount  
8 of weight to any factor in making a recommendation.

9 (g) (h) With the exception of guidance counselors, the seniority of classroom teachers as  
10 defined in section one, article one of this chapter shall be determined on the basis of is based on the  
11 length of time the employee has been employed by the county board as a regular full-time certified  
12 and/or licensed professional educator. by the county board of education and Such seniority shall be  
13 granted in all areas that the employee is certified, licensed or both.

14 (h) (i) Upon completion of one hundred thirty-three days of employment in any one school  
15 year, substitute teachers, except retired teachers and other retired professional educators employed  
16 as substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a  
17 permanent, full-time professional employee. One hundred thirty-three days or more of said  
18 employment shall be prorated and shall vest as a fraction of the school year worked by the  
19 permanent, full-time teacher.

20 (i) (j) Guidance counselors and all other professional employees, as defined in section one,  
21 article one of this chapter except classroom teachers, shall gain seniority in their nonteaching area  
22 of professional employment on the basis of the length of time the employee has been employed by  
23 the county board of education in that area. *Provided, That* If an employee is certified as a classroom

1 teacher, the employee accrues classroom teaching seniority for the time that ~~that employee~~ he or she  
2 is employed in another professional area. For the ~~purposes~~ purpose of accruing seniority, ~~under this~~  
3 ~~paragraph~~ employment as principal, supervisor or central office administrator ~~as defined in section~~  
4 ~~one, article one of this chapter shall be~~ is considered one area of employment.

5 (j) ~~(k)~~ Employment for a full employment term ~~shall equal~~ equals one year of seniority, but  
6 ~~no~~ an employee may not accrue more than one year of seniority during any ~~given~~ fiscal year.  
7 Employment for less than the full employment term shall be prorated. A random selection system  
8 established by the employees and approved by the county board shall be used to determine the  
9 priority if two or more employees accumulate identical seniority. ~~Provided, That~~ When two or more  
10 principals have accumulated identical seniority, decisions on reductions in force shall be based on  
11 qualifications.

12 (k) ~~(l)~~ Whenever a county board is required to reduce the number of professional personnel  
13 ~~in its employment~~ it employs, the employee with the least amount of seniority shall be properly  
14 notified and released from employment pursuant to the provisions of section two, article two of this  
15 chapter. ~~The provisions of~~ This subsection ~~are~~ is subject to the following:

16 (1) All persons employed in a certification area to be reduced who are employed under a  
17 temporary permit shall be properly notified and released before a fully certified employee in such  
18 a position is subject to release;

19 (2) Notwithstanding any provision of this code to the contrary, all employees subject to  
20 release shall be considered applicants for any vacancy for which they are qualified in an established,  
21 existing or newly created position that is known on or before February 15 ~~is known~~ to exist for the  
22 ensuing school year. ~~and for which they are qualified, and~~ Upon recommendation of the  
23 superintendent, the board shall appoint the successful applicant from among ~~them~~ those employees

1 before posting ~~such~~ the vacancies for application by other persons: Provided, That the  
2 superintendent first may transfer to the vacancy an employee not subject to release if the  
3 superintendent determines that the employee is most qualified and the employee consents to the  
4 transfer. The superintendent then may recommend an employee subject to release for the resulting  
5 vacancy;

6 (3) An employee subject to release shall be employed in any other professional position  
7 where the employee is certified and was previously employed or to any lateral area for which the  
8 employee is certified, licensed or both, if the employee's seniority is greater than the seniority of any  
9 other employee in that area of certification, licensure or both;

10 (4) If an employee subject to release holds certification, licensure or both in more than one  
11 lateral area and if the employee's seniority is greater than the seniority of any other employee in one  
12 or more of those areas of certification, licensure or both, the employee subject to release shall be  
13 employed in the professional position held by the employee with the least seniority in any of those  
14 areas of certification, licensure or both; and

15 (5) If, prior to August 1 of the year a reduction in force is approved, the reason for any  
16 particular reduction in force no longer exists as determined by the county board in its sole and  
17 exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the  
18 released employee in writing of his or her right to be restored to his or her position of employment.  
19 Within five days of being so notified, the released employee shall notify the board, in writing, of his  
20 or her intent to resume ~~his or her~~ the position of employment or the right to be restored shall  
21 terminate. Notwithstanding any other provision of this subdivision, if there is another employee on  
22 the preferred recall list with proper certification and higher seniority, that person shall be placed in  
23 the position restored as a result of the reduction in force being rescinded.

1           ~~(h)~~ (m) For the purpose of this article, all positions which meet the definition of "classroom  
2 teacher" as defined in section one, article one of this chapter ~~shall be~~ are lateral positions. For all  
3 other professional positions, the county board of education shall adopt a policy, ~~by October 31, 1993~~  
4 and may modify ~~the policy thereafter~~ it as necessary, which ~~defines~~ specifies which positions shall  
5 ~~be~~ are lateral positions. The board shall submit a copy of its policy to the state board within thirty  
6 days of ~~adoption or~~ any modification. ~~and~~ The state board shall compile a report and submit ~~the~~  
7 ~~report~~ it by December 31 to the Legislative Oversight Commission on Education Accountability by  
8 ~~December 31, 1993, and by that date~~ in any ~~succeeding~~ year in which any county board submits a  
9 modification of its policy. ~~relating to lateral positions~~ In adopting the policy, the county board shall  
10 ~~give consideration to~~ consider the rank of each position in terms of title; nature of responsibilities;  
11 salary level; certification, licensure or both; and days in the ~~period of~~ employment period.

12           ~~(m)~~ (n) After the twentieth day prior to the beginning of the instructional term, ~~no~~ a person  
13 employed and assigned to a professional position may not transfer to another professional position  
14 in the county during that instructional term unless the person holding that position does not have  
15 valid certification. ~~The provisions of~~ This subsection ~~are~~ is subject to the following:

16           (1) The person may apply for any posted, vacant positions with the successful applicant  
17 assuming the position at the beginning of the next instructional term;

18           (2) Professional personnel who have been on an approved leave of absence may fill these  
19 vacancies upon ~~their~~ return from the approved leave of absence;

20           ~~(3) The county board~~ Upon recommendation of the superintendent, a county board may fill  
21 a position before the next instructional term when it is determined to be in the best interest of the  
22 students. The county superintendent shall notify the state board of each transfer of a person  
23 employed in a professional position to another professional position after the twentieth day prior to

1 the beginning of the instructional term;

2 ~~(4) This subsection do not apply to filling of a position vacated because of resignation or~~  
3 ~~retirement that became effective on or before the twentieth day prior to the beginning of the~~  
4 ~~instructional term, but not posted until after that date; and~~

5 (5) The Legislature finds that it is not in the best interest of ~~the~~ students, particularly in the  
6 elementary grades, to have multiple teachers for any one grade level or course during the  
7 instructional term. It is the intent of the Legislature that ~~the~~ filling of positions ~~through transfers of~~  
8 by transferring personnel from one professional position to another after the twentieth day prior to  
9 the beginning of the instructional term should be kept to a minimum.

10 ~~(n)~~ (o) All professional personnel whose seniority with the county board is insufficient to  
11 allow their retention by the county board during a reduction in work force shall be placed upon a  
12 preferred recall list. As to any professional position opening within the area where they had  
13 previously been employed or to any lateral area for which they have certification, licensure or both,  
14 the employee shall be recalled on the basis of seniority if no regular, full-time professional personnel,  
15 or those returning from leaves of absence with greater seniority, are qualified, apply for and accept  
16 the position.

17 ~~(o)~~ (p) Before position openings for professional personnel that are known or expected to  
18 extend for twenty consecutive employment days or longer ~~for professional personnel~~ may be filled  
19 by the board, the board shall ~~be required to~~ notify all qualified professional personnel on the  
20 preferred list and give them an opportunity to apply. ~~but~~ Failure to apply shall does not cause the  
21 employee to forfeit any right to recall. The notice shall be sent ~~by certified mail to the last known~~  
22 address of to the employee with written receipt notification documented by the superintendent. ~~and~~  
23 ~~it shall be~~ It is the duty of each professional personnel to notify the board of continued availability

1 annually, of any change in address or of any change in certification, licensure or both.

2 (p) (q) Openings in established, existing or newly created positions shall be processed as  
3 follows:

4 (1) Boards shall ~~be required to~~ post and date notices of each opening at least once. At their  
5 discretion, boards may post an opening for a position other than classroom teacher more than once  
6 in order to attract more qualified applicants. At their discretion, boards may post an opening for a  
7 classroom teacher one additional time after the first posting in order to attract more qualified  
8 applicants only if fewer than three individuals apply during the first posting subject to the following:

9 (A) Each notice shall be posted in ~~conspicuous places~~ a prominent manner on its website for  
10 all professional personnel to observe for at least ~~five~~ ten working days;

11 (B) At least one notice shall be posted within twenty working days of the position openings  
12 and shall include the job description;

13 (C) Any special criteria or skills that are required by the position shall be specifically stated  
14 in the job description and directly related to the performance of the job;

15 (D) Postings for vacancies made pursuant to this section shall be written so as to ensure that  
16 the largest possible pool of qualified applicants may apply; and

17 (E) Job postings may not require criteria which are not necessary for the successful  
18 performance of the job and may not be written with the intent to favor a specific applicant;

19 (2) ~~No~~ A vacancy shall may not be filled until after the ~~five-day~~ ten-day minimum posting  
20 period of the most recent posted notice of the vacancy;

21 (3) If one or more applicants under all the postings for a vacancy ~~meets~~ meet the  
22 qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected  
23 by the board within thirty working days of the end of the first posting period;

1 (4) A position held by a teacher who is certified, licensed or both, who has been issued a  
2 permit for full-time employment and is working toward certification in the permit area ~~shall not be~~  
3 is not subject to posting if the certificate is awarded within five years; and

4 (5) ~~Nothing provided herein shall~~ This subsection does not prevent the a county board of  
5 ~~education~~ from eliminating a position due to lack of need.

6 (q) (r) Notwithstanding any other provision of ~~the~~ this code to the contrary, ~~where~~ if the total  
7 number of classroom teaching positions in an elementary school does not increase from one school  
8 year to the next, but there ~~exists in that school~~ is a need to realign the number of teachers in one or  
9 more grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels  
10 for which they are certified without ~~that position~~ the positions being posted ~~Provided, That~~ if the  
11 employee and the county board mutually agree to the reassignment.

12 (r) (s) Reductions in classroom teaching positions in elementary schools shall be processed  
13 as follows:

14 (1) When the total number of classroom teaching positions in an elementary school needs to  
15 be reduced, the reduction shall be made on the basis of seniority with the least senior classroom  
16 teacher being recommended for transfer; and

17 (2) When a specified grade level needs to be reduced and the least senior employee in the  
18 school is not in that grade level, the least senior classroom teacher in the grade level that needs to  
19 be reduced shall be reassigned to the position made vacant by the transfer of the least senior  
20 classroom teacher in the school without that position being posted, ~~Provided, That~~ if the employee  
21 is certified, licensed or both and agrees to the reassignment.

22 (s) (t) Any board failing to comply with the provisions of this article may be compelled to  
23 do so by mandamus and ~~shall be~~ is liable to any party prevailing against the board for court costs and

1 reasonable attorney fees as determined and established by the court. ~~Further, employees~~ An  
2 employee denied promotion or employment in violation of this section shall be awarded the job, pay  
3 and any applicable benefits retroactive to the date of the violation and payable entirely from local  
4 funds. ~~Further~~ The board ~~shall be~~ is liable to any party prevailing against the board for any court  
5 reporter costs including copies of transcripts.

6 (t) ~~(u)~~ The county board shall compile, update annually on July 1, and make available by  
7 electronic or other means to all employees a list of all professional personnel employed by the  
8 county, their areas of certification and their seniority.

9 (u) ~~(v)~~ Notwithstanding any other provision of this code to the contrary, upon  
10 recommendation of the principal and approval by the classroom teacher and county board, a  
11 classroom teacher assigned to the school may at any time be assigned to a new or existing classroom  
12 teacher position at the school without the position being posted.

13 ~~(v) The amendments to this section during the 2013 regular session of the Legislature shall~~  
14 ~~be effective for school years beginning on or after July 1, 2013, and the provisions of this section~~  
15 ~~immediately prior to those amendments remain in effect until July 1, 2013.~~

16 **§18A-4-8b. Seniority rights for school service personnel.**

17 (a) A county board shall make decisions affecting promotions and the filling of any service  
18 personnel positions of employment or jobs occurring throughout the school year that are to be  
19 performed by service personnel as provided in section eight of this article, on the basis of seniority,  
20 qualifications and evaluation of past service.

21 (b) Qualifications means the applicant holds a classification title in his or her category of  
22 employment as provided in this section and is given first opportunity for promotion and filling  
23 vacancies. Other employees then shall be considered and shall qualify by meeting the definition of

1 the job title that relates to the promotion or vacancy, as defined in section eight of this article. If  
2 requested by the employee, the county board shall show valid cause why a service person with the  
3 most seniority is not promoted or employed in the position for which he or she applies. Qualified  
4 applicants shall be considered in the following order:

5 (1) Regularly employed service personnel who hold a classification title within the  
6 classification category of the vacancy;

7 (2) Service personnel who have held a classification title within the classification category  
8 of the vacancy whose employment has been discontinued in accordance with this section;

9 (3) Regularly employed service personnel who do not hold a classification title within the  
10 classification category of vacancy;

11 (4) Service personnel who have not held a classification title within the classification  
12 category of the vacancy and whose employment has been discontinued in accordance with this  
13 section;

14 (5) Substitute service personnel who hold a classification title within the classification  
15 category of the vacancy;

16 (6) Substitute service personnel who do not hold a classification title within the classification  
17 category of the vacancy; and

18 (7) New service personnel.

19 (c) The county board may not prohibit a service person from retaining or continuing his or  
20 her employment in any positions or jobs held prior to the effective date of this section and thereafter.

21 (d) A promotion means any change in employment that the service person considers to  
22 improve his or her working circumstance within the classification category of employment.

23 (1) A promotion includes a transfer to another classification category or place of employment

1 if the position is not filled by an employee who holds a title within that classification category of  
2 employment.

3 (2) Each class title listed in section eight of this article is considered a separate classification  
4 category of employment for service personnel, except for those class titles having Roman numeral  
5 designations, which are considered a single classification of employment:

6 (A) The cafeteria manager class title is included in the same classification category as cooks;

7 (B) The executive secretary class title is included in the same classification category as  
8 secretaries;

9 (C) Paraprofessional, autism mentor and braille or sign language specialist class titles are  
10 included in the same classification category as aides; and

11 (D) The mechanic assistant and chief mechanic class titles are included in the same  
12 classification category as mechanics.

13 (3) The assignment of an aide to a particular position within a school is based on seniority  
14 within the aide classification category if the aide is qualified for the position.

15 (4) Assignment of a custodian to work shifts in a school or work site is based on seniority  
16 within the custodian classification category.

17 (e) For purposes of determining seniority under this section a service person's seniority  
18 begins on the date that he or she enters into the assigned duties.

19 (f) *Extra-duty assignments.* --

20 (1) For the purpose of this section, "extra-duty assignment" means an irregular job that occurs  
21 periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets  
22 and band festival trips.

23 (2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting

1 service personnel with respect to extra-duty assignments are made in the following manner:

2 (A) A service person with the greatest length of service time in a particular category of  
3 employment is given priority in accepting extra duty assignments, followed by other fellow  
4 employees on a rotating basis according to the length of their service time until all employees have  
5 had an opportunity to perform similar assignments. The cycle then is repeated.

6 (B) An alternative procedure for making extra-duty assignments within a particular  
7 classification category of employment may be used if the alternative procedure is approved both by  
8 the county board and by an affirmative vote of two-thirds of the employees within that classification  
9 category of employment.

10 (g) County boards shall post and date notices of all job vacancies of existing or newly created  
11 positions in conspicuous places for all school service personnel to observe for at least five working  
12 days.

13 (1) Posting locations include any website maintained by or available for the use of the county  
14 board.

15 (2) Notice of a job vacancy shall include the job description, the period of employment, the  
16 work site, the starting and ending time of the daily shift, the amount of pay and any benefits and  
17 other information that is helpful to prospective applicants to understand the particulars of the job.  
18 The notice of a job vacancy in the aide classification categories shall include the program or primary  
19 assignment of the position. Job postings for vacancies made pursuant to this section shall be written  
20 to ensure that the largest possible pool of qualified applicants may apply. Job postings may not  
21 require criteria which are not necessary for the successful performance of the job and may not be  
22 written with the intent to favor a specific applicant.

23 (3) After the five-day minimum posting period, all vacancies shall be filled within twenty

1 working days from the posting date notice of any job vacancies of existing or newly created  
2 positions.

3 (4) The county board shall notify ~~any person who has applied for a job posted pursuant to this~~  
4 ~~section of the status of his or her application as soon as possible after the county board makes a~~  
5 ~~hiring decision regarding the posted position~~ the successful applicant.

6 (h) All decisions by county boards concerning reduction in work force of service personnel  
7 shall be made on the basis of seniority, as provided in this section.

8 (i) The seniority of a service person is determined on the basis of the length of time the  
9 employee has been employed by the county board within a particular job classification. For the  
10 purpose of establishing seniority for a preferred recall list as provided in this section, a service person  
11 who has been employed in one or more classifications retains the seniority accrued in each previous  
12 classification.

13 (j) If a county board is required to reduce the number of service personnel within a particular  
14 job classification, the following conditions apply:

15 (1) The employee with the least amount of seniority within that classification or grades of  
16 classification is properly released and employed in a different grade of that classification if there is  
17 a job vacancy;

18 (2) If there is no job vacancy for employment within that classification or grades of  
19 classification, the service person is employed in any other job classification which he or she  
20 previously held with the county board if there is a vacancy and retains any seniority accrued in the  
21 job classification or grade of classification.

22 (k) After a reduction in force or transfer is approved, but prior to August 1, a county board  
23 in its sole and exclusive judgment may determine that the reason for any particular reduction in force

1 or transfer no longer exists.

2 (1) If the board makes this determination, it shall rescind the reduction in force or transfer  
3 and notify the affected employee in writing of the right to be restored to his or her former position  
4 of employment.

5 (2) The affected employee shall notify the county board of his or her intent to return to the  
6 former position of employment within five days of being notified or lose the right to be restored to  
7 the former position.

8 (3) The county board may not rescind the reduction in force of an employee until all service  
9 personnel with more seniority in the classification category on the preferred recall list have been  
10 offered the opportunity for recall to regular employment as provided in this section.

11 (4) If there are insufficient vacant positions to permit reemployment of all more senior  
12 employees on the preferred recall list within the classification category of the service person who  
13 was subject to reduction in force, the position of the released service person shall be posted and filled  
14 in accordance with this section.

15 (l) If two or more service persons accumulate identical seniority, the priority is determined  
16 by a random selection system established by the employees and approved by the county board.

17 (m) All service personnel whose seniority with the county board is insufficient to allow their  
18 retention by the county board during a reduction in work force are placed upon a preferred recall list  
19 and shall be recalled to employment by the county board on the basis of seniority.

20 (n) A service person placed upon the preferred recall list shall be recalled to any position  
21 openings by the county board within the classification(s) where he or she had previously been  
22 employed, to any lateral position for which the service person is qualified or to a lateral area for  
23 which a service person has certification and/or licensure.

1 (o) A service person on the preferred recall list does not forfeit the right to recall by the  
2 county board if compelling reasons require him or her to refuse an offer of reemployment by the  
3 county board.

4 (p) The county board shall notify all service personnel on the preferred recall list of all  
5 position openings that exist from time to time. ~~The notice shall be sent by certified mail to the last~~  
6 ~~known address of the service person. Each service person shall notify the county board of any~~  
7 ~~change of address. The notification shall be sent annually, with written receipt notification~~  
8 ~~documented by the superintendent, and shall list instructions to access job posting on any website~~  
9 ~~maintained by or available for the use of the county board.~~

10 (q) ~~No~~ A position ~~openings~~ opening may not be filled by the county board, whether  
11 temporary or permanent, until all service personnel on the preferred recall list have been properly  
12 notified of existing vacancies and have been given an opportunity to accept reemployment.

13 (r) A service person released from employment for lack of need as provided in sections six  
14 and eight-a, article two of this chapter is accorded preferred recall status on July 1 of the succeeding  
15 school year if he or she has not been reemployed as a regular employee.

16 (s) A county board failing to comply with the provisions of this article may be compelled to  
17 do so by mandamus and is liable to any party prevailing against the board for court costs and the  
18 prevailing party's reasonable attorney fee, as determined and established by the court.

19 (1) A service person denied promotion or employment in violation of this section shall be  
20 awarded the job, pay and any applicable benefits retroactively to the date of the violation and shall  
21 be paid entirely from local funds.

22 (2) The county board is liable to any party prevailing against the board for any court reporter  
23 costs including copies of transcripts.

1    **§18A-4-8e. Competency testing for service personnel; and recertification testing for bus**  
2                                   **operators.**

3           (a) The state board shall develop and make available competency tests for all of the  
4 classification titles defined in section eight of this article and listed in section eight-a of this article  
5 for service personnel. Each classification title defined and listed is considered a separate  
6 classification category of employment for service personnel and has a separate competency test,  
7 except for those class titles having Roman numeral designations, which are considered a single  
8 classification of employment and have a single competency test.

9           (1) The cafeteria manager class title is included in the same classification category as cooks  
10 and has the same competency test.

11          (2) The executive secretary class title is included in the same classification category as  
12 secretaries and has the same competency test.

13          (3) The classification titles of chief mechanic, mechanic and assistant mechanic are included  
14 in one classification title and have the same competency test.

15          (b) The purpose of these tests is to provide county boards a uniform means of determining  
16 whether school service personnel who do not hold a classification title in a particular category of  
17 employment meet the definition of the classification title in another category of employment as  
18 defined in section eight of this article. Competency tests may not be used to evaluate employees who  
19 hold the classification title in the category of their employment.

20          (c) The competency test consists of an objective written or performance test, or both.  
21 Applicants may take the written test orally if requested. Oral tests are recorded mechanically and  
22 kept on file. The oral test is administered by persons who do not know the applicant personally.

23          (1) The performance test for all classifications and categories other than bus operator is

1 administered by an employee of the county board or an employee of a multicounty vocational school  
2 that serves the county at a location designated by the superintendent and approved by the board. The  
3 location may be a vocational school that serves the county.

4 (2) A standard passing score is established by the state Department of Education for each test  
5 and is used by county boards.

6 (3) The subject matter of each competency test is commensurate with the requirements of the  
7 definitions of the classification titles as provided in section eight of this article. The subject matter  
8 of each competency test is designed in such a manner that achieving a passing grade does not require  
9 knowledge and skill in excess of the requirements of the definitions of the classification titles.  
10 Achieving a passing score conclusively demonstrates the qualification of an applicant for a  
11 classification title.

12 (4) Once an employee passes the competency test of a classification title, the applicant is fully  
13 qualified to fill vacancies in that classification category of employment as provided in section eight-b  
14 of this article and may not be required to take the competency test again.

15 (d) An applicant who fails to achieve a passing score is given other opportunities to pass the  
16 competency test when applying for another vacancy within the classification category.

17 (e) Competency tests are administered to applicants in a uniform manner under uniform  
18 testing conditions. County boards are responsible for scheduling competency tests and notifying  
19 applicants of the date and time ~~of the one day of training prior to taking the test, and the date and~~  
20 ~~time~~ of the test. County boards may not use a competency test other than the test authorized by this  
21 section.

22 (f) When scheduling of the competency test conflicts with the work schedule of a school  
23 employee who has applied for a vacancy, the employee is excused from work to take the competency

1 test without loss of pay.

2 (g) ~~A minimum of one day of appropriate in-service training is provided to employees to~~  
3 ~~assist them in preparing to take the competency tests.~~

4 (h) ~~Competency tests are used to determine the qualification of new applicants seeking initial~~  
5 ~~employment in a particular classification title as either a regular or substitute employee.~~

6 (i) ~~(h)~~ Notwithstanding any provisions in this code to the contrary, once an employee holds  
7 or has held a classification title in a category of employment, that employee is considered qualified  
8 for the classification title even though that employee no longer holds that classification.

9 (j) ~~(i)~~ The requirements of this section do not alter the definitions of class titles as provided  
10 in section eight of this article or the procedure and requirements of section eight-b of this article.

11 (k) ~~(j)~~ Notwithstanding any other provision of this code to the contrary and notwithstanding  
12 any rules of the school board concerning school bus operator certification, the certification test for  
13 school bus operators shall be required as follows, and school bus operators may not be required to  
14 take the certification test more frequently:

15 (1) For substitute school bus operators and for school bus operators with regular employee  
16 status but on a probationary contract, the certification test shall be administered annually;

17 (2) For school bus operators with regular employee status and continuing contract status, the  
18 certification test shall be administered triennially; and

19 (3) For substitute school bus operators who are retired from a county board and who at the  
20 time of retirement had ten years of experience as a regular full-time bus operator, the certification  
21 test shall be administered triennially.

22 (4) *School bus operator certificate.* —

23 (A) A school bus operator certificate may be issued to a person who has attained the age of

1 twenty-one, completed the required training set forth in State Board rule, and met the physical  
2 requirements and other criteria to operate a school bus set forth in state board rule.

3 (B) The state superintendent may, after ten days' notice and upon proper evidence, revoke  
4 the certificate of any bus operator for any of the following causes:

5 (i) Intemperance, untruthfulness, cruelty or immorality;

6 (ii) Conviction of or guilty plea or plea of no contest to a felony charge;

7 (iii) Conviction of or guilty plea or plea of no contest to any charge involving sexual  
8 misconduct with a minor or a student;

9 (iv) Just and sufficient cause for revocation as specified by State Board rule; and

10 (v) Using fraudulent, unapproved or insufficient credit to obtain the certificates.

11 (vi) Of the causes for certificate revocation listed in this paragraph (B), the following causes  
12 constitute grounds for revocation only if there is a rational nexus between the conduct of the bus  
13 operator and the performance of the job:

14 (I) Intemperance, untruthfulness, cruelty or immorality;

15 (II) Just and sufficient cause for revocation as specified by state board rule; and

16 (III) Using fraudulent, unapproved or insufficient credit to obtain the certificate.

17 (C) The certificate of a bus operator may not be revoked for either of the following unless  
18 it can be proven by clear and convincing evidence that the bus operator has committed one of the  
19 offenses listed in this subsection and his or her actions render him or her unfit to operate a school  
20 bus:

21 (i) Any matter for which the bus operator was disciplined, less than dismissal, by the  
22 employing county board; or

23 (ii) Any matter for which the bus operator is meeting or has met an improvement plan

1 determined by the county board.

2 (D) The state superintendent shall designate a review panel to conduct hearings on certificate  
3 revocations or denials and make recommendations for action by the state superintendent. The state  
4 board, after consultation with employee organizations representing school service personnel, shall  
5 promulgate a rule to establish the review panel membership and composition, method of  
6 appointment, governing principles and meeting schedule.

7 (E) It is the duty of any county superintendent who knows of any acts on the part of a bus  
8 operator for which a certificate may be revoked in accordance with this section to report the same,  
9 together with all the facts and evidence, to the state superintendent for such action as in the state  
10 superintendent's judgment may be proper.

11 (F) If a certificate has been granted through an error, oversight or misinformation, the state  
12 superintendent may recall the certificate and make such corrections as will conform to the  
13 requirements of law and state board rules.

14 (5) The state board shall promulgate in accordance with article three-b, chapter twenty-nine-a  
15 of this code, revised rules in compliance with this subsection.