

COMMITTEE SUBSTITUTE

for

H. B. 2717

(BY DELEGATE(S) MARCUM, PASDON,
PERRY, H. WHITE, R. PHILLIPS, WILLIAMS, ELDRIDGE, RODIGHIERO,
REYNOLDS, CAMPBELL AND MOYE)

(Originating in the House Committee on Education)

[February 27, 2015]

A BILL to amend and reenact §18-5-15c of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of said code; to amend and reenact §18A-3-10 of said code; to amend and reenact §18A-4-7a of said code; and to amend and reenact §18A-4-8b and §18A-4-8e of said code, all relating to hiring employees in the public schools; expanding the sources from which background checks may be obtained; modifying certain dates regarding certain actions, notices and hearings; modifying certain time periods and required methods

of providing notice; modifying individuals to whom certain notice is required; limiting transfers from certain positions and providing exceptions; specifying certain actions of the county board to be in open, public meetings and authorizing certain executive sessions; authorizing county board to require certain actions of superintendent regarding job applicants; and removing requirement of county board to provide certain training.

Be it enacted by the Legislature of West Virginia:

That §18-5-15c of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of said code be amended and reenacted; that §18A-3-10 of said code be amended and reenacted; that §18A-4-7a of said code be amended and reenacted; and that §18A-4-8b and §18A-4-8e of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

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

- 1 (a) In recognition of the findings of the Legislature as set
- 2 forth in section one, article six-c, chapter forty-nine of this code,

3 the Legislature further finds that public schools are able to
4 provide a special environment for the training of children,
5 parents and school personnel in the prevention of child abuse and
6 neglect and child assault and that child abuse and neglect
7 prevention and child assault prevention programs in the public
8 schools are an effective and cost-efficient method of reducing
9 the incidents of child abuse and neglect, promoting a healthy
10 family environment and reducing the general vulnerability of
11 children.

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

22 and were in effect prior to the adoption of the regulations may be
23 continued.

24 (c) Funds for implementing the child abuse and neglect
25 prevention and child assault prevention programs may be
26 allocated to the county boards of education from the children's
27 trust fund established pursuant to the provisions of article six-c,
28 chapter forty-nine of this code or appropriated for such purpose
29 by the Legislature.

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

39 (e) Contractors or service providers or their employees may
40 not make direct, unaccompanied contact with students or access

41 school grounds unaccompanied when students are present if it
42 cannot be verified that the contractors, service providers or
43 employees have not previously been convicted of a qualifying
44 offense, as defined in section two, article twelve, chapter fifteen
45 of this code. For the purposes of this section, contractor and
46 service provider shall be limited to any vendor, individual or
47 entity under contract with a county school board. County school
48 boards may require contractors and service providers to verify
49 the criminal records of their employees before granting the
50 above-mentioned contact or access. Where prior written consent
51 is obtained, county school boards may obtain information from
52 the Central Abuse Registry regarding contractors, service
53 providers and their employees for the purposes of this
54 subsection. Where a contractor or service provider gives his or
55 her prior written consent, the county school board also may share
56 information provided by the Central Abuse Registry with other
57 county school boards for the purposes of satisfying the
58 requirements of this subsection. ~~The requirements of this~~
59 ~~subsection shall not go into effect until July 1, 2007.~~

CHAPTER 18A. SCHOOL PERSONNEL.

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 state the
3 salary to be paid and shall be in the form prescribed by the state
4 superintendent. Each contract shall be signed by the teacher and
5 by the president and secretary of the county board and shall be
6 filed, together with the certificate of the teacher, by the secretary
7 of the office of the county board. ~~Provided, That~~ When
8 necessary to facilitate the employment of employable
9 professional personnel and prospective and recent graduates of
10 teacher education programs who have not yet attained
11 certification, the contract may be signed upon the condition that
12 the certificate is issued to the employee prior to the beginning of
13 the employment term in which the employee enters upon his or
14 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 teacher
22 who holds a professional certificate, based on at least a
23 bachelor's degree, has met the qualifications for a bachelor's
24 degree and the county board enter into a new contract of
25 employment, it shall be a continuing contract, subject to the
26 following:

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

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

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

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

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

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

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

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

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

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

67 (6) A continuing contract does not operate to prevent a
68 teacher's dismissal based upon the lack of need for the teacher's
69 services pursuant to the provisions of law relating to the
70 allocation to teachers and ~~pupil-teacher~~ student-teacher ratios.

71 The written notification of teachers being considered for
72 dismissal for lack of need shall be limited to only those teachers

73 whose consideration for dismissal is based upon known or

74 expected circumstances which will require dismissal for lack of
75 need. An employee who was not provided notice and an
76 opportunity for a hearing pursuant to this subsection may not be
77 included on the list. In case of dismissal for lack of need, a
78 dismissed teacher shall be placed upon a preferred list in the
79 order of their length of service with that board. ~~No~~ A teacher
80 may not be employed by the board until each qualified teacher
81 ~~upon~~ on the preferred list, in order, has been offered the
82 opportunity for reemployment in a position for which he or she
83 is qualified, not including a teacher who has accepted a teaching
84 position elsewhere. The reemployment shall be upon a teacher's
85 preexisting continuing contract and has the same effect as though
86 the contract had been suspended during the time the teacher was
87 not employed.

88 (d) In the assignment of position or duties of a teacher under
89 a continuing contract, the board may provide for released time
90 of a teacher for any special professional or governmental
91 assignment without jeopardizing the contractual rights of the
92 teacher or any other rights, privileges or benefits under the
93 provisions of this chapter. Released time shall be provided for

94 any professional educator while serving as a member of the
95 Legislature during any duly constituted session of that body and
96 its interim and statutory committees and commissions. ~~without~~
97 ~~jeopardizing his or her~~ The released time does not jeopardize the
98 teacher's contractual rights or any other rights, privileges,
99 benefits or accrual of experience for placement on the state
100 minimum salary schedule in the following school year under the
101 provisions of this chapter, board policy and law.

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

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

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

111 (3) The state Department of Education or board may hold all
112 papers and credentials of the disqualified teacher on file for a
113 period of one year for the violation. ~~Provided, That~~ Marriage of

114 a teacher is not considered a failure to fulfill, or violation of, the
115 contract.

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

127 (g) (1) A classroom teacher who gives written notice to the
128 county board on or before ~~January 15~~ February 1 of the school
129 year of his or her retirement ~~from employment with the board at~~
130 the conclusion of the school year shall be paid \$500 from the
131 Early Notification of Retirement line item established for the
132 Department of Education for this purpose, subject to
133 appropriation by the Legislature. If the appropriations to the

134 Department of Education for this purpose are insufficient to
135 compensate all applicable teachers, the Department of Education
136 shall request a supplemental appropriation in an amount
137 sufficient to compensate all such teachers. Additionally, if funds
138 are still insufficient to compensate all applicable teachers, the
139 priority of payment is for teachers who give written notice the
140 earliest. This payment ~~shall not be~~ is not counted as part of the
141 final average salary for the purpose of calculating retirement.

142 (2) The position of a classroom teacher providing written
143 notice of retirement pursuant to this subsection may be
144 considered vacant and the county board may immediately post
145 the position as an opening to be filled at the conclusion of the
146 school year. If a teacher has been hired to fill the position of a
147 retiring classroom teacher prior to the start of the next school
148 year, the retiring classroom teacher is disqualified from
149 continuing his or her employment in that position. However, the
150 retiring classroom teacher may be permitted to continue his or
151 her employment in that position and forfeit the early retirement
152 notification payment if, after giving notice of retirement in
153 accordance with this subsection, he or she becomes subject to a

154 significant unforeseen financial hardship, including a hardship
155 caused by the death or illness of an immediate family member or
156 loss of employment of a spouse. Other significant unforeseen
157 financial hardships shall be determined by the county
158 superintendent on a case-by-case basis. This subsection does not
159 prohibit a county school board from eliminating the position of
160 a retiring classroom teacher.

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

1 (a) After three years of acceptable employment, each service
2 ~~personnel employee~~ person who enters into a new contract of
3 employment with the board shall be granted continuing contract
4 status. ~~Provided, That a service personnel employee~~ A service
5 person holding continuing contract status with one county shall
6 be granted continuing contract status with any other county upon
7 completion of one year of acceptable employment if such
8 employment with the other county is during the next succeeding
9 school year or immediately following an approved leave of
10 absence ~~extending~~ which extends no more than one year. The
11 continuing contract of any such employee shall remain in full

12 force and effect except as modified by mutual consent of the
13 school board and the employee, unless and until terminated with
14 written notice, stating cause or causes, to the employee, by a
15 majority vote of the full membership of the board on or before
16 ~~March~~ May 1 of the current year, or by written resignation of the
17 employee on or before that date. The affected employee has the
18 right of a hearing before the board, if requested, before final
19 action is taken by the board upon the termination of such
20 employment.

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

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

1 (a) The superintendent, subject only to approval of the board,
2 may assign, transfer, promote, demote or suspend school
3 personnel and recommend their dismissal pursuant to provisions
4 of this chapter. ~~However~~ An employee shall be notified in
5 writing by the superintendent on or before ~~March~~ April 1 if he or

6 she is being transferred or considered for transfer. ~~or to be~~
7 ~~transferred~~ Only those employees whose transfer or
8 consideration for transfer ~~or intended transfer~~ is based upon
9 known or expected circumstances which will require the transfer
10 of employees ~~shall~~ may be transferred or considered for transfer
11 ~~or intended for transfer~~ and the notification shall be limited to
12 only those employees. Any teacher or employee who desires to
13 protest the proposed transfer may request in writing a statement
14 of the reasons for the proposed transfer. The statement of reasons
15 shall be delivered to the teacher or employee within ten days of
16 ~~the~~ receipt of the request. Within ten days of ~~the~~ receipt of the
17 statement of ~~the~~ reasons, the teacher or employee may make
18 written demand upon the superintendent for a hearing on the
19 proposed transfer before the county board. The hearing on the
20 proposed transfer shall be held on or before ~~April 15~~ May 1. At
21 the hearing, the reasons for the proposed transfer must be shown.

22 (b) The superintendent, at a meeting of the board on or
23 before ~~April 15~~ May 1, shall furnish in writing to the board a list
24 of teachers and other employees to be considered for transfer and
25 subsequent assignment for the next ensuing school year. An

26 employee who was not provided notice and an opportunity for a
27 hearing pursuant to subsection (a) of this section may not be
28 included on the list. All other teachers and employees not so
29 listed shall be considered as reassigned to the positions or jobs
30 held at the time of this meeting. The list of those recommended
31 for transfer shall be included in the minute record of the meeting
32 and all those so listed shall be notified in writing. ~~which~~ The
33 ~~notice shall be delivered in writing, by certified mail, return~~
34 ~~receipt requested, to the person's last known addresses within~~
35 ~~ten days following the board meeting~~ with written receipt
36 notification documented by the superintendent, of their having
37 been so and shall state that the person been recommended for
38 transfer and subsequent assignment and the reasons therefor.

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

44 (d) The provisions of this section respecting hearing upon
45 notice of transfer is not applicable in emergency situations where

46 the school building becomes damaged or destroyed through an
47 unforeseeable act and which act necessitates a transfer of the
48 school personnel because of the aforementioned condition of the
49 building.

50 (e) Notwithstanding this section or any provision of this
51 code, when actual student enrollment in a grade level or
52 program, unforeseen before March 1 of the preceding school
53 year, permits the assignment of fewer teachers or service
54 personnel to or within a school under any pupil-teacher ratio,
55 class size or caseload standard established in section eighteen-a,
56 article five, chapter eighteen of this code or any policy of the
57 state board, the superintendent, with board approval, may
58 reassign the surplus personnel to another school or to another
59 grade level or program within the school if needed there to
60 comply with any such pupil-teacher ratio, class size or caseload
61 standard.

62 (1) Before any reassignment may occur pursuant to this
63 subsection, notice shall be provided to the employee and the
64 employee shall be provided an opportunity to appear before the

65 county board to state the reasons for his or her objections, if any,
66 prior to the board voting on the reassignment.

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

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

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

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

86 (f) Except as provided in this section, and notwithstanding
87 section eight, article five of this chapter, after the twentieth day
88 prior to the beginning of the instructional school year, a service
89 person employed and assigned to a position in the county may
90 not transfer during the instructional school year to another
91 position in the county, subject to the following:

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

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

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

103 (4) The county board, upon recommendation of the
104 superintendent that it is in the best interest of the students, may

105 fill a position before the beginning of the next instructional
106 school year with an employed and assigned service person who
107 applies for the position;

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

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

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

1 The superintendent at a meeting of the board on or before
2 ~~April 15~~ May 1 of each year shall provide in writing to the board
3 a list of all probationary teachers that he or she recommends to
4 be rehired for the next ensuing school year. The board shall act
5 upon the superintendent's recommendations at that meeting in
6 accordance with section one of this article. The board at this

7 same meeting shall also act upon the retention of other
8 probationary employees as provided in sections two and five of
9 this article. Any such probationary teacher or other probationary
10 employee who is not rehired by the board at that meeting shall
11 be notified in writing, by certified mail, return receipt requested,
12 to such person's last known addresses within ten days following
13 ~~said the~~ board meeting, of their not having been rehired or ~~not~~
14 ~~having been~~ nor recommended for rehiring.

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

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

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

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

7 (1) The state police for a state criminal history record check
8 through the central abuse registry and then forwarded to the
9 federal bureau of investigation for a national criminal history
10 record check; or

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

13 (b) Information contained in either the central abuse registry
14 record or the federal bureau of investigation record may form the
15 basis for the denial of a certificate for just cause. The applicant
16 for initial certification pays for the cost of obtaining the ~~central~~
17 ~~abuse registry record and the federal bureau of investigation~~
18 record checks or screening.

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

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

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

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

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

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

10 (1) Appropriate certification, licensure or both;

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

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

16 (4) Academic achievement;

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

20 (6) Specialized training relevant to ~~the performance of the~~
21 duties of performing the job duties;

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

27 (8) Seniority;

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

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

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

38 (c) ~~In considering the~~ When filling of a vacancy pursuant to
39 this section, a county board is entitled to determine the
40 appropriate weight to apply to each of the criterion when
41 assessing an applicant's qualifications: *Provided*, That if ~~one or~~
42 ~~more~~ any permanently employed instructional personnel apply
43 for a classroom teaching position and meet the standards set
44 forth in the job posting, each criterion ~~under~~ in subsection (b) of
45 this section shall be given equal weight except that the criterion

46 in subdivisions (10) and (11) ~~shall~~ each shall be double
47 weighted.

48 (d) A county board shall make all decisions regarding filling
49 vacancies at open, public meetings. The Legislature recognizes
50 that information collected by a county superintendent regarding
51 job applicants is confidential information of the county board
52 which the county board rightfully may access. A county board
53 may require the county superintendent to provide such applicant
54 information as it determines is necessary to properly consider
55 job candidates. The information includes, but is not limited to,
56 a complete list of all applicants for a position as well as their
57 qualifications and endorsements. The county board may enter
58 into executive session pursuant to section four, article nine-a,
59 chapter six of this code to receive and consider the information.
60 The county superintendent shall retain and maintain the
61 confidentiality of all the information following conclusion of the
62 executive session.

63 (e) For a classroom teaching position, if the
64 ~~recommendations resulting from the operations of principal and~~
65 faculty senate recommend the same applicant pursuant to

66 subdivisions (10) and (11), subsection (b) of this section, ~~are for~~
67 ~~the same applicant~~ and the superintendent concurs with ~~that~~
68 ~~recommendation~~ those recommendations, then the other
69 provisions of subsections (b) and (c) of this section do not apply
70 and the county board shall appoint that applicant
71 notwithstanding any other provision of this code to the contrary.

72 ~~(e)~~ (f) The state board shall promulgate a rule, including an
73 emergency rule if necessary, in accordance with the provisions
74 of article three-b, chapter twenty-nine-a of this code to
75 implement and interpret the provisions of this section. The rule
76 ~~including provisions that may provide for the compensation~~
77 ~~based on the appropriate daily rate of a classroom teacher who~~
78 directly participates in making recommendations pursuant to this
79 section ~~for~~ to be compensated at an appropriate daily rate for
80 participation during periods beyond his or her individual
81 contract.

82 ~~(f)~~ (g) The principal and faculty senate recommendations
83 made pursuant to said subdivisions (10) and (11) ~~subsection (b)~~
84 ~~of this section~~ shall be ~~made~~ based on a determination as to
85 which ~~of the applicants is the highest~~ applicant is most highly

86 qualified for the position. ~~Provided, That nothing in~~ This
87 subsection ~~shall~~ does not require principals or faculty senates to
88 assign any amount of weight to any factor in making a
89 recommendation.

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

98 ~~(h)~~ (i) Upon completion of one hundred thirty-three days of
99 employment in any one school year, substitute teachers, except
100 retired teachers and other retired professional educators
101 employed as substitutes, shall accrue seniority exclusively for
102 the purpose of applying for employment as a permanent, full-
103 time professional employee. One hundred thirty-three days or
104 more of said employment shall be prorated and shall vest as a

105 fraction of the school year worked by the permanent, full-time
106 teacher.

107 (†) (j) Guidance counselors and all other professional
108 employees, ~~as defined in section one, article one of this chapter~~
109 except classroom teachers, shall gain seniority in their
110 nonteaching area of professional employment on the basis of the
111 length of time the employee has been employed by the county
112 board of education in that area. ~~Provided, That~~ If an employee is
113 certified as a classroom teacher, the employee accrues classroom
114 teaching seniority for the time that ~~that employee~~ he or she is
115 employed in another professional area. For the ~~purposes~~ purpose
116 of accruing seniority, ~~under this paragraph~~ employment as
117 principal, supervisor or central office administrator ~~as defined in~~
118 ~~section one, article one of this chapter shall be~~ is considered one
119 area of employment.

120 (†) (k) Employment for a full employment term ~~shall equal~~
121 equals one year of seniority, but ~~no~~ an employee may not accrue
122 more than one year of seniority during any given fiscal year.
123 Employment for less than the full employment term shall be
124 prorated. A random selection system established by the

125 employees and approved by the county board shall be used to
126 determine the priority if two or more employees accumulate
127 identical seniority. ~~Provided, That~~ When two or more principals
128 have accumulated identical seniority, decisions on reductions in
129 force shall be based on qualifications.

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

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

140 (2) Notwithstanding any provision of this code to the
141 contrary, all employees subject to release shall be considered
142 applicants for any vacancy for which they are qualified in an
143 established, existing or newly created position that is known on
144 or before February 15 ~~is known~~ to exist for the ensuing school

145 year. ~~and for which they are qualified, and~~ Upon
146 recommendation of the superintendent, the board shall appoint
147 the successful applicant from among ~~them~~ those employees
148 before posting ~~such~~ the vacancies for application by other
149 persons: Provided, That the superintendent first may transfer to
150 the vacancy an employee not subject to release if the
151 superintendent determines that the employee is most qualified
152 and the employee consents to the transfer. The superintendent
153 then may recommend an employee subject to release for the
154 resulting vacancy;

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

161 (4) If an employee subject to release holds certification,
162 licensure or both in more than one lateral area and if the
163 employee's seniority is greater than the seniority of any other
164 employee in one or more of those areas of certification, licensure

165 or both, the employee subject to release shall be employed in the
166 professional position held by the employee with the least
167 seniority in any of those areas of certification, licensure or both;
168 and

169 (5) If, prior to August 1 of the year a reduction in force is
170 approved, the reason for any particular reduction in force no
171 longer exists as determined by the county board in its sole and
172 exclusive judgment, the board shall rescind the reduction in
173 force or transfer and shall notify the released employee in
174 writing of his or her right to be restored to his or her position of
175 employment. Within five days of being so notified, the released
176 employee shall notify the board, in writing, of his or her intent
177 to resume ~~his or her~~ the position of employment or the right to
178 be restored shall terminate. Notwithstanding any other provision
179 of this subdivision, if there is another employee on the preferred
180 recall list with proper certification and higher seniority, that
181 person shall be placed in the position restored as a result of the
182 reduction in force being rescinded.

183 (†) (m) For the purpose of this article, all positions which
184 meet the definition of “classroom teacher” as defined in section

185 one, article one of this chapter ~~shall be~~ are lateral positions. For
186 all other professional positions, the county board ~~of education~~
187 shall adopt a policy, ~~by October 31, 1993~~ and may modify ~~the~~
188 ~~policy thereafter~~ it as necessary, which ~~defines~~ specifies which
189 positions ~~shall be~~ are lateral positions. The board shall submit a
190 copy of its policy to the state board within thirty days of
191 ~~adoption or any modification. and~~ The state board shall compile
192 a report and submit ~~the report~~ it by December 31 to the
193 Legislative Oversight Commission on Education Accountability
194 ~~by December 31, 1993, and by that date~~ in any ~~succeeding~~ year
195 in which any county board submits a modification of its policy.
196 ~~relating to lateral positions~~ In adopting the policy, the county
197 board shall ~~give consideration to~~ consider the rank of each
198 position in terms of title; nature of responsibilities; salary level;
199 certification, licensure or both; and days in the ~~period of~~
200 employment period.

201 (m) (n) After the twentieth day prior to the beginning of the
202 instructional term, ~~no~~ a person employed and assigned to a
203 professional position may not transfer to another professional
204 position in the county during that instructional term unless the

205 person holding that position does not have valid certification.

206 ~~The provisions of~~ This subsection ~~are~~ is subject to the following:

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

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

213 (3) ~~The county board~~ Upon recommendation of the
214 superintendent, a county board may fill a position before the next
215 instructional term when it is determined to be in the best interest
216 of the students. The county superintendent shall notify the state
217 board of each transfer of a person employed in a professional
218 position to another professional position after the twentieth day
219 prior to the beginning of the instructional term; and

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

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

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

242 (7) ~~(o)~~ (p) Before position openings for professional personnel
243 that are known or expected to extend for twenty consecutive

244 employment days or longer ~~for professional personnel~~ may be
245 filled by the board, the board shall ~~be required to~~ notify all
246 qualified professional personnel on the preferred list and give
247 them an opportunity to apply. ~~but~~ Failure to apply shall does not
248 cause the employee to forfeit any right to recall. The notice shall
249 be sent ~~by certified mail to the last known address of~~ to the
250 employee with written receipt notification documented by the
251 superintendent. ~~and it shall be~~ It is the duty of each professional
252 personnel to notify the board of continued availability annually,
253 of any change in address or of any change in certification,
254 licensure or both.

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

257 (1) Boards shall ~~be required to~~ post and date notices of each
258 opening at least once. At their discretion, boards may post an
259 opening for a position other than classroom teacher more than
260 once in order to attract more qualified applicants. At their
261 discretion, boards may post an opening for a classroom teacher
262 one additional time after the first posting in order to attract more

263 qualified applicants only if fewer than three individuals apply
264 during the first posting subject to the following:

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

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

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

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

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

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

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

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

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

296 ~~(q)~~ (r) Notwithstanding any other provision of ~~the~~ this code
297 to the contrary, ~~where~~ if the total number of classroom teaching
298 positions in an elementary school does not increase from one
299 school year to the next, but there ~~exists in that school~~ is a need
300 to realign the number of teachers in one or more grade levels,
301 kindergarten through six, teachers at the school may be
302 reassigned to grade levels for which they are certified without

303 ~~that position~~ the positions being posted *Provided, That* if the
304 employee and the county board mutually agree to the
305 reassignment.

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

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

312 (2) When a specified grade level needs to be reduced and the
313 least senior employee in the school is not in that grade level, the
314 least senior classroom teacher in the grade level that needs to be
315 reduced shall be reassigned to the position made vacant by the
316 transfer of the least senior classroom teacher in the school
317 without that position being posted, *Provided, That* if the
318 employee is certified, licensed or both and agrees to the
319 reassignment.

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

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

330 (†) (u) The county board shall compile, update annually on
331 July 1, and make available by electronic or other means to all
332 employees a list of all professional personnel employed by the
333 county, their areas of certification and their seniority.

334 (†) (v) Notwithstanding any other provision of this code to
335 the contrary, upon recommendation of the principal and approval
336 by the classroom teacher and county board, a classroom teacher
337 assigned to the school may at any time be assigned to a new or
338 existing classroom teacher position at the school without the
339 position being posted.

340 (†) ~~The amendments to this section during the 2013 regular~~
341 ~~session of the Legislature shall be effective for school years~~
342 ~~beginning on or after July 1, 2013, and the provisions of this~~

343 ~~section immediately prior to those amendments remain in effect~~
344 ~~until July 1, 2013.~~

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

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

7 (b) Qualifications means the applicant holds a classification
8 title in his or her category of employment as provided in this
9 section and is given first opportunity for promotion and filling
10 vacancies. Other employees then shall be considered and shall
11 qualify by meeting the definition of the job title that relates to
12 the promotion or vacancy, as defined in section eight of this
13 article. If requested by the employee, the county board shall
14 show valid cause why a service person with the most seniority is
15 not promoted or employed in the position for which he or she
16 applies. Qualified applicants shall be considered in the following
17 order:

18 (1) Regularly employed service personnel who hold a
19 classification title within the classification category of the
20 vacancy;

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

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

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

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

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

37 (7) New service personnel.

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

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

45 (1) A promotion includes a transfer to another classification
46 category or place of employment if the position is not filled by
47 an employee who holds a title within that classification category
48 of employment.

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

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

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

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

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

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

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

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

72 (f) *Extra-duty assignments.* —

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

77 (2) Notwithstanding any other provisions of this chapter to
78 the contrary, decisions affecting service personnel with respect
79 to extra-duty assignments are made in the following manner:

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

86 (B) An alternative procedure for making extra-duty
87 assignments within a particular classification category of
88 employment may be used if the alternative procedure is
89 approved both by the county board and by an affirmative vote of
90 two-thirds of the employees within that classification category
91 of employment.

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

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

98 (2) Notice of a job vacancy shall include the job description,
99 the period of employment, the work site, the starting and ending
100 time of the daily shift, the amount of pay and any benefits and
101 other information that is helpful to prospective applicants to
102 understand the particulars of the job. The notice of a job vacancy
103 in the aide classification categories shall include the program or
104 primary assignment of the position. Job postings for vacancies
105 made pursuant to this section shall be written to ensure that the
106 largest possible pool of qualified applicants may apply. Job
107 postings may not require criteria which are not necessary for the
108 successful performance of the job and may not be written with
109 the intent to favor a specific applicant.

110 (3) After the five-day minimum posting period, all vacancies
111 shall be filled within twenty working days from the posting date
112 notice of any job vacancies of existing or newly created
113 positions.

114 (4) The county board shall notify ~~any person who has~~
115 ~~applied for a job posted pursuant to this section of the status of~~

116 ~~his or her application as soon as possible after the county board~~
117 ~~makes a hiring decision regarding the posted position the~~
118 successful applicant.

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

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

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

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

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

142 (k) After a reduction in force or transfer is approved, but
143 prior to August 1, a county board in its sole and exclusive
144 judgment may determine that the reason for any particular
145 reduction in force or transfer no longer exists.

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

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

154 (3) The county board may not rescind the reduction in force
155 of an employee until all service personnel with more seniority in

156 the classification category on the preferred recall list have been
157 offered the opportunity for recall to regular employment as
158 provided in this section.

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

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

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

174 (n) A service person placed upon the preferred recall list
175 shall be recalled to any position openings by the county board

176 within the classification(s) where he or she had previously been
177 employed, to any lateral position for which the service person is
178 qualified or to a lateral area for which a service person has
179 certification and/or licensure.

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

184 (p) The county board shall notify all service personnel on the
185 preferred recall list of all position openings that exist from time
186 to time. ~~The notice shall be sent by certified mail to the last~~
187 ~~known address of the service person. Each service person shall~~
188 ~~notify the county board of any change of address. The~~
189 notification shall be sent annually, with written receipt
190 notification documented by the superintendent, and shall list
191 instructions to access job posting on any website maintained by
192 or available for the use of the county board.

193 (q) ~~No~~ A position ~~openings~~ opening may not be filled by the
194 county board, whether temporary or permanent, until all service
195 personnel on the preferred recall list have been properly notified

196 of existing vacancies and have been given an opportunity to
197 accept reemployment.

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

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

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

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

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

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

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

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

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

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

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

32 (1) The performance test for all classifications and categories
33 other than bus operator is administered by an employee of the
34 county board or an employee of a multicounty vocational school
35 that serves the county at a location designated by the
36 superintendent and approved by the board. The location may be
37 a vocational school that serves the county.

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

41 (3) The subject matter of each competency test is
42 commensurate with the requirements of the definitions of the
43 classification titles as provided in section eight of this article.
44 The subject matter of each competency test is designed in such
45 a manner that achieving a passing grade does not require
46 knowledge and skill in excess of the requirements of the
47 definitions of the classification titles. Achieving a passing score
48 conclusively demonstrates the qualification of an applicant for
49 a classification title.

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

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

58 (e) Competency tests are administered to applicants in a
59 uniform manner under uniform testing conditions. County
60 boards are responsible for scheduling competency tests and
61 notifying applicants of the date and time ~~of the one day of~~
62 ~~training prior to taking the test, and the date and time~~ of the test.
63 County boards may not use a competency test other than the test
64 authorized by this section.

65 (f) When scheduling of the competency test conflicts with
66 the work schedule of a school employee who has applied for a
67 vacancy, the employee is excused from work to take the
68 competency test without loss of pay.

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

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

75 (i) (h) Notwithstanding any provisions in this code to the
76 contrary, once an employee holds or has held a classification title
77 in a category of employment, that employee is considered

78 qualified for the classification title even though that employee no
79 longer holds that classification.

80 ~~(f)~~ (i) The requirements of this section do not alter the
81 definitions of class titles as provided in section eight of this
82 article or the procedure and requirements of section eight-b of
83 this article.

84 ~~(k)~~ (j) Notwithstanding any other provision of this code to
85 the contrary and notwithstanding any rules of the school board
86 concerning school bus operator certification, the certification test
87 for school bus operators shall be required as follows, and school
88 bus operators may not be required to take the certification test
89 more frequently:

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

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

96 (3) For substitute school bus operators who are retired from
97 a county board and who at the time of retirement had ten years

98 of experience as a regular full-time bus operator, the certification
99 test shall be administered triennially.

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

101 (A) A school bus operator certificate may be issued to a
102 person who has attained the age of twenty-one, completed the
103 required training set forth in State Board rule, and met the
104 physical requirements and other criteria to operate a school bus
105 set forth in state board rule.

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

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

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

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

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

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

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

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

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

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

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

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

134 (ii) Any matter for which the bus operator is meeting or has
135 met an improvement plan determined by the county board.

136 (D) The state superintendent shall designate a review panel
137 to conduct hearings on certificate revocations or denials and

138 make recommendations for action by the state superintendent.
139 The state board, after consultation with employee organizations
140 representing school service personnel, shall promulgate a rule to
141 establish the review panel membership and composition, method
142 of appointment, governing principles and meeting schedule.

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

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

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