

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4566

(BY DELEGATES ESPINOSA, DUKE, STATLER
AND D. EVANS)

[Originating in the Committee on Finance, February 26, 2016.]

1 A BILL to amend and reenact §18-4-2 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §18A-2-2, §18A-2-5a, §18A-2-6, §18A-2-7 and §18A-2-8a of said code; to
3 amend said code by adding thereto a new section, designated §18A-2-7b; to amend and
4 reenact, §18A-4-7a, §18A-4-8b and §18A-4-8e of said code; and to amend and reenact
5 §18A-5-8 of said code, all relating to school personnel; including assistant and associate
6 superintendents under provisions for permanent administrative certification for
7 superintendents; changing deadline for county board vote on termination of continuing
8 contracts of teachers; requiring the department to report on database system certain
9 disqualifications to teach; changing deadlines for teachers and service personnel to give
10 notice of retirement to qualify for early notification payment; changing deadline for county
11 board vote on termination of continuing contracts of service persons; changing deadline
12 for notice of consideration for transfer; changing deadline for hearing on proposed transfer;
13 changing deadline to provide list of employees considered for transfer to county board;
14 changing method of notification and documentation of receipt of notice to employees
15 recommended for transfer; making technical alignment of dates on personnel action and
16 foreseen need for personnel; consolidating limitations on employee transfers after
17 twentieth day prior to instructional term; removing reports to state superintendent;
18 removing exemption for position vacated but not posted; changing transfer limit to
19 twentieth day for prior for service person employed and assigned as autism mentor or
20 certain aid, paraprofessional, interpreter or early childhood assistant teacher; limiting
21 transfers service persons after the twentieth day prior with certain exceptions; changing
22 deadline providing county board list of probationary teachers recommended for rehire;
23 providing for filling position known on or before March 1 to exist for the next school year
24 and requiring employees subject to release to be considered prior to posting for application
25 for nonemployees; removing requirement to submit lateral transfer policies to state board
26 to be complied for reports to LOCEA; facilitating postings for longer than the five-day

27 minimum; removing requirement to any applicant of status of his or her application after
28 hiring decision made; changing requirements for notice and receipt notification to persons
29 on preferred recall of all position openings; requiring periodic review and update of service
30 personnel competency tests; removing requiring requirement for minimum one day in-
31 service training to assist preparation for competency tests; removing obsolete language
32 and making technical improvements.

Be it enacted by the Legislature of West Virginia:

1 That §18-4-2 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §18A-2-2, §18A-2-5a, §18A-2-6, §18A-2-7 and §18A-2-8a of said code be
3 amended and reenacted; that said code be amended by adding thereto a new section, designated
4 §18A-2-7b; that §18A-4-7a, §18A-4-8b and §18A-4-8e of said code be amended and reenacted;
5 and that §18A-5-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

1 (a) Each county superintendent shall hold a professional administrative certificate
2 endorsed for superintendent, or a first class permit endorsed for superintendent, subject to the
3 following:

4 (1) A superintendent who holds a first class permit may be appointed for one year only,
5 and may be reappointed two times for an additional year each upon an annual evaluation by the
6 county board and a determination of satisfactory performance and reasonable progress toward
7 completion of the requirements for a professional administrative certificate endorsed for
8 superintendent;

9 (2) Any candidate for superintendent, assistant superintendent or associate
10 superintendent, who possesses an earned doctorate from an accredited institution of higher

11 education and either has completed three successful years of teaching in public education or has
12 the equivalent of three years of experience in management or supervision as defined by state
13 board rule, after employment by the county board shall be granted a permanent administrative
14 certificate and shall be a licensed county superintendent;

15 (3) The state board shall promulgate a legislative rule in accordance with article three-b,
16 chapter twenty-nine-a of this code, to address those cases where a county board finds that course
17 work needed by the county superintendent who holds a first class permit is not available or is not
18 scheduled at state institutions of higher education in a manner which will enable the county
19 superintendent to complete normal requirements for a professional administrative certificate
20 within the three-year period allowed under the permit; and

21 (4) Any person employed as assistant superintendent or educational administrator prior to
22 June 27, 1988, and who was previously employed as superintendent is not required to hold the
23 professional administrative certificate endorsed for superintendent.

24 (b) In addition to other requirements set forth in this section, a county superintendent shall
25 meet the following health-related conditions of employment:

26 (1) Before entering upon the discharge of his or her duties, file with the president of the
27 county board a certificate from a licensed physician certifying the following:

28 (A) A tuberculin skin test, of the type Mantoux test (PPD skin test), approved by the
29 Director of the Division of Health, has been made within four months prior to the beginning of the
30 term of the county superintendent; and

31 (B) The county superintendent does not have tuberculosis in a communicable state based
32 upon the test results and any further study;

33 (2) After completion of the initial test, the county superintendent shall have an approved
34 tuberculin skin test once every two years or more frequently if medically indicated. Positive
35 reactors to the skin test are to be referred immediately to a physician for evaluation and indicated
36 treatment or further studies;

37 (3) A county superintendent who is certified by a licensed physician to have tuberculosis
38 in a communicable stage shall have his or her employment discontinued or suspended until the
39 disease has been arrested and is no longer communicable; and

40 (4) A county superintendent who fails to complete required follow-up examinations as set
41 forth in this subsection shall be suspended from employment until a report of examination is
42 confirmed.

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

10 (b) Each teacher's contract, under this section, shall be designated as a probationary or
11 continuing contract. A probationary teachers contract shall be for a term of not less than one nor
12 more than three years, one of which shall be for completion of a beginning teacher internship
13 pursuant to the provisions of section two-b, article three of this chapter, if applicable. If, after three

14 years of such employment, the teacher who holds a professional certificate, based on at least a
15 bachelor's degree, has met the qualifications for a bachelors degree and the county board enter
16 into a new contract of employment, it shall be a continuing contract, subject to the following:

17 (1) Any teacher ~~holding a valid certificate~~ with less than a bachelor's degree who holds a
18 valid certificate and is employed in a county beyond the three-year probationary period shall be
19 granted continuing contract status upon qualifying for the professional certificate based upon a
20 bachelor's degree, if the teacher becomes reemployed; ~~be granted continuing contract status and~~

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

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

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

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

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

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

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

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

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

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

57 (d) In the assignment of position or duties of a teacher under a continuing contract, the
58 board may provide for released time of a teacher for any special professional or governmental
59 assignment without jeopardizing the contractual rights of the teacher or any other rights, privileges
60 or benefits under the provisions of this chapter. Released time shall be provided for any
61 professional educator while serving as a member of the Legislature during any duly constituted
62 session of that body and its interim and statutory committees and commissions without
63 jeopardizing his or her contractual rights or any other rights, privileges, benefits or accrual of

64 experience for placement on the state minimum salary schedule in the following school year under
65 the provisions of this chapter, board policy and law.

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

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

71 (2) Violates any lawful provision of the his or her contract: ~~is disqualified to teach in any~~
72 ~~other public school in the state for a period of the next ensuing school year and~~ *Provided, That*
73 ~~the marriage of a teacher is not considered a failure to fulfill, or violation of, the contract.~~

74 The State Department of Education or board may hold all papers and credentials of the
75 teacher on file for a period of one year for the violation ~~*Provided, That marriage of a teacher is*~~
76 ~~not considered a failure to fulfill, or violation of, the contract~~ and shall report such disqualification
77 status in the National Association of State Directors of Teacher Education and Certification
78 (NASDTEC) database system.

79 (f) Any classroom teacher, as defined in section one, article one of this chapter, who
80 desires to resign employment with a county board or request a leave of absence, the resignation
81 or leave of absence to become effective on or before July 15 of the same year and after
82 completion of the employment term, may do so at any time during the school year by written
83 notification of the resignation or leave of absence and any notification received by a county board
84 shall automatically extend the teacher's public employee insurance coverage until August 31 of
85 the same year.

86 (g) (1) A classroom teacher who gives written notice to the county board on or before
87 ~~January 15~~ March 1 of the school year of his or her retirement from employment with the board
88 at the conclusion of the school year shall be paid \$500 from the early notification of retirement
89 line item established for the Department of Education for this purpose, subject to appropriation by

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

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

§18A-2-5a. Authorizing payment for notification of retirement.

1 Each county board is authorized to pay, entirely from local funds, \$500 or less to any
2 service employee, or to any professional employee who is not a classroom teacher, who gives
3 written notice to the county board on or before ~~February 4~~ March 1 of the school year of his or her
4 retirement from employment with the board at the conclusion of the school year.

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

1 After three years of acceptable employment, each service ~~personnel employee~~ person
2 who enters into a new contract of employment with the board shall be granted continuing contract

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

14 Those employees who have completed three years of acceptable employment as of the
15 effective date of this legislation 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, may assign, transfer,
2 promote, demote or suspend school personnel and recommend their dismissal pursuant to
3 provisions of this chapter. However, an employee shall be notified in writing by the superintendent
4 on or before ~~March 1~~ April 1 if he or she is being considered for transfer or to be transferred. Only
5 those employees whose consideration for transfer or intended transfer is based upon known or
6 expected circumstances which will require the transfer of employees shall be considered for
7 transfer or intended for transfer and the notification shall be limited to only those employees. Any
8 teacher or employee who desires to protest the proposed transfer may request in writing a
9 statement of the reasons for the proposed transfer. The statement of reasons shall be delivered
10 to the teacher or employee within ten days of the receipt of the request. Within ten days of the

11 receipt of the statement of the reasons, the teacher or employee may make written demand upon
12 the superintendent for a hearing on the proposed transfer before the county board. The hearing
13 on the proposed transfer shall be held on or before ~~April 15~~ May 1. At the hearing, the reasons
14 for the proposed transfer must be shown.

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

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

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

34 (e) Notwithstanding this section or any provision of this code, when actual student
35 enrollment in a grade level or program, unforeseen on or before ~~March 4~~ May 1 of the preceding
36 school year, permits the assignment of fewer teachers or service personnel to or within a school

37 under any pupil-teacher ratio, class size or caseload standard established in section eighteen-a,
38 article five, chapter eighteen of this code or any policy of the state board, the superintendent, with
39 board approval, may reassign the surplus personnel to another school or to another grade level
40 or program within the school if needed there to comply with any such pupil-teacher ratio, class
41 size or caseload standard.

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

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

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

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

56 (5) No school employee's annual contract term, compensation or benefits shall be
57 changed as a result of a reassignment under this subsection.

**§18A-2-7b. Limitations on voluntary transfer of school employees to posted vacant
position after twentieth day prior to beginning of instructional term.**

1 (a) The Legislature finds that it is not in the best interest of the students particularly in the
2 elementary grades to have multiple teachers for any one grade level or course during the
3 instructional term. Therefore, it is the intent of the Legislature that the filling of positions through

4 transfers of personnel from one professional position to another after the twentieth day prior to
5 the beginning of the instructional term should be kept to a minimum in accordance with the
6 following:

7 (1) After the twentieth day prior to the beginning of the instructional term, no person
8 employed and assigned to a professional position may transfer to another professional position
9 in the county during that instructional term unless the person holding that position does not have
10 valid certification;

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

13 (3) Professional personnel who have been on an approved leave of absence may fill these
14 vacancies upon their return from the approved leave of absence; and

15 (4) The county board, upon recommendation of the superintendent may fill a position
16 before the next instructional term when it is determined to be in the best interest of the students.

17 (b) The Legislature finds that it is not in the best interest of students with autism or with an
18 exceptionality whose IEP requires one-on-one services, or students in the early childhood years,
19 to have multiple teachers, mentors, aides, paraprofessionals, interpreters or any combination
20 thereof during the instructional term. Therefore, it is the intent of the Legislature that after the
21 twentieth day prior to the beginning of the instructional term, filling positions through transfers of
22 personnel from one position to another be kept to a minimum for autism mentors and aides who
23 work with students with autism and for paraprofessionals, interpreters, early childhood classroom
24 assistant teachers and aides who work with students with exceptionalities whose IEPs require
25 one-on-one services, in accordance with the following:

26 (1) After the twentieth day prior to the beginning of the instructional term, a service person
27 may not transfer to another position in the county during that instructional term, unless he or she
28 does not have valid certification, if the service person is employed and assigned as an autism
29 mentor or aide who works with students with autism, or as a paraprofessional, interpreter, early

30 childhood classroom assistant teacher, or aide who works with a student with an exceptional
31 whose IEP requires one-on-one services;

32 (2) The aide, autism mentor, paraprofessional, interpreter or early childhood classroom
33 assistant teacher may apply for any posted, vacant position with the successful applicant
34 assuming the position at the beginning of the next instructional term; and

35 (3) The county board, upon recommendation of the superintendent, may fill a position
36 before the beginning of the next instructional term when it is determined to be in the best interest
37 of the students.

38 (c) Except as provided in subsection (b) of this section, after the twentieth day prior to the
39 beginning of the instructional term, a service person may transfer to another position of
40 employment one time only during any one half of the instructional term, unless otherwise mutually
41 agreed upon by the service person and the county superintendent, or the superintendent's
42 designee, subject to county board approval. During the first year of employment as a service
43 person, a service person may not transfer to another position of employment during the first one
44 half of the instructional term unless mutually agreed upon by the service person and county
45 superintendent, subject to county board approval, except as follows:

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

48 (2) A service person may apply for a posted, vacant position at any time. The successful
49 applicant for the position may not assume the position until the beginning of the next one half of
50 the instructional term; and

51 (3) Extracurricular assignments for school bus operators pursuant to section sixteen,
52 article four of this chapter are 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 ~~April 15~~ May 1 of each year
2 shall provide in writing to the board a list of all probationary teachers that he or she recommends

3 to be rehired for the next ensuing school year. The board shall act upon the superintendent's
4 recommendations at that meeting in accordance with section one of this article. The board at this
5 same meeting shall also act upon the retention of other probationary employees as provided in
6 sections two and five of this article. Any such probationary teacher or other probationary employee
7 who is not rehired by the board at that meeting shall be notified in writing, by certified mail, return
8 receipt requested, to such persons' last known addresses within ten days following said board
9 meeting, of their not having been rehired or not having been recommended for rehiring.

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

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 affecting the filling of vacancies in
2 professional positions of employment on the basis of the applicant with the highest qualifications:
3 *Provided*, That the county superintendent shall be hired under separate criteria pursuant to
4 section two, article four, chapter eighteen of this code.

5 (b) In judging qualifications for the filling of vacancies of professional positions of
6 employment, consideration shall be given to each of the following:

7 (1) Appropriate certification, licensure or both;

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

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

- 12 (4) Academic achievement;
- 13 (5) In the case of a principal or classroom teaching position, ~~or the position of principal,~~
14 certification by the National Board for Professional Teaching Standards;
- 15 (6) Specialized training relevant to ~~the performance of~~ performing the duties of the job;
- 16 (7) Past performance evaluations conducted pursuant to section twelve, article two of this
17 chapter and section two, article three-c of this chapter or, in the case of a classroom teacher, past
18 evaluations of the applicants performance in the teaching profession;
- 19 (8) Seniority;
- 20 (9) Other measures or indicators upon which the relative qualifications of the applicant
21 may fairly be judged;
- 22 (10) In the case of a classroom teaching position, the recommendation of the principal of
23 the school at which the applicant will be performing a majority of his or her duties; and
- 24 (11) In the case of a classroom teaching position, the recommendation, if any, resulting
25 from the process established pursuant to the provisions of section five, article five-a, chapter
26 eighteen of this code by the faculty senate of the school at which the employee will be performing
27 a majority of his or her duties.
- 28 (c) ~~In considering the~~ When filling of a vacancy pursuant to this section, a county board is
29 entitled to determine the appropriate weight to apply to each of the criterion when assessing an
30 applicants qualifications: *Provided*, That if one or more permanently employed instructional
31 personnel apply for a classroom teaching position and meet the standards set forth in the job
32 posting, each criterion under subsection (b) of this section shall be given equal weight except that
33 the criterion in subdivisions (10) and (11) shall each be double weighted.
- 34 (d) For a classroom teaching position, if the ~~recommendations resulting from the~~
35 ~~operations of~~ principal and faculty senate recommend the same applicant pursuant to
36 subdivisions (10) and (11), subsection (b) of this section, ~~are for the same applicant and the~~
37 superintendent concurs with ~~that recommendation~~ those recommendations, then the other

38 provisions of subsections (b) and (c) of this section do not apply and the county board shall
39 appoint that applicant notwithstanding any other provision of this code to the contrary.

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

46 (f) The recommendations of the principal and faculty senate made pursuant to
47 subdivisions (10) and (11), subsection (b) of this section shall be ~~made~~ based on a determination
48 as to which ~~of the applicants is the highest~~ applicant is the most highly qualified for the position:
49 *Provided*, That nothing in this subsection shall may require principals or faculty senates to assign
50 any amount of weight to any factor in making a recommendation.

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

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

62 (i) Guidance counselors and all other professional employees, as defined in section one,
63 article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching

64 area of professional employment on the basis of the length of time the employee has been
65 employed by the county board of education in that area: *Provided*, That if an employee is certified
66 as a classroom teacher, the employee accrues classroom teaching seniority for the time that
67 employee is employed in another professional area. For the purposes of accruing seniority under
68 this paragraph, employment as principal, supervisor or central office administrator, as defined in
69 section one, article one of this chapter, shall be considered one area of employment.

70 (j) Employment for a full employment term ~~shall equal~~ equals one year of seniority, but ~~no~~
71 an employee may not accrue more than one year of seniority during any given fiscal year.
72 Employment for less than the full employment term shall be prorated. A random selection system
73 established by the employees and approved by the county board shall be used to determine the
74 priority if two or more employees accumulate identical seniority: *Provided*, That when two or more
75 principals have accumulated identical seniority, decisions on reductions in force shall be based
76 on qualifications.

77 (k) Whenever a county board is required to reduce the number of professional personnel
78 in its employment, the employee with the least amount of seniority shall be properly notified and
79 released from employment pursuant to the provisions of section two, article two of this chapter.
80 The provisions of this subsection are subject to the following:

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

84 (2) ~~Notwithstanding any provision of this code to the contrary, all employees subject to~~
85 ~~release shall be considered applicants for any vacancy in an established, existing or newly~~
86 ~~created position that, on or before February 15, is known to exist for the ensuing school year, and~~
87 ~~for which they are qualified, and, upon recommendation of the superintendent, the board shall~~
88 ~~appoint the successful applicant from among them before posting such vacancies for application~~
89 ~~by other persons~~ Notwithstanding any provision of this code to the contrary, for any vacancy in

90 an established, existing or newly created position that, on or before March 1, is known to exist for
91 the ensuing school year, upon recommendation of the superintendent, the board shall appoint the
92 successful applicant from among all qualified applicants. All employees subject to release shall
93 be considered applicants for the positions for which they are qualified and shall be considered
94 before posting such vacancies for application by nonemployees;

95 (3) An employee subject to release shall be employed in any other professional position
96 where the employee is certified and was previously employed or to any lateral area for which the
97 employee is certified, licensed or both, if the employees seniority is greater than the seniority of
98 any other employee in that area of certification, licensure or both;

99 (4) If an employee subject to release holds certification, licensure or both in more than one
100 lateral area and if the employees seniority is greater than the seniority of any other employee in
101 one or more of those areas of certification, licensure or both, the employee subject to release
102 shall be employed in the professional position held by the employee with the least seniority in any
103 of those areas of certification, licensure or both; and

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

113 (l) For the purpose of this article, all positions which meet the definition of “classroom
114 teacher” as defined in section one, article one of this chapter shall be lateral positions. For all
115 other professional positions, the county board of education shall adopt a policy by October 31,

116 1993, and may modify the policy thereafter as necessary, which defines which positions shall be
117 lateral positions. ~~The board shall submit a copy of its policy to the state board within thirty days of~~
118 ~~adoption or any modification, and the state board shall compile a report and submit the report to~~
119 ~~the Legislative Oversight Commission on Education Accountability by December 31, 1993, and~~
120 ~~by that date in any succeeding year in which any county board submits a modification of its policy~~
121 ~~relating to lateral positions.~~ In adopting the policy, the board shall give consideration to the rank
122 of each position in terms of title; nature of responsibilities; salary level; certification, licensure or
123 both; and days in the period of employment.

124 ~~(m) After the twentieth day prior to the beginning of the instructional term, no person~~
125 ~~employed and assigned to a professional position may transfer to another professional position~~
126 ~~in the county during that instructional term unless the person holding that position does not have~~
127 ~~valid certification. The provisions of this subsection are subject to the following:~~

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

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

132 ~~(3) The county board, upon recommendation of the superintendent may fill a position~~
133 ~~before the next instructional term when it is determined to be in the best interest of the students.~~
134 ~~The county superintendent shall notify the state board of each transfer of a person employed in a~~
135 ~~professional position to another professional position after the twentieth day prior to the beginning~~
136 ~~of the instructional term;~~

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

140 ~~(5) The Legislature finds that it is not in the best interest of the students particularly in the~~
141 ~~elementary grades to have multiple teachers for any one grade level or course during the~~

142 ~~instructional term. It is the intent of the Legislature that the filling of positions through transfers of~~
143 ~~personnel from one professional position to another after the twentieth day prior to the beginning~~
144 ~~of the instructional term should be kept to a minimum.~~

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

152 ~~(o)~~ (n) Before position openings that are known or expected to extend for twenty
153 consecutive employment days or longer for professional personnel may be filled by the board, the
154 board shall be required to notify all qualified professional personnel on the preferred list and give
155 them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right
156 to recall. The notice shall be sent by certified mail to the last known address of the employee, and
157 it shall be the duty of each professional personnel to notify the board of continued availability
158 annually, of any change in address or of any change in certification, licensure or both.

159 ~~(p)~~ (o) Openings in established, existing or newly created positions shall be processed as
160 follows:

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

167 (A) Each notice shall be posted in conspicuous working places for all professional
168 personnel to observe for at least five working days;

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

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

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

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

177 (2) No vacancy ~~shall~~ may be filled until after the five-day minimum posting period of the
178 most recent posted notice of the vacancy;

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

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

185 (5) Nothing provided herein ~~shall~~ may prevent the county board of education from
186 eliminating a position due to lack of need.

187 ~~(q)~~ (p) Notwithstanding any other provision of the code to the contrary, where the total
188 number of classroom teaching positions in an elementary school does not increase from one
189 school year to the next, but there exists in that school a need to realign the number of teachers
190 in one or more grade levels, kindergarten through six, teachers at the school may be reassigned
191 to grade levels for which they are certified without that position being posted: *Provided*, That the
192 employee and the county board mutually agree to the reassignment.

193 (†) (q) Reductions in classroom teaching positions in elementary schools shall be
194 processed as follows:

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

198 (2) When a specified grade level needs to be reduced and the least senior employee in
199 the school is not in that grade level, the least senior classroom teacher in the grade level that
200 needs to be reduced shall be reassigned to the position made vacant by the transfer of the least
201 senior classroom teacher in the school without that position being posted: *Provided*, That the
202 employee is certified, licensed or both and agrees to the reassignment.

203 (‡) (r) Any board failing to comply with the provisions of this article may be compelled to
204 do so by mandamus and shall be liable to any party prevailing against the board for court costs
205 and reasonable attorney fees as determined and established by the court. Further, employees
206 denied promotion or employment in violation of this section shall be awarded the job, pay and any
207 applicable benefits retroactive to the date of the violation and payable entirely from local funds.
208 Further, the board shall be liable to any party prevailing against the board for any court reporter
209 costs including copies of transcripts.

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

213 (†) (t) Notwithstanding any other provision of this code to the contrary, upon
214 recommendation of the principal and approval by the classroom teacher and county board, a
215 classroom teacher assigned to the school may at any time be assigned to a new or existing
216 classroom teacher position at the school without the position being posted.

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

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

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

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

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

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

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

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

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

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

25 (7) New service personnel.

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

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

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

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

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

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

41 (C) Paraprofessional, autism mentor, early classroom assistant teacher and braille or sign
42 support specialist class titles are included in the same classification category as aides; and

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

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

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

49 (e) For purposes of determining seniority under this section a service persons seniority
50 begins on the date that he or she enters into the assigned duties.

51 (f) *Extra-duty assignments.* —

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

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

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

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

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

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

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

78 (3) ~~After the five-day minimum posting period,~~ All vacancies in existing or newly created
79 positions shall be filled within twenty working days from ~~the posting date notice of any job~~
80 ~~vacancies of existing or newly created positions~~ the closing date of the job posting for the position.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

134 (q) ~~No~~ A position openings opening may be filled by the county board, whether temporary
135 or permanent, until all service personnel on the preferred recall list have been properly notified of
136 existing vacancies and have been given an opportunity to accept reemployment.

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

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

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

146 (2) The county board is liable to any party prevailing against the board for any court
147 reporter costs including copies of 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 competency tests for all of the
2 classification titles defined in section eight of this article and listed in section eight-a of this article
3 for service personnel. The board shall review and, if needed, update the competency tests at least
4 every five years. Each classification title defined and listed is considered a separate classification

5 category of employment for service personnel and has a separate competency test, except for
6 those class titles having Roman numeral designations, which are considered a single
7 classification of employment and have a single competency test.

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

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

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

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

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

22 (1) The performance test for all classifications and categories other than bus operator is
23 administered by an employee of the county board or an employee of a multicounty vocational
24 school that serves the county at a location designated by the superintendent and approved by the
25 board. The location may be a vocational school that serves the county.

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

28 (3) The subject matter of each competency test is commensurate with the requirements
29 of the definitions of the classification titles as provided in section eight of this article. The subject
30 matter of each competency test is designed in such a manner that achieving a passing grade

31 does not require knowledge and skill in excess of the requirements of the definitions of the
32 classification titles. Achieving a passing score conclusively demonstrates the qualification of an
33 applicant for a classification title.

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

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

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

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

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

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

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

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

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

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

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

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

67 (4) *School bus operator certificate.*

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

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

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

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

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

77 (iv) Just and sufficient cause for revocation as specified by state board rule; and

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

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

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

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

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

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

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

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

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

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

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

105 (5) The state board shall ~~promulgate~~ propose revised rules for legislative approval in
106 accordance with article three-b, chapter twenty-nine-a of this code, ~~revised rules~~ in compliance
107 with this subsection.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-8. Authority of certain aides to exercise control over students; compensation; transfers.

1 (a) Within the limitations provided in this section, any aide who agrees to do so shall stand
2 in the place of the parent or guardian and shall exercise such authority and control over students
3 as is required of a teacher as provided in section one of this article. The principal shall designate
4 aides in the school who agree to exercise that authority on the basis of seniority as an aide and
5 shall enumerate the instances in which the authority shall be exercised by an aide when requested
6 by the principal, assistant principal or professional employee to whom the aide is assigned.

7 (b) The authority provided for in subsection (a) of this section does not extend to
8 suspending or expelling any student, participating in the administration of corporal punishment or
9 performing instructional duties as a teacher or substitute teacher. However, the authority extends
10 to supervising students undergoing in-school suspension if the instructional duties required by the
11 supervision are limited solely to handing out class work and collecting class work. The authority
12 to supervise students undergoing in-school suspension does not include actual instruction.

13 (c) An aide designated by the principal under subsection (a) of this section shall receive a
14 salary not less than one pay grade above the highest pay grade held by the service person under
15 section eight-a, article four of this chapter and any county salary schedule in excess of the
16 minimum requirements of this article.

17 (d) An aide may not be required by the operation of this section to perform noninstructional
18 duties for an amount of time which exceeds that required under the aide's contract of employment
19 or that required of other aides in the same school unless the assignment of the duties is mutually
20 agreed upon by the aide and the county superintendent, or the superintendent's designated
21 representative, subject to county board approval.

22 (1) The terms and conditions of the agreement shall be in writing, signed by both parties,
23 and may include additional benefits.

24 (2) The agreement shall be uniform as to aides assigned similar duties for similar amounts
25 of time within the same school.

26 (3) Aides have the option of agreeing to supervise students and of renewing related
27 assignments annually. If an aide elects not to renew the previous agreement to supervise
28 students, the minimum salary of the aide shall revert to the pay grade specified in section eight-
29 a, article four of this chapter for the classification title held by the aide and any county salary
30 schedule in excess of the minimum requirements of this article.

31 (e) For the purposes of this section, aide means any aide class title as defined in section
32 eight, article four of this chapter regardless of numeric classification.

33 ~~(f) Subject to the limitations set forth in subsection (g) of this section, an aide may transfer~~
34 ~~to another position of employment one time only during any one half of a school term, unless~~
35 ~~otherwise mutually agreed upon by the aide and the county superintendent, or the~~
36 ~~superintendent's designee, subject to county board approval. During the first year of employment~~
37 ~~as an aide, an aide may not transfer to another position of employment during the first one-half~~
38 ~~school term of employment unless mutually agreed upon by the aide and county superintendent,~~
39 ~~subject to county board approval.~~

40 ~~(g) Autism mentors and aides providing services to children diagnosed as autistic or with~~
41 ~~autism spectrum disorder; and paraprofessionals, interpreters and aides providing one-on-one~~
42 ~~services to students with exceptionalities as required by the students' individualized education~~
43 ~~programs (IEP).~~

44 ~~(1) Legislative findings and intent.~~

45 ~~(A) The Legislature finds that it is not in the best interest of a student with autism or a~~
46 ~~student with an exceptionality whose IEP requires one-on-one services to have multiple teachers,~~
47 ~~mentors, aides, paraprofessionals, interpreters or any combination thereof during the instructional~~
48 ~~term; and~~

49 ~~(B) It is the intent of the Legislature that filling positions through transfers of personnel~~
50 ~~from one position to another after the fifth day prior to the beginning of the instructional term be~~
51 ~~kept to a minimum for autism mentors and aides who work with students with autism and for~~
52 ~~paraprofessionals, interpreters and aides who work with students with exceptionalities whose~~
53 ~~IEPs require one-on-one services.~~

54 ~~(2) Transfer limitations and conditions.~~

55 ~~(A) Notwithstanding the provisions of subsection (f) of this section, after the fifth day prior~~
56 ~~to the beginning of the instructional term, a service person may not transfer to another position in~~
57 ~~the county during that instructional term, unless he or she does not have valid certification, if the~~
58 ~~service person is employed and assigned as an autism mentor or aide who works with students~~
59 ~~with autism, or as a paraprofessional, interpreter or aide who works with a student with an~~
60 ~~exceptionality whose IEP requires one-on-one services.~~

61 ~~(B) The provisions of this subsection are subject to the following conditions:~~

62 ~~(i) The aide, autism mentor, paraprofessional or interpreter may apply for any posted,~~
63 ~~vacant position with the successful applicant assuming the position at the beginning of the next~~
64 ~~instructional term;~~

65 ~~(ii) The county board, upon recommendation of the superintendent, may fill a position~~
66 ~~before the beginning of the next instructional term when it is determined to be in the best interest~~
67 ~~of the students; and~~

68 ~~(iii) The county superintendent shall notify the state Board when a service person who is~~
69 ~~subject to the provisions of this subsection is transferred to another position after the fifth day~~
70 ~~prior to the beginning of the instructional term;~~

71 ~~(h) (f) Regular service personnel employed in a category of employment other than aide~~
72 ~~who seek employment as an aide shall hold a high school diploma or shall have received a~~
73 ~~general educational development certificate and shall have the opportunity to receive appropriate~~
74 ~~training pursuant to subsection (j), section thirteen, article five, chapter eighteen of this code and~~
75 ~~section two, article twenty of said chapter.~~