

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Engrossed

Senate Bill 401

BY SENATORS GAUNCH AND TAKUBO

[Introduced February 22, 2017; Referred
to the Committee on Education]

1 A BILL to amend and reenact §18A-4-7a of the Code of West Virginia, 1931, as amended, relating
2 to permitting a county board of education to base its employment decisions, transfers,
3 reassignments, reducing the number of professional personnel, reductions in classroom
4 teaching positions and reductions in the workforce on an individual's qualifications; and
5 setting forth the factors to be considered when determining an individual's qualifications.

Be it enacted by the Legislature of West Virginia:

1 That §18A-4-7a of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

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

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, certification by the National
14 Board for Professional Teaching Standards;

15 (6) Specialized training relevant to 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 applicant's 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) When filling of a vacancy pursuant to this section, a county board is entitled to
29 determine the appropriate weight to apply to each of the criterion when assessing an applicant's
30 qualifications: *Provided*, That if one or more permanently employed instructional personnel apply
31 for a classroom teaching position and meet the standards set forth in the job posting, each
32 criterion under subsection (b) of this section shall be given equal weight except that the criterion
33 in subdivisions (10) and (11) of said subsection shall each be double weighted.

34 (d) For a classroom teaching position, if the principal and faculty senate recommend the
35 same applicant pursuant to subdivisions (10) and (11), subsection (b) of this section, and the
36 superintendent concurs with those recommendations, then the other provisions of subsections
37 (b) and (c) of this section do not apply and the county board shall appoint that applicant
38 notwithstanding any other provision of this code to the contrary.

39 (e) The state board shall promulgate a rule, including an emergency rule if necessary, in
40 accordance with ~~the provisions of~~ article three-b, chapter twenty-nine-a of this code to implement
41 and interpret ~~the provisions of~~ this section. The rule may provide for a classroom teacher who

42 directly participates in making recommendations pursuant to this section to be compensated at
43 the appropriate daily rate during periods of participation beyond his or her individual contract.

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

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

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

60 (i) Guidance counselors and all other professional employees, as defined in section one,
61 article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching
62 area of professional employment on the basis of the length of time the employee has been
63 employed by the county board of education in that area: *Provided*, That if an employee is certified
64 as a classroom teacher, the employee accrues classroom teaching seniority for the time that
65 employee is employed in another professional area. For the purposes of accruing seniority under
66 this subsection, employment as principal, supervisor or central office administrator, as defined in
67 section one, article one of this chapter, shall be considered one area of employment.

68 (j) Employment for a full employment term equals one year of seniority, but an employee
69 may not accrue more than one year of seniority during any given fiscal year. Employment for less
70 than the full employment term shall be prorated. ~~A random selection system established by the~~
71 ~~employees and approved by the county board shall be used to determine the priority if two or~~
72 ~~more employees accumulate identical seniority. *Provided*, That when two or more principals have~~
73 ~~accumulated identical seniority. All decisions on reductions in force shall be based on~~
74 ~~qualifications as set forth in a county board policy. Furthermore, for the purposes of this~~
75 ~~subsection and subsections (k) through (s) of this section, the word "qualifications" means the~~
76 ~~qualifications as set forth in county board policy and only means qualifications set forth in~~
77 ~~subsection (b) to the extent those qualifications are set forth in county board policy.~~

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

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

86 (2) Notwithstanding any provision of this code to the contrary, for any vacancy in an
87 established, existing or newly created position that, on or before March 1, is known to exist for
88 the ensuing school year, upon recommendation of the superintendent, the board shall appoint the
89 successful applicant from among all qualified applicants. All employees subject to release shall
90 be considered applicants for the positions for which they are qualified and shall be considered
91 before posting such vacancies for application by nonemployees;

92 (3) An employee subject to release shall be employed in any other professional position
93 where the employee is certified and was previously employed or to any lateral area for which the

94 employee is certified, licensed or both: ~~if the employees seniority is greater than the seniority of~~
95 ~~any other employee in that area of certification, licensure or both~~ Provided, That the employee is
96 the most qualified person for that position;

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

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

112 (l) For the purpose of this article, all positions which meet the definition of "classroom
113 teacher" as defined in section one, article one of this chapter shall be lateral positions. For all
114 other professional positions, the county board of education shall adopt a policy by October 31,
115 1993, and may modify the policy thereafter as necessary, which defines which positions shall be
116 lateral positions. In adopting the policy, the board ~~shall~~ may give consideration to the rank of each
117 position in terms of title; nature of responsibilities; salary level; and certification, licensure or both,
118 ~~and~~ along with the days in the period of employment.

119 (m) All professional personnel whose ~~seniority~~ lesser qualifications, as determined by
120 county board policy, with the county board is insufficient to allow their retention by the county
121 board during a reduction in workforce shall be placed upon a preferred recall list. As to any
122 professional position opening within the area where they had previously been employed or to any
123 lateral area for which they have certification, licensure or both, the employee shall be recalled on
124 the basis of ~~seniority~~ qualifications if no regular, full-time professional personnel, or those
125 returning from leaves of absence with greater ~~seniority~~ are qualified qualifications, apply for and
126 accept the position.

127 (n) ~~Before position openings that are known or expected to extend for twenty consecutive~~
128 ~~employment days or longer for professional personnel may be filled by the board, the board shall~~
129 ~~be required to notify all qualified professional personnel on the preferred list and give them an~~
130 ~~opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall.~~
131 ~~The notice shall be sent by certified mail to the last known address of the employee and it shall~~
132 ~~be the duty of each professional personnel to notify the board of continued availability annually,~~
133 ~~of any change in address or of any change in certification, licensure or both. The board shall~~
134 annually notify professional personnel on the preferred list of job application procedures and any
135 websites used to advertise vacancies. The notice shall be sent by certified U. S. postal mail to the
136 last known address of the employee, and it shall be the duty of each professional person to notify
137 the board of continued availability annually, of any change in address, or of any change in
138 certification, licensure or both.

139 (o) Openings in established, existing or newly created positions shall be processed as
140 follows:

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

145 more qualified applicants ~~only if fewer than three individuals apply during the first posting~~ subject
146 to the following:

147 (A) Each notice shall be posted in conspicuous working places for all professional
148 personnel to observe for at least five working days which may include any website maintained by
149 the county board;

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

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

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

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

158 (2) No vacancy may be filled until after the five-day minimum posting period of the most
159 recent posted notice of the vacancy;

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

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

166 (5) Nothing provided herein may prevent the county board of education from eliminating a
167 position due to lack of need.

168 (p) Notwithstanding any other provision of the code to the contrary, where the total number
169 of classroom teaching positions in an elementary school does not increase from one school year
170 to the next, but there exists in that school a need to realign the number of teachers in one or more

171 grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels
172 for which they are certified without that position being posted: *Provided*, That the employee and
173 the county board mutually agree to the reassignment.

174 (q) Reductions in classroom teaching positions in elementary schools shall be determined
175 pursuant to the considerations set forth in county board policy and processed as follows:

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

179 (2) When a specified grade level needs to be reduced and the least ~~senior~~ qualified
180 employee in the school is not in that grade level, the ~~senior~~ least qualified classroom teacher in
181 the grade level that needs to be reduced shall be reassigned to the position made vacant by the
182 transfer of the ~~senior~~ least qualified classroom teacher in the school without that position being
183 posted: *Provided*, That the employee is certified, licensed or both and agrees to the reassignment.

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

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

194 (†) (s) Notwithstanding any other provision of this code to the contrary, upon
195 recommendation of the principal and approval by the classroom teacher and county board, a

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196 classroom teacher assigned to the school may at any time be assigned to a new or existing
197 classroom teacher position at the school without the position being posted.