

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4378

BY DELEGATES HILL, PACK, KESSINGER, HANNA,
ELLINGTON, HIGGINBOTHAM, FOSTER, P. MARTIN AND
WORRELL

[Passed March 6, 2020; in effect ninety days from
passage.]

1 AN ACT to amend and reenact §18A-2-8 of the Code of West Virginia, 1931, as amended; and
2 to amend §18A-3-6 of said code, all relating to school personnel; requiring a county board
3 of education to complete an investigation of an employee that involves evidence that the
4 employee may have engaged in certain conduct despite the employee's resignation;
5 limiting time period for a county superintendent to report any employee suspended,
6 dismissed, or who resigned during the course of an investigation of the employee's alleged
7 misconduct; authorizing suspension of teaching certificate in certain instances and for
8 certain causes; authorizing additional sanction options by the state superintendent with
9 respect to violations; authorizing superintendent to issue subpoenas to aid investigation
10 of allegations against persons subject to licensure; adding to reasons for which a teacher's
11 certificate or license is automatically revoked; requiring professional relationship with
12 students; providing minimum revocation period for offenses and specifying offenses;
13 defining grooming a student or minor; adding a public school principal and public charter
14 school administrator to the requirement to report certain acts of any teacher to the State
15 Superintendent; requiring the State Superintendent to maintain a public database of
16 individuals who have had adverse action taken against their teaching certificate; providing
17 that individuals whose certificate has been revoked are not eligible to be employed by a
18 county board until their certificate is reinstated; clarifying that all of certain teacher
19 certificate provisions apply to all public school teachers whether employed by a county
20 board or a public charter school governing board; requiring State Superintendent to
21 periodically ensure that county boards are in compliance with certain teacher certificate
22 provisions; and allowing the state board to propose legislative rules that are necessary to
23 implement certain provisions pertaining to action against a teacher certificate.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

1 (a) Notwithstanding any other provisions of law, a board may suspend or dismiss any
2 person in its employment at any time for: Immorality, incompetency, cruelty, insubordination,
3 intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the
4 Department of Health and Human Resources in accordance with §49-1-1 *et seq.* of this code, the
5 conviction of a misdemeanor or a guilty plea or a plea of *nolo contendere* to a misdemeanor
6 charge that has a rational nexus between the conduct and performance of the employee's job,
7 the conviction of a felony or a guilty plea or a plea of *nolo contendere* to a felony charge.

8 (b) A charge of unsatisfactory performance shall not be made except as the result of an
9 employee performance evaluation pursuant to §18A-2-12 of this code. The charges shall be
10 stated in writing served upon the employee within two days of presentation of the charges to the
11 board.

12 (c) The affected employee shall be given an opportunity, within five days of receiving the
13 written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions
14 of §6C-2-1 *et seq.* of this code, except that dismissal for a finding of abuse or the conviction of a
15 felony or guilty plea or plea of *nolo contendere* to a felony charge is not by itself a grounds for a
16 grievance proceeding. An employee charged with the commission of a felony, a misdemeanor
17 with a rational nexus between the conduct and performance of the employee's job, or child abuse
18 may be reassigned to duties which do not involve direct interaction with pupils pending final
19 disposition of the charges.

20 (d) A county board of education has the duty and authority to provide a safe and secure
21 environment in which students may learn and prosper; therefore, it may take necessary steps to
22 suspend or dismiss any person in its employment at any time should the health, safety, and
23 welfare of students be jeopardized or the learning environment of other students has been
24 impacted. A county board shall complete an investigation of an employee that involves evidence
25 that the employee may have engaged in conduct that jeopardizes the health, safety, or welfare of

26 students despite the employee's resignation from employment prior to completion of the
27 investigation.

28 (e) It shall be the duty of any county superintendent to report any employee suspended or
29 dismissed, or resigned during the course of an investigation of the employee's alleged
30 misconduct, in accordance with this section, including the rationale for the suspension or
31 dismissal, to the state superintendent within seven business days of the suspension, dismissal,
32 or resignation. The state superintendent shall maintain a database of all individuals suspended
33 or dismissed for jeopardizing the health, safety, and welfare of students, or for impacting the
34 learning environment of other students. The database shall also include the rationale for the
35 suspension or dismissal. The database shall be confidential and shall only be accessible to county
36 human resource directors, county superintendents, and the state superintendent.

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

**§18A-3-6. Grounds for revocation or suspension of certificates; other authorized actions
by state superintendent; required reporting by county superintendents; and
recalling certificates for correction.**

1 (a) The State Superintendent may, after 10 days' notice and upon proper evidence, revoke
2 or suspend the certificates of any teacher for any of the following causes: Intemperance;
3 untruthfulness; cruelty; immorality; the conviction of a felony or a guilty plea or a plea of no contest
4 to a felony charge; the conviction, guilty plea or plea of no contest to any charge involving sexual
5 misconduct with a minor or a student; or for using fraudulent, unapproved or insufficient credit to
6 obtain the certificates: *Provided*, That in order for any conduct of a teacher involving
7 intemperance; cruelty; immorality; or using fraudulent, unapproved or insufficient credit to obtain
8 the certificates to constitute grounds for the revocation of the certificates of the teacher, there
9 must be a rational nexus between the conduct of the teacher and the performance of his or her

10 job. The State Superintendent shall also have the authority to limit certificates, issue letters of
11 admonishment, or enter into consent agreements requiring specific training in order for a teacher
12 to maintain a certificate. The State Superintendent may designate the West Virginia commission
13 for professional teaching standards or members thereof to conduct hearings on revocations or
14 certificate denials and make recommendations for action by the State Superintendent. The State
15 Superintendent may issue subpoenas and subpoenas duces tecum to obtain testimony and
16 documents to aid in the investigation of allegations against any person subject to licensure by the
17 State Superintendent.

18 (b) A teacher, as defined by West Virginia Code §18-1-1(g), convicted under §61-8D-3 or
19 §61-8D-5 of this code or comparable statute in any other state, any criminal offense that requires
20 the teacher to register as a sex offender, or any criminal offense which has as an element delivery
21 or distribution of a controlled substance, or pleads guilty to or is convicted under the provisions of
22 §61-2-1 of this code or has been so convicted under any law of the United States or any other
23 state for an offense which has the same elements as those offenses described in §61-2-1, shall
24 have his or her certificate or license automatically revoked. Should the conviction resulting in
25 automatic revocation pursuant to this section be overturned by any Court of this State or the
26 United States, the teacher's certification shall be reinstated unless otherwise prohibited by law.

27 (c) A teacher, as defined by §18-1-1(g) of this code, and including any individual holding
28 a license granted pursuant to §18A-3-2a of this code, shall maintain a professional relationship
29 with all students at all times, both in and out of the classroom. Following a hearing as provided in
30 subsection (a) of this section, any teacher found to have committed any act of sexual abuse of a
31 student or minor or to have engaged in inappropriate sexual conduct with a student or minor;
32 committed an act of cruelty to children or an act of child endangerment or solicited, encouraged,
33 engaged in or consummated an inappropriate relationship with any student, minor, or individual;
34 exploited a student by engaging in any of the aforementioned illegal or inappropriate conduct
35 which then escalated into a relationship with the exploited student within 12 months of that

36 student's graduation; or engaged in grooming a student or minor shall have his or her license
37 revoked for a period of time not less than five years. For the purposes of this subsection,
38 "grooming a student or minor" means befriending and establishing an emotional connection with
39 a student or minor, which may include the family of the student or minor, to lower the student's or
40 minor's inhibitions with the objective of committing sexual abuse, child trafficking, child
41 prostitution, the production of child pornography, or any other offense for which a license shall be
42 revoked under this subsection.

43 (d) Any county superintendent, public school principal, or public charter school
44 administrator who knows of any acts on the part of any teacher for which a certificate may be
45 revoked or for which other action may be taken in accordance with this section shall report this,
46 together with all the facts and evidence, to the State Superintendent for such action as in the
47 State Superintendent's judgment may be proper.

48 (e) If a certificate has been granted through an error, oversight, or misinformation, the
49 State Superintendent may recall the certificate and make such corrections as will conform to the
50 requirements of law and the state board.

51 (f) The state superintendent shall maintain a public database of individuals who have had
52 adverse action taken against their teaching certificate by the state superintendent. Individuals
53 whose certificate has been revoked by the state superintendent are not eligible to be employed
54 by a county board unless the individual's certificate is subsequently reinstated by the state
55 superintendent.

56 (g) This section applies to all public school teachers whether employed by a county board
57 or the governing board of a public charter school.

58 (h) The state superintendent shall periodically ensure that county boards are acting in
59 compliance with this section.

60 (i) The state board may propose legislative rules pursuant to §29A-3B-1 *et seq.* of this
61 code that are necessary to implement the provisions of this section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2020.

.....
Governor