WEST virginia legislature

2021 regular session

Introduced

House Bill 2832

By Delegate Holstein

[Introduced March 02, 2021; Referred to the Committee on Education then the Judiciary]

A BILL to amend and reenact §18-5-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-2-1 of said code; to amend and reenact §18A-4-7a of said code; to amend and reenact §18A-5-1 of said code; and to amend and reenact §18B-8-6 of said code, all relating to providing that expression of political ideas and speech (verbal or written), may not be a factor in hiring or employment, admittance, suspension or expulsion in schools, colleges, or universities.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

Subject to the provisions of this chapter and the rules of the state board, each county board may:

(a) Control and manage all of the schools and school interests for all school activities and upon all school property owned or leased by the county, including:

(1) Requiring schools to keep records regarding funds connected with the school or school interests, including all receipts and disbursements of all funds collected or received by:

(A) Any principal, teacher, student, or other person in connection with the schools and school interests;

(B) Any program, activity or other endeavor of any nature operated or conducted by or in the name of the school; and

(C) Any organization or body directly connected with the school;

(2) Allowing schools to expend funds for student, parent, teacher and community recognition programs. A school may use only funds it generates through a fund-raising or donation-soliciting activity. Prior to commencing the activity, the school shall:

(A) Publicize the activity as intended for this purpose; and

(B) Designate for this purpose the funds generated;

(3) Auditing the records and conserving the funds, including securing surety bonds by expending board moneys. The funds described in this subsection are quasipublic funds, which means the moneys were received for the benefit of the school system as a result of curricular or noncurricular activities;

(b) Establish:

(1) Schools, from preschool through high school;

(2) Vocational schools; and

(3) Schools and programs for post-high school instruction, subject to approval of the state board;

(c) Close any school:

(1) Which is unnecessary and assign the students to other schools. The closing shall occur pursuant to official action of the county board. Except in emergency situations when the timing and manner of notification are subject to approval by the state superintendent, the county board shall notify the affected teachers and service personnel of the county board action not later than the first Monday in April. The board shall provide notice in the same manner as set forth in section four of this article; or

(2) Pursuant to subsection (e) of this section;

(d) Consolidate schools;

(e) Close any elementary school whose average daily attendance falls below 20 students for two consecutive months. The county board may assign the students to other schools in the district or to schools in adjoining districts. If the teachers in the closed school are not transferred or reassigned to other schools, they shall receive one month’s salary;

(f) Provide transportation according to rules established by the county board, as follows:

(1) To provide at public expense adequate means of transportation:

(A) For all children of school age who live more than two-miles distance from school by the nearest available road;

(B) For school children participating in county board-approved curricular and extracurricular activities;

(C) Across county lines for students transferred from one district to another by mutual agreement of both county boards. The agreement shall be recorded in the meeting minutes of each participating county board and is subject to subsection (h) of this section; and

(D) Within available revenues, for students within two-miles distance of the school; and

(2) To provide transportation for participants in projects operated, financed, sponsored, or approved by the Bureau of Senior Services. This transportation shall be provided at no cost to the county board. All costs and expenses incident in any way to this transportation shall be borne by the bureau or the local or county affiliate of the bureau;

(3) Any school bus owned by the county board may be operated only by a bus operator regularly employed by the county board, except as provided in subsection (g) of this section;

(4) Pursuant to rules established by the state board, the county board may provide for professional employees to be certified to drive county board-owned vehicles that have a seating capacity of fewer than 10 passengers. These employees may use the vehicles to transport students for school-sponsored activities, but may not use the vehicles to transport students between school and home. Not more than one of these vehicles may be used for any school-sponsored activity;

(5) Students may not be transported to a school-sponsored activity in any county-owned or leased vehicle that does not meet school bus or public transit ratings. This section does not prohibit a parent from transporting ten or fewer students in a privately-owned vehicle;

(6) Students may be transported to a school-sponsored activity in a vehicle that has a seating capacity of 16 or more passengers which is not owned and operated by the county board only as follows:

(A) The state board shall promulgate a rule to establish requirements for:

(i) Automobile insurance coverage;

(ii) Vehicle safety specifications;

(iii) School bus or public transit ratings; and

(iv) Driver training, certification, and criminal history record check; and

(B) The vehicle owner shall provide to the county board proof that the vehicle and driver satisfy the requirements of the state board rule; and

(7) Buses shall be used for extracurricular activities as provided in this section only when the insurance coverage required by this section is in effect;

(g) Lease school buses pursuant to rules established by the county board.

(1) Leased buses may be operated only by bus operators regularly employed by the county board, except that these buses may be operated by bus operators regularly employed by another county board in this state if bus operators from the owning county are unavailable.

(2) The lessee shall bear all costs and expenses incurred by, or incidental to the use of, the bus.

(3) The county board may lease buses to:

(A) Public and private nonprofit organizations and private corporations to transport school-age children for camps or educational activities;

(B) Any college, university or officially recognized campus organization for transporting students, faculty, and staff to and from the college or university. Only college and university students, faculty and staff may be transported pursuant to this paragraph. The lease shall include provisions for:

(i) Compensation for bus operators;

(ii) Consideration for insurance coverage, repairs, and other costs of service; and

(iii) Any rules concerning student behavior;

(C) Public and private nonprofit organizations, including education employee organizations, for transportation associated with fairs, festivals, and other educational and cultural events. The county board may charge fees in addition to those charges otherwise required by this subsection;

(h) To provide at public expense for insurance coverage against negligence of the drivers of school buses, trucks or other vehicles operated by the county board. Any contractual agreement for transportation of students shall require the vehicle owner to maintain insurance coverage against negligence in an amount specified by the county board;

(i) Provide for the full cost or any portion thereof for group plan insurance benefits not provided or available under the West Virginia Public Employees Insurance Act. Any of these benefits shall be provided:

(1) Solely from county board funds; and

(2) For all regular full-time employees of the county board;

(j) Employ teacher aides; to provide in-service training for the aides pursuant to rules established by the state board; and, prior to assignment, to provide a four-clock-hour program of training for a service person assigned duties as a teacher aide in an exceptional children program. The four-clock-hour program shall consist of training in areas specifically related to the education of exceptional children;

(k) Establish and operate a self-supporting dormitory for:

(1) Students attending a high school or participating in a post high school program; and

(2) Persons employed to teach in the high school or post high school program;

(l) At the county board’s discretion, employ, contract with, or otherwise engage legal counsel in lieu of using the services of the prosecuting attorney to advise, attend to, bring, prosecute, or defend, as the case may be, any matters, actions, suits and proceedings in which the county board is interested;

(m) Provide appropriate uniforms for school service personnel;

(n) Provide at public expense for payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by the county board, subject to rules established by the county board;

(o) Allow designated employees to use publicly provided carriage to travel from their residences to their workplace and return. The use:

(1) Is subject to the supervision of the county board; and

(2) Shall be directly connected with, required by and essential to the performance of the employee’s duties and responsibilities;

(p) Provide at public expense adequate public liability insurance, including professional liability insurance, for county board employees;

(q)(1) Enter into cooperative agreements with one or more county boards or educational services cooperative to provide improvements to the instructional needs of each district. The cooperative agreements may be used to employ specialists in a field of academic study or for support functions or services for the field.

(2) Enter into cooperative agreements with one or more county boards to facilitate coordination and cooperation in areas of service to reduce administrative and/or operational costs, including the consolidation of administrative, coordinating, and other county level functions into shared functions to promote the efficient administration and operation of the public school systems including, but not limited to:

(A) Purchasing;

(B) Operation of specialized programs for exceptional children;

(C) Employment of any school personnel as defined in §18A-1-1 of this code: *Provided,* That expression of political ideas and speech (verbal or written), may not be a factor in hiring or employment.

(D) Professional development;

(E) Technology including, but not limited to WVEIS; and

(F) Billing for school-based Medicaid services in schools throughout the state.

Each such cooperative agreement shall be in writing and agreed to by each county board participating in the cooperative agreement. Each cooperative agreement that is an employment agreement may be entered into on a case-by-case basis. Notwithstanding the geographic quadrants as provided in §18-5-13b of this code, school systems may enter into cooperative agreements with any school system in the state.

(3) Enter into a cooperative agreement with other county boards to establish educational services cooperatives as provided in §18-5-13c of this code.

(r) Provide information about vocational and higher education opportunities to exceptional students. The county board shall provide in writing to the students and their parents or guardians information relating to programs of vocational education and to programs available at state institutions of higher education. The information may include sources of available funding, including grants, mentorships and loans for students who wish to attend classes at institutions of higher education;

(s) Enter into agreements with other county boards for the transfer and receipt of any funds determined to be fair when students are permitted or required to attend school in a district other than the district of their residence. These agreements are subject to the approval of the state board; and

(t) Enter into job-sharing arrangements, as defined in §18A-1-1 of this code, with its employees, subject to the following provisions:

(1) A job sharing arrangement shall meet all the requirements relating to posting, qualifications and seniority, as provided in §18A-4-1 *et seq.* of this code;

(2) Notwithstanding any contrary provision of this code or legislative rule and specifically §5-16-1 *et seq.* of this code, a county board that enters into a job-sharing arrangement:

(A) Shall provide insurance coverage to the one employee mutually agreed upon by the employees participating in that arrangement; and

(B) May not provide insurance benefits of any type to more than one of the job-sharing employees, including any group plan available under the State Public Employees Insurance Act;

(3) Each job-sharing agreement shall be in writing on a form prescribed and furnished by the county board. The agreement shall designate specifically one employee only who is entitled to the insurance coverage. Any employee who is not designated is not eligible for state public employees insurance coverage regardless of the number of hours he or she works;

(4) All employees involved in the job-sharing agreement shall meet the requirements of §5-16-2(3) of this code; and

(5) When entering into a job-sharing agreement, the county board and the participating employees shall consider issues such as retirement benefits, termination of the job-sharing agreement and any other issue the parties consider appropriate. Any provision in the agreement relating to retirement benefits may not cause any cost to be incurred by the retirement system that is more than the cost that would be incurred if a single employee were filling the position; and

(u) Under rules it establishes for each child, expend an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-1. Employment in general.

(a) The employment of professional personnel shall be made by the board only upon nomination and recommendation of the superintendent, subject to the following:

(1) The superintendent shall provide the principal at the school at which the professional educator or paraprofessional employee is to be employed an opportunity to interview all qualified applicants and make recommendations to the county superintendent regarding their employment;

(2) The principal may not recommend for employment an individual who is related to him or her as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister;

(3) Nothing shall prohibit the timely employment of persons to perform necessary duties; nor may expression of political ideas and speech (verbal or written), be a factor in hiring or employment;

(4) In case the board refuses to employ any or all of the persons nominated, the superintendent shall nominate others and submit the same to the board at such time as the board may direct;

(5) All personnel so nominated and recommended for employment and for subsequent assignment shall meet the certification, licensing, training, and other eligibility classifications as may be required by provisions of this chapter and by state board rule. In addition to any other information required, the application for any certification or licensing shall include the applicant’s Social Security number.

(b) Professional personnel employed as deputy, associate, or assistant superintendents by the board in offices, departments, or divisions at locations other than a school and who are directly answerable to the superintendent shall serve at the will and pleasure of the superintendent and may be removed by the superintendent upon approval of the board. Such professional personnel shall retain seniority rights only in the area or areas in which they hold valid certification or licensure.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

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

(a) A county board of education shall make decisions affecting the filling of vacancies in professional positions of employment on the basis of the applicant with the highest qualifications: *Provided,* That the county superintendent shall be hired under separate criteria pursuant to §18-4-2 of this code.

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

(1) Appropriate certification, licensure, or both;

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

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

(4) Academic achievement;

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

(6) Specialized training relevant to performing the duties of the job;

(7) Past performance evaluations conducted pursuant to §18A-2-12 and §18A-3C-2 of this code or, in the case of a classroom teacher, past evaluations of the applicant’s performance in the teaching profession;

(8) Seniority;

(9) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged: *Provided,* That expression of political ideas and speech (verbal or written), may not be a factor in hiring or employment;

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

(11) In the case of a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to the provisions of §18-5A-5 of this code by the faculty senate of the school at which the employee will be performing a majority of his or her duties.

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

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

(e) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with the provisions of §29A-3B-1 *et seq.* of this code to implement and interpret the provisions of this section. The rule may provide for a classroom teacher who directly participates in making recommendations pursuant to this section to be compensated at the appropriate daily rate during periods of participation beyond his or her individual contract.

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

(g) With the exception of guidance counselors, the seniority of classroom teachers, as defined in §18A-1-1 of this code, shall be determined on the basis of the length of time the employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified, licensed or both.

(h) If two or more employees with the same certification establish an identical seniority date as a result of initial employment as a regular teacher on or after July 1, 2019, the priority between these employees shall be determined by a random selection system established by the employees and approved by the county board. A board shall conduct the random selection within 30 days of the time the employees with the same certification establish an identical seniority date. All employees with an identical seniority date and the same certification shall participate in the random selection. As long as the affected employees hold the identical seniority date within a certification, the initial random selection conducted by the board shall be permanent for the duration of the employment of the employees by the board.

(i) Upon completion of 133 days of employment in any one school year, substitute teachers, except retired teachers and other retired professional educators employed as substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. One hundred thirty-three days or more of said employment shall be prorated and shall vest as a fraction of the school year worked by the permanent, full-time teacher.

(j) Guidance counselors and all other professional employees, as defined in §18A-1-1 of this code, except classroom teachers, shall gain seniority in their nonteaching area of professional employment on the basis of the length of time the employee has been employed by the county board of education in that area: *Provided,* That if an employee is certified as a classroom teacher, the employee accrues classroom teaching seniority for the time that employee is employed in another professional area. For the purposes of accruing seniority under this subsection, employment as principal, supervisor, or central office administrator, as defined in §18A-1-1 of this code, shall be considered one area of employment.

(k) Employment for a full employment term equals one year of seniority, but an employee may not accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated.

(l) All decisions on reductions in force shall be based on qualifications as set forth in a county board policy. Furthermore, for the purposes of this subsection and subsections (m) through (t), inclusive, of this section, the word “qualifications” means the qualifications set forth in county board policy and only means qualifications set forth in subsection (b) of this section to the extent those qualifications are set forth in county board policy: *Provided,* That in defining the word “qualifications” in its policy, the county board:

(1) Shall consider including the following criteria:

(A) Seniority;

(B) Appropriate certification, licensure, or both;

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

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

(E) Academic achievement;

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

(G) Specialized training relevant to performing the duties of the job;

(H) Past performance evaluations conducted pursuant to §18A-2-12 and §18A-3C-2 of this code or, in the case of a classroom teacher, past evaluations of the applicant’s performance in the teaching profession;

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

(J) In the case of transfer or recall to a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and

(K) In the case of transfer or recall to a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to the provisions of §18-5A-5 of this code by the faculty senate of the school at which the employee will be performing a majority of his or her duties;

(2) Shall consider other criteria set forth in subdivision (1) of this subsection to the extent they are included in the county board policy only after considering personnel whose last performance evaluation conducted pursuant to §18A-2-12 or §18A-3C-2 of this code, as applicable, is less than satisfactory; and

(3) May not include salary as one of the criteria in the definition.

(m) Whenever a county board is required to reduce the number of professional personnel in its employment, the selection of the employee to be properly notified and released from employment pursuant to the provisions of section two, article two of this chapter shall be based upon seniority, certification, licensure, and performance evaluations. The provisions of this subsection are subject to the following:

(1) ~~In the event of~~ If there is a reduction in force, a county board of education may properly notify and release from employment pursuant to ~~the provisions of~~ §18A-2-2 of this code any classroom teacher with unsatisfactory evaluations for the previous two consecutive years regardless of years of service instead of release from employment of less senior classroom teachers with satisfactory performance evaluations;

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

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

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

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

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

(n) For the purpose of this article, all positions which meet the definition of “classroom teacher” as defined in §18A-1-1 of this code shall be lateral positions. For all other professional positions, the county board of education shall adopt a policy by October 31, 1993, and may modify the policy thereafter as necessary, which defines which positions shall be lateral positions. In adopting the policy, the board may give consideration to the rank of each position in terms of title; nature of responsibilities; salary level; and certification, licensure, or both; along with the days in the period of employment.

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

(p) The board shall annually notify professional personnel on the preferred list of the job application procedures and any websites used to advertise vacancies. The notice shall be sent by certified mail via the U.S. Postal Service to the last known address of the employee, and it shall be the duty of each professional person to notify the board of continued availability annually of any change in address, or of any change in certification, licensure, or both.

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

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

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

(B) At least one notice shall be posted within 20 working days of the position openings and shall include the job description;

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

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

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

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

(3) If one or more applicants under all the postings for a vacancy meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within 30 working days of the end of the first posting period;

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

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

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

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

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

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

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

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

(v) All personnel in a public charter school shall continue to accrue seniority in the same manner that they would accrue seniority if employed in a noncharter public school in the county for the purpose of employment in noncharter public schools.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.

(a) The teacher shall stand in the place of the parent(s), guardian(s) or custodian(s) in exercising authority over the school and has control of all students enrolled in the school from the time they reach the school until they have returned to their respective homes, except that where transportation of students is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the students while they are in transit to and from the school.

(b) Subject to the rules of the State Board of Education, the teacher shall exclude from the school any student known to have or suspected of having any infectious disease, or any student who has been exposed to any infectious disease, and shall immediately notify the proper health officer or medical inspector of the exclusion. Any student so excluded may not be readmitted to the school until he or she has complied with all the requirements of the rules governing those cases or has presented a certificate of health signed by the medical inspector or other proper health officer.

(c) The teacher may exclude from his or her classroom or school bus any student who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a student; who willfully disobeys a school employee; or who uses abusive or profane language directed at a school employee. Any student excluded shall be placed under the control of the principal of the school or a designee. The excluded student may be admitted to the classroom or school bus only when the principal, or a designee, provides written certification to the teacher that the student may be readmitted and specifies the specific type of disciplinary action, if any, that was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of the action to the parent(s), guardian(s) or custodian(s). When a student is excluded from a classroom or a school bus two times in one semester, and after exhausting all reasonable methods of classroom discipline provided in the school discipline plan, the student may be readmitted to the classroom or the school bus only after the principal, teacher and, if possible, the parent(s), guardian(s) or custodian(s) of the student have held a conference to discuss the student’s disruptive behavior patterns, and the teacher and the principal agree on a course of discipline for the student and inform the parent(s), guardian(s) or custodian(s) of the course of action. Thereafter, if the student’s disruptive behavior persists, upon the teacher’s request, the principal may, to the extent feasible, transfer the student to another setting. The Legislature finds that isolating students or placing them in alternative learning centers may be the best setting for chronically disruptive students. The county board shall create more alternative learning centers or expand its capacity for alternative placements, subject to funding, to correct these students’ behaviors so they can return to a regular classroom without engaging in further disruptive behavior.

(d) The Legislature finds that suspension from school is not appropriate solely for a student’s failure to attend class. Therefore, a student may not be suspended from school solely for not attending class. Other methods of discipline may be used for the student which may include, but are not limited to, detention, extra class time or alternative class settings.

(e) Corporal punishment of any student by a school employee is prohibited.

(f) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions. These policies shall encourage the use of alternatives to corporal punishment, providing for the training of school personnel in alternatives to corporal punishment and for the involvement of parent(s), guardian(s) or custodian(s) in the maintenance of school discipline. The county boards shall provide for the immediate incorporation and implementation in the schools of a preventive discipline program which may include the responsible student program and a student involvement program which may include the peer mediation program, devised by the West Virginia Board of Education. Each county board may modify those programs to meet the particular needs of the county. The county boards shall provide in-service training for teachers and principals relating to assertive discipline procedures and conflict resolution. The county boards also may establish cooperatives with private entities to provide middle educational programs which may include programs focusing on developing individual coping skills, conflict resolution, anger control, self-esteem issues, stress management and decision making for students and any other program related to preventive discipline.

(g) For the purpose of this section:

(1) “Student” includes any child, youth or adult who is enrolled in any instructional program or activity conducted under board authorization and within the facilities of or in connection with any program under public school direction: *Provided,* That, in the case of adults, the studentteacher relationship shall terminate when the student leaves the school or other place of instruction or activity;

(2) “Teacher” means all professional educators as defined in section one, article one of this chapter and includes the driver of a school bus or other mode of transportation; and

(3) “Principal” means the principal, assistant principal, vice principal or the administrative head of the school or a professional personnel designee of the principal or the administrative head of the school.

(h) Teachers shall exercise other authority and perform other duties prescribed for them by law or by the rules of the state board not inconsistent with the provisions of this chapter and chapter 18 of this code: *Provided,* That a student’s expression of political ideas and speech (verbal or written), may not be a factor in suspension or expulsion.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.

§18B-8-6. Faculty employment practices; campus administrators required to teach or perform research.

Each governing board, with the advice and assistance of the faculty senate, shall promulgate and adopt a rule in accordance with section six, article one of this chapter addressing the following issues:

(a) Defining an appropriate balance between full-time and adjunct faculty members and the appropriate role of adjunct faculty; and

(b) Requiring each administrator on each campus who holds faculty rank to teach at least one course during each 18-month employment period or to perform ongoing research in lieu of teaching.

(c) Rules shall be promulgated and adopted pursuant to this article that provide that expression of political ideas and speech (verbal or written), may not be a factor in hiring or employment.

NOTE: The purpose of this bill is to provide that expression of political ideas and speech (verbal or written) may not be a factor in hiring or employment, admittance, suspension or expulsion in schools, colleges, or universities.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.