

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5425

By Delegate Mazzocchi

[Originating in the Committee on Education; Reported
on February 19, 2024]

1 A BILL to amend and reenact §18A-4-7a of the Code of West Virginia, 1931, as amended, relating
2 to clarifying the amount of experience required in the hiring of professional education
3 personnel; and providing that those years of experience gained outside of the county or
4 state shall count towards the required threshold.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7a. Employment, promotion, and transfer of professional personnel; 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 §18-4-2 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: *Provided*, That a
10 classroom teacher who has completed his or her initial three years of experience may be
11 considered for a professional position: *Provided further*, That any classroom teacher who has
12 completed three years of experience in another county or out of state satisfies the provisions of
13 this subsection.

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

16 (4) Academic achievement;

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

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

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

23 (8) Seniority;

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

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

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

31 (c) In the case of a principal, assistant principal, or classroom teaching position, When
32 when filling of a vacancy pursuant to this section, a county board is entitled to determine the
33 appropriate weight to apply to each of the criterion when assessing an applicant's qualifications:
34 *Provided*, That if one or more permanently employed instructional personnel apply for a principal,
35 assistant principal, or classroom teaching position and meet the standards set forth in the job
36 posting, each criterion under subsection (b) of this section shall be given equal weight except that
37 the criterion in subdivisions (10) and (11) of this section shall each be double weighted: *Provided*,
38 That a classroom teacher who has completed his or her initial three years of experience may be
39 considered for a professional position: *Provided further*, That any classroom teacher who has
40 completed three years of experience in another county or out of state satisfies the provisions of
41 this subsection.

42 (d) For a classroom teaching position, if the principal and faculty senate recommend the
43 same applicant pursuant to subdivisions (10) and (11), subsection (b) of this section, and the
44 superintendent concurs with those recommendations, then the other provisions of subsections (b)

45 and (c) of this section do not apply and the county board shall appoint that applicant
46 notwithstanding any other provision of this code to the contrary.

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

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

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

62 (h) If two or more employees with the same certification establish an identical seniority date
63 as a result of initial employment as a regular teacher on or after July 1, 2019, the priority between
64 these employees shall be determined by a random selection system established by the
65 employees and approved by the county board. A board shall conduct the random selection within
66 30 days of the time the employees with the same certification establish an identical seniority date.
67 All employees with an identical seniority date and the same certification shall participate in the
68 random selection. As long as the affected employees hold the identical seniority date within a
69 certification, the initial random selection conducted by the board shall be permanent for the
70 duration of the employment of the employees by the board.

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

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

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

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

94 (1) Shall consider including the following criteria:

95 (A) Seniority;

96 (B) Appropriate certification, licensure, or both;

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

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

101 (E) Academic achievement;

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

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

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

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

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

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

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

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

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

127 (1) In the event of a reduction in force, a county board of education may properly notify and
128 release from employment pursuant to the provisions of section two, article two of this chapter any
129 classroom teacher with unsatisfactory evaluations for the previous two consecutive years
130 regardless of years of service instead of release from employment of less senior classroom
131 teachers with satisfactory performance evaluations;

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

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

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

145 (5) If an employee subject to release holds certification, licensure or both in more than one
146 lateral area and if the employees seniority is greater than the seniority of any other employee in
147 one or more of those areas of certification, licensure or both, the employee subject to release shall

148 be employed in the professional position held by the employee with the least seniority in any of
149 those areas of certification, licensure or both; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

222 (t) Any board failing to comply with the provisions of this article may be compelled to do so
223 by mandamus and shall be liable to any party prevailing against the board for court costs and

224 reasonable attorney fees as determined and established by the court. Further, employees denied
225 promotion or employment in violation of this section shall be awarded the job, pay and any
226 applicable benefits retroactive to the date of the violation and payable entirely from local funds.
227 Further, the board shall be liable to any party prevailing against the board for any court reporter
228 costs including copies of transcripts.

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

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

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