

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5598

By Delegates Tully, Toney, Maynor, Holstein, Ferrell,

Kimble, Summers, and Statler

[Introduced February 12, 2024; Referred to the
Committee on Education]

1 A BILL to amend and reenact §18A-5-1a of the Code of West Virginia, 1931, as amended, relating
 2 to determining if a child is in foster care or otherwise in physical and/or legal custody of
 3 Child Protective Services prior to disciplining any child who commits a Level Three or Level
 4 Four policy violation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

**§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a
 controlled substance on premises of educational facilities; assaults and batteries
 committed by students upon teachers or other school personnel; temporary
 suspension, hearing; procedure, notice and formal hearing; extended suspension;
 sale of narcotic; expulsion; exception; alternative education.**

1 (a) (1) A school principal or local board of education shall assess whether a student is in
 2 the foster care system or under the supervision of Child Protective Services prior to disciplining
 3 any child who commits a Level Three or Level Four policy violation. The principal or Board of
 4 Education members shall document the assessment and review of this information in the school
 5 disciplinary record. If the child is in the physical and/or legal custody of Child Protective Services,
 6 that agency must be contacted prior to disciplining the child.

7 (2) A principal shall suspend a student from school or from transportation to or from the
 8 school on any school bus if the student, in the determination of the principal after an informal
 9 hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of §61-2-15(b) of
 10 this code; (ii) violated the provisions of §61-7-11a (b); or (iii) sold a narcotic drug, as defined in
 11 §60A-1-101, on the premises of an educational facility, at a school-sponsored function or on a
 12 school bus. If a student has been suspended pursuant to this subsection, the principal shall, within
 13 24 hours, request that the county superintendent recommend to the county board that the student
 14 be expelled. Upon such a request by a principal, the county superintendent shall recommend to
 15 the county board that the student be expelled. Upon such recommendation, the county board shall

16 conduct a hearing in accordance with subsections (e), (f) and (g) of this section to determine if the
17 student committed the alleged violation. If the county board finds that the student did commit the
18 alleged violation, the county board shall expel the student.

19 (b) A principal shall suspend a student from school, or from transportation to or from the
20 school on any school bus, if the student, in the determination of the principal after an informal
21 hearing pursuant to subsection (d) of this section, has: (i) Committed an act or engaged in conduct
22 that would constitute a felony under the laws of this state if committed by an adult; or (ii) unlawfully
23 possessed on the premises of an educational facility or at a school-sponsored function a
24 controlled substance governed by the Uniform Controlled Substances Act as described in §60A-1-
25 101, *et seq.* of this code. If a student has been suspended pursuant to this subsection, the
26 principal may request that the superintendent recommend to the county board that the student be
27 expelled. Upon such recommendation by the county superintendent, the county board may hold a
28 hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine
29 if the student committed the alleged violation. If the county board finds that the student did commit
30 the alleged violation, the county board may expel the student.

31 (c) A principal may suspend a student from school, or transportation to or from the school
32 on any school bus, if the student, in the determination of the principal after an informal hearing
33 pursuant to subsection (d) of this section: (i) Threatened to injure, or in any manner injured, a
34 student, teacher, administrator or other school personnel; (ii) willfully disobeyed a teacher; (iii)
35 possessed alcohol in an educational facility, on school grounds, a school bus or at any school-
36 sponsored function; (iv) used profane language directed at a school employee or student; (v)
37 intentionally defaced any school property; (vi) participated in any physical altercation with another
38 person while under the authority of school personnel; or (vii) habitually violated school rules or
39 policies. If a student has been suspended pursuant to this subsection, the principal may request
40 that the superintendent recommend to the county board that the student be expelled. Upon such
41 recommendation by the county superintendent, the county board may hold a hearing in

42 accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the
43 student committed the alleged violation. If the county board finds that the student did commit the
44 alleged violation, the county board may expel the student.

45 (d) The actions of any student which may be grounds for his or her suspension or expulsion
46 under the provisions of this section shall be reported immediately to the principal of the school in
47 which the student is enrolled. If the principal determines that the alleged actions of the student
48 would be grounds for suspension, he or she shall conduct an informal hearing for the student
49 immediately after the alleged actions have occurred. The hearing shall be held before the student
50 is suspended unless the principal believes that the continued presence of the student in the school
51 poses a continuing danger to persons or property or an ongoing threat of disrupting the academic
52 process, in which case the student shall be suspended immediately and a hearing held as soon as
53 practicable after the suspension.

54 The student and his or her parent(s), guardian(s) or custodian(s), or social worker
55 appointed to the student's case, as the case may be, shall be given telephonic notice, if possible,
56 of this informal hearing, which notice shall briefly state the grounds for suspension.

57 At the commencement of the informal hearing, the principal shall inquire of the student as
58 to whether he or she admits or denies the charges. If the student does not admit the charges, he or
59 she shall be given an explanation of the evidence possessed by the principal and an opportunity to
60 present his or her version of the occurrence. At the conclusion of the hearing or upon the failure of
61 the noticed student to appear, the principal may suspend the student for a maximum of 10 school
62 days, including the time prior to the hearing, if any, for which the student has been excluded from
63 school.

64 The principal shall report any suspension the same day it has been decided upon, in
65 writing, to the parent(s), guardian(s) or custodian(s) of the student by regular United States mail.
66 The suspension also shall be reported to the county superintendent and to the faculty senate of
67 the school at the next meeting after the suspension.

68 (e) Prior to a hearing before the county board, the county board shall cause a written notice
69 which states the charges and the recommended disposition to be served upon the student and his
70 or her parent(s), guardian(s) or custodian(s), as the case may be. The notice shall state clearly
71 whether the board will attempt at hearing to establish the student as a dangerous student, as
72 defined by section one, article one of this chapter. The notice also shall include any evidence upon
73 which the board will rely in asserting its claim that the student is a dangerous student. The notice
74 shall set forth a date and time at which the hearing shall be held, which date shall be within the 10-
75 day period of suspension imposed by the principal.

76 (f) The county board shall hold the scheduled hearing to determine if the student should be
77 reinstated or should, under the provisions of this section, must be expelled from school. If the
78 county board determines that the student should or must be expelled from school, it also may
79 determine whether the student is a dangerous student pursuant to subsection (g) of this section. At
80 this, or any hearing before a county board conducted pursuant to this section, the student may be
81 represented by counsel, may call his or her own witnesses to verify his or her version of the
82 incident and may confront and cross examine witnesses supporting the charge against him or her.
83 The hearing shall be recorded by mechanical means unless recorded by a certified court reporter.
84 The hearing may be postponed for good cause shown by the student but he or she shall remain
85 under suspension until after the hearing. The state board may adopt other supplementary rules of
86 procedure to be followed in these hearings. At the conclusion of the hearing the county board shall
87 either: (1) Order the student reinstated immediately at the end of his or her initial suspension; (2)
88 suspend the student for a further designated number of days; or (3) expel the student from the
89 public schools of the county.

90 (g) A county board that did not intend prior to a hearing to assert a dangerous student
91 claim, that did not notify the student prior to the hearing that a dangerous student determination
92 would be considered and that determines through the course of the hearing that the student may
93 be a dangerous student shall schedule a second hearing within ten days to decide the issue. The

94 hearing may be postponed for good cause shown by the student, but he or she remains under
95 suspension until after the hearing.

96 A county board that expels a student, and finds that the student is a dangerous student,
97 may refuse to provide alternative education. However, after a hearing conducted pursuant to this
98 section for determining whether a student is a dangerous student, when the student is found to be
99 a dangerous student, is expelled and is denied alternative education, a hearing shall be conducted
100 within three months after the refusal by the board to provide alternative education to reexamine
101 whether or not the student remains a dangerous student and whether the student shall be
102 provided alternative education. Thereafter, a hearing for the purpose of reexamining whether or
103 not the student remains a dangerous student and whether the student shall be provided alternative
104 education shall be conducted every three months for so long as the student remains a dangerous
105 student and is denied alternative education. During the initial hearing, or in any subsequent
106 hearing, the board may consider the history of the student's conduct as well as any improvements
107 made subsequent to the expulsion. If it is determined during any of the hearings that the student is
108 no longer a dangerous student or should be provided alternative education, the student shall be
109 provided alternative education during the remainder of the expulsion period.

110 (h) The superintendent may apply to a circuit judge or magistrate for authority to subpoena
111 witnesses and documents, upon his or her own initiative, in a proceeding related to a
112 recommended student expulsion or dangerous student determination, before a county board
113 conducted pursuant to the provisions of this section. Upon the written request of any other party,
114 the superintendent shall apply to a circuit judge or magistrate for the authority to subpoena
115 witnesses, documents or both on behalf of the other party in a proceeding related to a
116 recommended student expulsion or dangerous student determination before a county board. If the
117 authority to subpoena is granted, the superintendent shall subpoena the witnesses, documents or
118 both requested by the other party. Furthermore, if the authority to subpoena is granted, it shall be
119 exercised in accordance with the provisions of section one, article five, chapter twenty-nine-a of

120 this code.

121 Any hearing conducted pursuant to this subsection may be postponed: (1) For good cause
122 shown by the student; (2) when proceedings to compel a subpoenaed witness to appear must be
123 instituted; or (3) when a delay in service of a subpoena hinders either party's ability to provide
124 sufficient notice to appear to a witness. A student remains under suspension until after the hearing
125 in any case where a postponement occurs.

126 (i) Students may be expelled pursuant to this section for a period not to exceed one school
127 year, except that if a student is determined to have violated the provisions of subsection (a) of this
128 section the student shall be expelled for a period of not less than 12 consecutive months, subject
129 to the following:

130 (1) The county superintendent may lessen the mandatory period of 12 consecutive months
131 for the expulsion of the student if the circumstances of the student's case demonstrably warrant;

132 (2) Upon the reduction of the period of expulsion, the county superintendent shall prepare
133 a written statement setting forth the circumstances of the student's case which warrant the
134 reduction of the period of expulsion. The county superintendent shall submit the statement to the
135 county board, the principal, the faculty senate and the local school improvement council for the
136 school from which the student was expelled. The county superintendent may use the following
137 factors as guidelines in determining whether or not to reduce a mandatory twelve-month
138 expulsion:

139 (A) The extent of the student's malicious intent;

140 (B) The outcome of the student's misconduct;

141 (C) The student's past behavior history;

142 (D) The likelihood of the student's repeated misconduct; and

143 (E) If applicable, successful completion or making satisfactory progress toward successful
144 completion of Juvenile Drug Court pursuant to section one-d of this section.

145 (j) In all hearings under this section, facts shall be found by a preponderance of the

146 evidence.

147 (k) For purposes of this section, nothing herein may be construed to be in conflict with the
148 federal provisions of the Individuals with Disabilities Education Act, 20 U. S. C. §1400, *et seq.*

149 (l) Each suspension or expulsion imposed upon a student under the authority of this
150 section shall be recorded in the uniform integrated regional computer information system
151 (commonly known as the West Virginia Education Information System) described in subsection
152 §18-2-26(f) of this code.

153 (1) The principal of the school at which the student is enrolled shall create an electronic
154 record within 24 hours of the imposition of the suspension or expulsion.

155 (2) Each record of a suspension or expulsion shall include the student's name and
156 identification number, the reason for the suspension or expulsion and the beginning and ending
157 dates of the suspension or expulsion.

158 (3) The state board shall collect and disseminate data so that any principal of a public
159 school in West Virginia can review the complete history of disciplinary actions taken by West
160 Virginia public schools against any student enrolled or seeking to enroll at that principal's school.
161 The purposes of this provision are to allow every principal to fulfill his or her duty under subsection
162 §18-5-15f(b) of this code to determine whether a student requesting to enroll at a public school in
163 West Virginia is currently serving a suspension or expulsion from another public school in West
164 Virginia and to allow principals to obtain general information about students' disciplinary histories.

165 (m) Principals may exercise any other authority and perform any other duties to discipline
166 students consistent with state and federal law, including policies of the state board.

167 (n) Each county board is solely responsible for the administration of proper discipline in the
168 public schools of the county and shall adopt policies consistent with the provisions of this section
169 to govern disciplinary actions.

170 (o) For the purpose of this section, "principal" means the principal, assistant principal, vice
171 principal or the administrative head of the school or a professional personnel designee of the

172 principal or the administrative head of the school.

NOTE: The purpose of this bill is to require principals and school boards to determine if a student is in foster care or otherwise in Child Protective Services' custody prior to disciplining that student for a level three or level four behavior violation.

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