

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 727

BY SENATORS GRADY, ROBERTS, AND PLYMALE

[Originating in the Committee on Education; reported

February 16, 2024]

1 A BILL to amend and reenact §18-5A-5 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §18A-4-8b of said code, all relating to revising the process for county
3 boards of education to hire aides and early childhood classroom assistant teachers;
4 allowing the principal or certain other person designated in West Virginia Board of
5 Education rule to be given opportunity to interview all qualified applicants and make
6 recommendations regarding their employment; allowing faculty senate to interview or
7 otherwise obtain information regarding applicants; adding to criterion that decisions
8 affecting promotions and filling of the aide and early childhood classroom assistant teacher
9 positions are to be based on; specifying weight to be given to each criterion; requiring all
10 qualified applicants to be considered together in one group; requiring appointment of
11 applicant if the principal and faculty senate recommend the same applicant and the county
12 superintendent concurs; requiring state board rule to implement and interpret certain
13 provisions; and establishing effective date.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

1 (a) There is established at every public school in this state a faculty senate which is
2 comprised of all permanent, full-time professional educators employed at the school who shall all
3 be voting members. "Professional educators", as used in this section, means "professional
4 educators" as defined in chapter 18A of this code. A quorum of more than one half of the voting
5 members of the faculty shall be present at any meeting of the faculty senate at which official
6 business is conducted. Prior to the beginning of the instructional term each year, but within the
7 employment term, the principal shall convene a meeting of the faculty senate to elect a chair, vice

8 chair, and secretary and discuss matters relevant to the beginning of the school year. The vice
9 chair shall preside at meetings when the chair is absent. Meetings of the faculty senate shall be
10 held during the times provided in accordance with subdivision (12), subsection (b), of this section
11 as determined by the faculty senate. Emergency meetings may be held during noninstructional
12 time at the call of the chair or a majority of the voting members by petition submitted to the chair
13 and vice chair. An agenda of matters to be considered at a scheduled meeting of the faculty
14 senate shall be available to the members at least two employment days prior to the meeting. For
15 emergency meetings, the agenda shall be available as soon as possible prior to the meeting. The
16 chair of the faculty senate may appoint such committees as may be desirable to study and submit
17 recommendations to the full faculty senate, but the acts of the faculty senate shall be voted upon
18 by the full body.

19 (b) In addition to any other powers and duties conferred by law, or authorized by policies
20 adopted by the state or county board or bylaws which may be adopted by the faculty senate not
21 inconsistent with law, the powers and duties listed in this subsection are specifically reserved for
22 the faculty senate. The intent of these provisions is neither to restrict nor to require the activities
23 of every faculty senate to the enumerated items except as otherwise stated. Each faculty senate
24 shall organize its activities as it considers most effective and efficient based on school size,
25 departmental structure, and other relevant factors.

26 (1) Each faculty senate shall control funds allocated to the school from legislative
27 appropriations pursuant to ~~section nine, article nine-a of this chapter~~ §18-9A-9 of this code. From
28 those funds, each classroom teacher and librarian shall be allotted \$300 for expenditure during
29 the instructional year for academic materials, supplies, or equipment which, in the judgment of
30 the teacher or librarian, will assist him or her in providing instruction in his or her assigned
31 academic subjects or shall be returned to the faculty senate: *Provided*, That nothing contained
32 herein prohibits the funds from being used for programs and materials that, in the opinion of the
33 teacher, enhance student behavior, increase academic achievement, improve self-esteem, and

34 address the problems of students at risk. The remainder of funds shall be expended for academic
35 materials, supplies, or equipment in accordance with a budget approved by the faculty senate.
36 Notwithstanding any other provisions of the law to the contrary, funds not expended in one school
37 year are available for expenditure in the next school year: *Provided, however,* That the amount of
38 county funds budgeted in a fiscal year may not be reduced throughout the year as a result of the
39 faculty appropriations in the same fiscal year for such materials, supplies, and equipment.
40 Accounts shall be maintained ~~of~~ with the allocations and expenditures of such funds for the
41 purpose of financial audit. Academic materials, supplies, or equipment shall be interpreted
42 broadly, but does not include materials, supplies, or equipment which will be used in or connected
43 with interscholastic athletic events.

44 (2) A faculty senate may establish a process for members to interview or otherwise obtain
45 information regarding applicants for classroom teaching, aide, and early childhood classroom
46 assistant teacher vacancies that will enable the faculty senate to submit recommendations
47 regarding employment to the principal. To facilitate the establishment of a process that is timely,
48 effective, consistent among schools and counties, and designed to avoid litigation or grievance,
49 the state board shall promulgate a rule pursuant to ~~article three-b, chapter twenty-nine-a~~ §29A-
50 3B-1 et seq. of this code to implement the provisions of this subdivision. The rule may include the
51 following:

52 (A) A process or alternative processes that a faculty senate may adopt;

53 (B) If determined necessary, a requirement and procedure for training for principals and
54 faculty senate members or their designees who may participate in interviews and provisions that
55 may provide for the compensation based on the appropriate daily rate of a classroom teacher
56 who directly participates in the training for periods beyond his or her individual contract;

57 (C) Timelines that will assure the timely completion of the recommendation or the forfeiture
58 of the right to make a recommendation upon the failure to complete a recommendation within a
59 reasonable time;

60 (D) The authorization of the faculty senate to delegate the process for making a
61 recommendation to a committee of no less than three members of the faculty senate; and

62 (E) Such other provisions as the state board determines are necessary or beneficial for
63 the process to be established by the faculty senate.

64 (3) A faculty senate may nominate teachers for recognition as outstanding teachers under
65 state and local teacher recognition programs and other personnel at the school, including parents,
66 for recognition under other appropriate recognition programs and may establish such programs
67 for operation at the school.

68 (4) A faculty senate may submit recommendations to the principal regarding the
69 assignment scheduling of secretaries, clerks, aides, and paraprofessionals at the school.

70 (5) A faculty senate may submit recommendations to the principal regarding establishment
71 of the master curriculum schedule for the next ensuing school year.

72 (6) A faculty senate may establish a process for the review and comment on sabbatical
73 leave requests submitted by employees at the school pursuant to ~~section eleven, article two of~~
74 ~~this chapter~~ §18-2-11 of this code.

75 (7) Each faculty senate shall elect three faculty representatives to the local school
76 improvement council established pursuant to section two of this article.

77 (8) Each faculty senate may nominate a member for election to the county staff
78 development council pursuant to ~~section eight, article three, chapter eighteen-a~~ §18A-3-8 of this
79 code.

80 (9) Each faculty senate shall have an opportunity to make recommendations on the
81 selection of faculty to serve as mentors for beginning teachers under beginning teacher internship
82 programs at the school.

83 (10) A faculty senate may solicit, accept, and expend any grants, gifts, bequests,
84 donations, and any other funds made available to the faculty senate: *Provided*, That the faculty
85 senate shall select a member who has the duty of maintaining a record of all funds received and

86 expended by the faculty senate, which record shall be kept in the school office and is subject to
87 normal auditing procedures.

88 (11) Any faculty senate may review the evaluation procedure as conducted in their school
89 to ascertain whether the evaluations were conducted in accordance with the written system
90 required pursuant to ~~section twelve, article two, chapter eighteen-a~~ §18A-2-12 of this code or
91 pursuant to ~~section two, article three-c, chapter eighteen-a~~ §18A-3C-2 of this code, as applicable,
92 and the general intent of this Legislature regarding meaningful performance evaluations of school
93 personnel. If a majority of members of the faculty senate determine that such evaluations were
94 not so conducted, they shall submit a report in writing to the State Board of Education: *Provided,*
95 That nothing herein creates any new right of access to or review of any individual's evaluations.

96 (12) A local board shall provide to each faculty senate at least six two-hour blocks of time
97 for faculty senate meetings with at least one two-hour block of time scheduled in the first month
98 of the employment term, one two-hour block of time scheduled in the last month of the
99 employment term and at least one two-hour block of time scheduled in each of the months of
100 October, December, February, and April. A faculty senate may meet for an unlimited block of time
101 during noninstructional days to discuss and plan strategies to improve student instruction and to
102 conduct other faculty senate business. A faculty senate meeting scheduled on a noninstructional
103 day shall be considered as part of the purpose for which the noninstructional day is scheduled.
104 This time may be used and determined at the local school level and includes, but is not limited to,
105 faculty senate meetings.

106 (13) Each faculty senate shall develop a strategic plan to manage the integration of special
107 needs students into the regular classroom at their respective schools and submit the strategic
108 plan to the superintendent of the county board periodically pursuant to guidelines developed by
109 the State Department of Education. Each faculty senate shall encourage the participation of local
110 school improvement councils, parents, and the community at large in developing the strategic
111 plan for each school.

112 Each strategic plan developed by the faculty senate shall include at least: (A) A mission
113 statement; (B) goals; (C) needs; (D) objectives and activities to implement plans relating to each
114 goal; (E) work in progress to implement the strategic plan; (F) guidelines for placing additional
115 staff into integrated classrooms to meet the needs of exceptional needs students without
116 diminishing the services rendered to the other students in integrated classrooms; (G) guidelines
117 for implementation of collaborative planning and instruction; and (H) training for all regular
118 classroom teachers who serve students with exceptional needs in integrated classrooms.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-8b. Seniority rights for school service personnel.

1 (a) A county board shall make decisions affecting promotions and the filling of any service
2 personnel positions of employment or jobs occurring throughout the school year that are to be
3 performed by service personnel as provided in §18A-4-8 of this code, on the basis of seniority,
4 qualifications, and evaluation of past service, subject to subsection (c) of this section.

5 (b) Qualifications means the applicant holds a classification title in his or her category of
6 employment as provided in this section and is given first opportunity for promotion and filling
7 vacancies. Other employees then shall be considered and shall qualify by meeting the definition
8 of the job title that relates to the promotion or vacancy, as defined in §18A-4-8 of this code. If
9 requested by the employee, the county board shall show valid cause why a service person with
10 the most seniority is not promoted or employed in the position for which he or she applies.
11 ~~Qualified~~ Subject to subsection (c) of this section, applicants shall be considered in the following
12 order:

13 (1) Regularly employed service personnel who hold a classification title within the
14 classification category of the vacancy;

15 (2) Service personnel who have held a classification title within the classification category
16 of the vacancy whose employment has been discontinued in accordance with this section;

17 (3) Regularly employed service personnel who do not hold a classification title within the
18 classification category of the vacancy;

19 (4) Service personnel who have not held a classification title within the classification
20 category of the vacancy and whose employment has been discontinued in accordance with this
21 section;

22 (5) Substitute service personnel who hold a classification title within the classification
23 category of the vacancy;

24 (6) Substitute service personnel who do not hold a classification title within the
25 classification category of the vacancy; and

26 (7) New service personnel.

27 (c) Notwithstanding any other provision of this code to the contrary, in the case of any aide
28 position or early childhood classroom assistant teacher position:

29 (1) A county board shall give the principal at the school at which the majority of duties
30 would be performed by applicants an opportunity to interview all qualified applicants and make
31 recommendations to the county superintendent regarding their employment. The state board rule
32 required by subdivision (7) of this subsection shall designate the person to interview the applicants
33 if the principal is unable to submit hiring recommendations;

34 (2) A county board shall also give the faculty senate at the school at which the employee
35 will be performing a majority of his or her duties an opportunity to interview or otherwise obtain
36 information regarding applicants for the vacancies;

37 (3) Decisions affecting promotions and filling of the aide or early childhood classroom
38 assistant teacher positions of employment or jobs occurring throughout the school year that are
39 to be performed by any aide or early childhood classroom assistant teacher as provided in §18A-
40 4-8 of this code shall be made on the basis of:

- 41 (A) Seniority;
- 42 (B) Qualifications;
- 43 (C) Evaluation of past service;
- 44 (D) The recommendation of the principal or other person as designated by the state board
45 rule pursuant to subdivision (1) of this subsection;
- 46 (E) The recommendation, if any, resulting from the process established pursuant to §18-
47 5A-5 of this code by the faculty senate of the school at which the employee will be performing a
48 majority of his or her duties; and
- 49 (F) Whether the applicant is an aide or an early childhood classroom assistant teacher
50 with a preference for early childhood classroom assistant teachers over aides.
- 51 (4) Each of the criterion under subdivision (3) of this subsection shall be given equal weight
52 except that the recommendation of the principal or other persons designated by the state board
53 rule pursuant to subdivision (1) of this subsection and the recommendation of the faculty senate,
54 if any, shall be double weighted;
- 55 (5) The order of consideration of qualified applicants set forth in subsection (b) of this
56 section shall not apply when filling aide or early childhood classroom assistant teacher positions
57 and all qualified applicants shall be considered together in one group;
- 58 (6) If the principal and faculty senate recommend the same applicant pursuant to this
59 subsection, and the county superintendent concurs with those recommendations, then the county
60 board shall appoint that applicant notwithstanding any other provision of this code to the contrary;
- 61 (7) The state board shall promulgate a rule in accordance with the provisions of §29A-3B-
62 1 et seq. of this code to implement and interpret the provisions of this section. The rule may
63 provide for a classroom teacher who directly participates in making recommendations pursuant
64 to this section to be compensated at the appropriate daily rate during periods of participation
65 beyond his or her individual contract; and

66 (8) This subsection shall be effective for any promotions and filling of aide or early
67 childhood classroom assistant teacher positions of employment or jobs occurring throughout the
68 school year when the employment of the successful applicant in the position is to begin on or after
69 July 1, 2024.

70 ~~(e)~~ (d) The county board may not prohibit a service person from retaining or continuing his
71 or her employment in any positions or jobs held prior to the effective date of this section and
72 thereafter.

73 ~~(d)~~ (e) A promotion means any change in employment that the service person considers
74 to improve his or her working circumstance within the classification category of employment.

75 (1) A promotion includes a transfer to another classification category or place of
76 employment if the position is not filled by an employee who holds a title within that classification
77 category of employment.

78 (2) Each class title listed in §18A-4-8 of this code is considered a separate classification
79 category of employment for service personnel, except for those class titles having Roman numeral
80 designations, which are considered a single classification of employment:

81 (A) The cafeteria manager class title is included in the same classification category as
82 cooks;

83 (B) The executive secretary class title is included in the same classification category as
84 secretaries;

85 (C) Paraprofessional, autism mentor, early classroom assistant teacher, and braille or sign
86 support specialist class titles are included in the same classification category as aides; and

87 (D) The mechanic assistant and chief mechanic class titles are included in the same
88 classification category as mechanics.

89 (3) The assignment of an aide to a particular position within a school is based on seniority
90 within the aide classification category if the aide is qualified for the position.

91 (4) Assignment of a custodian to work shifts in a school or work site is based on seniority
92 within the custodian classification category.

93 ~~(e)~~ (f) For purposes of determining seniority under this section a service persons seniority
94 begins on the date that he or she enters into the assigned duties.

95 ~~(f)~~ (g) *Extra duty assignments.* —

96 (1) For the purpose of this section, "extra duty assignment" means an irregular job that
97 occurs periodically or occasionally, such as, but not limited to, field trips, athletic events, proms,
98 banquets, and band festival trips.

99 (2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting
100 service personnel with respect to extra duty assignments are made in the following manner:

101 (A) A service person with the greatest length of service time in a particular category of
102 employment is given priority in accepting extra duty assignments, followed by other fellow
103 employees on a rotating basis according to the length of their service time until all employees
104 have had an opportunity to perform similar assignments. The cycle then is repeated.

105 (B) An alternative procedure for making extra duty assignments within a particular
106 classification category of employment may be used if the alternative procedure is approved both
107 by the county board and by an affirmative vote of two-thirds of the employees within that
108 classification category of employment.

109 ~~(g)~~ (h) County boards shall post and date notices of all job vacancies of existing or newly
110 created positions in conspicuous places for all school service personnel to observe for at least
111 five working days.

112 (1) Posting locations include any website maintained by or available for the use of the
113 county board.

114 (2) Notice of a job vacancy shall include the job description, the period of employment, the
115 work site, the starting and ending time of the daily shift, the amount of pay and any benefits and
116 other information that is helpful to prospective applicants to understand the particulars of the job.

117 The notice of a job vacancy in the aide classification categories shall include the program or
118 primary assignment of the position. Job postings for vacancies made pursuant to this section shall
119 be written to ensure that the largest possible pool of qualified applicants may apply. Job postings
120 may not require criteria which are not necessary for the successful performance of the job and
121 may not be written with the intent to favor a specific applicant.

122 (3) All vacancies in existing or newly created positions shall be filled within 20 working
123 days from the closing date of the job posting for the position.

124 (4) The county board shall notify the successful applicant as soon as possible after the
125 county board makes a hiring decision regarding the posted position.

126 ~~(h)~~ (i) All decisions by county boards concerning reduction in work force of service
127 personnel shall be made on the basis of seniority, as provided in this section.

128 ~~(i)~~ (j) The seniority of a service person is determined on the basis of the length of time the
129 employee has been employed by the county board within a particular job classification. For the
130 purpose of establishing seniority for a preferred recall list as provided in this section, a service
131 person who has been employed in one or more classifications retains the seniority accrued in
132 each previous classification.

133 ~~(j)~~ (k) If a county board is required to reduce the number of service personnel within a
134 particular job classification, the following conditions apply:

135 (1) The employee with the least amount of seniority within that classification or grades of
136 classification is properly released and employed in a different grade of that classification if there
137 is a job vacancy;

138 (2) If there is no job vacancy for employment within that classification or grades of
139 classification, the service person is employed in any other job classification which he or she
140 previously held with the county board if there is a vacancy and retains any seniority accrued in
141 the job classification or grade of classification.

142 ~~(k)~~ (l) After a reduction in force or transfer is approved, but prior to August 1, a county
143 board in its sole and exclusive judgment may determine that the reason for any particular
144 reduction in force or transfer no longer exists.

145 (1) If the board makes this determination, it shall rescind the reduction in force or transfer
146 and notify the affected employee in writing of the right to be restored to his or her former position
147 of employment.

148 (2) The affected employee shall notify the county board of his or her intent to return to the
149 former position of employment within five days of being notified or lose the right to be restored to
150 the former position.

151 (3) The county board may not rescind the reduction in force of an employee until all service
152 personnel with more seniority in the classification category on the preferred recall list have been
153 offered the opportunity for recall to regular employment as provided in this section.

154 (4) If there are insufficient vacant positions to permit reemployment of all more senior
155 employees on the preferred recall list within the classification category of the service person who
156 was subject to reduction in force, the position of the released service person shall be posted and
157 filled in accordance with this section.

158 ~~(j)~~ (m) If two or more service persons accumulate identical seniority, the priority is
159 determined by a random selection system established by the employees and approved by the
160 county board.

161 ~~(m)~~ (n) All service personnel whose seniority with the county board is insufficient to allow
162 their retention by the county board during a reduction in work force are placed upon a preferred
163 recall list and shall be recalled to employment by the county board on the basis of seniority.

164 ~~(n)~~ (o) A service person placed upon the preferred recall list shall be recalled to any
165 position openings by the county board within the classification(s) where he or she had previously
166 been employed, to any lateral position for which the service person is qualified or to a lateral area
167 for which a service person has certification and/or licensure.

168 ~~(p)~~ (p) A service person on the preferred recall list does not forfeit the right to recall by the
169 county board if compelling reasons require him or her to refuse an offer of reemployment by the
170 county board.

171 ~~(q)~~ (q) The county board shall notify all service personnel on the preferred recall list of all
172 position openings that exist from time to time. The notification shall be sent annually, with written
173 receipt notification documented by the superintendent, and shall list instructions to access job
174 postings on any website maintained by or available for the use of the county board.

175 ~~(r)~~ (r) A position opening may be filled by the county board, whether temporary or
176 permanent, until all service personnel on the preferred recall list have been properly notified of
177 existing vacancies and have been given an opportunity to accept reemployment.

178 ~~(s)~~ (s) A service person released from employment for lack of need as provided in ~~sections~~
179 ~~six and eight-a, article two of this chapter~~ §18A-2-6 and §18A-2-8a of this code is accorded
180 preferred recall status on July 1 of the succeeding school year if he or she has not been
181 reemployed as a regular employee.

182 ~~(t)~~ (t) A county board failing to comply with the provisions of this article may be compelled
183 to do so by mandamus and is liable to any party prevailing against the board for court costs and
184 the prevailing party's reasonable attorney's fee, as determined and established by the court.

185 (1) A service person denied promotion or employment in violation of this section shall be
186 awarded the job, pay and any applicable benefits retroactively to the date of the violation and
187 shall be paid entirely from local funds.

188 (2) The county board is liable to any party prevailing against the board for any court
189 reporter costs including copies of transcripts.