

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993



ENROLLED

HOUSE BILL No. 2460

(By Delegates Projiso, Adkins, Overington,
Paxton and Schoonover)



Passed March 17, 1993

In Effect From Passage

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H. B. 2460

(By DELEGATES PREZIOSO, ADKINS, OVERINGTON,
PAXTON AND SCHOONOVER)

[Passed March 17, 1993; in effect from passage.]

AN ACT to amend and reenact section seven-a, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reductions in force of professional educators; requiring that such reductions be based solely on seniority; and requiring local boards to adopt policy defining lateral positions.

Be it enacted by the Legislature of West Virginia:

That section seven-a, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

1 A county board of education shall make decisions
2 affecting the hiring of professional personnel other than
3 classroom teachers on the basis of the applicant with the
4 highest qualifications. Further, the county board shall
5 make decisions affecting the hiring of new classroom
6 teachers on the basis of the applicant with the highest
7 qualifications. In judging qualifications, consideration
8 shall be given to each of the following: Appropriate
9 certification and/or licensure; amount of experience
10 relevant to the position or, in the case of a classroom
11 teaching position, the amount of teaching experience in
12 the subject area; the amount of course work and/or

13 degree level in the relevant field and degree level
14 generally; academic achievement; relevant specialized
15 training; past performance evaluations conducted
16 pursuant to section twelve, article two of this chapter;
17 and other measures or indicators upon which the
18 relative qualifications of the applicant may fairly be
19 judged. If one or more permanently employed instruc-
20 tional personnel apply for a classroom teaching position
21 and meet the standards set forth in the job posting, the
22 county board of education shall make decisions affecting
23 the filling of such positions on the basis of the following
24 criteria: Appropriate certification and/or licensure; total
25 amount of teaching experience; the existence of teaching
26 experience in the required certification area; degree
27 level in the required certification area; specialized
28 training directly related to the performance of the job
29 as stated in the job description; receiving an overall
30 rating of satisfactory in evaluations over the previous
31 two years; and seniority. Consideration shall be given to
32 each criterion with each criterion being given equal
33 weight. If the applicant with the most seniority is not
34 selected for the position, upon the request of the
35 applicant a written statement of reasons shall be given
36 to the applicant with suggestions for improving the
37 applicant's qualifications.

38 The seniority of classroom teachers as defined in
39 section one, article one of this chapter with the exception
40 of guidance counselors shall be determined on the basis
41 of the length of time the employee has been employed
42 as a regular full-time certified and/or licensed profes-
43 sional educator by the county board of education and
44 shall be granted in all areas that the employee is
45 certified and/or licensed.

46 Upon completion of one hundred thirty-three days of
47 employment in any one school year, substitute teachers
48 shall accrue seniority exclusively for the purpose of
49 applying for employment as a permanent, full-time
50 professional employee. One hundred thirty-three days or
51 more of said employment shall be prorated and shall
52 vest as a fraction of the school year worked by the
53 permanent, full-time teacher.

54 Guidance counselors and all other professional em-
55 ployees, as defined in section one, article one of this
56 chapter, except classroom teachers, shall gain seniority
57 in their nonteaching area of professional employment on
58 the basis of the length of time the employee has been
59 employed by the county board of education in that area:
60 *Provided*, That if an employee is certified as a classroom
61 teacher, the employee accrues classroom teaching
62 seniority for the time that that employee is employed in
63 another professional area. For the purposes of accruing
64 seniority under this paragraph, employment as princi-
65 pal, supervisor or central office administrator, as
66 defined in section one, article one of this chapter, shall
67 be considered one area of employment.

68 Employment for a full employment term shall equal
69 one year of seniority, but no employee may accrue more
70 than one year of seniority during any given fiscal year.
71 Employment for less than the full employment term
72 shall be prorated. A random selection system estab-
73 lished by the employees and approved by the board shall
74 be used to determine the priority if two or more
75 employees accumulate identical seniority: *Provided*,
76 That when two or more principals have accumulated
77 identical seniority, decisions on reductions in force shall
78 be based on qualifications.

79 Whenever a county board is required to reduce the
80 number of professional personnel in its employment, the
81 employee with the least amount of seniority shall be
82 properly notified and released from employment pursu-
83 ant to the provisions of section two, article two of this
84 chapter: *Provided*, That all persons employed in a
85 certification area to be reduced who are employed under
86 a temporary permit shall be properly notified and
87 released before a fully certified employee in such a
88 position is subject to release: *Provided, however*, That an
89 employee subject to release shall be employed in any
90 other professional position where such employee is
91 certified and was previously employed or to any lateral
92 area for which such employee is certified and/or
93 licensed, if such employee's seniority is greater than the
94 seniority of any other employee in that area of certifi-

95 cation and/or licensure: *Provided further*, That, if an
96 employee subject to release holds certification and/or
97 licensure in more than one lateral area and if such
98 employee's seniority is greater than the seniority of any
99 other employee in one or more of those areas of
100 certification and/or licensure, the employee subject to
101 release shall be employed in the professional position
102 held by the employee with the least seniority in any of
103 those areas of certification and/or licensure.

104 For the purpose of this article, all positions which
105 meet the definition of classroom teacher as defined in
106 section one, article one of this chapter, shall be lateral
107 positions. For all other professional positions the county
108 board of education shall adopt a policy by the thirty-first
109 day of October, one thousand nine hundred ninety-three,
110 and may modify said policy thereafter as necessary,
111 which defines which positions shall be lateral positions.
112 The board shall submit a copy of its policy to the state
113 board within thirty days of adoption or any modifica-
114 tion, and the state board shall compile a report and
115 submit same to the legislative oversight commission on
116 education accountability by the thirty-first day of
117 December, one thousand nine hundred ninety-three, and
118 by such date in any succeeding year in which any county
119 board submits a modification of its policy relating to
120 lateral positions. In adopting such a policy, the board
121 shall give consideration to the rank of each position in
122 terms of title, nature of responsibilities, salary level,
123 certification and/or licensure, and days in the period of
124 employment.

125 After the fifth day prior to the beginning of the
126 instructional term, or after the first day of the second
127 half of the instructional term, no person employed and
128 assigned to a professional position may transfer to
129 another professional position in the county during that
130 half of the instructional term: *Provided*, That such
131 person may apply for any posted, vacant positions with
132 the successful applicant assuming the position at the
133 beginning of the next half of the instructional term:
134 *Provided, however*, That professional personnel who have
135 been on an approved leave of absence may fill these

136 vacancies prior to the next semester. The superintendent
137 may fill a position before the next instructional term
138 when it is determined to be in the best interest of the
139 students.

140 All professional personnel whose seniority with the
141 county board is insufficient to allow their retention by
142 the county board during a reduction in work force shall
143 be placed upon a preferred recall list. As to any
144 professional position opening within the area where they
145 had previously been employed or to any lateral area for
146 which they have certification and/or licensure, such
147 employee shall be recalled on the basis of seniority if no
148 regular, full-time professional personnel, or those
149 returning from leaves of absence with greater seniority,
150 are qualified, apply for and accept such position. Before
151 position openings that are known or expected to extend
152 for twenty consecutive employment days or longer for
153 professional personnel may be filled by the board, the
154 board shall be required to notify all qualified profes-
155 sional personnel on the preferred list and give them an
156 opportunity to apply, but failure to apply shall not cause
157 such employee to forfeit any right to recall. The notice
158 shall be sent by certified mail to the last known address
159 of the employee, and it shall be the duty of each
160 professional personnel to notify the board of continued
161 availability annually of any change in address or of any
162 change in certification and/or licensure.

163 Boards shall be required to post and date notices of
164 all openings in established, existing or newly created
165 positions in conspicuous working places for all profes-
166 sional personnel to observe for at least five working
167 days. The notice shall be posted within twenty working
168 days of such position openings and shall include the job
169 description. Any special criteria or skills that are
170 required by the position shall be specifically stated in
171 the job description and directly related to the perfor-
172 mance of the job. No vacancy shall be filled until after
173 the five-day minimum posting period. If one or more
174 applicants meets the qualifications listed in the job
175 posting, the successful applicant to fill the vacancy shall
176 be selected by the board within thirty working days of

177 the end of the posting period: *Provided*, That a position
178 held by a certified and/or licensed teacher who has been
179 issued a permit for full-time employment and is working
180 toward certification in the permit area shall not be
181 subject to posting if the certificate is awarded within
182 five years. Nothing provided herein shall prevent the
183 county board of education from eliminating a position
184 due to lack of need.

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

195 When the total number of classroom teaching posi-
196 tions in an elementary school needs to be reduced, such
197 reduction shall be made on the basis of seniority with
198 the least senior classroom teacher being recommended
199 for transfer: *Provided*, That a specified grade level
200 needs to be reduced and the least senior employee in the
201 school is not in that grade level, the least senior
202 classroom teacher in the grade level that needs to be
203 reduced shall be reassigned to the position made vacant
204 by the transfer of the least senior classroom teacher in
205 the school without that position being posted: *Provided*,
206 *however*, That the employee is certified and/or licensed
207 and agrees to the reassignment.

208 Any board failing to comply with the provisions of this
209 article may be compelled to do so by mandamus and
210 shall be liable to any party prevailing against the board
211 for court costs and reasonable attorney fees as deter-
212 mined and established by the court. Further, employees
213 denied promotion or employment in violation of this
214 section shall be awarded the job, pay and any applicable
215 benefits retroactive to the date of the violation and
216 payable entirely from local funds. Further, the board
217 shall be liable to any party prevailing against the board

218 for any court reporter costs including copies of trans-
219 cripts.

A large, dark, handwritten scribble or signature is located in the lower-middle portion of the page. It consists of several overlapping, dark ink strokes that are difficult to decipher as a specific name or word.

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

[Handwritten Signature]
Chairman Senate Committee

[Handwritten Signature]
Chairman House Committee

Originating in the House.

Takes effect from passage.

[Handwritten Signature]
Clerk of the Senate

[Handwritten Signature]
Clerk of the House of Delegates

[Handwritten Signature]
President of the Senate

[Handwritten Signature]
Speaker of the House of Delegates

The within *is approved* this the *30th* day of *March* 1993.

[Handwritten Signature]
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/93

Time 1:40pm