

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2039

BY: DELEGATES BOGGS, TONEY, AND PAYNTER

[Introduced February 10, 2021; Referred to the
Committee on Education then the Judiciary]

1 A BILL to amend and reenact §18A-2-2 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §49-5-102 of said code, all relating to expunging records of
 3 unsubstantiated complaints made by the Department of Health and Human Resources
 4 against teachers three years following investigation of the complaint.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof; written notice bonus for teachers and professional personnel.

1 (a) Before entering upon their duties, all teachers shall execute a contract with their county
 2 boards, which shall state the salary to be paid and shall be in the form prescribed by the state
 3 superintendent. Each contract shall be signed by the teacher and by the president and secretary
 4 of the county board and shall be filed, together with the certificate of the teacher, by the secretary
 5 of the office of the county board. When necessary to facilitate the employment of employable
 6 professional personnel and prospective and recent graduates of teacher education programs who
 7 have not yet attained certification, the contract may be signed upon the condition that the
 8 certificate is issued to the employee prior to the beginning of the employment term in which the
 9 employee enters upon his or her duties.

10 (b) Each teacher’s contract, under this section, shall be designated as a probationary or
 11 continuing contract. A probationary teachers contract shall be for a term of not less than one nor
 12 more than three years, one of which shall be for completion of a beginning teacher internship
 13 pursuant to ~~the provisions of~~ §18A-3-2b of this code, if applicable. If, after three years of such
 14 employment, the teacher who holds a professional certificate, based on at least a bachelor’s
 15 degree, has met the qualifications for a bachelors degree and the county board enter into a new

16 contract of employment, it shall be a continuing contract, subject to the following:

17 (1) Any teacher with less than a bachelor's degree who holds a valid certificate and is
18 employed in a county beyond the three-year probationary period shall be granted continuing
19 contract status upon qualifying for the professional certificate based upon a bachelor's degree, if
20 the teacher becomes reemployed; and

21 (2) A teacher holding continuing contract status with one county shall be granted
22 continuing contract status with any other county upon completion of one year of acceptable
23 employment if the employment is during the next succeeding school year or immediately following
24 an approved leave of absence extending no more than one year.

25 (c) The continuing contract of any teacher shall remain in full force and effect except as
26 modified by mutual consent of the school board and the teacher, unless and until terminated,
27 subject to the following:

28 (1) A continuing contract may not be terminated except:

29 (A) By a majority vote of the full membership of the county board on or before May 1 of
30 the then current year, after written notice, served upon the teacher, return receipt requested,
31 stating cause or causes and an opportunity to be heard at a meeting of the board prior to the
32 board's action on the termination issue; or

33 (B) By written resignation of the teacher on or before May 1 to initiate termination of a
34 continuing contract;

35 (2) The termination shall take effect at the close of the school year in which the contract
36 is terminated;

37 (3) The contract may be terminated at any time by mutual consent of the school board and
38 the teacher;

39 (4) This section does not affect the powers of the school board to suspend or dismiss a
40 principal or teacher pursuant to §18A-2-8 of this code;

41 (5) A continuing contract for any teacher holding a certificate valid for more than one year

42 and in full force and effect during the school year 1984-1985 shall remain in full force and effect;

43 (6) A continuing contract does not operate to prevent a teacher's dismissal based upon
44 the lack of need for the teacher's services pursuant to the ~~provisions of~~ law relating to the
45 allocation to teachers and pupil-teacher ratios. The written notification of teachers being
46 considered for dismissal for lack of need shall be limited to only those teachers whose
47 consideration for dismissal is based upon known or expected circumstances which will require
48 dismissal for lack of need. An employee who was not provided notice and an opportunity for a
49 hearing pursuant to this subsection may not be included on the list. In case of dismissal for lack
50 of need, a dismissed teacher shall be placed upon a preferred list in the order of their length of
51 service with that board. A teacher may not be employed by the board until each qualified teacher
52 on the preferred list, in order, has been offered the opportunity for reemployment in a position for
53 which he or she is qualified, not including a teacher who has accepted a teaching position
54 elsewhere. The reemployment shall be upon a teacher's preexisting continuing contract and has
55 the same effect as though the contract had been suspended during the time the teacher was not
56 employed.

57 (d) In the assignment of position or duties of a teacher under a continuing contract, the
58 board may provide for released time of a teacher for any special professional or governmental
59 assignment without jeopardizing the contractual rights of the teacher or any other rights, privileges
60 or benefits under ~~the provisions of~~ this chapter. Released time shall be provided for any
61 professional educator while serving as a member of the Legislature during any duly constituted
62 session of that body and its interim and statutory committees and commissions without
63 jeopardizing his or her contractual rights or any other rights, privileges, benefits, or accrual of
64 experience for placement on the state minimum salary schedule in the following school year under
65 ~~the provisions of~~ this chapter, board policy and law.

66 (e) A teacher is disqualified to teach in any public school in the state for the duration of
67 the next ensuing school year, if that teacher:

68 (1) Fails to fulfill his or her contract with the board, unless prevented from doing so by
69 personal illness or other just cause or unless released from his or her contract by the board, or

70 (2) Violates any lawful provision of his or her contract: *Provided*, That the marriage of a
71 teacher is not considered a failure to fulfill, or violation of, the contract.

72 The State Department of Education or board may hold all papers and credentials of the
73 teacher on file for a period of one year for the violation and shall report such disqualification status
74 in the National Association of State Directors of Teacher Education and Certification (NASDTEC)
75 database system.

76 (f) Any classroom teacher, as defined in §18A-1-1 of this code, who desires to resign
77 employment with a county board or request a leave of absence, the resignation or leave of
78 absence to become effective on or before July 15 of the same year and after completion of the
79 employment term, may do so at any time during the school year by written notification of the
80 resignation or leave of absence and any notification received by a county board shall
81 automatically extend the teacher's public employee insurance coverage until August 31 of the
82 same year.

83 (g) (1) A classroom teacher who gives written notice to the county board on or before
84 March 1 of the school year of his or her retirement from employment with the board at the
85 conclusion of the school year shall be paid \$500 from the early notification of retirement line item
86 established for the department of education for this purpose, subject to appropriation by the
87 Legislature. If the appropriations to the department of education for this purpose are insufficient
88 to compensate all applicable teachers, the department of education shall request a supplemental
89 appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are
90 still insufficient to compensate all applicable teachers, the priority of payment is for teachers who
91 give written notice the earliest. This payment may not be counted as part of the final average
92 salary for the purpose of calculating retirement.

93 (2) The position of a classroom teacher providing written notice of retirement pursuant to

94 this subsection may be considered vacant and the county board may immediately post the
95 position as an opening to be filled at the conclusion of the school year. If a teacher has been hired
96 to fill the position of a retiring classroom teacher prior to the start of the next school year, the
97 retiring classroom teacher is disqualified from continuing his or her employment in that position.
98 However, the retiring classroom teacher may be permitted to continue his or her employment in
99 that position and forfeit the early retirement notification payment if, after giving notice of retirement
100 in accordance with this subsection, he or she becomes subject to a significant unforeseen
101 financial hardship, including a hardship caused by the death or illness of an immediate family
102 member or loss of employment of a spouse. Other significant unforeseen financial hardships shall
103 be determined by the county superintendent on a case-by-case basis. This subsection does not
104 prohibit a county school board from eliminating the position of a retiring classroom teacher.

105 (h) When a complaint has been filed against a teacher by the Department of Health and
106 Human Resources, and the county school board has investigated the complaint and found that
107 the complaint was not substantiated and no further action was taken against the employee, the
108 complaint and all associated documents shall be expunged from the records of the employee by
109 the county school board and the department within three years of the complaint's disposition.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. RECORD KEEPING AND DATABASE.

§49-5-102. Preservation of records.

1 The proceedings, records, reports, case histories, and all other papers or documents of
2 or received by the state department in the administration of this chapter shall be filed of record
3 and preserved: Provided, That any complaint initiated or investigated by the state department
4 regarding a public school teacher that has been found to be without merit shall be expunged within
5 three years of the complaint's disposition.

NOTE: The purpose of this bill is to remove from the permanent records of school employees and the Department of Health and Human Resources, documentation regarding unsubstantiated complaints filed against the employee that the school board took no action upon.

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