

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Introduced**

## **House Bill 4562**

BY DELEGATES KESSINGER, BURKHAMMER, MAYNOR,  
KEATON, AND PINSON

[Introduced February 07, 2022; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §18A-2-8 of the Code of West Virginia, 1931, as amended, relating  
 2 generally to the suspension and dismissal of school personnel by board and the appeals  
 3 process.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 2. SCHOOL PERSONNEL.**

**§18A-2-8. Suspension and dismissal of school personnel by board; appeal.**

1 (a) Notwithstanding any other provisions of law, a board may suspend or dismiss any  
 2 person in its employment at any time for: Immorality, incompetency, cruelty, insubordination,  
 3 intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the  
 4 Department of Health and Human Resources in accordance with §49-1-1 *et seq.* of this code, the  
 5 conviction of a misdemeanor or a guilty plea or a plea of nolo contendere to a misdemeanor  
 6 charge that has a rational nexus between the conduct and performance of the employee’s job,  
 7 the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge. Upon  
 8 the commencement of any fact-finding investigation involving conduct alleged to jeopardize the  
 9 health, safety, or welfare of students or the learning environment of other students, whether being  
 10 conducted internally, or in cooperation with police or Department of Health and Human  
 11 Resources, the affected employee shall be placed on administrative leave or reassigned to duties  
 12 which do not involve direct interaction with pupils.

13 (b) A charge of unsatisfactory performance shall not be made except as the result of an  
 14 employee performance evaluation pursuant to §18A-2-12 of this code. The charges shall be  
 15 stated in writing served upon the employee within two days of presentation of the charges to the  
 16 board.

17 (c) The affected employee shall be given an opportunity, within five days of receiving the  
 18 written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions  
 19 of §6C-2-1 *et seq.* of this code, except that dismissal for a finding of abuse or the conviction of a  
 20 felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grounds for a

21 grievance proceeding. An employee charged with the commission of a felony, a misdemeanor  
22 with a rational nexus between the conduct and performance of the employee's job, or child abuse  
23 ~~may be~~ shall be placed on administrative leave or reassigned to duties which do not involve direct  
24 interaction with pupils pending final disposition of the charges.

25 (d) A county board of education has the duty and authority to provide a safe and secure  
26 environment in which students may learn and prosper; therefore, it may take necessary steps to  
27 suspend or dismiss any person in its employment at any time should the health, safety, and  
28 welfare of students be jeopardized or the learning environment of other students has been  
29 impacted. A county board shall complete an investigation of an employee that involves evidence  
30 that the employee may have engaged in conduct that jeopardizes the health, safety, or welfare of  
31 students despite the employee's resignation from employment prior to completion of the  
32 investigation.

33 (e) It shall be the duty of any school principal to report any employee conduct alleged to  
34 jeopardize the health, safety, or welfare of students or the learning environment of other students,  
35 to the county superintendent within two business days of the allegation. Nothing in this subsection  
36 supersedes §49-2-803 of this code or the provisions therein regarding mandated reporting of child  
37 abuse and neglect.

38 ~~(e)~~ (f) It shall be the duty of any county superintendent to report any employee suspended  
39 or dismissed, or resigned during the course of an investigation of the employee's alleged  
40 misconduct, in accordance with this section, including the rationale for the suspension or  
41 dismissal, to the state superintendent within seven business days of the suspension, dismissal,  
42 or resignation. The state superintendent shall maintain a database of all individuals suspended  
43 or dismissed for jeopardizing the health, safety, ~~and~~ or welfare of students, or for impacting the  
44 learning environment of other students. The database shall also include the rationale for the  
45 suspension or dismissal. The database shall be confidential and shall only be accessible to county  
46 human resource directors, county superintendents, and the state superintendent of schools.

NOTE: The purpose of this bill is to clarify the process of the suspension and dismissal of school personnel by board and the appeals process.

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