

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2458

By Delegate Clark

[Introduced January 11, 2023; Referred to the
Committee on Education then Finance]

1 A BILL to amend and reenact §18-20-1c of the Code of West Virginia, 1931, as amended; to
 2 amend said code by adding thereto a new section, designated §18A-2-3a; and to amend
 3 and reenact §18A-4-10 and §18A-4-14 of said code, all relating to public school personnel;
 4 prohibiting regular classroom teachers and special education classroom teachers required
 5 to participate an individualized education program committee from being required to
 6 prepare or reduce to writing the individualized education program plan; providing for
 7 contracted employment of substitute teachers for 180 instructional days; requiring
 8 employment in schools of certain size and describing duration, nature, qualifications and
 9 daily rate of pay of 180 day contract substitute teacher; increasing number of personal
 10 leave days an employee may use without regard to the cause for the absence; and
 11 requiring state board rule providing uniform procedure, prohibition, form and benefit
 12 regarding a teacher’s voluntary exchange of duty-free lunch recess to perform duties at the
 13 school.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1c. Integrated classrooms serving students with exceptional needs; and requirements as to the assistance, training and information to be provided to the affected classroom teacher.

1 (a) The regular classroom teacher is entitled to the following when placing a student with
 2 exceptional needs into an integrated classroom when the student’s individualized education
 3 program requires an adjustment in either the curriculum, instruction or service to be provided by
 4 the regular classroom teacher:

5 (1) Training provided pursuant to the integrated classroom program and additional
 6 individualized training, pursuant to the rules developed by the State Board of Education, if

7 requested by the regular classroom teacher to prepare the teacher to meet the exceptional needs
8 of individual students. Whenever possible, the training shall be provided prior to the placement.
9 Where prior training is not possible, the training shall be commenced no later than 10 days
10 following the placement of the student into the regular classroom. Unavoidable delays in the
11 provision of training may not result in the exclusion of a special needs student from any class if the
12 training cannot be provided in 10 days;

13 (2) A signed copy of the individualized education program for the special education student
14 prior to the placement of the student into the regular classroom. The receiving and referring
15 teachers shall participate in the development of that student's individualized education program
16 and shall also sign the individualized education program as developed. In all cases the teacher
17 shall receive a copy of the individualized education program for the special education student prior
18 to or at the time of the placement of the student into the regular classroom. Any teacher
19 disagreeing with the individualized education program committee's recommendation shall file a
20 written explanation outlining his or her disagreement or recommendation;

21 (3) Participation by referring teachers in all eligibility committees and participation by
22 referring and receiving teachers in all individualized education program committees which involve
23 possible placement of an exceptional student in an integrated classroom;

24 (4) Opportunity to reconvene the committee responsible for the individualized education
25 program of the student with special needs assigned to the regular classroom teacher. The meeting
26 shall include all persons involved in a student's individualized education program and shall be held
27 within 21 days of the time the request is made; and

28 (5) Assistance from persons trained or certified to deal with a student's exceptional needs
29 whenever assistance is part of the student's individualized education program as necessary to
30 promote accomplishment of the program's goals and objectives: *Provided*, That aides in the area
31 of special education cannot be reassigned to more than one school without the employee's
32 consent.

33 (b) Except teachers already required to participate in the development of a student's
34 individualized education program and sign it as provided in subdivision (2) of this section, all other
35 teachers in whose class or program a student with exceptional needs is enrolled shall:

36 (1) Participate in the meeting to develop the student's individualized education program, or
37 read and sign a copy of the student's individualized education program plan acknowledging that
38 he or she has read and understands it; and

39 (2) Make accommodations and modifications for the student, if needed or identified, to help
40 the student succeed in the class or program.

41 This requirement includes, but is not limited to, teachers of music, musical education, art,
42 driver education and other instruction offered.

43 (c) A regular classroom teacher or special education classroom teacher required to
44 participate in an individualized education program committee pursuant to this section may not be
45 required to prepare, or reducing to writing, the individualized education program plan.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-3a. Employment of 180-day contracted substitute teachers.

1 Each county board of education shall employ at every school in the county with greater
2 than 200 students a substitute teacher contracted for 180 instructional days in accordance with the
3 following:

4 (1) The 180-day substitute teacher shall be employed under a contract of employment for
5 180 instructional days consistent with the instructional days enumerated in the school calendar of
6 the county;

7 (2) The 180-day substitute teacher shall not be considered a regular employee of the
8 county, is not entitled to any of the rights, privileges and benefits of regular employment and shall
9 not accrue seniority;

10 (3) The 180-day substitute teacher shall work under the direction of the school principal to
11 provide substitute teacher service as needed to cover teacher absences and, when not needed for
12 substitute teacher service, to perform other duties at the direction of the principal which may be
13 non-instruction duties which would otherwise be assigned to regularly employed classroom
14 teachers and school counselors;

15 (4) The 180-day substitute teacher shall not be considered a long-term substitute as
16 defined in §18A-1-1 of this code;

17 (5) The 180-day substitute teacher shall meet all requirements necessary for employment
18 in the public schools as a substitute teacher; and

19 (6) The daily rate of pay of a 180-day substitute teacher shall be the amount paid by the
20 county for substitute teachers as provided in §18A-4-7 of this code who teach less than 10
21 consecutive days plus at least five percent.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.

1 (a) Personal Leave.

2 (1) At the beginning of the employment term, any full-time employee of a county board is
3 entitled annually to at least one and one-half days personal leave for each employment month or
4 major fraction thereof in the employee's employment term. Unused leave shall be accumulative
5 without limitation and is transferable within the state. A change in job assignment during the school
6 year does not affect the employee's rights or benefits.

7 (2) A regular full-time employee who is absent from assigned duties due to accident,
8 sickness, death in the immediate family, or life-threatening illness of the employee's spouse,
9 parents or child, or other cause authorized or approved by the board, shall be paid the full salary
10 from his or her regular budgeted salary appropriation during the period which the employee is
11 absent, but not to exceed the total amount of leave to which the employee is entitled.

12 (3) Each employee is permitted to use ~~three~~ four days of leave annually without regard to

13 the cause for the absence: *Provided*, That effective ~~July 1, 2019~~ July 1, 2023, each employee is
14 permitted to use ~~four~~ five days of leave annually without regard to the cause for the absence.
15 Personal leave without cause may not be used on consecutive work days unless authorized or
16 approved by the employee's principal or immediate supervisor, as appropriate. The employee
17 shall give notice of leave without cause to the principal or immediate supervisor at least 24 hours in
18 advance, except that in the case of sudden and unexpected circumstances, notice shall be given
19 as soon as reasonably practicable. The principal or immediate supervisor may deny use of the day
20 if, at the time notice is given, either 15 percent of the employees or three employees, whichever is
21 greater, under the supervision of the principal or immediate supervisor, have previously given
22 notice of their intention to use that day for leave. Personal leave may not be used in connection
23 with a concerted work stoppage or strike. Where the cause for leave originated prior to the
24 beginning of the employment term, the employee shall be paid for time lost after the start of the
25 employment term. If an employee uses personal leave which the employee has not yet
26 accumulated on a monthly basis and subsequently leaves the employment, the employee is
27 required to reimburse the board for the salary or wages paid for the unaccumulated leave.

28 (4) The State Board shall maintain a rule to restrict the payment of personal leave benefits
29 and the charging of personal leave time used to an employee receiving a workers' compensation
30 benefit from a claim filed against and billed to the county board by which the person is employed. If
31 an employee is awarded this benefit, the employee shall receive personal leave compensation
32 only to the extent the compensation is required, when added to the workers' compensation benefit,
33 to equal the amount of compensation regularly paid the employee. If personal leave compensation
34 equal to the employee's regular pay is paid prior to the award of the workers' compensation
35 benefit, the amount which, when added to the benefit, is in excess of the employee's regular pay
36 shall be deducted from the employee's subsequent pay. The employee's accrued personal leave
37 days shall be charged only for such days as equal the amount of personal leave compensation
38 required to compensate the employee at the employee's regular rate of pay.

39 (5) The county board may establish reasonable rules for reporting and verification of
40 absences for cause. If any error in reporting absences occurs, the county board may make
41 necessary salary adjustments:

42 (A) In the next pay after the employee has returned to duty; or

43 (B) In the final pay if the absence occurs during the last month of the employment term.

44 (b) Leave Banks.

45 (1) Each county board shall establish a personal leave bank that is available to all school
46 personnel. The board may establish joint or separate banks for professional personnel and school
47 service personnel. Each employee may contribute up to two days of personal leave per school
48 year. An employee may not be coerced or compelled to contribute to a personal leave bank.

49 (2) The personal leave bank shall be established and operated pursuant to a rule adopted
50 by the county board. The rule:

51 (A) May limit the maximum number of days used by an employee;

52 (B) Shall limit the use of leave bank days to an active employee with fewer than five days
53 accumulated personal leave who is absent from work due to accident or illness of the employee;
54 and

55 (C) Shall prohibit the use of days to:

56 (i) Qualify for or add to service for any retirement system administered by the State; or

57 (ii) Extend insurance coverage pursuant to §5-16-13 of this code.

58 (D) Shall require that each personal leave day contributed:

59 (i) Is deducted from the number of personal leave days to which the donor employee is
60 entitled by this section;

61 (ii) Is not deducted from the personal leave days without cause to which a donor employee
62 is entitled if sufficient general personal leave days are otherwise available to the donor employee;

63 (iii) Is credited to the receiving employee as one full personal leave day;

64 (iv) May not be credited for more or less than a full day by calculating the value of the leave

65 according to the hourly wage of each employee; and

66 (v) May be used only for an absence due to the purpose for which the leave was
67 transferred. Any transferred days remaining when the catastrophic medical emergency ends
68 revert back to the leave bank.

69 (3) The administration, subject to county board approval, may use its discretion as to the
70 need for a substitute where limited absence may prevail, when an allowable absence does not:

71 (i) Directly affect the instruction of the students; or

72 (ii) Require a substitute employee because of the nature of the work and the duration of the
73 cause for the absence.

74 (4) If funds in any fiscal year, including transfers, are insufficient to pay the full cost of
75 substitutes for meeting the provisions of this section, the remainder shall be paid on or before the
76 August 31 from the budget of the next fiscal year.

77 (5) A county board may supplement the leave provisions in any manner it considers
78 advisable in accordance with applicable rules of the State Board and the provisions of this chapter
79 and chapter 18 of this code.

80 (c) Effective July 1, 2019, a classroom teacher who has not utilized more than four days of
81 personal leave during the 200-day employment term shall receive a bonus of \$500 at the end of
82 the school year. If the appropriations to the Department of Education for this purpose are
83 insufficient to compensate all applicable classroom teachers, the Department of Education shall
84 request a supplemental appropriation in an amount sufficient to compensate all eligible classroom
85 teachers. This bonus may not be counted as part of the final average salary for the purpose of
86 calculating retirement.

§18A-4-14. Duty-free lunch and daily planning period for certain employees.

1 (a) Notwithstanding §18A-2-7 of this code, every teacher who is employed for a period of
2 time more than one half the class periods of the regular school day and every service person
3 whose employment is for a period of more than three and one-half hours per day and whose pay is

4 at least the amount indicated in the state minimum pay scale as set forth in §18-4-8a shall be
5 provided a daily lunch recess of not less than 30 consecutive minutes, and the employee shall not
6 be assigned any responsibilities during this recess. The recess shall be included in the number of
7 hours worked, and no county shall increase the number of hours to be worked by an employee as
8 a result of the employee being granted a recess under this section.

9 (b) Every teacher who is regularly employed for a period of time more than one half the
10 class periods of the regular school day shall be provided at least one planning period within each
11 school day to be used to complete necessary preparations for the instruction of pupils. No teacher
12 may be assigned any responsibilities during this period, and no county shall increase the number
13 of hours to be worked by a teacher as a result of such teacher being granted a planning period
14 subsequent to the adoption of this section (March 13, 1982). Educators shall receive uninterrupted
15 time for planning periods each day. Administrators may not require a teacher to use the planning
16 period time allotted to complete duties beyond instructional planning, including, but not limited to,
17 administrative tasks and meetings.

18 The duration of the planning period shall be in accordance with the following:

19 (1) For grades where the majority of the student instruction is delivered by only one
20 teacher, the planning period shall be no less than 40 minutes; and

21 (2) For grades where students take separate courses during at least four separate periods
22 of instruction, most usually delivered by different teachers for each subject, the planning period
23 shall be the length of the usual class period taught by the teacher, but no less than 40 minutes.

24 Principals, and assistant principals, where applicable, shall cooperate in carrying out the
25 provisions of this subsection, including, but not limited to, assuming control of the class period or
26 supervision of students during the time the teacher is engaged in the planning period. Substitute
27 teachers may also be utilized to assist with classroom responsibilities under this subsection:

28 *Provided*, That any substitute teacher who is employed to teach a minimum of two consecutive
29 days in the same position shall be granted a planning period pursuant to this section.

30 (c) Nothing in this section prevents any teacher from exchanging his or her lunch recess or
31 a planning period or any service person from exchanging his or her lunch recess for any
32 compensation or benefit mutually agreed upon by the employee and the county superintendent or
33 his or her agent: *Provided*, That a teacher and the superintendent or his or her agent may not
34 agree to terms which are different from those available to any other teacher granted rights under
35 this section within the individual school or to terms which in any way discriminate among those
36 teachers within the individual school, and a service person granted rights under this section and
37 the superintendent or his or her agent may not agree to terms which are different from those
38 available to any other service personnel within the same classification category granted rights
39 under this section within the individual school or to terms which in any way discriminate among
40 those service personnel within the same classification category within the individual school.

41 (d) Nothing in this section prevents any teacher from volunteering to exchange and
42 exchanging his or her lunch recess in accordance with a rule promulgated by the state board in
43 accordance with §29A-3B-1 et seq. of this code. The rule promulgated by the state board shall
44 include at least the following:

45 (1) A uniform method for notifying teachers of the duties at the school for which a teacher
46 may voluntarily exchange his or her lunch recess to perform, and the process for volunteering to
47 make the exchange;

48 (2) A uniform prohibition on direct, in-person contact by administrators to request, coerce
49 or order a teacher to exchange his or her lunch recess to perform the duties;

50 (3) A uniform form for documenting the terms of the agreement between a teacher and the
51 superintendent or his or her agent for the exchange of the teacher's lunch recess to perform the
52 duties; and

53 (4) A uniform benefit for the exchange of the lunch recess by a teacher to perform the
54 duties equal to 6.25 percent of the teacher's daily rate of pay.

NOTE: The purpose of this bill is to implement results of the Chapter 18 Study conducted during the 2021 interim period. The bill prohibits regular classroom teachers and special education classroom teachers required to participate an individualized education program committee from being required to prepare or reduce to writing the individualized education program plan. It requires the contracted employment substitute teachers for 180 instructional days at all schools with more than 200 students. It increases the number of personal leave days that county board of education employees may use without regard to the cause for the absence from four to five. Finally, the bill provides for uniform procedures, agreement forms and benefits to ensure a teacher's exchange of his or her duty-free lunch to perform duties at the school is a voluntary exchange.

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