

# **WEST VIRGINIA LEGISLATURE**

**2024 REGULAR SESSION**

**ENGROSSED**

## **House Bill 4769**

By Delegates Ellington, Toney and Brooks

[Introduced January 16, 2024; Referred  
to the Committee on Education]



1 A BILL to amend and reenact §18-5-18b of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §18A-1-1 of said code, all relating to public-school counselors; adding  
3 exclusions for school counselors; and clarifying the definition and job duties of school  
4 counselors.

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

**CHAPTER 18. EDUCATION.**

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-18b. School counselors in public schools.**

1 (a) A school counselor means a professional ~~educator~~ school counselor who holds a valid  
2 school counselor's certificate in accordance with §18A-1-1 (d) (2) of this code.

3 (b) Each county board shall provide counseling services for each pupil enrolled in the  
4 public schools of the county.

5 (c) The school counselor shall work with individual pupils and groups of pupils in providing  
6 developmental, preventive and remedial guidance and counseling programs to meet academic,  
7 social, emotional, and physical needs; including programs to identify and address the problem of  
8 potential school dropouts. The school counselor also may provide consultant services for parents,  
9 teachers, and administrators and may use outside referral services, when appropriate, if no  
10 additional cost is incurred by the county board.

11 (d) The state board may adopt rules consistent with the provisions of this section that  
12 define the role of a school counselor based on the "National Standards for School Counseling  
13 Programs" of the American School Counselor Association. A school counselor is authorized to  
14 perform such services as are not inconsistent with the provisions of the rule as adopted by the  
15 state board. To the extent that any funds are made available for this purpose, county boards shall  
16 provide training for counselors and administrators to implement the rule as adopted by the state  
17 board.

18 (e) Each county board shall develop a comprehensive drop-out prevention program  
19 utilizing the expertise of school counselors and any other appropriate resources available.

20 (f) School counselors shall be full-time professional personnel, shall spend at least 80  
21 percent of work time in a direct counseling relationship with pupils, and shall devote no more than  
22 20 percent of the ~~work day~~ workday to administrative activities: *Provided*, That such activities are  
23 ~~counselor related~~ directly related to their counseling duties: *Provided, further*, That school  
24 counselors may not perform the following duties:

25 (1) Build the master schedule;

26 (2) Administer cognitive, aptitude, and achievement testing programs; *Provided*, That  
27 school counselors may administer make up test and any test that are required for virtual students,  
28 should no other person be available to administer the test;

29 (3) Routinely sign excuses for students who are tardy or absent;

30 (4) Perform disciplinary actions or assign discipline consequences;

31 (5) Provide more than eight sessions of counseling in schools to address psychological  
32 disorders: *Provided*, That students who have experienced an emergency situation such as, but not  
33 limited to, CPS investigations, death, abuse, or home removal may be addressed regardless of  
34 how many sessions have previously been utilized;

35 (6) Cover classes when teachers are absent or to create teacher planning time;

36 (7) The counselor may have access but may not maintain student records;

37 (8) Compute grade-point averages;

38 (9) Supervise classrooms or common areas;

39 (10) May access but not keep clerical records;

40 (11) Coordinate schoolwide plans including:

41 (A) Individual Education Plans;

42 (B) 504 Plans;

43 (C) Student Study Teams;

- 44           (D) Response to Intervention Plans;
  - 45           (E) Multi-Tiered System of Support; and
  - 46           (F) May access attendance records but may not oversee School Attendance Review
  - 47 Boards.
- 48           (g) Nothing in this section prohibits a county board from exceeding the provisions of this
- 49 section, or requires any specific level of funding by the Legislature.

## CHAPTER 18A. SCHOOL PERSONNEL

### ARTICLE 1. GENERAL PROVISIONS.

**§18A-1-1. Definitions.**

1           The definitions contained in §18-1-1 of this code apply to this chapter. In addition, the

2 following words used in this chapter and in any proceedings pursuant to this chapter have the

3 meanings ascribed to them unless the context clearly indicates a different meaning:

4           (a) "School personnel" means all personnel employed by a county board whether

5 employed on a regular full-time basis, an hourly basis or otherwise. "School personnel" is

6 comprised of two categories: Professional personnel and service personnel;

7           (b) "Professional person" or "professional personnel" means those persons or employees

8 who meet the certification requirements of the state, licensing requirements of the state, or both,

9 and includes a professional educator and other professional employee;

10          (c) "Professional educator" has the same meaning as "teacher" as defined in section one,

11 article one, chapter eighteen of this code. Professional educators are classified as follows:

12          (1) "Classroom teacher" means a professional educator who has a direct instructional or

13 counseling relationship with students and who spends the majority of his or her time in this

14 capacity;

15          (2) "Principal" means a professional educator who functions as an agent of the county

16 board and has responsibility for the supervision, management and control of a school or schools

17 within the guidelines established by the county board. The principal's major area of responsibility  
18 is the general supervision of all the schools and all school activities involving students, teachers  
19 and other school personnel;

20 (3) "Supervisor" means a professional educator who is responsible for working primarily in  
21 the field with professional and other personnel in instructional and other school improvement. This  
22 category includes other appropriate titles or positions with duties that fit within this definition; and

23 (4) "Central office administrator" means a superintendent, associate superintendent,  
24 assistant superintendent and other professional educators who are charged with administering  
25 and supervising the whole or some assigned part of the total program of the countywide school  
26 system. This category includes other appropriate titles or positions with duties that fit within this  
27 definition;

28 (d) "Other professional employee" means a person from another profession who is  
29 properly licensed and who is employed to serve the public schools. This definition includes:

30 (1) a A registered professional nurse, licensed by the West Virginia Board of Examiners for  
31 Registered Professional Nurses, who is employed by a county board and has completed either a  
32 two-year (64 semester hours) or a three-year (96 semester hours) nursing program;

33 (2) A certified school counselor who holds a master's degree in school counseling from an  
34 accredited university and certification through the state board of education.

35 (e) "Service person" or "service personnel", whether singular or plural, means a  
36 nonteaching school employee who is not included in the meaning of "teacher" as defined in §18-1-  
37 1 of this code and who serves the school or schools as a whole, in a nonprofessional capacity,  
38 including such areas as secretarial, custodial, maintenance, transportation, school lunch and  
39 aides. Any reference to "service employee" or "service employees" in this chapter or chapter 18 of  
40 this code means service person or service personnel as defined in this section;

41 (f) "Principals Academy" or "academy" means the academy created pursuant to §18A-3a-  
42 2b of this code;

43 (g) "Center for Professional Development" means the center created pursuant to §18A-3a-  
44 1 of this code;

45 (h) "Job-sharing arrangement" means a formal, written agreement voluntarily entered into  
46 by a county board with two or more of its employees who wish to divide between them the duties  
47 and responsibilities of one authorized full-time position;

48 (i) "Prospective employable professional person", whether singular or plural, means a  
49 certified professional educator who:

50 (1) Has been recruited on a reserve list of a county board;

51 (2) Has been recruited at a job fair or as a result of contact made at a job fair;

52 (3) Has not obtained regular employee status through the job posting process provided in  
53 §18A-4-7a of this code; and

54 (4) Has obtained a baccalaureate degree from an accredited institution of higher education  
55 within the past year;

56 (j) "Dangerous student" means a student who is substantially likely to cause serious bodily  
57 injury to himself, herself or another individual within that student's educational environment, which  
58 may include any alternative education environment, as evidenced by a pattern or series of violent  
59 behavior exhibited by the student, and documented in writing by the school, with the  
60 documentation provided to the student and parent or guardian at the time of any offense;

61 (k) "Alternative education" means an authorized departure from the regular school  
62 program designed to provide educational and social development for students whose disruptive  
63 behavior places them at risk of not succeeding in the traditional school structures and in adult life  
64 without positive interventions; and

65 (l) "Long-term substitute" means a substitute employee who fills a vacant position:

66 That the county superintendent expects to extend for at least thirty consecutive days, and  
67 is either:

68 (A) Listed in the job posting as a long-term substitute position of over thirty days; or

69 (B) Listed in a job posting as a regular, full-time position and:

70 (i) Is not filled by a regular, full-time employee; and

71 (ii) Is filled by a substitute employee.

72 For the purposes of §5-16-2 of this code, long-term substitute does not include a retired

73 employee hired to fill the vacant position.