

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **Senate Bill 1048**

**FISCAL  
NOTE**

By Senators Grady and Weld

[Introduced February 21, 2026; referred  
to the Committee on Education; and then to the  
Committee on Finance]

1 A BILL to amend and reenact §18-5-39, §18A-2-7, §18A-4-7a, and §18A-4-8b of the Code of West  
 2 Virginia, 1931, as amended; and to amend the code by adding a new section, designated  
 3 §18A-4-23, relating to transferring the responsibility for making determinations on  
 4 eliminating school personnel positions due to lack of need for all county school districts  
 5 from the county boards of those districts to the West Virginia Board of Education;  
 6 specifying factors to be considered in determining whether elimination of positions due to  
 7 lack of need is necessary; requiring that the county board for any position over the  
 8 numbers included in the foundation allowance for professional educators and the  
 9 foundation allowance for service personnel provide information on the source of the  
 10 additional funds to pay for the additional positions; addressing factors to be considered by  
 11 the state board when deciding which positions need to be eliminated; and requiring that  
 12 notice to the county board of any terminated positions be early enough to allow the board  
 13 to meet all personnel-related statutory deadlines.

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

**CHAPTER 18. EDUCATION.**

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

**§18-5-39. Establishment of summer school programs; tuition.**

1 (a) Inasmuch as the present county school facilities for the most part lie dormant and  
 2 unused during the summer months, and inasmuch as there are many students who are in need of  
 3 remedial instruction and others who desire accelerated instruction, it is the purpose of this section  
 4 to provide for the establishment of a summer school program, which is to be separate and apart  
 5 from the full school term as established by each county.

6 (b) The board of any county has the authority to establish a summer school program  
 7 utilizing the public school facilities and to charge tuition for students who attend the summer  
 8 school. The tuition may not exceed in any case the actual cost of operation of the summer school

9 program: *Provided*, That any deserving pupil whose parents, in the judgment of the board, are  
10 unable to pay the tuition, may attend the summer school program at a reduced charge or without  
11 charge. The county board may determine the term and curriculum of the summer schools based  
12 upon the particular needs of the individual county. The curriculum may include, but is not limited to,  
13 remedial instruction, accelerated instruction and the teaching of manual arts. The term of the  
14 summer school program may not be established in such a manner as to interfere with the regular  
15 school term.

16 (c) The county boards may employ any certified teacher as teachers for this summer  
17 school program. Certified teachers employed by the county board to teach in the summer school  
18 program shall be paid an amount to be determined by the county board and shall enter into a  
19 contract of employment in such form as is prescribed by the county board: *Provided*, That teachers  
20 who teach summer courses of instruction which are offered for credit and which are taught during  
21 the regular school year shall be paid at the same daily rate they would receive if paid in  
22 accordance with the then current minimum monthly salary in effect for teachers in that county.

23 (d) Any funds accruing from the tuitions shall be credited to and expended within the  
24 existing framework of the general current expense fund of the county board.

25 (e) Notwithstanding any other provision of this code to the contrary, the board shall fill  
26 professional positions established pursuant to the provisions of this section on the basis of  
27 certification and length of time the professional has been employed in the county's summer school  
28 program. In the event that no employee who has been previously employed in the summer school  
29 program holds a valid certification or licensure, a board shall fill the position as a classroom  
30 teaching position in accordance with section seven-a, article four, chapter eighteen-a of this code.

31 (f) Notwithstanding any other provision of the code to the contrary, the county board may  
32 employ school service personnel to perform any related duties outside the regular school term as  
33 defined in section eight, article four, chapter eighteen-a of this code. An employee who was  
34 employed in any service personnel job or position during the previous summer shall have the

35 option of retaining the job or position if the job or position exists during any succeeding summer. If  
36 the employee is unavailable or if the position is newly created, the position shall be filled pursuant  
37 to section eight-b, article four, chapter eighteen-a of this code. When any summer employee is  
38 absent, qualified regular employees within the same classification category who are not working  
39 because their employment term for the school year has ended or has not yet begun the  
40 succeeding school employment term, shall be given first opportunity to substitute for the absent  
41 summer employee on a rotating and seniority basis. When any summer employee who is  
42 employed in a summer position is granted a leave of absence for the summer months, the board  
43 shall give regular employment status to the employee for that summer position which shall be filled  
44 under the procedure set forth in section eight-b, article four, chapter eighteen-a of this code. The  
45 summer employee on leave of absence has the option of returning to that summer position if the  
46 position exists the succeeding summer or whenever the position is reestablished if it were  
47 abolished. The salary of a summer employee shall be in accordance with the salary schedule of  
48 persons regularly employed in the same position in the county where employed and persons  
49 employed in those positions are entitled to all rights, privileges and benefits provided in sections  
50 five-b, eight, eight-a, ten and fourteen, article four, chapter eighteen-a of this code: *Provided*, That  
51 those persons are not entitled to a minimum employment term of two hundred days for their  
52 summer position.

53 (g) ~~If a county board reduces~~ the state board eliminates summer school program positions  
54 pursuant to its authority in §18A-4-23 of this code resulting in a reduction in force of the number of  
55 employees to be employed in a particular summer program or classification from the number  
56 employed in that position in previous summers, the reductions in force and priority in  
57 reemployment to that summer position shall be based upon the length of service time in the  
58 particular summer program or classification.

59 (h) For the purpose of this section, summer employment for service personnel includes,  
60 but is not limited to, filling jobs and positions as defined in section eight, article four, chapter

61 eighteen-a of this code and especially established for and which are to be predominantly  
62 performed during the summer months to meet the needs of a county board.

**CHAPTER 18A. SCHOOL PERSONNEL.**

**ARTICLE 2. SCHOOL PERSONNEL.**

**§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.**

1 (a) The superintendent, subject only to approval of the board, may assign, transfer,  
2 promote, demote or suspend school personnel and recommend their dismissal pursuant to  
3 provisions of this chapter: Provided, That elimination of positions due to lack of need is the  
4 responsibility of the state board pursuant to §18A-4-23 of this code. However, an employee shall  
5 be notified in writing by the superintendent on or before April 1 if he or she is being considered for  
6 transfer or to be transferred. Only those employees whose consideration for transfer or intended  
7 transfer is based upon known or expected circumstances which will require the transfer of  
8 employees shall be considered for transfer or intended for transfer and the notification shall be  
9 limited to only those employees. Any teacher or employee who desires to protest the proposed  
10 transfer may request in writing a statement of the reasons for the proposed transfer. The statement  
11 of reasons shall be delivered to the teacher or employee within ten days of the receipt of the  
12 request. Within ten days of the receipt of the statement of the reasons, the teacher or employee  
13 may make written demand upon the superintendent for a hearing on the proposed transfer before  
14 the county board. The hearing on the proposed transfer shall be held on or before May 1. At the  
15 hearing, the reasons for the proposed transfer must be shown.

16 (b) The superintendent at a meeting of the board on or before May 1 shall furnish in writing  
17 to the board a list of teachers and other employees to be considered for transfer and subsequent  
18 assignment for the next ensuing school year. An employee who was not provided notice and an

19 opportunity for a hearing pursuant to subsection (a) of this section may not be included on the list.  
20 All other teachers and employees not so listed shall be considered as reassigned to the positions  
21 or jobs held at the time of this meeting. The list of those recommended for transfer shall be  
22 included in the minute record of the meeting and all those so listed shall be notified in writing and  
23 shall be delivered within ten days following the board meeting, with written receipt notification  
24 documented by the superintendent, and shall state that the person is being recommended for  
25 transfer and subsequent assignment and the reasons therefor.

26 (c) The superintendent's authority to suspend school personnel shall be temporary only  
27 pending a hearing upon charges filed by the superintendent with the county board and the period  
28 of suspension may not exceed thirty days unless extended by order of the board.

29 (d) The provisions of this section respecting hearing upon notice of transfer are not  
30 applicable in emergency situations where a school building becomes damaged or destroyed  
31 through an unforeseeable act and which act necessitates a transfer of the school personnel  
32 because of the aforementioned condition of the building.

33 (e) Notwithstanding this section or any provision of this code, when actual student  
34 enrollment in a grade level or program, unforeseen on or before May 1 of the preceding school  
35 year, permits the assignment of fewer teachers or service personnel to or within a school under  
36 any pupil-teacher ratio, class size or caseload standard established in section eighteen-a, article  
37 five, chapter eighteen of this code or any policy of the state board, the superintendent, with board  
38 approval, may reassign the surplus personnel to another school or to another grade level or  
39 program within the school if needed there to comply with any such pupil-teacher ratio, class size or  
40 caseload standard.

41 (1) Before any reassignment may occur pursuant to this subsection, notice shall be  
42 provided to the employee and the employee shall be provided an opportunity to appear before the  
43 county board to state the reasons for his or her objections, if any, prior to the board voting on the  
44 reassignment.

45 (2) Except as otherwise provided in subdivision (1) of this subsection, the reassignment  
 46 may be made without following the notice and hearing provisions of this section, and at any time  
 47 during the school year when the conditions of this subsection are met: *Provided*, That the  
 48 reassignment may not occur after the last day of the second school month.

49 (3) A professional employee reassigned under this subsection shall be the least senior of  
 50 the surplus professional personnel who holds certification or licensure to perform the duties at the  
 51 other school or at the grade level or program within the school.

52 (4) A service employee reassigned under this subsection shall be the least senior of the  
 53 surplus personnel who holds the same classification or multiclassification needed to perform the  
 54 duties at the other school or at the grade level or program within the same school.

55 (5) No school employee's annual contract term, compensation or benefits shall be  
 56 changed as a result of a reassignment under this subsection.

**ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

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

1 (a) A county board of education shall make decisions affecting the filling of vacancies in  
 2 professional positions of employment on the basis of the applicant with the highest qualifications:  
 3 *Provided*, That the county superintendent shall be hired under separate criteria pursuant to  
 4 §18-4-2 of this code.

5 (b) In judging qualifications for the filling of vacancies of professional positions of  
 6 employment, consideration shall be given to each of the following:

- 7 (1) Appropriate certification, licensure or both;
- 8 (2) Amount of experience relevant to the position or, in the case of a classroom teaching  
 9 position, the amount of teaching experience in the required certification area;
- 10 (3) The amount of course work, degree level or both in the relevant field and degree level  
 11 generally;
- 12 (4) Academic achievement;

13 (5) In the case of a principal or classroom teaching position, certification by the National  
14 Board for Professional Teaching Standards;

15 (6) Specialized training relevant to performing the duties of the job;

16 (7) Past performance evaluations conducted pursuant to §18A-2-12 and §18A-3C-2 of this  
17 code or, in the case of a classroom teacher, past evaluations of the applicant's performance in the  
18 teaching profession;

19 (8) Seniority;

20 (9) Other measures or indicators upon which the relative qualifications of the applicant may  
21 fairly be judged;

22 (10) In the case of a classroom teaching position, the recommendation of the principal of  
23 the school at which the applicant will be performing a majority of his or her duties; and

24 (11) In the case of a classroom teaching position, the recommendation, if any, resulting  
25 from the process established pursuant to the provisions of §18-5A-5 of this code by the faculty  
26 senate of the school at which the employee will be performing a majority of his or her duties.

27 (c) When filling of a vacancy pursuant to this section, a county board is entitled to  
28 determine the appropriate weight to apply to each of the criterion when assessing an applicant's  
29 qualifications: *Provided*, That if one or more permanently employed instructional personnel apply  
30 for a classroom teaching position and meet the standards set forth in the job posting, each criterion  
31 under subsection (b) of this section shall be given equal weight except that the criterion in  
32 subdivisions (10) and (11) shall each be double weighted.

33 (d) For a classroom teaching position, if the principal and faculty senate recommend the  
34 same applicant pursuant to subdivisions (10) and (11), subsection (b) of this section, and the  
35 superintendent concurs with those recommendations, then the other provisions of subsections (b)  
36 and (c) of this section do not apply and the county board shall appoint that applicant  
37 notwithstanding any other provision of this code to the contrary.

38 (e) The state board shall promulgate a rule, including an emergency rule if necessary, in  
39 accordance with the provisions of §29A-3B-1 *et seq.* of this code to implement and interpret the  
40 provisions of this section. The rule may provide for a classroom teacher who directly participates in  
41 making recommendations pursuant to this section to be compensated at the appropriate daily rate  
42 during periods of participation beyond his or her individual contract.

43 (f) The recommendations of the principal and faculty senate made pursuant to subdivisions  
44 (10) and (11), subsection (b) of this section shall be based on a determination as to which applicant  
45 is the most highly qualified for the position: *Provided*, That nothing in this subsection may require  
46 principals or faculty senates to assign any amount of weight to any factor in making a  
47 recommendation.

48 (g) With the exception of guidance counselors, the seniority of classroom teachers, as  
49 defined in section one, article one of this chapter, shall be determined on the basis of the length of  
50 time the employee has been employed as a regular full-time certified and/or licensed professional  
51 educator by the county board of education and shall be granted in all areas that the employee is  
52 certified, licensed or both.

53 (h) If two or more employees with the same certification establish an identical seniority date  
54 as a result of initial employment as a regular teacher on or after July 1, 2019, the priority between  
55 these employees shall be determined by a random selection system established by the  
56 employees and approved by the county board. A board shall conduct the random selection within  
57 30 days of the time the employees with the same certification establish an identical seniority date.  
58 All employees with an identical seniority date and the same certification shall participate in the  
59 random selection. As long as the affected employees hold the identical seniority date within a  
60 certification, the initial random selection conducted by the board shall be permanent for the  
61 duration of the employment of the employees by the board.

62 (i) Upon completion of 133 days of employment in any one school year, substitute  
63 teachers, except retired teachers and other retired professional educators employed as

64 substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a  
65 permanent, full-time professional employee. One hundred thirty-three days or more of said  
66 employment shall be prorated and shall vest as a fraction of the school year worked by the  
67 permanent, full-time teacher.

68 (j) Guidance counselors and all other professional employees, as defined in §18A-1-1 of  
69 this code, except classroom teachers, shall gain seniority in their nonteaching area of professional  
70 employment on the basis of the length of time the employee has been employed by the county  
71 board of education in that area: *Provided*, That if an employee is certified as a classroom teacher,  
72 the employee accrues classroom teaching seniority for the time that employee is employed in  
73 another professional area. For the purposes of accruing seniority under this subsection,  
74 employment as principal, supervisor or central office administrator, as defined in §18A-1-1 of this  
75 code, shall be considered one area of employment.

76 (k) Employment for a full employment term equals one year of seniority, but an employee  
77 may not accrue more than one year of seniority during any given fiscal year. Employment for less  
78 than the full employment term shall be prorated.

79 (l) All decisions on reductions in force shall be based on qualifications as set forth in a  
80 county board policy. Furthermore, for the purposes of this subsection and subsections (m) through  
81 (t), inclusive, of this section, the word "qualifications" means the qualifications set forth in county  
82 board policy and only means qualifications set forth in subsection (b) of this section to the extent  
83 those qualifications are set forth in county board policy: *Provided*, That in defining the word  
84 "qualifications" in its policy, the county board:

85 (1) Shall consider including the following criteria:

86 (A) Seniority;

87 (B) Appropriate certification, licensure, or both;

88 (C) Amount of experience relevant to the position or, in the case of a classroom teaching  
89 position, the amount of teaching experience in the required certification area;

90 (D) The amount of course work, degree level, or both in the relevant field and degree level  
91 generally;

92 (E) Academic achievement;

93 (F) In the case of a principal or classroom teaching position, certification by the National  
94 Board for Professional Teaching Standards;

95 (G) Specialized training relevant to performing the duties of the job;

96 (H) Past performance evaluations conducted pursuant to §18A-2-12 and §18A-3C-2 of this  
97 code or, in the case of a classroom teacher, past evaluations of the applicant's performance in the  
98 teaching profession;

99 (I) Other measures or indicators upon which the relative qualifications of the applicant may  
100 fairly be judged;

101 (J) In the case of transfer or recall to a classroom teaching position, the recommendation of  
102 the principal of the school at which the applicant will be performing a majority of his or her duties;  
103 and

104 (K) In the case of transfer or recall to a classroom teaching position, the recommendation,  
105 if any, resulting from the process established pursuant to the provisions of §18-5A-5 of this code by  
106 the faculty senate of the school at which the employee will be performing a majority of his or her  
107 duties;

108 (2) Shall consider other criteria set forth in subdivision (1) of this subsection to the extent  
109 they are included in the county board policy only after considering personnel whose last  
110 performance evaluation conducted pursuant to §18A-2-12 or §18A-3C-2 of this code, as  
111 applicable, is less than satisfactory; and

112 (3) May not include salary as one of the criteria in the definition.

113 (m) Whenever a county board the state board notifies a county board that the state board  
114 pursuant to its authority in §18A-4-23 of this code is eliminating one or more professional  
115 personnel positions the county board is required to reduce the number of professional personnel in

116 its employment, the selection of the employee to be properly notified and released from  
117 employment pursuant to the provisions of ~~section two, article two of this chapter~~ §18A-2-2 shall be  
118 based upon seniority, certification, licensure and performance evaluations. The provisions of this  
119 subsection are subject to the following:

120 (1) In the event of ~~the state board eliminates professional personnel positions pursuant to~~  
121 its authority in §18A-4-23 of this code resulting in a reduction in force a in a county school district,  
122 the county board of education may properly notify and release from employment pursuant to ~~the~~  
123 provisions of section two, article two of this chapter §18A-2-2 of this code any classroom teacher  
124 with unsatisfactory evaluations for the previous two consecutive years regardless of years of  
125 service instead of release from employment of less senior classroom teachers with satisfactory  
126 performance evaluations;

127 (2) All persons employed in a certification area to be reduced who are employed under a  
128 temporary permit shall be properly notified and released before a fully certified employee in such a  
129 position is subject to release;

130 (3) Notwithstanding any provision of this code to the contrary, for any vacancy in an  
131 established, existing or newly created position that, on or before March 1, is known to exist for the  
132 ensuing school year, upon recommendation of the superintendent, the board shall appoint the  
133 successful applicant from among all qualified applicants. All employees subject to release shall be  
134 considered applicants for the positions for which they are qualified and shall be considered before  
135 posting such vacancies for application by nonemployees;

136 (4) An employee subject to release shall be employed in any other professional position  
137 where the employee is certified and was previously employed or to any lateral area for which the  
138 employee is certified, licensed or both, if the employees seniority is greater than the seniority of  
139 any other employee in that area of certification, licensure or both;

140 (5) If an employee subject to release holds certification, licensure or both in more than one  
141 lateral area and if the employees seniority is greater than the seniority of any other employee in

142 one or more of those areas of certification, licensure or both, the employee subject to release shall  
143 be employed in the professional position held by the employee with the least seniority in any of  
144 those areas of certification, licensure or both; and

145 (6) If, prior to August 1 of the year, a reduction in force is approved, the reason for any  
146 particular reduction in force no longer exists as determined by the ~~county~~ state board in its sole  
147 and exclusive judgment, the state board shall rescind the reduction in force or transfer and the  
148 county board shall notify the released employee in writing of his or her right to be restored to his or  
149 her position of employment. Within five days of being so notified, the released employee shall  
150 notify the board, in writing, of his or her intent to resume his or her position of employment or the  
151 right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there  
152 is another employee on the preferred recall list with proper certification and higher seniority, that  
153 person shall be placed in the position restored as a result of the reduction in force being rescinded.

154 (n) For the purpose of this article, all positions which meet the definition of "classroom  
155 teacher" as defined in §18A-1-1 of this code shall be lateral positions. For all other professional  
156 positions, the county board of education shall adopt a policy by October 31, 1993, and may modify  
157 the policy thereafter as necessary, which defines which positions shall be lateral positions. In  
158 adopting the policy, the board may give consideration to the rank of each position in terms of title;  
159 nature of responsibilities; salary level; and certification, licensure or both; along with the days in  
160 the period of employment.

161 (o) All professional personnel whose lesser qualifications, as determined by county board  
162 policy, with the county board is insufficient to allow their retention by the county board during a  
163 reduction in workforce shall be placed upon a preferred recall list. As to any professional position  
164 opening within the area where they had previously been employed or to any lateral area for which  
165 they have certification, licensure or both, the employee shall be recalled on the basis of  
166 qualifications if no regular, full-time professional personnel, or those returning from leaves of  
167 absence with greater qualifications apply for and accept the position.

168 (p) The board shall annually notify professional personnel on the preferred list of the job  
169 application procedures and any websites used to advertise vacancies. The notice shall be sent by  
170 certified mail via the U.S. Postal Service to the last known address of the employee, and it shall be  
171 the duty of each professional person to notify the board of continued availability annually of any  
172 change in address, or of any change in certification, licensure or both.

173 (q) Openings in established, existing or newly created positions shall be processed as  
174 follows:

175 (1) Boards shall be required to post and date notices of each opening at least once. At their  
176 discretion, boards may post an opening for a position other than classroom teacher more than  
177 once in order to attract more qualified applicants. At their discretion, boards may repost an  
178 opening for a classroom teacher after the first posting in order to attract more qualified applicants  
179 subject to the following:

180 (A) Each notice shall be posted in conspicuous working places for all professional  
181 personnel to observe for at least five working days which may include any website maintained by  
182 the county board;

183 (B) At least one notice shall be posted within 20 working days of the position openings and  
184 shall include the job description;

185 (C) Any special criteria or skills that are required by the position shall be specifically stated  
186 in the job description and directly related to the performance of the job;

187 (D) Postings for vacancies made pursuant to this section shall be written so as to ensure  
188 that the largest possible pool of qualified applicants may apply; and

189 (E) Job postings may not require criteria which are not necessary for the successful  
190 performance of the job and may not be written with the intent to favor a specific applicant;

191 (2) No vacancy may be filled until after the five-day minimum posting period of the most  
192 recent posted notice of the vacancy;

193 (3) If one or more applicants under all the postings for a vacancy meets the qualifications  
194 listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board  
195 within 30 working days of the end of the first posting period;

196 (4) A position held by a teacher who is certified, licensed or both, who has been issued a  
197 permit for full-time employment and is working toward certification in the permit area shall not be  
198 subject to posting if the certificate is awarded within five years; and

199 (5) Nothing provided herein may prevent the county board of education from eliminating a  
200 position due to lack of need.

201 (r) Notwithstanding any other provision of the code to the contrary, where the total number  
202 of classroom teaching positions in an elementary school does not increase from one school year  
203 to the next, but there exists in that school a need to realign the number of teachers in one or more  
204 grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels  
205 for which they are certified without that position being posted: *Provided*, That the employee and  
206 the county board mutually agree to the reassignment.

207 (s) Reductions in classroom teaching positions in elementary schools shall be determined  
208 pursuant to the considerations set forth in county board policy and processed as follows:

209 (1) When the total number of classroom teaching positions in an elementary school needs  
210 to be reduced, the reduction shall be made on the basis of qualifications with the least qualified  
211 classroom teacher being recommended for transfer; and

212 (2) When a specified grade level needs to be reduced and the least qualified employee in  
213 the school is not in that grade level, the least qualified classroom teacher in the grade level that  
214 needs to be reduced shall be reassigned to the position made vacant by the transfer of the least  
215 qualified classroom teacher in the school without that position being posted: *Provided*, That the  
216 employee is certified, licensed or both and agrees to the reassignment.

217 (t) Any board failing to comply with the provisions of this article may be compelled to do so  
218 by mandamus and shall be liable to any party prevailing against the board for court costs and

219 reasonable attorney fees as determined and established by the court. Further, employees denied  
 220 promotion or employment in violation of this section shall be awarded the job, pay and any  
 221 applicable benefits retroactive to the date of the violation and payable entirely from local funds.  
 222 Further, the board shall be liable to any party prevailing against the board for any court reporter  
 223 costs including copies of transcripts.

224 (u) Notwithstanding any other provision of this code to the contrary, upon recommendation  
 225 of the principal and approval by the classroom teacher and county board, a classroom teacher  
 226 assigned to the school may at any time be assigned to a new or existing classroom teacher  
 227 position at the school without the position being posted.

228 (v) All personnel in a public charter school shall continue to accrue seniority in the same  
 229 manner that they would accrue seniority if employed in a noncharter public school in the county for  
 230 the purpose of employment in noncharter public schools.

**§18A-4-8b. Seniority rights for school service personnel.**

1 (a) A county board shall make decisions affecting promotions and the filling of any service  
 2 personnel positions of employment or jobs occurring throughout the school year that are to be  
 3 performed by service personnel as provided in section eight of this article, on the basis of seniority,  
 4 qualifications and evaluation of past service.

5 (b) Qualifications means the applicant holds a classification title in his or her category of  
 6 employment as provided in this section and is given first opportunity for promotion and filling  
 7 vacancies. Other employees then shall be considered and shall qualify by meeting the definition of  
 8 the job title that relates to the promotion or vacancy, as defined in section eight of this article. If  
 9 requested by the employee, the county board shall show valid cause why a service person with the  
 10 most seniority is not promoted or employed in the position for which he or she applies. Qualified  
 11 applicants shall be considered in the following order:

12 (1) Regularly employed service personnel who hold a classification title within the  
 13 classification category of the vacancy;

14 (2) Service personnel who have held a classification title within the classification category  
15 of the vacancy whose employment has been discontinued in accordance with this section;

16 (3) Regularly employed service personnel who do not hold a classification title within the  
17 classification category of vacancy;

18 (4) Service personnel who have not held a classification title within the classification  
19 category of the vacancy and whose employment has been discontinued in accordance with this  
20 section;

21 (5) Substitute service personnel who hold a classification title within the classification  
22 category of the vacancy;

23 (6) Substitute service personnel who do not hold a classification title within the  
24 classification category of the vacancy; and

25 (7) New service personnel.

26 (c) The county board may not prohibit a service person from retaining or continuing his or  
27 her employment in any positions or jobs held prior to the effective date of this section and  
28 thereafter.

29 (d) A promotion means any change in employment that the service person considers to  
30 improve his or her working circumstance within the classification category of employment.

31 (1) A promotion includes a transfer to another classification category or place of  
32 employment if the position is not filled by an employee who holds a title within that classification  
33 category of employment.

34 (2) Each class title listed in section eight of this article is considered a separate  
35 classification category of employment for service personnel, except for those class titles having  
36 Roman numeral designations, which are considered a single classification of employment:

37 (A) The cafeteria manager class title is included in the same classification category as  
38 cooks;

39 (B) The executive secretary class title is included in the same classification category as

40 secretaries;

41 (C) Paraprofessional, autism mentor, early classroom assistant teacher and braille or sign  
42 support specialist class titles are included in the same classification category as aides; and

43 (D) The mechanic assistant and chief mechanic class titles are included in the same  
44 classification category as mechanics.

45 (3) The assignment of an aide to a particular position within a school is based on seniority  
46 within the aide classification category if the aide is qualified for the position.

47 (4) Assignment of a custodian to work shifts in a school or work site is based on seniority  
48 within the custodian classification category.

49 (e) For purposes of determining seniority under this section a service persons seniority  
50 begins on the date that he or she enters into the assigned duties.

51 (f) *Extra-duty assignments.* --

52 (1) For the purpose of this section, "extra-duty assignment" means an irregular job that  
53 occurs periodically or occasionally such as, but not limited to, field trips, athletic events, proms,  
54 banquets and band festival trips.

55 (2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting  
56 service personnel with respect to extra-duty assignments are made in the following manner:

57 (A) A service person with the greatest length of service time in a particular category of  
58 employment is given priority in accepting extra duty assignments, followed by other fellow  
59 employees on a rotating basis according to the length of their service time until all employees have  
60 had an opportunity to perform similar assignments. The cycle then is repeated.

61 (B) An alternative procedure for making extra-duty assignments within a particular  
62 classification category of employment may be used if the alternative procedure is approved both  
63 by the county board and by an affirmative vote of two-thirds of the employees within that  
64 classification category of employment.

65 (g) County boards shall post and date notices of all job vacancies of existing or newly

66 created positions in conspicuous places for all school service personnel to observe for at least five  
67 working days.

68 (1) Posting locations include any website maintained by or available for the use of the  
69 county board.

70 (2) Notice of a job vacancy shall include the job description, the period of employment, the  
71 work site, the starting and ending time of the daily shift, the amount of pay and any benefits and  
72 other information that is helpful to prospective applicants to understand the particulars of the job.  
73 The notice of a job vacancy in the aide classification categories shall include the program or  
74 primary assignment of the position. Job postings for vacancies made pursuant to this section shall  
75 be written to ensure that the largest possible pool of qualified applicants may apply. Job postings  
76 may not require criteria which are not necessary for the successful performance of the job and  
77 may not be written with the intent to favor a specific applicant.

78 (3) All vacancies in existing or newly created positions shall be filled within twenty working  
79 days from the closing date of the job posting for the position.

80 (4) The county board shall notify the successful applicant as soon as possible after the  
81 county board makes a hiring decision regarding the posted position.

82 (h) All After notification by the state board of the elimination of service personnel positions  
83 pursuant to §18A-4-23 of this code, decisions by county boards concerning reduction in work force  
84 of service personnel shall be made on the basis of seniority, as provided in this section.

85 (i) The seniority of a service person is determined on the basis of the length of time the  
86 employee has been employed by the county board within a particular job classification. For the  
87 purpose of establishing seniority for a preferred recall list as provided in this section, a service  
88 person who has been employed in one or more classifications retains the seniority accrued in each  
89 previous classification.

90 (j) If the state board eliminates service personnel positions in a county school district  
91 pursuant to §18A-4-23 of this code and as a result a county board is required to reduce the number

92 of service personnel within a particular job classification, the following conditions apply:

93 (1) The employee with the least amount of seniority within that classification or grades of  
94 classification is properly released and employed in a different grade of that classification if there is  
95 a job vacancy;

96 (2) If there is no job vacancy for employment within that classification or grades of  
97 classification, the service person is employed in any other job classification which he or she  
98 previously held with the county board if there is a vacancy and retains any seniority accrued in the  
99 job classification or grade of classification.

100 (k) After the state board eliminates service personnel positions and a reduction in force or  
101 transfer is approved, but prior to August 1, ~~a county board~~ the state board in its sole and exclusive  
102 judgment may determine that the reason for any particular reduction in force or transfer no longer  
103 exists.

104 (1) If the state board makes ~~this determination, it~~ and notifies the county board of this  
105 determination, the county board shall rescind the reduction in force or transfer and the county  
106 board shall notify the affected employee in writing of the right to be restored to his or her former  
107 position of employment.

108 (2) The affected employee shall notify the county board of his or her intent to return to the  
109 former position of employment within five days of being notified or lose the right to be restored to  
110 the former position.

111 (3) The county board may not rescind the reduction in force of an employee until all service  
112 personnel with more seniority in the classification category on the preferred recall list have been  
113 offered the opportunity for recall to regular employment as provided in this section.

114 (4) If there are insufficient vacant positions to permit reemployment of all more senior  
115 employees on the preferred recall list within the classification category of the service person who  
116 was subject to reduction in force, the position of the released service person shall be posted and  
117 filled in accordance with this section.

118 (l) If two or more service persons accumulate identical seniority, the priority is determined  
119 by a random selection system established by the employees and approved by the county board.

120 (m) All service personnel whose seniority with the county board is insufficient to allow their  
121 retention by the county board during a reduction in work force are placed upon a preferred recall  
122 list and shall be recalled to employment by the county board on the basis of seniority.

123 (n) A service person placed upon the preferred recall list shall be recalled to any position  
124 openings by the county board within the classification(s) where he or she had previously been  
125 employed, to any lateral position for which the service person is qualified or to a lateral area for  
126 which a service person has certification and/or licensure.

127 (o) A service person on the preferred recall list does not forfeit the right to recall by the  
128 county board if compelling reasons require him or her to refuse an offer of reemployment by the  
129 county board.

130 (p) The county board shall notify all service personnel on the preferred recall list of all  
131 position openings that exist from time to time. The notification shall be sent annually, with written  
132 receipt notification documented by the superintendent, and shall list instructions to access job  
133 postings on any website maintained by or available for the use of the county board.

134 (q) A position opening may be filled by the county board, whether temporary or permanent,  
135 until all service personnel on the preferred recall list have been properly notified of existing  
136 vacancies and have been given an opportunity to accept reemployment.

137 (r) A service person released from employment for lack of need as provided in sections six  
138 and eight-a, article two of this chapter is accorded preferred recall status on July 1 of the  
139 succeeding school year if he or she has not been reemployed as a regular employee.

140 (s) A county board failing to comply with the provisions of this article may be compelled to  
141 do so by mandamus and is liable to any party prevailing against the board for court costs and the  
142 prevailing party's reasonable attorney fee, as determined and established by the court.

143 (1) A service person denied promotion or employment in violation of this section shall be

144 awarded the job, pay and any applicable benefits retroactively to the date of the violation and shall  
145 be paid entirely from local funds.

146 (2) The county board is liable to any party prevailing against the board for any court  
147 reporter costs including copies of transcripts.

**§18A-4-23. Transferring responsibility for eliminating school personnel positions due to lack of need to the West Virginia Board of Education.**

1 (a) Beginning with the decisions on eliminating or reducing the number of school personnel  
2 positions due to lack of need being made for the 2026-2027 school year and all school years  
3 thereafter, the responsibility for making determinations on eliminating a position or any number of  
4 positions due to lack of need for all county school districts is transferred from the county boards of  
5 those districts to the state board. This authority only extends to eliminating a position or positions  
6 and not the individual school employee or employees filling those positions. Any transfers or  
7 dismissals of the individual school personnel that are employed in those eliminated positions and  
8 necessary due to seniority and other factors remains the responsibility of the county board. In  
9 implementing any transfers or dismissals necessary due to the state board's elimination of a  
10 position or positions due to lack of need, the county board shall continue to abide by §18A-2-2,  
11 §18A-2-7, §18A-4-7a, §18A-4-8b, and any other applicable section of code.

12 (b) In determining whether elimination of positions due to lack of need is necessary, the  
13 state board shall consider whether and by how many positions the county school district has  
14 employed personnel over the numbers that are included in the foundation allowance for  
15 professional educators in accordance with the ratios in §18A-9A-4 of this code and the number  
16 included in the foundation allowance for service personnel in accordance with the ratios in §18-9A-  
17 5 of this code.

18 (c) For any positions that are over the numbers included in the foundation allowance for  
19 professional educators and the foundation allowance for service personnel, the county board shall  
20 provide information on the source of the additional funds to pay for those additional positions.

21 (d) If the state board determines that elimination of a position or positions in a school  
22 district is necessary due to lack of need:

23 (1) It shall consider class sizes, the length of bus routes, input from the school district, and  
24 any other relevant factors when deciding which positions need to be eliminated; and

25 (2) It shall notify the county board of any terminated positions early enough for the board to  
26 meet all personnel related statutory deadlines.

NOTE: The purpose of this bill is to transfer the responsibility for making determinations on eliminating school personnel positions due to lack of need for all county school districts from the county boards of those districts to the West Virginia Board of Education.

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