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## HIGHLIGHTS OF LEGISLATION ENACTED AT THE 2013 REGULAR SESSION AFFECTING PUBLIC EDUCATION

By the Education Law Group at Bowles Rice LLP

### **Senate Bill 80** **Including Substitute Teaching in Job** **Duties of Certain Professional Educators**

*In effect July 1, 2013*  
[Read the Entire Bill](#)

With the enactment of Senate Bill 80, certain professional educators now have the obligation to substitute teach on at least three instructional days each school year, provided that they have ever held a teaching or administrative certificate. The affected professional educators are (1) associate superintendents, assistant superintendents and other central office administrators who, regardless of job title, administer and supervise the whole or some part of the school system's program; (2) supervisors and others who, regardless of job title, are responsible for working primarily in the field with professional and other personnel in instructional and other school improvement; and (3) other general and special supervisors or directors of instruction and other educational activities. County superintendents are exempt from the requirement. W. Va. Code § 18-5-32(b).

### **Senate Bill 336** **Interscholastic Athletics** **Concussions and Head Injuries**

*In effect July 12, 2013*  
[Read the Entire Bill](#)

Senate Bill 336 requires the West Virginia Secondary School Activities Commission to adopt rules addressing concussions and head injuries in athletes who participate in interscholastic athletics at WVSSAC-member middle and high schools. The rules must (1) contain guidelines and information to educate administrators, coaches, athletes and parents of the nature and risk of concussion and head injury; (2) establish an information sheet to be annually signed by the athlete and parent or guardian as a condition to beginning practice or competition; (3) make each head coach annually attend an approved course on concussion and head injury recognition and return-to-play protocol; (4) require the immediate removal from competition of an athlete who is suspected by his or her head coach, athletic trainer or a licensed health care professional of having sustained a concussion or head injury; (5) allow the athlete's return to play



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or practice only with written clearance from a licensed health care professional trained in the evaluation and management of concussions; (6) specify categories of licensed health care professionals who, if properly trained, may provide the written clearance; and (7) require all member schools to timely report information to the WVSSAC about each athlete suffering or suspected of suffering a concussion or head injury in a practice or game, including the date the athlete returned to play or practice. *W. Va. Code § 18-2-25a.*

## **Senate Bill 355**

### **Final Wage Payment to Discharged Employees**

*In effect July 12, 2013*

[Read the Entire Bill](#)

Under the Wage Payment and Collection Act, if an employer discharges an employee, the employer must pay the employee's wages in full within a specified time. In place of a requirement that the payment be made within 72 hours of discharge, Senate Bill 355 mandates that the payment be made no later than the next regular payday or four business days, whichever comes first. The discharged employee may request that payment be made by mail. *W. Va. Code § 21-5-4(b).*

## **Senate Bill 359**

### **Reforming Public Education**

*In effect June 20, 2013*

[Read the Entire Bill](#)

This 147-page education reform bill is far reaching and bound to affect West Virginia public education in myriad ways. Its most significant provisions are summarized here. Readers are advised to consult the bill itself to apprise themselves of all the school statutes repealed, amended and enacted by Senate Bill 359.

#### *Alternative Teacher Certification Programs*

The State Board of Education is directed to study alternative certification programs and report its findings and recommendations to the Legislative Oversight Commission on Education Accountability no later than December 31, 2013.

The study will include the effectiveness of current methods of alternative certification, any needed improvements, and potential additional methods of certification that would enhance the placement of effective teachers in subject areas, schools or areas of West Virginia where critical teacher shortages exist. *W. Va. Code § 18A-3-1d.*

#### *College and Career Readiness Initiative*

Before the 2014-2015 school year, the State Board of Education, Higher Education Policy Commission and Council for Community and Technical College Education must jointly develop college- and career-readiness standards for English/language arts and math. Linked to state content standards and based on skills and competencies rather than high school course titles, the standards will be used to determine whether a student needs to enroll in a post-secondary remedial course. By December 31, 2013, the State Board must develop a plan to unify the standards for a high school diploma uniform with the college- and career-readiness standards. The statewide assessment program or end-of-course exams will be used to determine whether eleventh graders have met the college- and career-readiness standards. Those who do not meet the standards will, in twelfth grade, be required to take a transitional course in English/language arts and/or math, as applicable, to be developed by the State Board. The American College Testing Program's Computerized Adaptive Placement Assessment and Support System (COMPASS) or another assessment designated by the State Board will be used to determine whether a student who completes the transitional course meets the college- and career-readiness standards. *W. Va. Code § 18-2-39(b),(c),(d),(e).*

All state institutions of higher education may use no factor other than the eleventh grade assessment program or exams, and the COMPASS or other designated assessment administered after the twelfth grade transitional course, to determine whether public high school students who graduate during or after the 2016-2017 school year must enroll in a post-secondary remedial course or be placed in a college-level introductory course. *W. Va. Code § 18-2-39(f).*



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All schools and school districts will be held accountable for helping students in earlier grade levels achieve math and English/language test scores that predict success in subsequent levels of related coursework. All high schools and school districts will be held accountable for increasing the percentages of students who meet the college- and career-readiness standards. The State Board will either align the comprehensive statewide student assessment with the college- and career-readiness standards, or it will develop aligned tests at each grade level to measure progress toward the standards. *W. Va. Code § 18-2-39(g)*.

## *Early Childhood Education*

Beginning no later than the 2016-2017 school year, each county must make voluntary five-day full-day early childhood education programs available to all children who reach age four prior to September 1 of the year in which the pupil enters the program. Based on family need, the program may be for fewer than five days per week and less than full-day if a sufficient number of families request shorter programs and the county board finds that such programs are in the best interest of the requesting families and students. However, the ability of families to request programs that are fewer than five days a week or less than full-day does not relieve the county of the obligation to provide all resident children with the opportunity to enroll in a full-day program. A parent may withdraw a child from the program for good cause, including, but not limited to, the child's enrollment in another program or the child's immaturity. A child who is withdrawn for cause is not subject to the compulsory school attendance laws until the child again enrolls in a West Virginia public school. *W. Va. Code § 18-5-44(c), (d)*.

## *Employee Reassignment*

Regardless of the provisions of any other section of the West Virginia Code, upon recommendation of the principal and approval by a classroom teacher and the county board, a classroom teacher assigned to the school may, at any time, be assigned to a new or existing classroom teacher position at the school without the position being posted. The State Board of Education must adopt rules to implement and interpret

this and the other provisions of W. Va. Code § 18A-4-7a. *See W. Va. Code § 18A-4-7a(u), (v)*.

Also, regardless of the provisions of any other section of the West Virginia Code, when actual student enrollment in a grade level or program, unforeseen before March 1 of the preceding school year, permits the assignment of fewer teachers or service personnel to or within a school under any pupil-teacher ratio, class size or caseload standard established in W. Va. Code § 18-5-18a or any State Board of Education policy, the county superintendent, with county board approval, may reassign the surplus personnel to another school, or to another grade level or program within the school, if needed to comply with any such pupil-teacher ratio, class size or caseload standard. The professional or service employee so reassigned must be the least senior of the surplus professional or service personnel, as the case may be, who holds certification or licensure, or the classification or multi-classification, needed to perform the duties at the other school or at the grade level or program within the same school. In the case of such a reassignment, the employee is entitled to advance notice and an opportunity to appear before the county board to object. All reassignments under this paragraph must occur on or before the last day of the second school month. No school employee's annual contract term, compensation or benefits may be changed because of such a reassignment. *W. Va. Code § 18A-2-7(e)*.

## *Faculty Senate Meetings*

In addition to a two-hour block of time for faculty senate meetings on a day prior to the beginning of the instructional term, a county board must provide at least four additional two-hour blocks of time for faculty senate meetings during non-instructional days, to be scheduled once at least every 45 instructional days. *W. Va. Code § 18A-5A-5(b)(12)*.

## *Filling Vacancies in Professional Positions of Employment*

County boards continue to have the obligation to select the most qualified applicants for positions of professional employment. However, Senate Bill 359 changes some of the rules that apply





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in selecting the most qualified candidate.

In place of the two “seven-factor” measures of qualifications that boards have for many years been required to use to compare applicants’ qualifications, the bill identifies eleven criteria that must be considered in filling all professional positions other than superintendent of schools. They are: (1) appropriate certification, licensure or both; (2) amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the required certification area; (3) the amount of course work, degree level or both in the relevant field and degree level generally; (4) academic achievement; (5) in the case of a classroom teaching position or the position of principal, certification by the National Board for Professional Teaching Standards; (6) specialized training relevant to the performance of the duties of the job; (7) past performance evaluations conducted pursuant to W. Va. Code § 18A-2-12 and W. Va. Code § 18A-3C-2 or, in the case of a classroom teacher, past evaluations of the applicant’s performance in the teaching profession; (8) seniority; (9) other measures or indicators upon which the relative qualifications of the applicant may fairly be judged; (10) in the case of a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and (11) in the case of a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to the provisions of W. Va. Code § 18-5A-5 by the faculty senate of the school at which the employee will be performing a majority of his or her duties. *W. Va. Code § 18A-4-7a(b)*.

The principal must be given the opportunity to interview all qualified applicants in order to make a recommendation. However, the principal is prohibited from recommending for employment an individual who is related to him or her as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister. *W. Va. Code § 18A-2-1(a)(2)*.

Any process established by a faculty senate to make recommendations under the eleventh criterion must be one that allows members to interview or otherwise obtain information regarding applicants for classroom teaching vacancies so that the faculty senate can submit its recommendations to the principal. The State Board must adopt a rule to implement this process. The rule may include a process or alternative process that a faculty senate may adopt; a requirement and process to train principals and faculty senate members to participate in interviews, if considered necessary, including provisions that may compensate a teacher, at the teacher’s daily rate, for participating in the training; time lines to assure timely completion of the recommendation; forfeiture of the right to make a recommendation if a recommendation is not made within a reasonable time; and authority for the faculty senate to delegate the recommendation process to a committee of at least three of its members. *W. Va. Code § 18A-5A-5(b)(2)*.

Recommendations under the tenth and eleventh criteria must be made based on a determination of the most qualified candidate. However, neither the principal nor the faculty senate process is required to assign any amount of weight to any factor in making a recommendation. *W. Va. Code § 18A-4-7a(f)*.

If one or more permanently employed instructional personnel apply for a classroom teaching vacancy and meet the standards in the job posting, each of the 11 criteria must be given equal weight in determining the successful candidate, except that the tenth and eleventh criteria shall each be double-weighted. In all other instances, a county board is entitled to determine the appropriate weight to apply to each criterion when assessing an applicant’s qualifications. *W. Va. Code § 18A-4-7a(c)*.

In the case of classroom teaching vacancies, if the recommendations of the principal and faculty senate process under the tenth and eleventh criteria are the same, then if the superintendent concurs, the county board must appoint that applicant. *W. Va. Code § 18A-4-7a(d)*.

The State Board of Education must adopt rules to implement



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and interpret these and the other provisions of W. Va. Code § 18A-4-7a. The rules may require compensation for a classroom teacher who directly participates in making recommendations under the eleventh criterion, with the compensation based on the appropriate daily rate. *W. Va. Code § 18A-4-7a(e).*

The new vacancy filling requirements are effective for school years beginning on or after July 1, 2013. *W. Va. Code § 18A-4-7a(v).*

## *Kindergarten Programs*

Any person previously employed as an Aide in a kindergarten program and who is employed in the same capacity on and after July 1, 2014, and any new person employed in that capacity in a kindergarten program on and after July 1, 2014, must hold one of three class titles that will be compensated at pay grade E: (1) Early Childhood Classroom Assistant Teacher - Temporary Authorization, (2) Early Childhood Classroom Assistant Teacher - Permanent Authorization, or (3) Early Childhood Classroom Assistant Teacher - Paraprofessional Certificate. An exception is made for any person employed as an Aide in a kindergarten program who is eligible for full retirement benefits before July 1, 2020. *W. Va. Code §§ 18-5-18(b); 18A-4-8(87),(88),(89); 18A-4-8a(a)(2).*

## *Posting Vacancies in Professional Positions of Employment*

Under existing law, if at least one person applies to fill a posted professional vacancy and meets the minimum qualifications listed in the job posting, a county board must offer the job to the minimally qualified applicants before re-posting the vacancy in an effort to attract better-qualified applicants. Senate Bill 359 gives boards discretion to post openings in professional jobs (other than classroom teacher) more than once in order to attract more qualified applicants, even if qualified applicants applied under the initial posting. In the case of classroom teaching vacancies, boards have the discretion to post once after the first posting in order to attract more qualified applicants, but only if fewer than three people applied during the first posting. Regardless of the number of postings, if at least one applicant

under all the postings of a vacancy meets the qualifications listed in the posting, the successful applicant shall be appointed within 30 working days of the end of the first posting period. *W. Va. Code § 18A-4-7a(p).*

## *National Board Certified Teachers*

Teachers who hold valid renewal certificates issued by the National Board of Professional Teaching Standards will now be entitled to a \$3,500 annual bonus, paid by the state, for the life of the renewal certificate (not to exceed 10 years). Teachers who complete the renewal process will also be reimbursed for the renewal certification fee. *W. Va. Code § 18A-4-2a.*

## *Planning Periods*

The bill establishes new minimum lengths for the daily planning periods of those teachers who are entitled to planning periods. For teachers of grade levels where the majority of the student instruction is delivered by only one teacher, the planning period must be no less than 40 minutes. For teachers of grade levels where students take separate courses during at least four separate periods of instruction, usually delivered by different teachers for each subject, the planning period must be the length of the usual class period taught by the teacher, but no less than 40 minutes. *W. Va. Code § 18A-4-14(b)(1),(2).*

No later than December 31, 2013, the State Board of Education must deliver to the Legislative Oversight Commission on Education Accountability a study on planning periods. The study will include recommendations on the appropriate length of planning periods at the various grade levels and for different types of class schedules. *W. Va. Code § 18A-4-14(d).*

## *Professional Development*

Senate Bill 359 aims to establish clear state-level leadership for professional development for all public school educators and administrators. It requires the State Board of Education to institute a system for the coordination and delivery of high-quality professional development with clearly defined goals,



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delineated roles and responsibilities for the various professional development providers. The Legislature's goal is for professional development to occur outside of scheduled instructional time so student learning is not interrupted by classroom teacher absences. *W. Va. Code § 18-21-1,2.*

To those ends, the State Board is required annually to establish a master plan for professional development in the public schools, placing the highest priority on professional development that ensures high-quality teaching to support improved student achievement, enables students to meet the content standards, and prepares students for college and careers. In developing the plan, the State Board must review reports that may indicate a need for professional development, including reports from the Center for Professional Development, student test scores on the statewide student assessment program, the measures of student and school performance for accreditation purposes, and school and school district report cards. The master plan must include professional development for teachers of the new twelfth grade transitional courses in English/language arts and math, and for teachers in at least grades eight through twelve on how to teach the college- and career-readiness standards in those subjects. The plan must also include approved plans for the State Department of Education, the state institutions of higher education, and the regional educational service agencies to meet the professional development goals. In order to include teacher preparation institutions in the master plan's professional staff development program, the bill requires West Virginia University, Marshall University, and the Center for Professional Development to collaborate. *W. Va. Code §§ 18-2-24(d)(1); 18-2I-3.*

The completed master plan will be submitted to the State Department of Education, the Center for Professional Development, the regional educational service agencies, the Higher Education Policy Commission and the Legislative Oversight Commission on Education Accountability. Under rules to be adopted by the State Board, all stakeholders, including classroom teachers, must help identify needed professional development and delivery models. State institutions of higher education with teacher preparation programs will help develop

and implement the professional development programs. The rules will establish processes for evaluating the effectiveness, efficiency and impact of professional development, with the results reported annually to the Legislative Oversight Commission on Education Accountability. *W. Va. Code § 18-2I-3a.*

In order to provide staff development in schools and counties that need additional resources, the legislation creates the Strategic Staff Development Fund, to be administered by the State Board. *W. Va. Code § 18-2I-5.*

### *Reductions in Force of Professional Employees*

Regardless of the provisions of any other section of the West Virginia Code, all professional employees who are subject to release in a reduction in force must be considered applicants for any vacancy in an established, existing or newly created position that, on or before February 15, is known to exist for the ensuing school year, and for which they are qualified. Upon recommendation of the superintendent, the county board must appoint the successful applicant from among them before posting such vacancies for application by other persons. *W. Va. Code § 18A-4-7a(k)(2).*

The State Board of Education must adopt a rule to implement and interpret these and the other provisions of W. Va. Code § 18A-4-7a. *See W. Va. Code § 18A-4-7a(e).*

### *School Calendar*

Under Senate Bill 359, county boards are obligated to provide an instructional term for students of at least 180 separate days of actual instruction. An inclement weather and emergencies plan must be adopted to guarantee that 180 separate days of instruction are achieved. If 180 separate days of instruction cannot be achieved with the current school calendar, instruction must be scheduled on any available non-instructional day or an out-of-calendar day, but not on a holiday, election day or weekend day. The State Board of Education is authorized to grant a waiver to a county board for noncompliance with other provisions of the



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school statutes in order to reach 180 separate days of instruction in a year. *W. Va. Code § 18-5-45(a)(1)(B), (c)(2), (e), (o)*.

Senate Bill 359 removes from the statute provisions that arguably allowed the use of “accrued instructional time” to take the place of a separate day of instruction. Nevertheless, to recover time lost due to late arrivals and early dismissals, county boards must develop policies requiring additional minutes of instruction in the school day or additional days of instruction. Instructional time may no longer be used for approved extracurricular activities. *W. Va. Code § 18-5-45(a)(1), (d)*.

The instructional term for students must fall inside the employment term for employees. County boards must provide employees with an employment term that excludes Saturdays and Sundays and consists of at least 200 days (which need not be successive) that occur within a period of 48 weeks. Twenty non-instructional days of the 200-day employment term must consist of seven paid holidays, election day(s), and six days to be used by employees outside the school environment. (At least four of the outside the school environment days must be scheduled to occur after the 130th day of instruction as it appears on the school calendar.) The remaining non-instructional days must be designated by the county board to include, but not be limited to, curriculum development, preparation for opening and closing school, professional development, teacher-pupil conferences, professional meetings, making up days when instruction was scheduled but did not occur, two-hour blocks of time for the required faculty senate meetings, and scheduled out-of-calendar days to be used for instructional days in the event school is cancelled for any reason. Instructional support and enhancement days are no longer mentioned in the statute. *W. Va. Code § 18-5-45(c)*.

Time lost by school closings is not to be counted as days of employment or as meeting a part of the required 180 separate days of instruction. However, a school employee’s pay schedule is not to be changed because of a school closing. The employee must be paid the same amount for a pay period in which a school closing occurs as he or she would have been paid had it

not occurred. *W. Va. Code § 18A-5-2*.

The State Board of Education is prohibited from scheduling the primary statewide assessment program to occur more than 30 days before the end of the instructional year unless the State Board determines that the nature of the test requires an earlier testing date. *W. Va. Code § 18-5-45(g)*.

In formulating its calendar, a county board must hold at least two public meetings for interested parties to discuss the calendar, with advance notice published as a Class II legal advertisement. *W. Va. Code § 18-5-45(l)*.

**Special Note:** House Bill 3157 postponed until July 1, 2014, the effective date of the Senate Bill 359 amendments to *W. Va. Code § 18-5-45*. See *W. Va. Code § 18-5-45(q)*.

## *Special Community Development School Pilot Program*

In 2010, the Legislature directed the State Superintendent to establish a five-year special community development school pilot program in one public school that has significant enrollments of disadvantaged, minority and underachieving students. The school was to collaborate with higher education, community organizations and the State Board to develop and implement strategies that could be replicated in other public schools with similar enrollments. *W. Va. Code § 18-3-12*.

Senate Bill 359 amends the statute to require implementation of the pilot program in a neighborhood of at least five public schools that are located in an area of no more than seven square miles, including at least one elementary and middle school. It also adds the Center for Professional Development as one of the collaborating entities. *W. Va. Code § 18-3-12(a)*.

## *Statewide Assessment Program; School Accreditation and School System Approval*

Extensive revisions of *W. Va. Code § 18-2E-5* require the State Board of Education to adopt high-quality education standards in the areas of professional personnel attendance





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(including principals and central office administrators) and service personnel attendance; allow the State Board to have the West Virginia writing assessment administered at any grade level to measure student proficiencies; and remove provisions that limited the assessments and measures that can be used to determine whether a school or school system made adequate yearly progress for purposes of the No Child Left Behind Act. *W. Va. Code § 18-2E-5(c)(12), (d)(4)*.

The amendments to *W. Va. Code § 18-2E-5* free the State Board to establish annual performance measures for school and school system accreditation and a system of education performance audits without having to heed a long list of detailed requirements and restrictions imposed by the Legislature in prior years; eliminate provisions that absolutely barred the Office of Education Performance Audits from reviewing and inspecting aspects of a school that are reviewed and inspected or controlled by other agencies; remove a requirement that on-site reviews include a person from the State Department of Education or a public education agency; and dispense with the statute's categories of school accreditation (exemplary, distinction, full, temporary, conditional and low performing accreditation), leaving it to the State Board to establish new levels of school accreditation that minimize the number of state and federal systems of school recognition. *W. Va. Code § 18-2E-5(e), (k)(1)(F), (k)(7), (l)(1)*.

In Senate Bill 359 the Legislature acknowledges that the State Board, in the exercise of its constitutional powers, may (1) require a school to revise its electronic strategic plan, (2) define extraordinary circumstances that warrant State Board intervention in the operation of a school, (3) appoint monitors to work with the principal and staff of a school where extraordinary circumstances exist, and to assist the principal after the intervention in a school's operation ends, (4) direct a county board to target resources to assist a school where extraordinary circumstances exist, (5) intervene directly in a school's operation and replace the principal with one who serves at the will and pleasure of the State Board, and (6) exercise such other powers and actions that it determines necessary to fulfill its duties of general supervision of the schools and school systems. *W. Va. Code § 18-2E-5(l)(3)*.

The bill retains the statute's categories of school system approval (full, temporary and conditional approval, and nonapproval status), as well as the provisions and processes that apply at each level, including State Board intervention in school systems that receive nonapproval status and school systems in which the conditions precedent to intervention exist and other requirements are met. *W. Va. Code § 18-2E-5(m), (n)*.

## *Sections Repealed*

Senate Bill 359 repeals *W. Va. Code § 18-2-23a* ("Annual professional staff development goals established by State Board; coordination of professional development programs; program development; approval and evaluation"), *§ 18-2-32* ("Strategic staff development fund"), *§ 18-2E-5c* ("Process for Improving Education Council established; membership; expenses; meetings; powers"), *§ 18-21-6* ("Functions of the regional staff development councils"), *§ 18-21-7* ("Limitations on funding of councils"), *§ 18A-3A-2a* ("Development training project") and *§ 18A-3A-6* ("Attendance outside the employment term").

## *State Department of Education*

The State Superintendent is required to reduce by five percent in each of fiscal years 2014 and 2015 the amount budgeted for the Department's personnel services, related employee benefits and contractual expenditures related to employment. The reductions must be taken department wide, but excluding the school aid formula, institutionalized services to juveniles and adults, and other direct-service education expenditures. *W. Va. Code § 18-3-9b*.

## *State Superintendent of Schools*

In appointing a State Superintendent, the State Board of Education is no longer required to select a person "of recognized ability as a school administrator" who holds at least a master's degree in educational administration and has at least five years of experience in public school work. As before, the person must be of good moral character. Under Senate Bill 359 he or she must additionally be able to perform the duties of State





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Superintendent as listed in the West Virginia Code; possess such other education, administrative, experiential and other qualifications as the State Board determines; and hold at least a master's degree. Senate Bill 359 also removes the \$146,100 cap on the State Superintendent's annual salary, allowing the State Board to set the salary. *W. Va. Code § 18-3-1.*

### *Underwood-Smith Teacher Scholarship Program*

Starting with Underwood-Smith scholarships initially awarded for the fall semester, 2014, particular efforts will be made in the selection criteria and procedures to reflect West Virginia's critical need for teachers in certain subject and geographic areas. In addition to scholarships, the program will now award loan assistance to teachers and prospective teachers under conditions that include partial awards for less than a full year of teaching in an area of critical need. *W. Va. Code § 18C-4-1(a),(b).*

The Higher Education Student Financial Aid Advisory Board is designated to select recipients of scholarships and recipients of loan assistance awards. *W. Va. Code §§ 18C-4-2(a); 18C-4A-1.*

Loan assistance will be made only to a teacher who has earned a teaching degree and is certified to teach a subject area of critical need in West Virginia public schools. A certified teacher in a subject area of critical need who is enrolled in an advanced in-field degree course or who has earned an advanced in-field degree may apply for an award to be paid toward current education loans. To be eligible for a loan award, a teacher must agree to teach, or shall currently be teaching, a subject area of critical need in a public school or geographic area of the state that is identified as an area of critical need. *W. Va. Code § 18C-4-1.*

A loan recipient is eligible to receive loan assistance of up to \$2,000 annually if the recipient has taught math or science for a full school year under contract with a county board in a school or geographic area of critical need and has otherwise complied with the loan assistance agreement. The same standards govern a recipient's eligibility for renewal of loan assistance. A teacher who is teaching under a contract in a position that no longer

meets the definition of critical need is eligible for renewal of loan assistance until the teacher leaves his or her current position. Under the program, loan assistance awards are paid to the recipient's educational loan institution. A recipient may not receive cumulative loan assistance in excess of \$15,000. *W. Va. Code § 18C-4A-2,3.*

### *Vision 2020 Plan*

The State Board of Education is required by the bill to submit its plan for achieving the goals and objectives of "Vision 2020: An Education Blueprint for Two Thousand Twenty" to the Legislative Oversight Commission on Education Accountability instead of to the abolished Process for Improving Education Council. *W. Va. Code § 18-1-4(d).*

### **Senate Bill 421 Exempting Certain School Mascot from Prohibition of Firearms on School Grounds**

*In effect July 4, 2013*  
[Read the Entire Bill](#)

A new exception is made to the law that makes it a felony for any person to possess a firearm or other deadly weapon on or in school property. Beginning on the effective date of the bill, the official mascot of Parkersburg South High School, known as "The Patriot," may lawfully possess a firearm or other deadly weapon on school property, but only when acting in his or her official capacity. *W. Va. Code § 61-7-11a(b)(2)(F).*

### **Senate Bill 430 Defining "Employment Term" in Teachers' Defined Contribution Retirement System**

*In effect July 7, 2013*  
[Read the Entire Bill](#)

For purposes of the Teachers' Defined Contribution Retirement System, Senate Bill 430 defines "employment term" as employment for at least ten months in any plan year with a month being defined as 20 employment days. *W. Va. Code § 18-7B-2(8).*



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Senate Bill 430 also requires that when any change or employer error in the records of an existing employer or the retirement system results in a member, retirant or beneficiary receiving more or less than he or she is actually entitled to receive, the Consolidated Public Retirement Board must correct the error. If the correction occurs after retirement, the Retirement Board must adjust benefit payments to correct the error. Errors resulting in an underpayment of required contributions to the retirement system may be corrected by both the member or retirant and the existing employer remitting the required contribution, with interest. Erroneous overpayments of employer contributions must be corrected by crediting the employer with an appropriate amount, to be offset against the employer's future liability for contributions to the system. To correct erroneous overpayments of employee contributions, the Retirement Board may use any means authorized by the Internal Revenue Code or may require the existing employer to pay the employee the amounts as wages, in which case the employer must be credited with an amount to offset against its future contributions to the plan. *W. Va. Code § 18-7B-21.*

## **Senate Bill 431 Public Employer Liability for Delinquent Retirement Contributions**

*In effect July 7, 2013*  
[Read the Entire Bill](#)

A new section of the West Virginia Code addresses the liability of a public employer that participates in a public retirement system under the Consolidated Public Retirement Board but fails for 60 days to pay an employee or employer retirement contribution, a delinquency fee, or any other fees, charges or costs related to the public retirement system. Among other provisions for enforcing the liability, the legislation makes all debts owed to the Retirement Board a lien on all of the public employer's assets in West Virginia. If a debt is not paid within 60 days, the Retirement Board may enforce the lien by filing a lawsuit in the Circuit Court of Kanawha County. In the lawsuit, the Retirement Board is entitled to recover the amounts that are at least 60 days past due, plus interest, attorney fees, and all

other fees and costs incurred by the Retirement Board during the pendency of the lawsuit. *W. Va. Code § 5-10D-11(a),(d).*

Senate Bill 431 provides that if any part of the new law or its application to any person or circumstance is ruled to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the other parts of the statute or its other applications. *W. Va. Code § 5-10D-11(c).*

## **Senate Bill 601 Juvenile Offenders**

*In effect July 12, 2013*  
[Read the Entire Bill](#)

This legislation extends the circuit court's jurisdiction over juvenile status offenders who are adjudicated delinquent for habitual truancy. The jurisdiction lasts until the juvenile reaches the age of 21, completes high school, completes a high school equivalent or other education plan approved by the court, or the court voluntarily relinquishes jurisdiction, whichever occurs first. Until the court's jurisdiction under this provision ends, the court has the same power over the individual as it had before he or she became an adult except that once the individual reaches age 19, the court cannot order him or her to attend school in a regular, non-alternative setting. *W. Va. Code § 49-5-2(f)(2).*

## **Senate Bill 663 West Virginia Feed to Achieve Act**

*In effect April 13, 2013*  
[Read the Entire Bill](#)

Senate Bill 663 repeals the "school breakfast programs" statute, *W. Va. Code § 18-5-37*, that was adopted in 1981. In its place, the bill enacts the new West Virginia Feed to Achieve Act that contains numerous legislative findings regarding child nutrition and its effects. Under the Act, each county board must establish and operate school nutrition programs that effectively make a nutritious breakfast and lunch available to all students in accordance with State Board of Education standards. The standards determine eligibility for paid, free and reduced price meals. They also allow meals to be provided without cost to



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students in schools where it is practical to do so. The initiative will be phased in for all elementary schools as funds become available from donations and payments made by individuals, communities, businesses, organizations and parents or guardians. *W. Va. Code § 18-5D-2.*

By the 2015 school year, each county board must require all schools to adopt a delivery system, approved by the Office of Child Nutrition, to ensure that all students get an adequate opportunity to eat breakfast through systems such as Grab-and-Go Breakfasts, Breakfast in the Classroom and Breakfast After First Period. Collaborating with the state Office of Child Nutrition, county boards must develop ways to increase student participation in the school breakfast and lunch nutrition programs. If federal appropriations for school nutrition programs are terminated, county boards may, but are not required to, continue the programs at their own expense. Classroom teachers cannot be required to participate in the operation of the school breakfast program as part of their regular duties. *W. Va. Code § 18-5D-3.*

The State Department of Education and each county board must promptly establish a fund or nonprofit foundation solely to receive and spend gifts, grants and bequests to provide supplemental or matching funds to increase participation in the nutrition programs. The State Department's fund or foundation may assist county boards whose fund or foundation lacks sufficient business, industry and individual contributors to fund the Feed to Achieve programs. Expenditures from the state and county funds or foundations must be used to provide food to students through approved programs. The expenditures may also be used for initiatives of the Department of Health and Human Resources and public-private partnerships to provide outreach and nutritional meals when students are not in school. No administrative or personnel expenses may be paid from the funds or foundations. Contributors to the funds or foundations may specify schools or nutrition programs for which contributions will be used. The funds and foundations will be audited as part of the annual independent audits of these entities. *W. Va. Code § 18-5D-4.*

The State Department of Education and county boards are required to expand partnerships to develop community gardens, farm-to-school programs and other programs that teach students how to grow and produce healthy food and provide healthy food to students. The Department of Education must also collaborate with the Department of Health and Human Resources on strategies to improve the healthy lifestyle of all students in grades Pre K through 12. *W. Va. Code § 18-3D-4.*

## **House Bill 2357** **Sexting by Minors**

*In effect July 12, 2013*

[Read the Entire Bill](#)

Under House Bill 2357, it is an act of delinquency for a minor to intentionally possess, produce or distribute a self-image, or the image of another minor, exhibiting a bare female breast, female or male genitalia, pubic or rectal areas for purposes of sexual titillation. The offense includes images that are made, stored or distributed digitally. However, the offense of possession does not apply when a minor possesses a prohibited image that he or she neither solicited nor distributed. *W. Va. Code § 61-8C-3b.*

Before a juvenile petition is filed, or after probable cause has been found to believe a juvenile violated the sexting provision but before an adjudicatory hearing, the court or prosecuting attorney may direct or allow the minor to participate in an educational diversion program. A minor may also be referred to such a program at other stages of the process. The educational diversion program, to be developed by the West Virginia Supreme Court of Appeals, will cover issues such as the legal and non-legal consequences of sharing sexually suggestive or explicit materials, the long term and unforeseen consequences of sharing such materials, and the connection between bullying and the sharing by minors of such materials. A minor's successful completion of the program must be considered by the prosecutor and the court in deciding whether to abstain from filing a juvenile petition or dismiss a petition. *W. Va. Code § 49-5-13g.*





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## **House Bill 2470 Sign Support Specialist or an Educational Sign Language Interpreter in the Education of Exceptional Children**

*In effect July 1, 2013*  
[Read the Entire Bill](#)

This bill revises an existing service employee class title and creates three new titles. The class title of “Braille or Sign Language Specialist” is changed to “Braille Specialist.” Its definition is revised to reflect that an employee holding the title provides Braille, but not sign language assistance, to students. A new class title, “Sign Support Specialist,” means a person who provides sign supported speech assistance to students who are able to access environments through audition. A current or former Aide who becomes employed as a Sign Support Specialist must be multi-classified as an Aide/Sign Support Specialist. *W. Va. Code § 18A-4-8(i)(15),(84).*

The contracts of persons who on June 30, 2013, were classified as “Braille or Sign Language Specialist” are automatically revised to give them the class title of either Braille Specialist or Sign Support Specialist, with no loss of salary. They must be credited in their new class title with any seniority they earned holding the Braille or Sign Language Specialist class title. *W. Va. Code § 18A-4-8(s)(1).*

“Educational Sign Language Interpreter I” and “Educational Sign Language Interpreter II” are the other new class titles, paid at grades F and G, respectively. Both mean a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing. An Educational Sign Language Interpreter I holds the Initial Paraprofessional Certificate – Educational Interpreter from the State Board of Education. An Educational Sign Language Interpreter II holds the Permanent Certificate. *W. Va. Code § 18A-4-8 (i)(39),(40).*

The contracts of Paraprofessionals who, on June 30, 2013, held either the Initial or Permanent “Paraprofessional Certificate -

Educational Interpreter,” are automatically revised to add the Educational Sign Language Interpreter I or II class title, as appropriate, without loss of salary. Any seniority they earned in the Paraprofessional classification prior to the change continues to be credited as seniority earned in their new classification. *W. Va. Code § 18A-4-8(i)(s)(2),(3).*

If a student’s individualized education plan or Section 504 plan requires the services of an Educational Sign Support Specialist or an Educational Sign Language Interpreter I or II, any Educational Sign Language Interpreter I or II assigned to assist shall be a related service provider member of the education team, participating in individualized education plan meetings and working with the team to implement the individualized education plan. *W. Va. Code § 18-20-2(e)(1).*

An Educational Sign Support Specialist may be assigned to a student with an exceptionality other than deaf or hard of hearing if it is determined that the student needs signs to support expressive communication. However, an Educational Sign Support Specialist may be assigned to a student who is deaf or hard of hearing in lieu of an Educational Sign Language Interpreter only if an Educational Sign Language Interpreter I or II is unavailable and the Educational Sign Support Specialist is executing a professional development plan while actively seeking certification, at the county board’s expense, as an Educational Sign Language Interpreter I or II. The Educational Sign Support Specialist may remain in the assignment beyond two years only if an Educational Sign Language Interpreter I or II is unavailable and with a waiver by the State Department of Education. *W. Va. Code § 18-20-2(e)(2),(3).*

The county board must pay in full the cost of certification renewal and the cost of meeting the requirements of the West Virginia Registry of Interpreters for any Educational Sign Language Interpreters required to complete testing or education to renew or maintain certification or to advance from Educational Sign Language Interpreter I to Educational Sign Language Interpreter II. The county board must likewise pay the costs of testing or education required for Educational Sign



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Support Specialists to advance to an Educational Sign Language Interpreter class title. *W. Va. Code § 18A-2-4(e)*.

Finally, House Bill 2470 provides that if any service employee must hold any certification as a condition of employment, the time devoted to acquiring or maintaining the certification must be counted as continuing education hours under the annual continuing education requirements of State Board of Education policy. *W. Va. Code § 18A-2-4(f)*.

## **House Bill 2548 Increasing the Criminal Penalties for Assaults and Batteries Against Athletic Officials**

*In effect July 11, 2013*  
[Read the Entire Bill](#)

Prior to House Bill 2548, the punishment for the misdemeanor of assaulting an athletic official was a fine of at least \$50 but not more than \$100 and/or a jail term of at least 24 hours but not more than 30 days. The bill increases the allowable punishment to a fine of no more than \$500 and/or a jail term of not more than six months. *W. Va. Code § 61-2-15a(a)*.

The punishment for the misdemeanor of battering an athletic official, which carried a fine of at least \$100 but not more than \$500 and/or a jail term of at least 24 hours but not more than 30 days is increased to a fine of not more than \$1,000 and/or a jail term of not more than 12 months. *W. Va. Code § 61-2-15a(b)*.

As before, an “athletic official” is defined as a person at a sports event who enforces the rules of that event, such as an umpire or referee, or a person who supervises the participants, such as a coach. *W. Va. Code § 61-2-15a(c)*.

## **House Bill 2727 School Aid Formula**

*In effect July 1, 2013*  
[Read the Entire Bill](#)

The additional 10 percent transportation allowance under the foundation school program for alternative fuel school bus

systems is now limited to those counties whose bus systems use compressed natural gas as an alternative fuel. However, for any county receiving an additional 10 percent for a portion of their bus system using bio-diesel in 2012-2013, bio-diesel will continue to qualify as an alternative fuel but to the extent that the additional percentage applicable to that portion of their bus system will be decreased by 2.5 percent per year for four consecutive school years beginning in school year 2014-2015. *W. Va. Code § 18-9A-7(a)(F)*.

House Bill 2727 also reduces the fiscal year cap on the foundation allowance for regional educational service agencies, from \$3,990,00 to \$3,690,750. *W. Va. Code § 18-9A-8a*.

## **House Bill 2729 Schools’ Voluntary Use of Epinephrine Auto-Injectors**

*In effect July 8, 2013*  
[Read the Entire Bill](#)

Public and private schools are authorized by this House Bill to stock epinephrine auto-injectors for emergency treatment of an anaphylactic reaction. There is no requirement that, in order to stock the auto-injectors, a school must show that a student or employee requires the use of the auto-injector. A school must maintain any injectors in a secure location, accessible only by medical and authorized nonmedical employees. Licensed physicians may prescribe standing orders and protocols for use at a school when necessary. *W. Va. Code § 18-5-22c(a),(b)*.

Either a school nurse or non-medical school personnel who have been trained and designated by the school may lawfully administer an epinephrine auto-injector to a student or school employee. This must occur during regular school hours or at school functions when the nurse or designated non-medical school employee believes a student or employee is experiencing an anaphylactic reaction. The nurse or designated non-medical school personnel may also use the school’s supply of injectors for a student or employee who is authorized to self-administer, provided that the injectors meet the requirements



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of a prescription on file with the school. The epinephrine auto-injector may be administered without giving prior notice to a student’s parents, but notice must be given immediately afterward. *W. Va. Code § 18-5-22c(c),(d),(e).*

A school nurse or trained and authorized nonmedical school personnel who administers an epinephrine auto-injection to a student or to school personnel under House Bill 2729 is immune from civil liability arising out of the injection unless an act or omission resulting from the administration of the auto-injection was the result of his or her gross negligence or willful misconduct. *W. Va. Code § 18-5-22c(f).*

## **House Bill 2747 Open Governmental Proceedings**

*In effect July 12, 2013*  
[Read the Entire Bill](#)

For purposes of the West Virginia Open Governmental Proceedings Act, House Bill 2747 defines regular, special and emergency meetings. A “regular meeting” of a governing body is defined as one at which the regular business of the public is conducted. A “special meeting” is one that is neither a regular meeting nor an emergency meeting. An “emergency meeting” is any meeting called by a governing body for the purpose of addressing an unexpected event that requires immediate attention because it poses an imminent threat to public health or safety, an imminent threat of damage to public or private property, or an imminent material financial loss or other imminent substantial harm to a public agency, its employees or the member of the public which it serves. *W. Va. Code § 6-9A-2(2),(9),(10).*

The bill also requires governing bodies other than a state executive branch agency to give notice of an emergency meeting in a way that is consistent with both the Act and the advisory opinions of the West Virginia Ethics Commission’s Committee on Open Governmental Meetings. *W. Va. Code § 6-9A-3(b)(1).*

## **House Bill 2764 Compulsory School Attendance**

*In effect July 12, 2013*  
[Read the Entire Bill](#)

This legislation gives assistant attendance directors employed by county boards of education the same authority that attendance directors have to require proof of a student’s age from parents, guardians or custodians. It also gives assistant attendance directors authority, without a warrant, to take any student who is unlawfully absent from school and place the student in the school where he or she should be enrolled. The bill requires the county board’s attendance director and assistant, during the instructional term and at other times when the duties of an attendance director are required, to devote the time required under existing law. Existing law mandates the equivalent of a full-time county attendance director for counties with net enrollment of more than 4,000 pupils, and at least a half-time director of attendance for counties with net enrollment of 4,000 pupils or less. Like attendance directors, assistants who are hired for more than 200 days per year may be assigned other duties during the period in excess of 200 days *W. Va. Code § 18-8-4(d),(e).*

## **House Bill 2800 Teachers’ Retirement System**

*In effect July 1, 2013*  
[Read the Entire Bill](#)

Under the existing Teachers’ Retirement System statutes, a member’s “gross salary” is “the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired.” House Bill 2800 clarifies that a member’s gross salary must be allocated and reported in the fiscal year in which the member performed the work, rather than the fiscal year in which the wages were paid. *W. Va. Code § 18-7A-3(12).*





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The bill modifies the definitions of some other terms, requires that members granted prior service credit for qualified military service must have been honorably discharged from active duty, provides that a nonteaching member is not considered absent from service while serving as an officer with a statewide professional teaching association, and makes other changes to the Teachers' Retirement System statutes. *W. Va. Code § 18-7A-3, 14, 14c, 17, 23, 25, 26.*

## **House Bill 2851**

### **One-Time Audit Cost Amnesty Program for Local Governments with Delinquent Audit Costs**

*In effect July 12, 2013*

[Read the Entire Bill](#)

A county board of education or other local government entity that owes fees for any audits conducted by the chief inspector will be eligible to participate in a one-time audit cost amnesty program to be established by the chief inspector and conducted during the 2014 fiscal year. However, an entity will be permitted to participate in the amnesty program only if, prior to its request for amnesty, the entity paid in full the fees related to its two most recent audits completed or in progress as of July 1, 2013. *W. Va. Code § 6-9-8a.*

## **House Bill 2861**

### **Continued Enrollment of At Risk Student in Public School**

*In effect July 1, 2013*

[Read the Entire Bill](#)

The House Bill defines an "at-risk student" as any child who is unlikely to graduate on schedule with the skills and self-esteem necessary to exercise meaningful options in the areas of work, leisure, culture, civic affairs and personal relationships. It states that public schools should not be deterred from seeking and assisting with the enrollment of students in an alternative program that helps remedy discouragement, lessens skill deficits, and facilitates a successful return to the public schools. *W. Va. Code § 18-2-6(i).*

Accordingly, the bill authorizes the dual enrollment of an at-risk student in the public schools and in an alternative program approved by the State Board of Education, but only if (1) the student exhibits behaviors and characteristics associated with a discouraged and defeated learner, (2) the student's parent or legal guardian makes application, and (3) the county superintendent approves. The alternative program must supply any information about the alternative program and the progress of the student that the county superintendent requests. The program must also include a family involvement component, an on-site boarding option for students, and an individualized education program for students designed to prepare them for a successful transition back into the public schools. *W. Va. Code § 18-2-6(i).*

## **House Bill 2913**

### **Procedures for Adjusting Payments to Correct Erroneous Distribution of Moneys Dedicated, Distributed or Directed to a State or Local Government Subdivision**

*In effect July 11, 2013*

[Read the Entire Bill](#)

This legislation addresses erroneous distributions, transfers, allocations, overpayments and underpayments by the state to a state or local governmental subdivision, a political subdivision of the state, or a fund, entity or instrumentality of the state. When such a mistake is caused by clerical error or mistake, or by a computational, informational or other mistake or error, the mistake may be corrected by an adjustment to a distribution, transfer, allocation or payment to the recipient, and by transfer of moneys from the recipient, until the amount of the error has been corrected. However, beginning three years after either party discovers that the erroneous transaction occurred, no corrections or adjustments are allowed, and no lawsuit can be brought to collect, correct or remedy the erroneous transaction. *W. Va. Code § 11-10-26(a).*

If on the effective date of the House Bill an agreement is already in effect to correct or adjust an erroneous transaction that would otherwise be subject to the provisions of House Bill



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2913, the bill's provisions will not apply to that agreement. *W. Va. Code § 11-10-26(c)*.

## **House Bill 2940**

### **Regional Meetings Among Certain Officials of County Boards of Education**

*In effect July 8, 2013*

[Read the Entire Bill](#)

A new section of the West Virginia Code requires all superintendents and members of county boards belonging to the same regional educational service agency to meet together in 2013, and then every two years. The purpose of the meetings will be to identify administrative, coordinating and other county level services and functions that may be shared between or among the county boards, especially when resignations, retirements, staffing realignments or similar events may occur. The first year's meetings will occur during July and August, 2013. Subsequent meetings will occur during the two months following the county boards' organizational meetings. The regional meetings qualify as special meetings of each participating county board and must be called under the statute governing special meetings. With the approval of the State Board and its Training Standards Review Committee, county board members may receive training credit for attending the meetings. *W. Va. Code § 18-2-26a(a), (e)*.

The West Virginia School Board Association will schedule the meetings and conduct them using a format to be approved by the State Board of Education. In developing the proposed meeting format, the Association must solicit input from statewide organizations that have an interest in public education. In conducting the meetings, the Association may consult with the regional educational service agencies. *W. Va. Code § 18-2-26a(b), (c)*.

Reports of the meetings will be made by the Association to the State Board and the Legislative Oversight Commission on Education Accountability. At a minimum, the reports must identify the county level services and functions that may be shared between or among county boards, analyze the advantages

and disadvantages of sharing services in each instance, and suggest a process for implementing recommended changes. *W. Va. Code § 18-2-26a(d)*.

The bill expressly states that it does not require the elimination or consolidation of county school districts. *W. Va. Code § 18-2-26a(f)*.

## **House Bill 3157**

### **Restoring the Authority, Flexibility and Capacity of Schools and School Systems to Improve Student Learning**

*In effect July 1, 2013*

[Read the Entire Bill](#)

House Bill 3157 amends a statute that previously required the State Board of Education to receive from county boards, and annually submit to the Legislative Oversight Commission on Education Accountability, any modifications made by county boards to their policies to promote school board effectiveness, together with annual reports of the meetings held by county boards with local school improvement councils. The amendment replaces those provisions with a requirement that the State Board annually review and evaluate the list of reports required to be written by principals and teachers, and annually advise the Legislative Oversight Commission on Education Accountability of unnecessary reports and how to reduce or consolidate principal and teacher reports. *W. Va. Code § 18-2-5g*.

The school calendar statute that was amended earlier in the 2013 regular session by Senate Bill 359 is further amended by House Bill 3157 to postpone until July 1, 2014, the effective date of the Senate Bill 359 amendments to *W. Va. Code § 18-5-45*. *W. Va. Code § 18-5-45(q)*.

If a county board enters into a truancy program agreement with the circuit court under which truant juveniles are referred for supervision by the court's probation officer and under which the county board pays the costs of the probation officer or officers, House Bill 3157 authorizes reimbursing the county board for



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one-half the cost of the probation officer or officers, subject to appropriation by the Legislature. *W. Va. Code § 18-8-6a.*

Effective July 1, 2014, the legislation (1) reduces, from 15 percent to 10 percent, the percent of increase in local share for the next school year to be added to the public school support plan's foundation allowance to improve instructional programs and used for instructional improvement; (2) restricts, beginning with the 2013-2014 school year, the use of any funds available to a county for personnel under the foundation allowance to improve instructional programs above the amount available for the 2012-2013 school year, requiring that the funds be used only for technology systems specialists until the State Superintendent of Schools determines that the county has sufficient technology systems specialists to serve the needs of the county; (3) increases, from 15 percent to 20 percent, the percent of increase in local share for the next school year to be added to the preceding year's appropriation for improving instructional technology; (4) changes the method of allocating the amounts for improving instructional technologies to the counties; and (5) directs that the moneys allocated to improve instructional technology be used to improve instructional technology programs according to the county and school strategic improvement plans, rather than the West Virginia 21st Century Strategic Technology Learning Plan. *W. Va. Code § 18-9A-10.*

Existing procedures to suspend or dismiss, for cause, teachers employed at the West Virginia Schools for the Deaf and the Blind are amended to include the Schools' auxiliary and service personnel. In all cases involving the suspension or dismissal of teachers and auxiliary and service personnel, if the employee requests a hearing, the State Board of Education may either conduct the evidentiary hearing itself or assign a hearing examiner to preside at the taking of evidence and prepare a recommended decision. If the State Board exercises the option to assign a hearing examiner, then the State Board need not hear evidence. Instead, the State Board must decide the case after hearing the arguments of the parties based upon the record that was made before the hearing examiner. Written notice of the State Board's decision must be served within five days. *W. Va. Code § 18-17-8.*

Finally, the bill also repeals numerous school statutes, many of which had expired or were outdated: *W. Va. Code § 18-2-15* ("Report to governor and legislature"), *§ 18-2-15a* ("Comprehensive study of regional education service agencies"), *§ 18-2-18* ("Study on fluctuating staff in schools with a high percentage of at-risk students"), *§ 18-2-23* ("Comprehensive educational programs; standards, etc.; evaluation and approval; allocation and distribution of funds; distribution of excess funds"), *§ 18-2-30* ("Statewide curriculum technology resource center established; distribution of materials by regional educational service agencies"), *§ 18-2-31* ("Plan for automatic cost of living adjustments"), *§ 18-2-36* ("Programs to strengthen student learning ability"), *§ 18-2-37* ("State Board study on flood insurance and general property insurance"), *§ 18-2-38* ("School committees and school teams; legislative findings; state board study"), *§ 18-2E-3c* ("Summer school READS grant program created; legislative findings and purpose of section"), *§ 18-2E-3d* ("Summer school MATH grant program created; legislative findings and purpose of section"), *§ 18-5-40* ("School entry age; operation of schools on semester basis"), *§ 18-9-2b* ("Transfer of moneys in separate funds of magisterial districts and independent school districts to county boards of education"), *§ 18-9-5* ("School fund; board of the school fund; investment of school fund; acquisition, etc., of real estate"), *§ 18-9-7* ("Supplemental aid for districts in which children's homes are located"), *§ 18-9-8* ("Exception"), *§ 18-9A-3a* ("Total state basic foundation program for fiscal years 2009 through 2013, only"), *§ 18-9A-3b* ("Total state basic foundation program and foundation allowance for regional educational service agencies for fiscal year 1993-1994 only"), *§ 18-9A-13* ("Transitional allocation for certain rural district boards"), *§ 18-9A-13a* ("Allowance for levy rate reduction under uniform school funding amendment"), *§ 18-9A-13b* ("Allowance for legislative reserve fund, current expense and substitute costs"), *§ 18-9A-25* ("State allowance for state teacher of the year salary"), *§ 18-9A-26* ("Allowance for workers' compensation for unpaid student work-based learning"), *§ 18-9B-11* ("Emergency and supplemental appropriations"), *§ 18-9B-16* ("Transmission and investment of proceeds of permanent improvement fund"), and *§ 18A-3-2b* ("Beginning teacher internships").





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## **House Bill 3159 Granting Exceptions from Certain Compulsory Attendance Statutes to the Monroe and Nicholas County School Systems**

*In effect July 1, 2013*

[Read the Entire Bill](#)

Under Local Solutions Dropout Prevention and Recovery Innovation Zone plans approved by the State Board of Education, Monroe County Schools and Nicholas County Schools are granted exceptions from certain school statutes. The exceptions are limited to the purposes set forth in those plans. *W. Va. Code § 18-5B-10(a)*.

Monroe County's exception covers the provision of *W. Va. Code § 18-8-1a(a)(3)* that makes school attendance compulsory until age 17. The county may now enforce compulsory school attendance until age 18 as part of its plan. *W. Va. Code § 18-5B-10(b)(6)*.

Nicholas County's exception covers provisions of *W. Va. Code § 18-8-4* ("Duties of attendance director and assistant directors; complaints, warrants and hearings"), *§ 18-8-8* ("Child suspended for failure to comply with requirements and regulations treated as unlawfully absent"), and *§ 18-8-11* ("School attendance and satisfactory academic progress as conditions of licensing for privilege of operation of motor vehicle"). The exception to those provisions is only to the extent necessary to permit the erasure from a student's attendance record of up to two unexcused absences per semester on regular instructional days if the student successfully completes the county's Saturday instruction program. *W. Va. Code § 18-5B-10(b)(7)*.

## **House Bill 3160 Pilot Initiative on Governance of Schools Jointly Established by Adjoining Counties**

*In effect July 16, 2013*

[Read the Entire Bill](#)

House Bill 3160 amends the existing statute that governs the joint establishment of a school by two or more adjoining

counties. In place of the previous requirement that the cost of establishing and equipping a joint school be apportioned among the participating counties based upon the valuations of taxable property in each, the participating counties are now required to enter into a formal agreement about how the counties will apportion those costs. In place of the previous requirement that the school district in which the joint school is located must control and manage the school, the amendment allows the participating county boards to provide otherwise in their written agreement. The participating counties need no longer apportion a joint school's annual operating costs on the basis of the average daily attendance of pupils from each district. Rather, unless otherwise provided in the counties' agreement, those costs are the responsibility of the county in which the joint school is located, subject to the allowance for county transfers under the public school support program. If a county board sends students to a joint school in another county and provides transportation for those students or otherwise contributes to the school's support services or instructional program, the sending county's net enrollment is increased for purposes of calculating its basic foundation program under the school support program. The increase is .15 times the number of full-time equivalent county students enrolled in the jointly established school. *W. Va. Code § 18-5-11*.

In the absence of a well-defined governance structure for schools established by two or more counties, the House Bill provides a pilot initiative for a joint governing partnership board. The pilot initiative applies where two adjoining counties have established a school that includes elementary grade levels and have signed a memorandum of understanding on the governance and operation of the school. Under the pilot initiative, the agreement between the parties must be amended as may be necessary to include at least certain features. *W. Va. Code § 18-5-11a*.

The features include a joint governing partnership board that meets monthly or at the call of its chair. The joint governing partnership board consists of five members: both county superintendents, the presidents of both county boards or their designees, and a designee of the State Superintendent



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of Schools. The chair must be elected by the joint governing partnership board from among its members for a two-year term. Once the partnership school opens, board meetings must be held at the school and comply with the Open Governmental Proceedings Act. Each board is responsible for the expenses of its members and must apportion other operational expenses by mutual agreement. With certain exceptions, all provisions of law for inter-county schools apply. *W. Va. Code § 18-5-11a.*

The exceptions are that the joint governing partnership board may exercise certain governing authority for operation and management of the school in four areas: personnel (exercising the power of a county superintendent in recommending personnel actions to whichever county board employs the personnel), curriculum (formulating and executing the school's strategic improvement and technology plans to meet the goals for student and school performance and progress), finances (controlling the expenditure of all funds allocated to the school for the school budget, soliciting and receiving donations, applying for and receiving grants, conducting fund raisers), and facilities (controlling the use of the school facility by organizations and groups from both counties). Additionally, the joint governing partnership board may adopt policies for the school that are separate from those of the two counties. Working with its local school improvement council, a joint governing partnership board may request waivers of policy, interpretations or statutes from either or both county boards, the State Board of Education and the Legislature. *W. Va. Code § 18-5-11a.*

On or before November 1, 2013, the superintendents and school board presidents from adjoining counties that have a memorandum of understanding in effect on July 16, 2013, must make a report to the Legislative Oversight Commission on Education Accountability covering the status of implementing the pilot initiative. The Legislative Oversight Commission on Education Accountability may require periodic updates. Joint governing partnership boards must remain in effect for five years unless authority for the pilot initiative is repealed. At the end of five years the member superintendents and board presidents must make recommendations to the Legislative Oversight Commission on Education Accountability on the viability of the joint governing partnership board approach. At the end of five years both county boards may vote to continue a joint governing partnership board arrangement. *W. Va. Code § 18-5-11a.*

House Bill 3160 also makes modifications in the local school improvement councils of jointly established schools and certain schools that are not jointly established but enroll a substantial number of students from an adjoining county. In the case of joint schools, the modifications ensure that neither the parent members nor the at-large members of the local school improvement council are all from the same county. In the case of schools that are not jointly established but whose net enrollment includes at least 150 students from an adjoining county, corresponding modifications take effect upon petition by a majority of the parents of students enrolled from the adjoining county. *W. Va. Code § 18-5A-2a.*



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