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# Schools Act



## A Guide to your Rights and Responsibilities under the Law



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## IN OF THE ACT

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ed the polling firm of McGinn, Ryan, Samples Research to on school violence. Overwhelmingly, the public called for tougher discipline and increased services for troubled students. Soon after, AFT-WV surveyed more than 20,000 teachers in the state, and found school employees shared the opinions of the public on the issue. During January of 1995, AFT-WV proposed the Safe Schools Act. Then again in 2006, AFT-WV and the West Virginia School Service Personnel Association conducted a scientific survey of the public on the issue of school safety and discipline. In 2007, AFT-West Virginia and WVSSPA surveyed more than 25,000 school employees to see if changes needed to be made to the Safe Schools Act. In 2008, based on the survey results, the legislature made changes to enhance the authority of teachers and other school employees to address disciplinary problems.

## EMPLOYEE EMPOWERMENT

WV Code §18A-5-1 states that a teacher or bus driver **may** exclude any student from a classroom or bus who:

- is guilty of disorderly conduct
- interferes with an orderly educational process
- threatens, abuses, intimidates, or attempts to intimidate a school employee or student
- willfully disobeys a school employee
- uses profane or abusive language toward a school employee.

Once excluded, the student shall be placed under the control of the principal or a designee who will decide if disciplinary action is warranted. The excluded student may be admitted to the classroom or school bus **only** when the principal, or a designee, provides written certification to the teacher that the student may be readmitted and spells out the specific type of disciplinary action, if any, which was taken. The principal shall also provide written and, if possible, telephone notice of the action to the parents.

When a student is excluded from a classroom or bus **two times in one semester**, and after exhausting all reasonable methods of classroom discipline provided in the school discipline plan, the student may be readmitted to the classroom or school bus **only** after a conference is held with the principal, teacher, bus operator and, if possible, the parent(s) of the student to discuss the student's disruptive behavior pattern. The teacher/bus operator and the principal must agree on a course of discipline for the student and inform the parents of the course of action.

If the student's disruptive behavior persists, the teacher or bus operator may request the student be transferred to another setting such as an alternative learning center. The legislature found that isolating students or placing them in alternative learning centers may be the best setting for chronically disruptive students.

## RIGHTS AND RESPONSIBILITIES

WV Code §18A-5-1c

Schools has been to prepare our state's young people for equal and responsible citizenship and productive adulthood. Today, we reaffirm that mission by remembering that democratic citizenship and productive adulthood begin with standards of conduct in our schools. Simply put, our schools cannot be safe havens for learning without high standards of conduct for students.

Recognizing that rights carry responsibilities, we declare that:

- ★ All students and school employees have a right to schools and buses that are safe, orderly and drug free.
- ★ All students and school employees have a right to learn and work in school districts and schools that have clear discipline codes with fair and consistently enforced consequences for misbehavior.
- ★ All students and school employees have a right to learn and work in school districts that have alternative educational placements for violent or chronically disruptive students.
- ★ All students and school employees have a right to be treated with courtesy and respect.
- ★ All students have a right to schools and buses that are free from bullying.
- ★ All school employees have a right to expect support from school administrators when enforcing discipline policies.
- ★ All students and school employees have a right to be supported by parents, the community, public officials and business in their efforts to uphold high standards of conduct.
- ★ All students and school employees adhere to the principles in this Bill of Rights and Responsibilities for Students and School Personnel and behave in a manner that guarantees that other students and school personnel enjoy the same rights.

## LOCAL SCHOOL IMPROVEMENT COUNCIL RESPONSIBILITY TO MONITOR SCHOOL DISCIPLINE

WV Code §18-5A-2

Each LSIC shall be composed of **three** teachers (elected by the faculty senate), as well as **one** bus operator who transports students enrolled at the school and **one** service person (elected by the school service personnel employed at each school).

Elections for the LSIC representatives shall be held prior to the 15<sup>th</sup> day of September. They shall serve a two-year term. The first LSIC meeting shall be held no later than October 1<sup>st</sup> of each school year. The LSIC shall meet once every nine weeks or equivalent grading period.

to the superintendent on the fairness and consistency of reach a conclusion on this matter, each LSIC will need to ministration. For example, each LSIC will want to request at each principal is required to provide teachers or staff when bus. If the LSIC believes that the school policies are not

being enforced fairly or consistently this shall be put in a report to the superintendent. The superintendent is required to respond, in writing, to the LSIC within ten (10) days. Each county school board is required to retain and file all LSIC reports and related correspondence so the public can review it.

Each LSIC is required yearly to:

- conduct a meeting to engage parents, students, school employees and other interested parties in a positive and interactive dialogue regarding effective discipline policies;
- meet with the county school board to discuss discipline and other issues;
- develop and deliver a report to the countywide council on productive and safe schools. The report shall include guidelines for a preventative discipline program with instructions for rehabilitation of students who have been excluded from the classroom, suspended or expelled from the school; and
- provide descriptions and recommendations for instruction and alternative education programs.

Each LSIC must report to the council and the superintendent the discipline measures at the school and the fairness and consistency of disciplinary actions at their school. The superintendent has ten (10) days to respond in writing if the LSIC and/or council determines that the discipline is not enforced fairly or consistently.

## PRINCIPAL'S AUTHORITY TO SUSPEND

According to WV Code §18A-5-1a, principals **must immediately suspend** any student who:

- commits an act which would constitute a felony if committed by an adult
- possesses any controlled substance on school property or at school-sponsored functions.

Principals **may** suspend a student for up to ten (10) school days and **may** recommend longer suspensions to the county Board of Education for any student who:

- threatens to injure or injures a pupil or school employee
- is guilty of willful disobedience
- possesses alcohol at school or a school-sponsored function
- uses profane or abusive language toward a school employee
- defaces school property
- participates in a fight
- habitually violates school rules.

No suspension or expulsion may exceed one (1) school year except the three (3) mandatory expulsion offenses.

## 12-MONTH EXPULSION

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ent **must be expelled** from school for twelve (12) calendar  
following:

- possesses a firearm or other dangerous/deadly weapon<sup>1</sup> on the school grounds or bus;
- physically assaults a school employee<sup>2</sup>; or
- sells narcotic drugs<sup>3</sup> on the school grounds or at a school-sponsored function.

If the county superintendent wants to lessen the mandatory 12-month expulsion, he/she **must**:

- prepare a written statement setting forth the circumstances which warrant a reduction of the mandatory penalty.
- submit the statement to the principal, faculty senate, and local school improvement council of the school from which the pupil was expelled.

Action **must** be taken on the superintendent's recommendation by the local Board of Education.

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1 "Deadly weapon" means an instrument which is designed to be used to produce serious bodily injury or death or is readily adaptable to such use. and shall include, but not be limited to, Blackjack, Gravity Knife, Knife, Switchblade Knife, Nanchuka, Metallic or False Knuckles, Pistol, Revolver, or other deadly weapons of like kind or character which may be easily concealed on or about the person. For the purposes of WV Code §18A-5-1, the term "deadly weapon" also includes any instrument included within the definition of "knife" with a blade of three and one-half inches or less in length. Additionally, the term "deadly weapon" includes explosive, chemical, biological and radiological materials. Any item or material owned by the school or county board, intended for curricular use, and used by the student at the time of the alleged offense solely for curricular purposes is not considered a ~~deadly weapon~~ (see WV Code §61-7-2)

2 If any person commits an assault: (1) By unlawfully attempting to commit a violent injury to the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils; or (2) by unlawfully committing an action which places a school employee in reasonable apprehension of immediately receiving a violent injury while the employee is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not less than five days nor more than six months and fined not less than fifty dollars nor more than one hundred dollars. Note: ~~School employee~~ means a person employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise, and includes a student teacher. (see WV Code §61-2-15. Assault, battery on school employees; penalties)

3 "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (1) Opium and opiate, (2) Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances in opium and opiate, but not including the isoquinoline alkaloids of opium, (3) Opium poppy and poppy straw, (4) Coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine. (see WV Code §60A-1-101) Note: Marijuana is not a narcotic drug . it is classified as a controlled substance.

## OF DEADLY WEAPONS

Pursuant to WV Code §61-7-11a, it is a felony for any person to possess a firearm or other deadly weapon on school grounds, a school bus, or at a school-sponsored function. The penalty is imprisonment for two (2) to ten (10) years and/or up to a \$5000 fine, and driver's license revocation.

This does not apply to:

1. a law-enforcement officer acting in his/her official capacity;
2. a person specifically authorized by the Board or principal to conduct programs with valid educational purposes;
3. a person who leaves an unloaded firearm or deadly weapon in a locked motor vehicle;
4. programs or raffles conducted with Board or school approval which include the display of unloaded firearms;
5. the WVU official mascot.

## ASSAULT AND/OR BATTERY ON SCHOOL EMPLOYEES

Pursuant to WV Code §61-2-15, any person who commits an **assault**<sup>4</sup> against a school employee is guilty of a misdemeanor and, if convicted, shall be confined in the county or regional jail for five (5) days to six (6) months and fined \$50 to \$100, and any person who commits a **battery**<sup>5</sup> against a school employee is guilty of a misdemeanor and, if convicted, shall be confined in the county or regional jail for ten (10) days to twelve (12) months and fined \$100 to \$500. This includes while the school employee is on the job, traveling to or from work, and on work assignments (field trips, extracurricular activities, etc.). School employee includes regular full-time employees, hourly employees, and student teachers. Mandatory jail time and fines also apply when the employee is away from work if the assault stems from supervision or discipline of a student in the course of employment.

*You do not give up your civil rights when you become employed by a county school board. It is your responsibility to report assault and/or battery to the proper law-enforcement authorities. If you are physically assaulted, you decide whether or not to file charges, not your supervisor and/or employer. School authorities are only responsible for the expulsion provisions under WV Code §18A-5-1a as discussed in the previous section, Mandatory 12-month Expulsion.*

## CRIMES AGAINST CHILDREN

The Safe Schools Act increased the felony penalty for **maliciously assaulting** a child sixteen (16) years of age or younger within one thousand (1000) feet of a school. If convicted, the penalty is confinement of not less than five (5) nor more than fifteen (15) years in a penitentiary. (see WV Code §61-2-9b) The law also provides that any person who **abducts** a child sixteen (16) years of age or younger within one thousand (1000) feet of a school is guilty of a felony. The penalty is the same for either offense of malicious assault or abduction. (see WV Code §61-2-14f)

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4 Assault. . unlawfully attempts to commit a violent injury to the person of another or unlawfully commits an act which places another in reasonable apprehension of immediately receiving a violent injury.

5 Battery. -- unlawfully and intentionally makes physical contact of an insulting or provoking nature with the person of another or unlawfully and intentionally causes physical harm to another person.

om, or holding hostage for the purpose of protecting oneself  
imprisonment without parole.

## **BOMB THREATS**

Pursuant to WV Code §18-6-17, any person who conveys in any way a false bomb threat is guilty of a felony. The penalty is a fine of not less than \$100 nor more than \$2000 and/or jail time of not less than one (1) year nor more than three (3) years.

If the false bomb threat directly causes economic harm, in addition to any other penalty, the circuit court may order the offender to pay the victim or victims restitution for economic loss in an amount not to exceed the economic harm suffered.

If the false bomb threat results in another suffering serious bodily injury, the offender is guilty of a felony. The penalty is a fine of not more than \$10,000 and/or jail time of not less than one (1) year nor more than five (5) years. Each injury constitutes a separate offense.

## **EXPULSION HEARINGS**

WV Code §18A-5-1b provides that county Boards of Education may hire Hearing Examiners to conduct suspension or expulsion hearings in place of the Board of Education. The following guidelines apply to those counties employing Hearing Examiners:

- the Hearing Examiner must be a licensed attorney who is not employed by and does not represent the school board
- Hearing Examiners must conduct hearings in accordance with statutory guidelines including a recording of the proceedings
- Hearing Examiners' decisions must contain written Findings of Fact and Conclusions of Law and must be rendered within five (5) days of the conclusion of the hearing
- Upon written request of a parent/guardian or county superintendent, the county Board of Education will review the Hearing Examiner's decision and within ten (10) days of the request either affirm, revise, or modify the Examiner's decision.

## **ADMISSION INTO PUBLIC SCHOOLS**

Prior to the admission of a pupil to any public school in West Virginia, the county superintendent shall require the pupil's parent/guardian/custodian to provide, upon registration, a sworn statement or affirmation indicating whether the student is under suspension or expulsion from attendance at a private or public school in West Virginia or another state. Any person willfully making a materially false statement or affirmation shall be guilty of a misdemeanor. Any pupil who has been suspended or expelled from school, either public or private in West Virginia or another state, due to violations described in the WV Safe Schools Act may not be admitted to any public school within the state of West Virginia until the period of suspension or expulsion has expired. (see WV Code §18-5-15f)

## **DISCLOSURE OF JUVENILE RECORDS**

WV Code §49-5-17 provides that a copy of a juvenile's records shall automatically be disclosed to certain school officials, subject to the following terms and conditions:

Only the records of certain juveniles shall be disclosed. These include and are limited to cases in which:

an offense which:  
another person;  
dangerous or deadly weapon; or  
possession, distribution, or  
consumption of a controlled substance<sup>6</sup>

to a point where one or more of the following has occurred:

- a judge, magistrate or referee has determined that there is probable cause to believe that the juvenile committed the offense as charged;
- the juvenile has been placed on probation for the offense;
- the juvenile has been placed into an improvement period; or
- some other type of disposition has been made of the case other than dismissal.

If the juvenile attends a West Virginia public school, the circuit court designee shall automatically disclose all records of the juvenile's case to the county superintendent and to the principal<sup>7</sup>. At a minimum, the records shall disclose the following information:

- copies of the arrest report;
- copies of all investigations;
- copies of any psychological test results and any mental health records;
- copies of any evaluation reports for probation or facility placement; and
- any other material that would alert the school to potential danger that the juvenile may pose to himself, herself or others;

Juvenile records must be treated as absolutely confidential by the school official to whom they are transmitted, and nothing contained within the juvenile's records shall be noted on the juvenile's permanent educational record. **The juvenile records are to be maintained in a secure location and are not to be copied under any circumstances.** The principal shall have the duty to disclose the contents of those records, except for the juvenile's psychological/mental health records<sup>8</sup>, to the juvenile's teachers and to the juvenile's regular school bus driver. Furthermore, any school official to whom the juvenile's records are transmitted may disclose the contents of such records to any adult within the school system who, in the discretion of the school official, has the need to be aware of the contents of those records.

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<sup>6</sup> "Controlled substance+means those substances listed in WV Code §60A-2, Schedules I through V.

<sup>7</sup> If the disclosure of any record is restricted by HIPAA, the circuit court designee shall provide the superintendent and principal any notice of the existence of the record that is permissible and any action that is required to obtain the record.

<sup>8</sup> The disclosure of the juvenile's psychological test results and any mental health records shall only be made in accordance with the following: The county superintendent shall designate the school psychologist to receive the juvenile's psychological test results and any mental health records. The psychologist designated shall review the juvenile's psychological test results and any mental health records, and, in the psychologist's professional judgment, may disclose to the principal of the school that the juvenile attends and other school employees who would have a need to know the psychological test results, mental health records and any behavior that may trigger violence or other disruptive behavior by the juvenile. Other school employees includes, but is not limited to, any teacher who teaches a class in which the subject juvenile is enrolled and the regular driver of a school bus in which the subject juvenile is regularly transported to or from school.





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appropriate official at that school shall seal the records and circumstances shall one school transmit a juvenile's records

## **ALTERNATIVE EDUCATION PROGRAMS**

WV Code §18-9A-21 provides for the funding of Alternative Education Programs for disruptive students. West Virginia Department of Education Policy 2419 addresses protecting the rights of an eligible student with a disability whenever removal from the educational placement is considered as a disciplinary action.

### **INTERIM ALTERNATIVE EDUCATIONAL SETTING**

If a student with a disability carries a dangerous weapon to school or to a school function or knowingly possesses or uses illegal drugs or sells or solicits a controlled substance while at school or a school function, an IEP team may change the student's placement to an interim alternative educational setting (IAES) for the same amount of time that a student without a disability would be subject to discipline, but for not more than 45 days, as long as such placement is selected to:

- enable the student to continue progress in the general curriculum
- enable the student to continue to receive those services and modifications including those in the current IEP that will enable the student to meet the goals in the IEP; and
- include services and modifications to address the behavior for which the student has been removed which are designed to prevent the behavior from recurring.

A change of placement to an IAES invokes the procedures set forth in sections 7.1.2 and 7.1.3 of WVDE Policy 2419.

### **STUDENTS NOT ELIGIBLE FOR SPECIAL EDUCATION**

WVDE Policy 2419 provides that a student may assert protections if the public agency had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

A public agency shall be deemed to have knowledge if:

- the parent expressed concern in writing (or orally if parent does not write or has a disability preventing a written statement) to personnel of the appropriate public agency that the student is in need of special education and related services;
- the behavior or performance of the student demonstrates the need for special education and related services in accordance with §126-16-4.1.;
- the parent has requested an evaluation of the student for special education and related services; or
- the teacher of the student or other personnel of the public agency expressed concern about the behavior or performance of the student to the director of special education or to other personnel in accordance with the public agency's child find or referral process.

A public agency would not be deemed to have knowledge if, as a result of receiving the information specified above, the public agency either:

- conducted an evaluation and determined the student was not a student with a disability; or
- determined that an evaluation was not necessary; and

the requirements of section 8.1.1 to the parent of its

age prior to taking disciplinary measures, the student may be subjected to the same disciplinary measures as applied to non-disabled students who engaged in comparable behaviors.

## HARASSMENT, INTIMIDATION OR BULLYING

WV Code §18-2C-3. Policy prohibiting harassment, intimidation or bullying.

(a) Each county board of education shall establish a policy prohibiting harassment, intimidation or bullying. Each county board has control over the content of its policy as long as the policy contains, at a minimum, the requirements of subdivision (b) of this section. The policy shall be adopted through a process that includes representation of parents or guardians, school employees, school volunteers, students and community members.

(b) Each county board policy shall, at a minimum, include the following components:

- (1) A statement prohibiting harassment, intimidation or bullying of any student on school property or at school sponsored events;
  - (2) A definition of harassment, intimidation or bullying no less inclusive than that in section two [§ 18-2C-2] of this article;
  - (3) A procedure for reporting prohibited incidents;
  - (4) A requirement that school personnel report prohibited incidents of which they are aware;
  - (5) A requirement that parents or guardians of any student involved in an incident prohibited pursuant to this article be notified;
  - (6) A procedure for documenting any prohibited incident that is reported;
  - (7) A procedure for responding to and investigating any reported incident;
  - (8) A strategy for protecting a victim from additional harassment, intimidation or bullying, and from retaliation following a report;
  - (9) A disciplinary procedure for any student guilty of harassment, intimidation or bullying; and
  - (10) A requirement that any information relating to a reported incident is confidential, and exempt from disclosure under the provisions of chapter twenty-nine-b [§§ 29B-1-1 et seq.] of this code.
- (c) Each county board shall adopt the policy and submit a copy to the state superintendent of schools by the first day of December, two thousand one.
- (d) To assist county boards in developing their policies, the West Virginia department of education shall develop a model policy applicable to grades kindergarten through twelfth. The model policy shall be issued by the first day of September, two thousand one.
- (e) Notice of the county board's policy shall appear in any student handbook, and in any county board publication that sets forth the comprehensive rules, procedures and standards of conduct for the school. [2001, c. 103.]