



# **West Virginia Compilation of School Discipline Laws and Regulations**

Prepared: April 30, 2024

## ***Introduction***

This compilation presents school discipline-related laws and regulations for U.S. states, U.S. territories, and the District of Columbia, and, where available, links to education agency websites or resources related to school discipline and student conduct. The discipline laws and regulations presented in this compilation have been categorized by type of specific discipline issue covered, according to an organizational framework developed by the National Center for Safe and Supportive Learning Environments (NCSSE). For example, one major category encompasses all laws or regulations governing states or territories that mandate specific disciplinary sanctions (such as suspension) for specific offenses (such as drug possession on school grounds). The school discipline laws and regulations were compiled through exhaustive searches of legislative websites that identified all laws and regulations relevant to each specific category. Compiled materials were subsequently reviewed by state education agency (SEA) representatives in the 50 states, Washington D.C., and the U.S. territories.

Discipline categories were not mutually exclusive. Laws and regulations often appeared across multiple categories. For jurisdictions with more extensive laws covering a breadth of topical areas, relevant sections were excerpted from the larger legislative text for inclusion in the appropriate discipline category. Laws, ordered by chapter and section number, appear first within each category followed by regulations. All laws and regulations listed within categories in the compilation also appear in the sources cited section of the document, which lists laws by chapter and section number and title, and where available, includes active hyperlinks to source websites supported or maintained by state legislatures. Additional links to government websites or resources are provided at the end of this document.

## ***Notes & Disclaimers***

To the best of the preparer's knowledge, this Compilation of School Discipline Laws and Regulations is complete and current as of April 2024. Readers should also note that the information in this document was compiled from individual sources that are created by each jurisdiction and which are maintained and updated with varying frequencies. Readers should consult the source information provided directly in order to check for updates to laws and regulations reported in this document or to conduct further research.

For further information, including definitions of the different policy categories, please refer to the [Discipline Laws and Regulations Compendium](#) posted on the Center's website.

*Prepared by:*



**National Center on Safe Supportive  
Learning Environments**

**Engagement • Safety • Environment**

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# **West Virginia State Codes Cited**

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- [§18-2-13.](#) Character education integration
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#### **Article 2C. Harassment, Intimidation or Bullying Prohibition**

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- [§18-5-15f.](#) Affirmation regarding the suspension or expulsion of a pupil from school
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- [§18-8-4.](#) Duties of attendance director and assistant directors; complaints, warrants, and hearings
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- [§18-8-8.](#) Child suspended for failure to comply with requirements and regulations treated as unlawfully absent

#### **Article 9F. School Access Safety Act**

- [§18-9F-3.](#) School access safety plan
- [§18-9F-9.](#) Crisis response plan

### **Chapter 18A. School Personnel**

#### **Article 5. Authority; Rights; Responsibility**

- [§18A-5-1.](#) Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished
- [§18A-5-1a.](#) Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education

- [§18A-5-1b.](#) Alternative procedures for expulsion hearings by county boards
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- [§18A-5-8.](#) Authority of certain aides to exercise control over students; compensation; transfers.

## **Chapter 49. Child Welfare**

### **Article 4. Court Actions**

- [§49-4-717.](#) Sexting educational diversion program; requirements

### **Article 5. Record Keeping Database**

## **Chapter 61. Crimes and Their Punishment**

### **Article 7. Dangerous Weapons**

- [§61-7-2.](#) Definitions
- [§61-7-11a.](#) Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts

## **West Virginia Regulations**

### **Title 126. Legislative Rule, Board of Education**

#### **Series 42. Assuring the Quality of Education: Regulations for Education Programs (2510)**

- §126-42-7. County board of education responsibilities

#### **Series 67. Comprehensive School Counseling Programs (2315)**

- §126-67-3. Comprehensive school counseling program description
- §126-67-4. Counties board responsibilities
- §126-67-5. Delivery components of comprehensive school counseling program

#### **Series 81. Attendance (4110)**

- §126-81-1. General
- §126-81-2. Rationale
- §126-81-3. Policy development
- §126-81-4. Definitions
- §126-81-5. Responsibilities
- §126-81-6. County attendance policy components
- §126-81-7. Severability

#### **Series 99. Expected Behavior in Safe and Supportive Schools (4373)**

- §126-99-1. General
- §126-99-2. Purpose
- §126-99-5. Severability

# ***Codes of Conduct***

## **Authority to Develop and Establish Codes of Conduct**

### **LAWS**

#### **§18-2-33. Rules for antihazing.**

(a) The Legislature hereby finds that hazing has become a problem in a limited number of public school-sponsored student organizations and that legal liability has already resulted from some of those activities. It is the intent of this section that problems with hazing in public school-sponsored student organizations be addressed.

(b) The State Board shall promulgate legislative rules in accordance with article three-b [ §§ 29A-3B-1 et seq.], chapter twenty-nine-a of this code that addresses hazing in the public school system. The rules shall include at least the following:

- (1) A definition of hazing;
- (2) A definition of a public school-sponsored student organization that includes both cocurricular and extracurricular activities;
- (3) A method to advise students and employees of the problems associated with hazing;
- (4) Appropriate penalties or procedures for establishing penalties for students who haze while engaged in the activities of a public school-sponsored student organization; and
- (5) Methods to prevent hazing in public school-sponsored organizations.

(c) The State Board shall consider the antihazing law set forth in article sixteen [ §§ 18-16-1 et seq.], chapter eighteen in drafting the rules required by this section.

(d) Nothing in this section or in the policy promulgated in accordance with this section may be construed to prevent a suspension or expulsion executed in accordance with section one-a [ § 18A-5-1a], article five, chapter eighteen-a of this code.

#### **§18-2C-3. Policy prohibiting harassment, intimidation or bullying.**

(a) Each county board 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.

#### **§18-9F-9. Crisis Response Plan.**

(a) The state board in conjunction with the Division of Homeland Security and Emergency Management shall promulgate by December 31, 2011, a legislative rule in accordance with article three-b [ §§ 29A-3B-1 et seq.], chapter twenty-nine-a of this code, and if necessary may promulgate an emergency rule in accordance with said article, for the establishment of an up-to-date, school specific crisis response plan at every school in the state. In developing the rule, the state board shall consider plans currently being developed as part of the safe schools initiative currently underway by the School Building Authority and the Division of Homeland Security and Emergency Management. In addition, those portions of a school's access safety plan created pursuant to section three [ § 18-9F-3] of this article may be used as a portion of the school's school specific crisis response plan if there are any overlapping requirements. The rule shall provide for at least the following:

(1) A model school crisis response plan for use by each school in the state, including a uniform template which shall be used by each school to file the plan, including at least the following information, in a secure electronic system identified by the Division of Homeland Security and Emergency Management:

(F) Policies and procedures for enforcing school discipline and maintaining a safe and orderly environment during the crisis.

**§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.**

(g) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions. These policies shall encourage the use of alternatives to discipline practices, provide for the training of school personnel in alternatives to discipline practices and provide for encouraging the involvement of parent(s), guardian(s) or custodian(s) in the maintenance of school discipline. To promote a teaching and learning environment free from substantial classroom disturbances, each county board shall ensure that each school implements a tier system policy, with teacher input, to provide a framework for student behaviors and punishments. The policy shall be clear and concise with specific guidelines and examples. The principal shall support the teacher in the discipline of the students if proper cause and documentation is provided following the schoolwide discipline policy. The teacher may not be reprimanded if their actions are legal and within the structure of the county board's policy for student behavior and punishment. The county board policies shall also include an appeal procedure whereby a teacher may appeal to the county superintendent if a school principal refuses to allow the exclusion of a student from the classroom or if a teacher believes the school principal has prematurely ended the exclusion of a student from the classroom. The county boards shall provide for the immediate incorporation and implementation in schools of a preventive discipline program which may include the responsible student program and a student involvement program, which may include the peer mediation program, devised by the West Virginia Board of Education. Each county board may modify those programs to meet the particular needs of the county. The county boards shall provide in-service training for teachers and principals relating to assertive discipline procedures and conflict resolution. The county boards also may establish cooperatives with private entities to provide middle educational programs, which may include programs focusing on developing individual coping skills, conflict resolution, anger control, self-esteem issues, stress management and decision making for students, and any other program related to preventive discipline.

**§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.**

(n) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions.

**REGULATIONS**

**§126-42-7. County board of education responsibilities.**

7.1. Schools shall implement WVBE and county policies as well as county and school procedures to ensure high quality delivery of their education program. In meeting this responsibility, schools shall address the following components of a high quality education program.

**§126-81-4. Definitions.**

4.3. Each county board of education shall:



4.3.a. establish an attendance policy as described in section 6.

**§126-81-5. Responsibilities.**

5.1. County central office staff shall:

5.1.a. provide opportunities for input from teachers, principals, attendance directors, parents/guardians/custodians, and community leaders when developing or revising the attendance policy.

**§126-99-1. General.**

1.1. Scope. - This rule sets the requirements for the development of safe and supportive schools that provide optimal learning conditions for both students and staff. Safety and order is the foundation of a positive school climate/culture that supports student academic achievement and personal-social development. This rule also establishes disciplinary guidelines for student conduct in West Virginia schools in order to assure an orderly, safe, drug-free, violence- and harassment-free learning environment.

**§126-99-2. Purpose.**

2.1. The West Virginia Board of Education (WVBE) recognizes the need for students, teachers, administrators, and other school personnel to have a safe and supportive educational environment. Public schools should undertake proactive, preventive approaches to ensure a positive school climate and culture that fosters learning and personal-social development. This rule requires county boards of education to design and implement procedures to create and support continuous school climate and culture improvement processes within all schools that will ensure an orderly and safe environment that is conducive to learning.

## **Scope**

### **LAWS**

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

(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, a school bus, at a school bus stop or at school sponsored events.

**§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.**

(b)(1) It is unlawful to possess a firearm or other deadly weapon:

(A) On a school bus as defined in § 17A-1-1 of this code;

(B) In or on the grounds of any primary or secondary educational facility of any type: Provided, That it shall not be unlawful to possess a firearm or other deadly weapon in or on the grounds of any private primary or secondary school, if such institution has adopted a written policy allowing for possession of firearms or other deadly weapons in the facility or on the grounds thereof;

(C) At a school-sponsored function that is taking place in a specific area that is owned, rented, or leased by the West Virginia Department of Education, the West Virginia Secondary Schools Activities Commission, a county school board, or local public school for the actual period of time the function is occurring.

### **REGULATIONS**

No relevant regulations found.

## Communication of Policy

### LAWS

#### **§18-2C-3. Policy prohibiting harassment, intimidation or bullying.**

(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.

#### **§18-2C-5. Policy training and education.**

- (b) To the extent state or federal funds are appropriated for these purposes, each school district shall:
- (1) Provide training on the harassment, intimidation or bullying policy to school employees upon employment and volunteers who have direct contact with students; and
  - (2) Develop a process for educating students on the harassment, intimidation or bullying policy.
- (c) Information regarding the county board policy against harassment, intimidation or bullying shall be incorporated into each school's current employee training program upon employment and renewed every three years thereafter.

### REGULATIONS

No relevant regulations found.

# ***In-School Discipline***

## **Discipline Frameworks**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

## **Teacher Authority to Remove Students From Classrooms**

### **LAWS**

**§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.**

(c) The teacher, may exclude from his or her classroom or school bus any student who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who behaves in a manner that obstructs the teaching or learning process of others in the classroom; who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a student; who willfully disobeys a school employee; or who uses abusive or profane language directed at a school employee. Any student excluded shall be placed under the control of the principal of the school or a designee. 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 specifies the specific type of disciplinary action, if any, that was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of the action to the parent(s), guardian(s), or custodian(s). When a student is excluded from a classroom or a school 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 the school bus only after the principal, teacher and, if possible, the parent(s), guardian(s), or custodian(s) of the student have held a conference to discuss the student's disruptive behavior patterns, and the teacher and the principal agree on a course of discipline for the student and inform the parent(s), guardian(s), or custodian(s) of the course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting. The Legislature finds that isolating students or placing them in alternative learning centers may be the best setting for chronically disruptive students. The county board shall create more alternative learning centers or expand its capacity for alternative placements, subject to funding, to correct these students' behaviors so they can return to a regular classroom without engaging in further disruptive behavior.

(d) When a grade six through 12 teacher, excluding an elementary school teacher, determines that the behavior of the student is disorderly conduct, is interfering with an orderly educational process, or obstructs the teaching or learning process of others in the classroom:

- (1) The student may be excluded from that teacher's classroom and if excluded may not re-enter that teacher's classroom for at least the remainder of the instructional day;
- (2) If the student is excluded pursuant to subdivision (1) of this subsection;
  - (A) The principal shall communicate with the teacher within 24 hours of the student being excluded from the teacher's classroom about the exclusion;
  - (B) The teacher has 24 hours to create an electronic record and place the report of this action into the West Virginia Education Information System (WVEIS), without any repercussion to the teacher; and

(C) If the student is removed from a classroom a total of three times in one month for one or more of the behaviors set forth in this subsection, the student shall receive as determined by the principal an in-school suspension, an out-of-school suspension, or may be considered for placement in an alternative learning center if one is available within the school district.

## **REGULATIONS**

### **§126-99-5. Severability.**

Section 2. Guidelines for Specific Responses to Inappropriate Behavior Exclusion. According to W. Va. Code § 18A-5-1, a teacher or bus driver may exclude from a classroom or bus any student who is guilty of disorderly conduct; interferes with the orderly educational process; threatens, abuses, or otherwise intimidates a school employee or student; willfully disobeys a school employee; or directs abusive or profane language at a school employee. Any student excluded shall be placed under the control of the principal of the school or a designee.

## **Alternatives to Suspension**

## **LAWS**

### **§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.**

(e) The Legislature finds that suspension from school is not appropriate solely for a student's failure to attend class. Therefore, a student may not be suspended from school solely for not attending class.

Other methods of discipline may be used for the student which may include, but are not limited to, detention, extra class time or alternative class settings. [...]

(g) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions. These policies shall encourage the use of alternatives to discipline practices, , provide for the training of school personnel in alternatives to discipline practices and provide for encouraging the involvement of parent(s), guardian(s) or custodian(s) in the maintenance of school discipline. To promote a teaching and learning environment free from substantial classroom disturbances, each county board shall ensure that each school implements a tier system policy, with teacher input, to provide a framework for student behaviors and punishments. The policy shall be clear and concise with specific guidelines and examples. The principal shall support the teacher in the discipline of the students if proper cause and documentation is provided following the schoolwide discipline policy. The teacher may not be reprimanded if their actions are legal and within the structure of the county board's policy for student behavior and punishment. The county board policies shall also include an appeal procedure whereby a teacher may appeal to the county superintendent if a school principal refuses to allow the exclusion of a student from the classroom or if a teacher believes the school principal has prematurely ended the exclusion of a student from the classroom. The county boards shall provide for the immediate incorporation and implementation in schools of a preventive discipline program which may include the responsible student program and a student involvement program, which may include the peer mediation program, devised by the West Virginia Board of Education. Each county board may modify those programs to meet the particular needs of the county. The county boards shall provide in- service training for teachers and principals relating to assertive discipline procedures and conflict resolution. The county boards also may establish cooperatives with private entities to provide middle educational programs, which may include programs focusing on developing individual coping skills, conflict resolution, anger control, self-esteem issues, stress management and decision making for students, and any other program related to preventive discipline.

**§18A-5-8. Authority of certain aides to exercise control over students; compensation; transfers.**

(b) The authority provided for in subsection (a) of this section does not extend to suspending or expelling any student, participating in the administration of corporal punishment or performing instructional duties as a teacher or substitute teacher. However, the authority extends to supervising students undergoing in-school suspension if the instructional duties required by the supervision are limited solely to handing out class work and collecting class work. The authority to supervise students undergoing in-school suspension does not include actual instruction.

**§49-4-717. Sexting educational diversion program; requirements.**

(a) Before a juvenile petition is filed for activity proscribed by article eight-a [ §§ 61-8A-1 et seq.] or eight-c [ §§ 61-8C-1 et seq.], chapter sixty-one of this code, or after probable cause has been found to believe a juvenile has committed a violation thereof, but before an adjudicatory hearing on the petition, the court or a prosecuting attorney may direct or allow a minor who engaged in the activity to participate in an educational diversion program which meets the requirements of subsection (b) of this section. The prosecutor or court may refer the minor to the educational diversion program, as part of a prepetition intervention pursuant to section seven hundred two [ § 49-4-702] of this article.

(b) The West Virginia Supreme Court of Appeals may develop an educational diversion program for minors who are accused of activity proscribed by article eight-a or eight-c, chapter sixty-one of this code. As a part of any specialized educational diversion program so developed, the following issues and topics should be included:

- (1) The legal consequences of and penalties for sharing sexually suggestive or explicit materials, including applicable federal and state statutes;
- (2) The nonlegal consequences of sharing sexually suggestive or explicit materials including, but not limited to, the effect on relationships, loss of educational and employment opportunities, and being barred or removed from school programs and extracurricular activities;
- (3) How the unique characteristics of cyberspace and the Internet, including searchability, replicability and an infinite audience, can produce long-term and unforeseen consequences for sharing sexually suggestive or explicit materials; and
- (4) The connection between bullying and cyber-bullying and minors sharing sexually suggestive or explicit materials.

**REGULATIONS**

**§126-81-3. Policy development.**

3.2. Allowable Deductions for Schools. Beginning with the 2016-2017 school year, absences that result from school approved curricular/co-curricular activities, failure of the bus to run/hazardous conditions,

students not in attendance due to disciplinary measures, and school/county directed placements outside the traditional classroom environment including but not limited to homebound placement and in-school suspension.

**§126-81-5. Responsibilities.**

5.2. Each county's attendance policy shall address the following components:

5.2.b. County school systems are responsible for:

5.2.b.7. assuring that a student may not be suspended solely for failure to attend class. Other methods of discipline may include, but are not limited to, detention, extra class time, or alternative class settings.

**§126-99-5. Severability.**

Suspension. The purpose of suspension is to protect the students, school personnel and property, the educational environment, and the orderly process of the school. Suspension is considered a temporary solution to an inappropriate behavior until the problem that caused the suspension is corrected. The length of a suspension should be short, usually one to three school days, but may extend to ten school days.

Suspension typically takes one of two forms:

-In-School Suspension. Student is temporarily removed from the classroom(s) for disciplinary reasons but remains under the direct supervision of school personnel and continues to receive instructional support. Direct supervision means school personnel are physically in the same location as the student(s) under their supervision. Settings may include other locations within the school building or removal to another school, such as an alternative school, provided the student remains under direct supervision of school personnel.

-Out-of-School Suspension. Student is temporarily removed from the school for disciplinary reasons to another setting pursuant to W. Va. Code § 18A-5-1a (e.g., home, community setting). This includes both removals in which no Individual Education Plan (IEP) services are provided because the removal is 10 days or less, as well as removals in which the student continues to receive services according to his/her IEP. The student is not under direct supervision of school personnel as defined under in-school suspension.

# ***Conditions on Use of Certain Forms of Discipline***

## **Corporal Punishment**

### **LAWS**

#### **§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.**

(f) Corporal punishment of any student by a school employee is prohibited.

(g) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions. These policies shall encourage the use of alternatives to corporal discipline practices, provide for the training of school personnel in alternatives to discipline practices, and provide for encouraging the involvement of parent(s), guardian(s) or custodian(s) in the maintenance of school discipline. To promote a teaching and learning environment free from substantial classroom disturbances, each county board shall ensure that each school implements a tier system policy, with teacher input, to provide a framework for student behaviors and punishments. The policy shall be clear and concise with specific guidelines and examples. The principal shall support the teacher in the discipline of the students if proper cause and documentation is provided following the schoolwide discipline policy. The teacher may not be reprimanded if their actions are legal and within the structure of the county board's policy for student behavior and punishment. The county board policies shall also include an appeal procedure whereby a teacher may appeal to the county superintendent if a school principal refuses to allow the exclusion of a student from the classroom or if a teacher believes the school principal has prematurely ended the exclusion of a student from the classroom. The county boards shall provide for the immediate incorporation and implementation in schools of a preventive discipline program which may include the responsible student program and a student involvement program, which may include the peer mediation program, devised by the West Virginia Board of Education. Each county board may modify those programs to meet the particular needs of the county. The county boards shall provide in-service training for teachers and principals relating to assertive discipline procedures and conflict resolution. The county boards also may establish cooperatives with private entities to provide middle educational programs, which may include programs focusing on developing individual coping skills, conflict resolution, anger control, self-esteem issues, stress management and decision making for students, and any other program related to preventive discipline.

#### **§18A-5-8. Authority of certain aides to exercise control over students; compensation; transfers.**

(a) Within the limitations provided in this section, any aide who agrees to do so shall stand in the place of the parent or guardian and shall exercise such authority and control over students as is required of a teacher as provided in section one [§ 18A-5-1] of this article. The principal shall designate aides in the school who agree to exercise that authority on the basis of seniority as an aide and shall enumerate the instances in which the authority shall be exercised by an aide when requested by the principal, assistant principal or professional employee to whom the aide is assigned.

(b) The authority provided for in subsection (a) of this section does not extend to suspending or expelling any student, participating in the administration of corporal punishment or performing instructional duties as a teacher or substitute teacher. However, the authority extends to supervising students undergoing in-school suspension if the instructional duties required by the supervision are limited solely to handing out class work and collecting class work. The authority to supervise students undergoing in-school suspension does not include actual instruction.



## **REGULATIONS**

### **§126-99-5. Severability.**

#### Section 4. Use of Physical Punishment Prohibited

W. Va. Code § 18A-5-1(e) prohibits school employees from using corporal (bodily) punishment on any student. No physical punishment of any kind can be inflicted upon a student. This includes:

- hitting or striking a student on their physical person;
- requiring physical activity as a punishment (this does not apply to physical activity within the structure and context of extracurricular activities);
- use of noxious stimuli (e.g., pepper spray), denial of food or water, or other negative physical actions to control behavior; and
- seclusion - a removal in which a student is left unsupervised in any space as an intervention or consequence to inappropriate behavior.

## **Search and Seizure**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

#### **§126-99-5. Severability.**

Section 3. Protection from Unreasonable Searches and Seizures and Self-Incrimination Federal and state constitutions and statutes provide protection for all citizens from unreasonable searches and seizures.

Although school personnel have more latitude than police officers in this regard, because they do not need search warrants, search and seizures of lockers or students by school officials must be reasonable and based upon the information known by them at the time of the search. Personal property may be searched by those authorized where there is reasonable suspicion to believe that student property contains stolen articles, illegal items, or other contraband as defined by law or by local board or school policy.

Students also have a right under federal and state constitutions not to incriminate themselves about a crime when questioned on school grounds by an individual acting in the capacity of a law enforcement official. The students are entitled to be informed of their right against self-incrimination if they are in a custodial setting, in other words, the students are not at liberty to terminate the interrogation and leave. Students do not have a constitutional right against self-incrimination when being questioned by school officials or Prevention Resource Officers (PRO) acting under the supervision of school officials who are investigating school-related misconduct.

## **Restraint and Seclusion**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

#### **§126-99-5. Severability.**

#### Section 5. Use of Restraint

Restraint, reasonable force, may be used to prevent a student from hurting himself/herself or any other person or property. Behavior interventions and support practices must be implemented in such a way as

to protect the health and safety of the student and others. When the use of physical restraint is necessary, the following guidelines must be followed:

- shall be limited to the use of such reasonable force as is necessary to address the emergency;
- shall not restrict breathing (e.g. prone restraint); place pressure or weight on the chest, lungs, sternum, diaphragm, back, neck, or throat; or cause physical harm;
- shall be discontinued at the point at which the emergency no longer exists;

- shall be implemented in such a way as to protect the health and safety of the student and others; and
- shall not deprive the student of basic human necessities.

Appropriate (intended use) utilization of mechanical restraints, such as seat belts or feeding tables, when applied for their intended purpose is not prohibited. The application of mechanical restraint is prohibited as an intervention or consequence for inappropriate behavior.

A core team of personnel in each school, including an administrator designee and any general or special education personnel likely to use restraint, must be trained annually in the use of:

- nationally recognized restraint process, and
- current professionally accepted practices and standards regarding behavior interventions and supports including prevention and de-escalation techniques.

Any non-trained personnel called upon to use restraint in an emergency must receive training within 30 days following the use of restraint if the principal determines the situation is likely to reoccur.

Comprehensive documentation and immediate notification of restraint usage is required. [...]

#### Section 6. Collaboration with Law Enforcement

Police Conducting an Investigation in the School. When a student is questioned by the police or by school officials in the presence of the police, the school administration and police must cooperate to ensure the privacy of the student is protected. It is the police officer's responsibility to ensure the student's constitutional rights are not violated and to determine if the student's parent or guardian, or lawyer should be contacted prior to questioning. The officer must also determine when the use of restraints is necessary to control an unruly student to prevent the student from harming him/herself or others during questioning.

# ***Exclusionary Discipline: Suspension, Expulsion, and Alternative Placement***

## **Grounds for Suspension or Expulsion**

### **LAWS**

**§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.**

(a) A principal shall suspend a student from school or from transportation to or from the school on any school bus if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of subsection (b), section fifteen [§ 61-2-15], article two, chapter sixty-one of this code; (ii) violated the provisions of subsection (b), section eleven-a [§ 61-7-11a], article seven of said chapter; or (iii) sold a narcotic drug, as defined in section one hundred one [§ 60A-1-101], article one, chapter sixty-a of this code, on the premises of an educational facility, at a school-sponsored function or on a school bus. If a student has been suspended pursuant to this subsection, the principal shall, within twenty-four hours, request that the county superintendent recommend to the county board that the student be expelled. Upon such a request by a principal, the county superintendent shall recommend to the county board that the student be expelled. Upon such recommendation, the county board shall conduct a hearing in accordance with subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board shall expel the student.

(b) A principal shall suspend a student from school, or from transportation to or from the school on any school bus, if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Committed an act or engaged in conduct that would constitute a felony under the laws of this state if committed by an adult; or (ii) unlawfully possessed on the premises of an educational facility or at a school-sponsored function a controlled substance governed by the Uniform Controlled Substances Act as described in chapter sixty-a [§§ 60A-1-101 et seq.] of this code. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(c) A principal may suspend a student from school, or transportation to or from the school on any school bus, if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section: (i) Threatened to injure, or in any manner injured, a student, teacher, administrator or other school personnel; (ii) willfully disobeyed a teacher; (iii) possessed alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function; (iv) used profane language directed at a school employee or student; (v) intentionally defaced any school property; (vi) participated in any physical altercation with another person while under the authority of school personnel; or (vii) habitually violated school rules or policies. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student

committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

## **REGULATIONS**

### **§126-99-5. Severability.**

#### Section 2. Guidelines for Specific Responses to Inappropriate Behavior

Expulsion. The county superintendent, upon recommendation by the principal, may recommend that a county board of education expel a student from school if the student's conduct is judged to be detrimental to the progress and general conduct of the school. In all cases involving expulsion, the student is entitled to formal due process procedures. These procedures are outlined in W. Va. Code § 18A-5-1 and § 18A-5-1a.

W. Va. Code § 18A-5-1 and § 18A-5-1a requires mandatory out-of-school suspension by the principal and mandatory expulsion for a period of not less than twelve consecutive months by the county board of education for: possession of a deadly weapon, battery of a school employee, or sale of a narcotic drug.

## **Limitations or Conditions on Exclusionary Discipline**

## **LAWS**

### **§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.**

(e) The Legislature finds that suspension from school is not appropriate solely for a student's failure to attend class. Therefore, a student may not be suspended from school solely for not attending class. Other methods of discipline may be used for the student which may include, but are not limited to, detention, extra class time, or alternative class settings.

### **§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.**

(a) A principal shall suspend a student from school or from transportation to or from the school on any school bus if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of subsection (b), section fifteen [§ 61-2-15], article two, chapter sixty-one of this code; (ii) violated the provisions of subsection (b), section eleven-a [§ 61-7-11a], article seven of said chapter; or (iii) sold a narcotic drug, as defined in section one hundred one [§ 60A-1-101], article one, chapter sixty-a of this code, on the premises of an educational facility, at a school-sponsored function or on a school bus. If a student has been suspended pursuant to this subsection, the principal shall, within twenty-four hours, request that the county superintendent recommend to the county board that the student be expelled. Upon such a request by a principal, the county superintendent shall recommend to the county board that the student be expelled. Upon such recommendation, the county board shall conduct a hearing in accordance with subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board shall expel the student.

(b) A principal shall suspend a student from school, or from transportation to or from the school on any school bus, if the student, in the determination of the principal after an informal hearing pursuant to

subsection (d) of this section, has: (i) Committed an act or engaged in conduct that would constitute a felony under the laws of this state if committed by an adult; or (ii) unlawfully possessed on the premises of an educational facility or at a school-sponsored function a controlled substance governed by the Uniform Controlled Substances Act as described in chapter sixty-a [ §§ 60A-1-101 et seq.] of this code. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(c) A principal may suspend a student from school, or transportation to or from the school on any school bus, if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section: (i) Threatened to injure, or in any manner injured, a student, teacher, administrator or other school personnel; (ii) willfully disobeyed a teacher; (iii) possessed alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function; (iv) used profane language directed at a school employee or student; (v) intentionally defaced any school property; (vi) participated in any physical altercation with another person while under the authority of school personnel; or (vii) habitually violated school rules or policies. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(d) The actions of any student which may be grounds for his or her suspension or expulsion under the provisions of this section shall be reported immediately to the principal of the school in which the student is enrolled. If the principal determines that the alleged actions of the student would be grounds for suspension, he or she shall conduct an informal hearing for the student immediately after the alleged actions have occurred. The hearing shall be held before the student is suspended unless the principal believes that the continued presence of the student in the school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, in which case the student shall be suspended immediately and a hearing held as soon as practicable after the suspension.

The student and his or her parent(s), guardian(s) or custodian(s), as the case may be, shall be given telephonic notice, if possible, of this informal hearing, which notice shall briefly state the grounds for suspension.

At the commencement of the informal hearing, the principal shall inquire of the student as to whether he or she admits or denies the charges. If the student does not admit the charges, he or she shall be given an explanation of the evidence possessed by the principal and an opportunity to present his or her version of the occurrence. At the conclusion of the hearing or upon the failure of the noticed student to appear, the principal may suspend the student for a maximum of ten school days, including the time prior to the hearing, if any, for which the student has been excluded from school.

The principal shall report any suspension the same day it has been decided upon, in writing, to the parent(s), guardian(s) or custodian(s) of the student by regular United States mail. The suspension also shall be reported to the county superintendent and to the faculty senate of the school at the next meeting after the suspension.

(e) Prior to a hearing before the county board, the county board shall cause a written notice which states the charges and the recommended disposition to be served upon the student and his or her parent(s), guardian(s) or custodian(s), as the case may be. The notice shall state clearly whether the board will attempt at hearing to establish the student as a dangerous student, as defined by section one [ § 18A-1-

1], article one of this chapter. The notice also shall include any evidence upon which the board will rely in asserting its claim that the student is a dangerous student. The notice shall set forth a date and time at which the hearing shall be held, which date shall be within the ten-day period of suspension imposed by the principal.

(f) The county board shall hold the scheduled hearing to determine if the student should be reinstated or should, under the provisions of this section, must be expelled from school. If the county board determines that the student should or must be expelled from school, it also may determine whether the student is a dangerous student pursuant to subsection (g) of this section. At this, or any hearing before a county board conducted pursuant to this section, the student may be represented by counsel, may call his or her own witnesses to verify his or her version of the incident and may confront and cross examine witnesses supporting the charge against him or her. The hearing shall be recorded by mechanical means unless recorded by a certified court reporter. The hearing may be postponed for good cause shown by the student but he or she shall remain under suspension until after the hearing. The state board may adopt other supplementary rules of procedure to be followed in these hearings. At the conclusion of the hearing the county board shall either: (1) Order the student reinstated immediately at the end of his or her initial suspension; (2) suspend the student for a further designated number of days; or (3) expel the student from the public schools of the county.

(g) A county board that did not intend prior to a hearing to assert a dangerous student claim, that did not notify the student prior to the hearing that a dangerous student determination would be considered and that determines through the course of the hearing that the student may be a dangerous student shall schedule a second hearing within ten days to decide the issue. The hearing may be postponed for good cause shown by the student, but he or she remains under suspension until after the hearing.

A county board that expels a student, and finds that the student is a dangerous student, may refuse to provide alternative education. However, after a hearing conducted pursuant to this section for determining whether a student is a dangerous student, when the student is found to be a dangerous student, is expelled and is denied alternative education, a hearing shall be conducted within three months after the refusal by the board to provide alternative education to reexamine whether or not the student remains a dangerous student and whether the student shall be provided alternative education. Thereafter, a hearing for the purpose of reexamining whether or not the student remains a dangerous student and whether the student shall be provided alternative education shall be conducted every three months for so long as the student remains a dangerous student and is denied alternative education. During the initial hearing, or in any subsequent hearing, the board may consider the history of the student's conduct as well as any improvements made subsequent to the expulsion. If it is determined during any of the hearings that the student is no longer a dangerous student or should be provided alternative education, the student shall be provided alternative education during the remainder of the expulsion period.

(h) The superintendent may apply to a circuit judge or magistrate for authority to subpoena witnesses and documents, upon his or her own initiative, in a proceeding related to a recommended student expulsion or dangerous student determination, before a county board conducted pursuant to the provisions of this section. Upon the written request of any other party, the superintendent shall apply to a circuit judge or magistrate for the authority to subpoena witnesses, documents or both on behalf of the other party in a proceeding related to a recommended student expulsion or dangerous student determination before a county board. If the authority to subpoena is granted, the superintendent shall subpoena the witnesses, documents or both requested by the other party. Furthermore, if the authority to subpoena is granted, it shall be exercised in accordance with the provisions of section one [§ 29A-5-1], article five, chapter twenty-nine-a of this code.

Any hearing conducted pursuant to this subsection may be postponed: (1) For good cause shown by the student; (2) when proceedings to compel a subpoenaed witness to appear must be instituted; or (3) when

a delay in service of a subpoena hinders either party's ability to provide sufficient notice to appear to a witness. A student remains under suspension until after the hearing in any case where a postponement occurs.

(i) Students may be expelled pursuant to this section for a period not to exceed one school year, except that if a student is determined to have violated the provisions of subsection (a) of this section the student shall be expelled for a period of not less than twelve consecutive months, subject to the following:

(1) The county superintendent may lessen the mandatory period of twelve consecutive months for the expulsion of the student if the circumstances of the student's case demonstrably warrant;

(2) Upon the reduction of the period of expulsion, the county superintendent shall prepare a written statement setting forth the circumstances of the student's case which warrant the reduction of the period of expulsion. The county superintendent shall submit the statement to the county board, the principal, the faculty senate and the local school improvement council for the school from which the student was expelled. The county superintendent may use the following factors as guidelines in determining whether or not to reduce a mandatory twelve-month expulsion:

(A) The extent of the student's malicious intent;

(B) The outcome of the student's misconduct;

(C) The student's past behavior history;

(D) The likelihood of the student's repeated misconduct; and

(E) If applicable, successful completion or making satisfactory progress toward successful completion of Juvenile Drug Court pursuant to section one-d of this section.

(j) In all hearings under this section, facts shall be found by a preponderance of the evidence.

(k) For purposes of this section, nothing herein may be construed to be in conflict with the federal provisions of the Individuals with Disabilities Education Act, 20 U. S. C. §§ 1400, et seq.

(l) Each suspension or expulsion imposed upon a student under the authority of this section shall be recorded in the uniform integrated regional computer information system (commonly known as the West Virginia Education Information System) described in subsection (f), section twenty-six [§ 18-2-26], article two, chapter eighteen of this code.

(1) The principal of the school at which the student is enrolled shall create an electronic record within twenty-four hours of the imposition of the suspension or expulsion.

(2) Each record of a suspension or expulsion shall include the student's name and identification number, the reason for the suspension or expulsion and the beginning and ending dates of the suspension or expulsion.

(3) The state board shall collect and disseminate data so that any principal of a public school in West Virginia can review the complete history of disciplinary actions taken by West Virginia public schools against any student enrolled or seeking to enroll at that principal's school. The purposes of this provision are to allow every principal to fulfill his or her duty under subsection (b), section fifteen-f [§ 18-5-15f], article five, chapter eighteen of this code to determine whether a student requesting to enroll at a public school in West Virginia is currently serving a suspension or expulsion from another public school in West Virginia and to allow principals to obtain general information about students' disciplinary histories.

(m) Principals may exercise any other authority and perform any other duties to discipline students consistent with state and federal law, including policies of the state board.

(n) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions.



(o) For the purpose of this section, principal means the principal, assistant principal, vice principal or the administrative head of the school or a professional personnel designee of the principal or the administrative head of the school.

**§18A-5-1d. Return to school through Juvenile Drug Court for certain students.**

(a) When a student is expelled from school pursuant to §18A-5-1a of this code, the county board, county superintendent, or principal for the school from which the student was expelled or the parent, guardian, or custodian may refer the student to a Juvenile Drug Court, operated pursuant to §49-4-703 of this code. Upon referral, the judge assigned to Juvenile Drug Court shall determine whether the student is an appropriate candidate for Juvenile Drug Court.

(b) If the judge determines the student is an appropriate candidate for Juvenile Drug Court, then the court has jurisdiction over the student in the same manner as it has jurisdiction over all other persons in Juvenile Drug Court. Jurisdiction over students includes the ability to issue any of the various sanctions available to the Juvenile Drug Court, including temporary detention.

(c)(1) Successful completion of Juvenile Drug Court or certification by the Juvenile Drug Court judge that the student is making satisfactory progress toward successful completion of Juvenile Drug Court warrants consideration for reduction of the expulsion period, pursuant to §18A-5-1a of this code.

(2) The Juvenile Drug Court shall notify the county superintendent of the completion or certification. The county superintendent shall arrange a meeting with the Juvenile Drug Court treatment team, the court, and the student assistance team of the school from which the student was expelled to discuss the student's history, progress, and potential for improvement.

(3) The student assistance team shall evaluate and recommend whether the student's expulsion period should be reduced, and the student reinstated in school.

(4) The student assistance team's recommendation shall be presented to the superintendent, who shall make the final determination. The superintendent shall prepare a statement detailing reasons for or against school reinstatement and submit the statement to the county board. If the superintendent determines to reduce the expulsion period, he or she shall submit the statement required by §18A-5-1a(i) of this code and place the student in an appropriate school within the district.

(5) A student to be reinstated shall be permitted to return to school no later than the 10th regular school day following notice by the court to the superintendent regarding the student's successful completion or satisfactory progress toward successful completion of Juvenile Drug Court.

**REGULATIONS**

**§126-99-5. Severability.**

Out-of-school suspension strategies should be used sparingly and shall never deny students access to instructional material and information necessary to maintain their academic progress. Out-of-school suspension should only be considered when all other interventions and consequences have not proven to correct the behavior. The determination of interventions and consequences is at the discretion of the school administrator, with input considered from teachers/service personnel. W. Va. Code requires that the principal shall suspend a student who commits a behavior classified as Level 4 in this policy. Level 3 and 4 behaviors are to be referred directly to the appropriate administrator because of the serious and/or unlawful nature of the misconduct. [...]

**Section 2. Guidelines for Specific Responses to Inappropriate Behavior**

A student is entitled to an informal hearing when faced with an out-of-school suspension of 10 days or less. At this hearing, the principal must explain why the student is being suspended, and the student must be given the opportunity to present reasons why she/he should not be suspended. However, a student

whose conduct is detrimental to the safety of the school may be suspended immediately and a hearing held as soon as practical after the suspension. Other procedures the school must follow when dealing with out-of-school suspensions are outlined in W. Va. Code § 18A-5-1 and § 18A-5-1a and include:

-student may not be suspended from school solely for not attending class.

## **Due Process**

### **LAWS**

#### **§18-8-4. Duties of attendance director and assistant directors; complaints, warrants, and hearings.**

(g) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in §50-1-8 of this code, shall assign the case to a magistrate within 10 days of execution of the summons or warrant. The hearing shall be held within 20 days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least 10 days' advance notice of the date, time and place of the hearing.

#### **§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.**

(a) A principal shall suspend a student from school or from transportation to or from the school on any school bus if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of subsection (b), section fifteen [§ 61-2-15], article two, chapter sixty-one of this code; (ii) violated the provisions of subsection (b), section eleven-a [§ 61-7-11a], article seven of said chapter; or (iii) sold a narcotic drug, as defined in section one hundred one [§ 60A-1-101], article one, chapter sixty-a of this code, on the premises of an educational facility, at a school-sponsored function or on a school bus. If a student has been suspended pursuant to this subsection, the principal shall, within twenty-four hours, request that the county superintendent recommend to the county board that the student be expelled. Upon such a request by a principal, the county superintendent shall recommend to the county board that the student be expelled. Upon such recommendation, the county board shall conduct a hearing in accordance with subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board shall expel the student.

(b) A principal shall suspend a student from school, or from transportation to or from the school on any school bus, if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Committed an act or engaged in conduct that would constitute a felony under the laws of this state if committed by an adult; or (ii) unlawfully possessed on the premises of an educational facility or at a school-sponsored function a controlled substance governed by the Uniform Controlled Substances Act as described in chapter sixty-a [ §§ 60A-1-101 et seq.] of this code. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(c) A principal may suspend a student from school, or transportation to or from the school on any school bus, if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section: (i) Threatened to injure, or in any manner injured, a student, teacher, administrator or

other school personnel; (ii) willfully disobeyed a teacher; (iii) possessed alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function; (iv) used profane language directed at a school employee or student; (v) intentionally defaced any school property; (vi) participated in any physical altercation with another person while under the authority of school personnel; or (vii) habitually violated school rules or policies. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(d) The actions of any student which may be grounds for his or her suspension or expulsion under the provisions of this section shall be reported immediately to the principal of the school in which the student is enrolled. If the principal determines that the alleged actions of the student would be grounds for suspension, he or she shall conduct an informal hearing for the student immediately after the alleged actions have occurred. The hearing shall be held before the student is suspended unless the principal believes that the continued presence of the student in the school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, in which case the student shall be suspended immediately and a hearing held as soon as practicable after the suspension.

The student and his or her parent(s), guardian(s) or custodian(s), as the case may be, shall be given telephonic notice, if possible, of this informal hearing, which notice shall briefly state the grounds for suspension.

At the commencement of the informal hearing, the principal shall inquire of the student as to whether he or she admits or denies the charges. If the student does not admit the charges, he or she shall be given an explanation of the evidence possessed by the principal and an opportunity to present his or her version of the occurrence. At the conclusion of the hearing or upon the failure of the noticed student to appear, the principal may suspend the student for a maximum of ten school days, including the time prior to the hearing, if any, for which the student has been excluded from school.

The principal shall report any suspension the same day it has been decided upon, in writing, to the parent(s), guardian(s) or custodian(s) of the student by regular United States mail. The suspension also shall be reported to the county superintendent and to the faculty senate of the school at the next meeting after the suspension.

(e) Prior to a hearing before the county board, the county board shall cause a written notice which states the charges and the recommended disposition to be served upon the student and his or her parent(s), guardian(s) or custodian(s), as the case may be. The notice shall state clearly whether the board will attempt at hearing to establish the student as a dangerous student, as defined by section one [§ 18A-1-1], article one of this chapter. The notice also shall include any evidence upon which the board will rely in asserting its claim that the student is a dangerous student. The notice shall set forth a date and time at which the hearing shall be held, which date shall be within the ten-day period of suspension imposed by the principal.

(f) The county board shall hold the scheduled hearing to determine if the student should be reinstated or should, under the provisions of this section, must be expelled from school. If the county board determines that the student should or must be expelled from school, it also may determine whether the student is a dangerous student pursuant to subsection (g) of this section. At this, or any hearing before a county board conducted pursuant to this section, the student may be represented by counsel, may call his or her own witnesses to verify his or her version of the incident and may confront and cross examine witnesses supporting the charge against him or her. The hearing shall be recorded by mechanical means unless recorded by a certified court reporter. The hearing may be postponed for good cause shown by the

student but he or she shall remain under suspension until after the hearing. The state board may adopt other supplementary rules of procedure to be followed in these hearings. At the conclusion of the hearing the county board shall either: (1) Order the student reinstated immediately at the end of his or her initial suspension; (2) suspend the student for a further designated number of days; or (3) expel the student from the public schools of the county.

(g) A county board that did not intend prior to a hearing to assert a dangerous student claim, that did not notify the student prior to the hearing that a dangerous student determination would be considered and that determines through the course of the hearing that the student may be a dangerous student shall schedule a second hearing within ten days to decide the issue. The hearing may be postponed for good cause shown by the student, but he or she remains under suspension until after the hearing.

A county board that expels a student, and finds that the student is a dangerous student, may refuse to provide alternative education. However, after a hearing conducted pursuant to this section for determining whether a student is a dangerous student, when the student is found to be a dangerous student, is expelled and is denied alternative education, a hearing shall be conducted within three months after the refusal by the board to provide alternative education to reexamine whether or not the student remains a dangerous student and whether the student shall be provided alternative education. Thereafter, a hearing for the purpose of reexamining whether or not the student remains a dangerous student and whether the student shall be provided alternative education shall be conducted every three months for so long as the student remains a dangerous student and is denied alternative education. During the initial hearing, or in any subsequent hearing, the board may consider the history of the student's conduct as well as any improvements made subsequent to the expulsion. If it is determined during any of the hearings that the student is no longer a dangerous student or should be provided alternative education, the student shall be provided alternative education during the remainder of the expulsion period.

(h) The superintendent may apply to a circuit judge or magistrate for authority to subpoena witnesses and documents, upon his or her own initiative, in a proceeding related to a recommended student expulsion or dangerous student determination, before a county board conducted pursuant to the provisions of this section. Upon the written request of any other party, the superintendent shall apply to a circuit judge or magistrate for the authority to subpoena witnesses, documents or both on behalf of the other party in a proceeding related to a recommended student expulsion or dangerous student determination before a county board. If the authority to subpoena is granted, the superintendent shall subpoena the witnesses, documents or both requested by the other party. Furthermore, if the authority to subpoena is granted, it shall be exercised in accordance with the provisions of section one [§ 29A-5-1], article five, chapter twenty-nine-a of this code.

Any hearing conducted pursuant to this subsection may be postponed: (1) For good cause shown by the student; (2) when proceedings to compel a subpoenaed witness to appear must be instituted; or (3) when a delay in service of a subpoena hinders either party's ability to provide sufficient notice to appear to a witness. A student remains under suspension until after the hearing in any case where a postponement occurs.

(i) Students may be expelled pursuant to this section for a period not to exceed one school year, except that if a student is determined to have violated the provisions of subsection (a) of this section the student shall be expelled for a period of not less than twelve consecutive months, subject to the following:

(1) The county superintendent may lessen the mandatory period of twelve consecutive months for the expulsion of the student if the circumstances of the student's case demonstrably warrant;

(2) Upon the reduction of the period of expulsion, the county superintendent shall prepare a written statement setting forth the circumstances of the student's case which warrant the reduction of the period of expulsion. The county superintendent shall submit the statement to the county board, the principal, the faculty senate and the local school improvement council for the school from which the

student was expelled. The county superintendent may use the following factors as guidelines in determining whether or not to reduce a mandatory twelve-month expulsion:

- (A) The extent of the student's malicious intent;
- (B) The outcome of the student's misconduct;
- (C) The student's past behavior history;
- (D) The likelihood of the student's repeated misconduct; and
- (E) If applicable, successful completion or making satisfactory progress toward successful completion of Juvenile Drug Court pursuant to section one-d of this section.

(j) In all hearings under this section, facts shall be found by a preponderance of the evidence.

(k) For purposes of this section, nothing herein may be construed to be in conflict with the federal provisions of the Individuals with Disabilities Education Act, 20 U. S. C. §§ 1400, et seq.

(l) Each suspension or expulsion imposed upon a student under the authority of this section shall be recorded in the uniform integrated regional computer information system (commonly known as the West Virginia Education Information System) described in subsection (f), section twenty-six [§ 18-2-26], article two, chapter eighteen of this code.

(1) The principal of the school at which the student is enrolled shall create an electronic record within twenty-four hours of the imposition of the suspension or expulsion.

(2) Each record of a suspension or expulsion shall include the student's name and identification number, the reason for the suspension or expulsion and the beginning and ending dates of the suspension or expulsion.

(3) The state board shall collect and disseminate data so that any principal of a public school in West Virginia can review the complete history of disciplinary actions taken by West Virginia public schools against any student enrolled or seeking to enroll at that principal's school. The purposes of this provision are to allow every principal to fulfill his or her duty under subsection (b), section fifteen-f [§ 18-5-15f], article five, chapter eighteen of this code to determine whether a student requesting to enroll at a public school in West Virginia is currently serving a suspension or expulsion from another public school in West Virginia and to allow principals to obtain general information about students' disciplinary histories.

(m) Principals may exercise any other authority and perform any other duties to discipline students consistent with state and federal law, including policies of the state board.

(n) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions.

(o) For the purpose of this section, principal means the principal, assistant principal, vice principal or the administrative head of the school or a professional personnel designee of the principal or the administrative head of the school.

**§18A-5-1b. Alternative procedures for expulsion hearings by county boards.**

The county boards may employ a hearing examiner to conduct the expulsion hearings required by this article. The hearing examiner shall be an attorney, duly licensed to practice law in the State of West Virginia and shall not be employed by the State or county boards for any other reason.

The hearing examiner shall conduct hearings in compliance with the guidelines of section one-a [§ 18A-5-1a] of this article. All hearings shall be recorded by mechanical means, unless recorded by a certified court reporter. The hearing examiner shall issue a decision and written findings of fact and conclusions of law within five days of the conclusion of the hearing. Hearings by a hearing examiner shall have the same

force and effect as a decision made by a county board. Upon the written request of a parent, guardian, or custodian of the student, or the county superintendent, the county board shall review the decision of the hearing examiner. Within ten calendar days from the date of the request of the review, the county board shall enter an order affirming, reversing, or modifying the decision of the hearing examiner. A county board may, in its own discretion, hold a hearing to determine any issues in question.

The authority of the county superintendent shall be the same as contained in section one-a of this article.

## **REGULATIONS**

### **§126-81-4. Definitions.**

4.3.c.6. The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in W. Va. Code §50-1-8, shall assign the case to a magistrate within 10 days of execution of the summons or warrant. The hearing shall be held within 20 days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least 10 days advance notice of the date, time, and place of the hearing.

### **§126-81-5. Responsibilities.**

5.2.c. County school systems are responsible for:

5.2.c.4. developing an attendance appeal process for students and parents/guardians/ custodians.

### **§126-99-5. Severability.**

A student is entitled to an informal hearing when faced with an out-of-school suspension of 10 days or less. At this hearing, the principal must explain why the student is being suspended, and the student must be given the opportunity to present reasons why she/he should not be suspended. However, a student whose conduct is detrimental to the safety of the school may be suspended immediately and a hearing held as soon as practical after the suspension. Other procedures the school must follow when dealing with out-of-school suspensions are outlined in W. Va. Code § 18A-5-1 and § 18A-5-1a and include:

- parent or guardian must be notified promptly in all cases of suspension;
- county superintendent or designee must be notified, preferably in writing, of the time and conditions pertaining to the suspension;
- student may not participate in any school-sponsored activities and is not permitted on school grounds during the period of suspension; or
- student may not be suspended from school solely for not attending class.

An out-of-school suspension of more than 10 days requires a formal hearing before the county board of education. The school and county must adhere to the following procedures as outlined in W. Va. Code § 18A-5-1 and § 18A-5-1a when dealing with suspensions of more than 10 days:

- parents or guardian must be informed in writing of the charges against their child, including a summary of the evidence upon which the charges are based;
- upon the student's parent or guardian's request, a formal hearing must be scheduled before the county board of education;
- students are entitled to be represented or advised during the proceedings by a person or persons of their choosing, including legal counsel; and
- students are entitled to be given reasonable time to prepare for the hearing.

## Return to School Following Removal

### LAWS

#### **§18-5-15f. Affirmation regarding the suspension or expulsion of a pupil from school.**

(d) Notwithstanding any other provision of this code to the contrary, any pupil who has been suspended or expelled from school pursuant to section one-a [§ 18A-5-1a], article five, chapter eighteen-a of this code, or who has been suspended or expelled from a public or private school in another state, due to actions described in section one-a, article five, chapter eighteen-a of this code, may not be admitted to any public school within the State of West Virginia until the period of suspension or expulsion has expired.

#### **§18-8-8. Child suspended for failure to comply with requirements and regulations treated as unlawfully absent.**

If a child be suspended from school because of improper conduct or refusal of such child to comply with the requirements of the school, the school shall immediately notify the county superintendent of such suspension, and specify the time or conditions of such suspension. Further admission of the child to school may be refused until such requirements and regulations be complied with. Any such child shall be treated by the school as being unlawfully absent from the school during the time he refuses to comply with such requirements and regulations, and any person having legal or actual control of such child shall be liable to prosecution under the provisions of this article for the absence of such child from school: Provided, That the county board of education does not exclude or expel the suspended child from school.

#### **§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.**

(c) The teacher, may exclude from his or her classroom or school bus any student who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who behaves in a manner that obstructs the teaching or learning process of others in the classroom; who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a student; who willfully disobeys a school employee; or who uses abusive or profane language directed at a school employee. Any student excluded shall be placed under the control of the principal of the school or a designee. 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 specifies the specific type of disciplinary action, if any, that was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of the action to the parent(s), guardian(s), or custodian(s). When a student is excluded from a classroom or a school 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 the school bus only after the principal, teacher and, if possible, the parent(s), guardian(s), or custodian(s) of the student have held a conference to discuss the student's disruptive behavior patterns, and the teacher and the principal agree on a course of discipline for the student and inform the parent(s), guardian(s), or custodian(s) of the course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting. The Legislature finds that isolating students or placing them in alternative learning centers may be the best setting for chronically disruptive students. The county board shall create more alternative learning centers or expand its capacity for alternative placements, subject to funding, to correct these students' behaviors so they can return to a regular classroom without engaging in further disruptive behavior.

**§18A-5-1d. Return to school through Juvenile Drug Court for certain students.**

(c)(3) The student assistance team shall evaluate and recommend whether the student's expulsion period should be reduced, and the student reinstated in school.

(4) The student assistance team's recommendation shall be presented to the superintendent, who shall make the final determination. The superintendent shall prepare a statement detailing reasons for or against school reinstatement and submit the statement to the county board. If the superintendent determines to reduce the expulsion period, he or she shall submit the statement required by §18A-5-1a(i) of this code and place the student in an appropriate school within the district.

(5) A student to be reinstated shall be permitted to return to school no later than the 10th regular school day following notice by the court to the superintendent regarding the student's successful completion or satisfactory progress toward successful completion of Juvenile Drug Court.

**REGULATIONS**

**§126-99-5. Severability.**

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 specifies the specific type of disciplinary action, if any, that was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of the action to the parent or guardian.

When a student is excluded from a classroom or a school 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 the school bus only after the principal, teacher and, if possible, the parent or guardian of the student have held a conference to discuss the student's disruptive behavior patterns and agree on a course of action. If they are not present at the conference then the parent or guardian must be notified of the course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting. [...]

**Section 2. Guidelines for Specific Responses to Inappropriate Behavior**

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 specifies the specific type of disciplinary action, if any, that was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of the action to the parent or guardian.

When a student is excluded from a classroom or a school 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 the school bus only after the principal, teacher and, if possible, the parent or guardian of the student have held a conference to discuss the student's disruptive behavior patterns and agree on a course of action. If they are not present at the conference then the parent or guardian must be notified of the course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting.



## Alternative Placements

### LAWS

#### **§18-2-6. Classification and standardization of schools; standards for degrees and diplomas; certificates of proficiency; establishment of alternative education programs.**

(d) The state board shall promulgate a rule for the approval of alternative education programs for disruptive students who are at risk of not succeeding in the traditional school structure.

(1) This rule may provide for the waiver of other policies of the state board, the establishment and delivery of a nontraditional curriculum, the establishment of licensure requirements for alternative education program teachers, and the establishment of performance measures for school accreditation.

(2) This rule shall provide uniform definitions of disruptive student behavior and uniform standards for the placement of students in alternative settings or providing other interventions including referrals to local juvenile courts to correct student behavior so that they can return to a regular classroom without engaging in further disruptive behavior.

(e) The state board shall establish up to five pilot projects at the elementary or middle school levels, or both, that employ alternative schools or other placements for disruptive students to learn appropriate behaviors so they can return to the regular classroom without further disrupting the learning environment. The state board shall report to the Legislative Oversight Commission on Education Accountability by December 1, 2010, on its progress in establishing the pilot projects and by December 1 in each year after that for the duration of the pilot projects on the effect of the projects on maintaining student discipline.

(f) If a student attends an approved alternative education program or the Mountaineer Challenge Academy, which is designated as a special alternative education program pursuant to §15-1B-24 of this code, and the student graduates or passes the high school equivalency tests within five years of beginning ninth grade, that student shall be considered graduated for the purposes of calculating the high school graduation rate used for school accreditation and school system approval, subject to the following:

(1) The student shall be considered graduated only to the extent that this is not in conflict with any provision of federal law relating to graduation rates;

(2) If the state board determines that this is in conflict with a provision of federal law relating to graduation rates, the state board shall request a waiver from the United States Department of Education; and

(3) If the waiver is granted, notwithstanding the provisions of §18-2-6(f)(1) of this code, the student graduating or passing the high school equivalency tests within five years shall be considered graduated.

(g) The state board shall promulgate a rule to support the operation of the National Guard Youth Challenge Program operated by the Adjutant General and known as the Mountaineer Challenge Academy which is designated as a special alternative education program pursuant to §15-1B-24 of this code for students who are at risk of not succeeding in the traditional school structure. The rule shall set forth policies and procedures applicable only to the Mountaineer Challenge Academy that provide for, but are not limited to, the following:

(1) Implementation of provisions set forth in §15-1B-24 of this code;

(2) Precedence of the policies and procedures designated by the National Guard Bureau for the operation of the Mountaineer Challenge Academy special alternative education program;

(3) Consideration of a student participating in the Mountaineer Challenge Academy special alternative education program at full enrollment status in the referring county for the purposes of funding and calculating attendance and graduation rates, subject to the following:

(A) The student shall be considered at full enrollment status only for the purposes of calculating attendance and graduation rates to the extent that this is not in conflict with any provision of federal law relating to attendance or graduation rates;

(B) If the state board determines that this is in conflict with a provision of federal law relating to attendance or graduation rates, the state board shall request a waiver from the United States Department of Education;

(C) If the waiver is granted, notwithstanding the provisions of §18-2-6(g)(3)(A) of this code, the student shall be considered at full enrollment status in the referring county for the purposes of calculating attendance and graduation rates; and

(D) Consideration of the student at full enrollment status in the referring county is for the purposes of funding and calculating attendance and graduation rates only. For any other purpose, a student participating in the academy is considered withdrawn from the public school system;

(4) Articulation of the knowledge, skills, and competencies gained through alternative education so that students who return to regular education may proceed toward attainment or may attain the standards for graduation without duplication;

(5) Consideration of eligibility to take the high school equivalency tests by qualifying within the extraordinary circumstances provisions established by state board rule for a student participating in the Mountaineer Challenge Academy special alternative education program who does not meet any other criteria for eligibility; and

(6) Payment of tuition by a county board to the Mountaineer Challenge Academy for each student graduating from the academy with a high school diploma that resides in that county board's school district. For purposes of this subdivision, "tuition" means an amount equal to 75 percent of the amount allotted per pupil under the school aid formula.

(h) Nothing in this section or the rules promulgated under this section compels the Mountaineer Challenge Academy to be operated as a special alternative education program or to be subject to any other laws governing the public schools except by its consent.

(i) The Legislature makes the following findings regarding students at risk:

(1) Defeated and discouraged learners. -

(A) Any child who is unlikely to graduate on schedule with both the skills and self-esteem necessary to exercise meaningful options in the areas of work, leisure, culture, civic affairs, and personal relationships may be defined as being an at-risk student;

(B) Problems associated with students at risk often begin for them in the early grades as they gradually fall further behind in the essential skills of reading, writing, and math;

(C) These problems may be accompanied by such behavior patterns as poor attendance, inattentiveness, negative attitudes, and acting out in class. These patterns are both symptoms of and added catalysts for students to become increasingly defeated and discouraged learners;

(D) By the middle grades, students with growing skill deficits usually know they are behind other students and have good reason to feel discouraged. A growing lack of self-confidence and self-worth, limited optimism for the future, avoidance of school and adults, and a dimming view of the relationship between effort and achievement are among the characteristics of defeated and discouraged learners;

(E) Public schools are expected to address the needs of all students, minimizing the likelihood that they will become at risk and giving additional attention to those who do; however, the circumstances involved with a becoming at risk often are complex and may include influences both within and outside of the school environment; and

(F) In fragile homes, a child who is at risk and is becoming a discouraged and defeated learner often lacks adequate support and may develop peer relationships that further exacerbate the difficulty of reengaging him or her in learning, school, and responsible social behavior.

(2) The Legislature further finds that the public schools should not be deterred from seeking and assisting with enrollment of students in an alternative program that helps remedy the discouragement, lessens skill deficits, and facilitates a successful return to public school.

(j) For this purpose, subject to approval of the county superintendent, a student enrolled in the public schools of the county may continue to be enrolled while also enrolled in an alternative program subject to the following conditions:

(1) The alternative program is approved by the state board;

(2) The student meets the general description of an at-risk student and exhibits behaviors and characteristics associated with a discouraged and defeated learner;

(3) The alternative program complies with all requests of the county superintendent for information on the educational program and progress of the student;

(4) The alternative program includes a family involvement component in its program. This component shall include, but is not limited to, providing for student and parent participation in activities that help address the challenging issues that have hindered the student's engagement and progress in learning;

(5) The alternative program includes an on-site boarding option for students;

(6) The alternative program provides an individualized education program for students that is designed to prepare them for a successful transition back into the public schools; and

(7) The parents or legal guardian of the student make application for enrollment of the student in the alternative program, agree to the terms and conditions for enrollment, and enroll the student in the program.

**§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.**

(c) The teacher, may exclude from his or her classroom or school bus any student who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who behaves in a manner that obstructs the teaching or learning process of others in the classroom; who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a student; who willfully disobeys a school employee; or who uses abusive or profane language directed at a school employee. Any student excluded shall be placed under the control of the principal of the school or a designee. 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 specifies the specific type of disciplinary action, if any, that was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of the action to the parent(s), guardian(s), or custodian(s). When a student is excluded from a classroom or a school 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 the school bus only after the principal, teacher and, if possible, the parent(s), guardian(s), or custodian(s) of the student have held a conference to discuss the student's disruptive behavior patterns, and the teacher and the principal agree on a course of discipline for the student and inform the parent(s), guardian(s), or custodian(s) of the course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting. The Legislature finds that isolating students or placing them in alternative learning centers may be the best setting for chronically disruptive students. The county board shall create more alternative learning centers or expand its capacity for alternative placements, subject to funding, to correct these students' behaviors so they can return to a regular classroom without engaging in further disruptive behavior. [...]

(e)The Legislature finds that suspension from school is not appropriate solely for a student's failure to attend class. Therefore, a student may not be suspended from school solely for not attending class. Other methods of discipline may be used for the student which may include, but are not limited to, detention, extra class time or alternative class settings.

**§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.**

A county board that expels a student, and finds that the student is a dangerous student, may refuse to provide alternative education. However, after a hearing conducted pursuant to this section for determining whether a student is a dangerous student, when the student is found to be a dangerous student, is expelled and is denied alternative education, a hearing shall be conducted within three months after the refusal by the board to provide alternative education to reexamine whether or not the student remains a dangerous student and whether the student shall be provided alternative education. Thereafter, a hearing for the purpose of reexamining whether or not the student remains a dangerous student and whether the student shall be provided alternative education shall be conducted every three months for so long as the student remains a dangerous student and is denied alternative education. During the initial hearing, or in any subsequent hearing, the board may consider the history of the student's conduct as well as any improvements made subsequent to the expulsion. If it is determined during any of the hearings that the student is no longer a dangerous student or should be provided alternative education, the student shall be provided alternative education during the remainder of the expulsion period.

**§18A-5-1c. Bill of rights and responsibilities for students and school personnel.**

(a) The Legislature finds that:

- (1) The mission of public schools is to prepare students for equal and responsible citizenship and productive adulthood;
- (2) Democratic citizenship and productive adulthood begin with standards of conduct in schools;
- (3) Schools should be safe havens for learning with high standards of conduct for students; and
- (4) Rights necessarily carry responsibilities.

(b) In recognition of the findings in this section, the following Bill of Rights and Responsibilities for Students and School Personnel is established:

- (3) The right to learn and work in a school that has alternative educational placements for violent or chronically disruptive students.

**REGULATIONS**

**§126-42-7. County board of education responsibilities.**

7.1.f. Alternate Delivery of Education Programs. The school shall follow county policies and procedures when providing for alternative delivery of education and service programs for students. A thorough and efficient education must be available to all students, whether they are placed in regular or alternative programs.

**§126-81-5. Responsibilities.**

5.2. Each county's attendance policy shall address the following components:

5.2.b. County school systems are responsible for:

- 5.2.b.7. assuring that a student may not be suspended solely for failure to attend class. Other methods of discipline may include, but are not limited to, detention, extra class time, or alternative class settings.

## **§126-99-5. Severability.**

### Chapter 4 Procedures for Taking Action on Substantiated Inappropriate Behaviors

#### Section 1. Interventions and Consequences of Inappropriate Behavior

When a student is excluded from a classroom or a school 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 the school bus only after the principal, teacher and, if possible, the parent or guardian of the student have held a conference to discuss the student's disruptive behavior patterns and agree on a course of action. If they are not present at the conference then the parent or guardian must be notified of the course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting. [...]

### Chapter 5 Alternative Education Requirements for Disruptive Students

W. Va. Code § 18-5-19 provides for the creation of alternative education programs to allow for the provision of a free and appropriate education to students whose disruptive behavior has caused them to be removed from the regular classroom/school setting. Nothing in this manual precludes county boards of education from operating alternative education programs for non-disruptive students. The guidelines in this manual apply solely to alternative education programs for disruptive students. The State Superintendent of School's approval of the county alternative education policies and procedures is required for authorization to operate an alternative education program under these regulations.

Alternative education program is a temporarily authorized departure from the regular school program designed to provide educational and social development for students whose disruptive behavior places them at risk of not succeeding in the traditional school structures and in adult life without positive interventions. These programs provide a safe and orderly learning environment for the education of all students in West Virginia public schools and meet the educational needs of disruptive students.

Alternative education programs for disruptive students encompass a range of program options such as:

- . in-school suspension;
- . a separate part-time or full-time alternative education classroom;
- . a school-within-a-school;
- . a school at an alternative site;
- . an afterschool class/night school program; or
- . a combination academic/work-based program.

County boards of education shall have flexibility in developing the type or types of alternative education program options needed to meet the needs of disruptive students in the county. County boards of education may request a waiver of State Board of Education policies and regulations in the development and operation of alternative education programs. Such a waiver request does not have to be submitted in accordance with the procedures for requesting waivers stipulated under W. Va. Code § 18-5A-3, but may be submitted directly to the State Superintendent of Schools.

Program flexibility does not extend to modifying the provisions of Policy 2419 in providing alternative education programs for students with exceptionalities or Section 504 of the Rehabilitation Act of 1973.

Section 1. Policies and Procedure County boards of education policies and procedures shall include, but are not limited to the:

- . goals of the program;
- . eligibility criteria and process for placement of students in the program as determined by Student Assistance Team as defined by W. Va. 126CSR42, WVBE Policy 2510, Assuring the Quality of Education: Regulations for Education Programs (Policy 2510);

- . involvement of parent or guardian and community agencies;
- . length and time of day the after-hours/night school program operates, if applicable;
- . plan for awarding of grades and/or credits;
- . behavioral management plan as an alternative to the county's discipline policy, if applicable;
- . staffing plan, personnel qualifications, and class size limits;
- . criteria for completion of the alternative education program or re-entry into general education; and
- . performance measures and process for program evaluation.

Section 2. Eligibility and Placement A student may be placed in alternative education programs for:

- . violations of the W. Va. Code § 18A-5-1a;
- . repeated violations of the county's discipline policy following documented multiple behavioral interventions by the Student Assistance Team at the referring school; or
- . continuation of educational services during periods of suspension.

A student who has been expelled must be placed in an alternative education program unless found to be a "dangerous student" under the procedures set forth in W. Va. Code § 18A-5-1a.

A student who has been suspended or expelled from a public or private school in West Virginia or another state, currently residing within the county, may not be denied enrollment unless determined to be a "dangerous student" under the procedures set forth in W. Va. Code § 18A-5-1a.

Upon placement, the Student Assistant Team shall develop a student's written plan which includes academic courses and behavioral components, criteria for re-entry to the regular school program, and provisions for periodic review of the student's progress at least on an annual basis. The team for all students with disabilities shall be the IEP team and the written plan shall be the IEP.

Section 3. County Alternative Education Requirements Curriculum. The curriculum will be based upon state-approved standards and include a component for teaching responsible behavior in a climate/culture conducive to teaching and learning.

Instruction. The instruction shall be personalized in a developmentally and age appropriate delivery.

Units of Credit. Units of credit are granted based upon proficiency of state-approved content standards.

Program Completion. A student may complete an alternative education program in one of the following manners:

- . fulfillment of the criteria for re-entry into the referral school;
- . completion of high school graduation requirements and awarding of a high school diploma from the referral school; or
- . completion of a high school equivalency exam in accordance with W. Va. 126CSR32, WVBE Policy 2444.4, Issuance of the State of West Virginia High School Equivalency Diploma and Option Pathway.

State Assessment. A student shall participate in the appropriate assessment according to W. Va. 126CSR14, WVBE Policy 2340, West Virginia Measures of Academic Progress Program. The test scores for these students shall be counted in the results of the referral school.

Support Services. A student shall receive counseling and/or other support services as indicated in the student's written plan.

Special Education. A student's IEP shall comply with applicable state and federal laws and regulations.

Licensure. A teacher assigned to deliver the state-approved content standards within an alternative education program must possess a West Virginia professional teaching certificate in any area. A Temporary Authorization valid for one year shall be granted to the successful candidate for the alternative education program position. The employing county superintendent must verify that the applicant

possesses the required competencies. The Temporary Authorization may be renewed each year based on the applicant's continued employment in an alternative education program.

Personnel Selection Criteria. A certified classroom teacher shall be selected on the basis of the teacher's demonstration of competence in meeting the following standards:

- . ability to effect positive behavior in disruptive students;
- . effective leadership and/or mentoring skills in working with youth;
- . successful experience in providing education to troubled or disruptive youth;
- . specialized training or experience in non-traditional programs; and
- . specialized training in behavior management skills.

Section 4. Optional Alternative Education Settings Day-School Programs. Absent expulsion, a student attending an alternative education day school program shall have the opportunity to receive a full-time instructional program and full instructional day.

After-Hours/Night School Classes. County boards of education are authorized to provide alternative education programs after regular school hours for expelled students and for students who have repeated serious violations of the county's discipline policy following documented multiple behavioral interventions and out-of-school suspensions. After-hour/night school programs shall include the provision of academic coursework and development of social skills/and appropriate behavior. Unless otherwise required by law, regulation, or court order, transportation services for such programs are at the discretion of the county board of education.

Home-Based Programs for Disruptive Students. County boards of education may provide home-based programs solely for students expelled under the Productive and Safe Schools Act (W. Va. Code § 18A-5-1a) or for disruptive students who meet the eligibility criteria for home/hospital instruction under Policy 2510.

Program Evaluation. County boards of education shall conduct an annual evaluation of the effectiveness of the programs. The evaluation shall focus upon the impact on student performance and results using indicators such as:

- . academic gains;
- . reduction in dropout rates;
- . reduction in incidences requiring disciplinary action;
- . improvement in attendance rates;
- . rates of successful program completion and return to the regular school program;
- . rates of successful completion of career and technical training programs;
- . rates of successful completion of high school graduation or attainment of a high school equivalency diploma; and
- . rates of successful job placement and job retention.

The WVDE shall review compliance with alternative education requirements and the effectiveness of alternative education programs through monitoring and review of the application received annually. The alternative education program shall be evaluated on the basis of its stated goals and the provisions of this policy.

# ***Discipline Addressing Specific Code of Conduct Violations***

## **Firearms and Other Weapons Violations**

### **LAWS**

**§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.**

(a) A principal shall suspend a student from school or from transportation to or from the school on any school bus if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of subsection (b), section fifteen [§ 61-2-15], article two, chapter sixty-one of this code; (ii) violated the provisions of subsection (b), section eleven-a [§ 61-7-11a], article seven of said chapter; or (iii) sold a narcotic drug, as defined in section one hundred one [§ 60A-1-101], article one, chapter sixty-a of this code, on the premises of an educational facility, at a school-sponsored function or on a school bus. If a student has been suspended pursuant to this subsection, the principal shall, within twenty-four hours, request that the county superintendent recommend to the county board that the student be expelled. Upon such a request by a principal, the county superintendent shall recommend to the county board that the student be expelled. Upon such recommendation, the county board shall conduct a hearing in accordance with subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board shall expel the student. [...]

(i) Students may be expelled pursuant to this section for a period not to exceed one school year, except that if a student is determined to have violated the provisions of subsection (a) of this section the student shall be expelled for a period of not less than twelve consecutive months, subject to the following:

(1) The county superintendent may lessen the mandatory period of twelve consecutive months for the expulsion of the student if the circumstances of the student's case demonstrably warrant;

(2) Upon the reduction of the period of expulsion, the county superintendent shall prepare a written statement setting forth the circumstances of the student's case which warrant the reduction of the period of expulsion. The county superintendent shall submit the statement to the county board, the principal, the faculty senate and the local school improvement council for the school from which the student was expelled. The county superintendent may use the following factors as guidelines in determining whether or not to reduce a mandatory twelve-month expulsion:

(A) The extent of the student's malicious intent;

(B) The outcome of the student's misconduct;

(C) The student's past behavior history;

(D) The likelihood of the student's repeated misconduct; and

(E) If applicable, successful completion or making satisfactory progress toward successful completion of Juvenile Drug Court pursuant to section one-d of this section.

**§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.**

(b)(1) It is unlawful to possess a firearm or other deadly weapon:



(A) On a school bus as defined in § 17A-1-1 of this code;

(B) In or on the grounds of any primary or secondary educational facility of any type: Provided, That it shall not be unlawful to possess a firearm or other deadly weapon in or on the grounds of any private primary or secondary school, if such institution has adopted a written policy allowing for possession of firearms or other deadly weapons in the facility or on the grounds thereof;

(C) At a school-sponsored function that is taking place in a specific area that is owned, rented, or leased by the West Virginia Department of Education, the West Virginia Secondary Schools Activities Commission, a county school board, or local public school for the actual period of time the function is occurring. [...]

(c) A school principal subject to the authority of the State Board of Education who discovers a violation of § 61-7-11a(b) of this code shall report the violation as soon as possible to:

(1) The State Superintendent of Schools. The State Board of Education shall keep and maintain these reports and may prescribe rules establishing policy and procedures for making and delivering the reports as required by this subsection; and

(2) The appropriate local office of the State Police, county sheriff or municipal police agency.

### **§61-7-2. Definitions.**

As used in this article, unless the context otherwise requires:

(10) "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. The term "deadly weapon" includes, but is not limited to, the instruments defined in subdivisions (1) through (8), inclusive, of this section or other deadly weapons of like kind or character which may be easily concealed on or about the person. For the purposes of §18A-5-1a of this code and §61-7-11a of this code, in addition to the definition of "knife" set forth in subdivision (3) of this section, 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, for the purposes of §18A-5-1a of this code and §61-7-11a of this code, the term "deadly weapon" includes explosive, chemical, biological, and radiological materials. Notwithstanding any other provision of this section, the term "deadly weapon" does not include 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. The term "deadly weapon" does not include pepper spray as defined in subdivision (9) of this section when used by any person over the age of 16 solely for self-defense purposes.

(12) "Firearm" means any weapon which will expel a projectile by action of an explosion.

## **REGULATIONS**

### **§126-99-5. Severability.**

Level 4: Safe Schools Act Behaviors are defined in W. Va. Code § 18A-5-1 and § 18A-5-1a. These laws require that the principal, county superintendent, and county board of education address Level 4 behaviors in a specific manner as outlined in W. Va. Code § 18A-5-1a and paraphrased in this chapter. W. Va. Code §§ 18A-5-1 and 18A-5-1a require mandatory out-of-school suspension by the principal and mandatory expulsion for a period of not less than twelve (12) consecutive months by the county board of education for possession of a deadly weapon, battery on a school employee, or sale of a narcotic drug. [...]

Section 2. Guidelines for Specific Responses to Inappropriate Behavior

W. Va. Code § 18A-5-1 and § 18A-5-1a requires mandatory out-of-school suspension by the principal and mandatory expulsion for a period of not less than twelve consecutive months by the county board of education for: possession of a deadly weapon, battery of a school employee, or sale of a narcotic drug.

## **Students with Chronic Disciplinary Issues**

### **LAWS**

#### **§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.**

(c) The teacher, may exclude from his or her classroom or school bus any student who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who behaves in a manner that obstructs the teaching or learning process of others in the classroom; who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a student; who willfully disobeys a school employee; or who uses abusive or profane language directed at a school employee. Any student excluded shall be placed under the control of the principal of the school or a designee. 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 specifies the specific type of disciplinary action, if any, that was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of the action to the parent(s), guardian(s), or custodian(s). When a student is excluded from a classroom or a school 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 the school bus only after the principal, teacher and, if possible, the parent(s), guardian(s), or custodian(s) of the student have held a conference to discuss the student's disruptive behavior patterns, and the teacher and the principal agree on a course of discipline for the student and inform the parent(s), guardian(s), or custodian(s) of the course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting. The Legislature finds that isolating students or placing them in alternative learning centers may be the best setting for chronically disruptive students. The county board shall create more alternative learning centers or expand its capacity for alternative placements, subject to funding, to correct these students' behaviors so they can return to a regular classroom without engaging in further disruptive behavior.

#### **§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.**

(c) A principal may suspend a student from school, or transportation to or from the school on any school bus, if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section: (i) Threatened to injure, or in any manner injured, a student, teacher, administrator or other school personnel; (ii) willfully disobeyed a teacher; (iii) possessed alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function; (iv) used profane language directed at a school employee or student; (v) intentionally defaced any school property; (vi) participated in any physical altercation with another person while under the authority of school personnel; or (vii) habitually violated school rules or policies. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing

in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

#### **§18A-5-1c. Bill of rights and responsibilities for students and school personnel.**

(a) The Legislature finds that:

- (1) The mission of public schools is to prepare students for equal and responsible citizenship and productive adulthood;
- (2) Democratic citizenship and productive adulthood begin with standards of conduct in schools;
- (3) Schools should be safe havens for learning with high standards of conduct for students; and
- (4) Rights necessarily carry responsibilities.

(b) In recognition of the findings in this section, the following Bill of Rights and Responsibilities for Students and School Personnel is established:

- (3) The right to learn and work in a school that has alternative educational placements for violent or chronically disruptive students.

### **REGULATIONS**

#### **§126-99-5. Severability.**

When a student is excluded from a classroom or a school 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 the school bus only after the principal, teacher and, if possible, the parent or guardian of the student have held a conference to discuss the student's disruptive behavior patterns and agree on a course of action. If they are not present at the conference then the parent or guardian must be notified of the course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting.

## **Chronic Absenteeism and Truancy**

### **LAWS**

#### **§18-8-4. Duties of attendance director and assistant directors; complaints, warrants, and hearings.**

(a) For the purposes of this article, the following definitions apply:

(1)"Excused absence" means:

(A) A medical or dental appointment with written excuse from physician or dentist;

(B) Personal illness or injury of the student accompanied by a timely written excuse from the student's parent, guardian, or custodian: Provided: That the total absences under this section combined with absences permitted under subdivision (C) of this subsection do not exceed more than 10 per school year unless supported by a physician's note: Provided however: That a medically documented chronic health condition or disability that adversely impacts in-person attendance approved by a county school board or the principal is not subject to this limitation, and that absences of students with disabilities shall be in accordance with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in compliance therewith;

(C) Personal illness or injury of the student's parent, guardian, custodian, or family member: Provided, That the excuse must provide a reasonable explanation for why the student's absence was necessary and caused by the illness or injury in the family, and the total absences under this section in combination with section (1)(B) may not exceed more than ten excuses per school year;

(D) Death in the family;

- (E) School-approved or county-approved curricular or extra-curricular activities;
- (F) A Judicial obligation or court appearance involving the student; and
- (G) A Military requirement for students enlisted or enlisting in the military.

(2) "Meaningful contact" means two-way communication by the school administrator or other school designee and the student's parent, guardian, or custodian to discuss the student's attendance record in an effort to prevent subsequent truancy or other legal proceedings relating to compulsory school attendance, and to minimize additional absences. Methods of meaningful contact include, but are not limited to, phone calls, video conferencing, home visits, and the use of digital platforms.

(3) "System of Support Plan" ("SOS Plan") refers to a plan to be developed by the State Board of Education designed to encourage students to attend school. It shall, at a minimum, require county attendance directors, principals, or other school designees to make periodic contact with the parent, guardian, or custodian of a student subject to compulsory school attendance to ascertain the reason or reasons for the student's absence or absences and what measures the school may employ to assist the student in attending school and not incurring additional absences. It shall also impart upon the student's parents, guardians, and custodians the importance of the student's attendance and the seriousness of failing to do so.

(4) "Unexcused absence" means any absence not specifically included in the definition of "excused absence".

(c) All documentation relating to absences shall be provided to the school no later than three instructional days after the first day the student returns to school. In the event documentation is not provided to the school within three instructional days after the first day the student returns to school, the absences are unexcused.

(d) In the case of three total unexcused absences of a student during a school year, the attendance director, his or her assistant, or the principal shall make meaningful contact with the parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences and what measures the school may employ to assist the student in attending and not incurring any additional unexcused absences.

(e) In the case of five total unexcused absences, the attendance director, his or her assistant or principal shall again make meaningful contact with the parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences and what measures the school may employ to assist the student in attending school and not incurring any additional unexcused absences.

(f) In the case of 10 total unexcused absences of a student during a school year, the attendance director or assistant may make a complaint against the parent, guardian or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent, guardian, or custodian may be charged in a complaint. Initial service of a summons or warrant issued pursuant to the provisions of this section shall be attempted within 10 calendar days of receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

(g) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in §50-1-8 of this code, shall assign the case to a magistrate within 10 days of execution of the summons or warrant. The hearing shall be held within 20 days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least 10 days' advance notice of the date, time and place of the hearing.

(h) When any doubt exists as to the age of a student absent from school, the attendance director and his or her assistants may require a properly attested birth certificate or an affidavit from the parent, guardian, or custodian of the student, stating the age of the student. In the performance of his or her duties, the county attendance director and his or her assistants have authority to take without warrant any student absent from school in violation of the provisions of this article and to place the student in the school in which he or she is or should be enrolled.

(i) The county attendance director and his or her assistants shall devote as much time as is required to the duties of attendance director in accordance with this section during the instructional term and at any other times as the duties of an attendance director are required. All attendance directors and assistants hired for more than 200 days may be assigned other duties determined by the superintendent during the period in excess of 200 days. The county attendance director is responsible under direction of the county superintendent for efficiently administering school attendance in the county.

(j) In addition to those duties directly relating to the administration of attendance, the county attendance director and his or her assistant directors also shall perform the following duties:

- (1) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;
- (2) Confer with principals and teachers on the comparison of the school census and enrollment for the detection of possible nonenrollees;
- (3) Cooperate with existing state and federal agencies charged with enforcing child labor laws;
- (4) Promote attendance in the county by compiling data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in any manner directed by the county superintendent;
- (5) Participate in school teachers' conferences with parents and students;
- (6) Assist in any other ways directed by the county superintendent for improving school attendance;
- (7) Make home visits of students who have excessive unexcused absences, as provided in subsection (a) of this section, or if requested by the chief administrator, principal, or assistant principal; and
- (8) Serve as the liaison for homeless children and youth.

#### **§18-8-5. Duties of principal, administrative head or other chief administrator.**

It shall be the duty of the principal, administrative head or other chief administrator of each school, whether public or private, to make prompt reports to the county attendance director, or proper assistant, of all cases of unexcused absences arising within the school which require the services of an attendance worker. Such reports shall be on the form prescribed for such purpose, by telephone, or in person, and shall include essential information about the child and the name and residence of any parent, guardian or custodian of a child.

It shall also be the duty of each principal, administrative head or other chief administrator of each public school to ascertain the report promptly the name of any parent, guardian or custodian of any child of compulsory school age as defined in this article who was or should be enrolled in the school reporting and who has not enrolled in any school that year. By way of ascertaining the status of school attendance, each principal, administrative head or other chief administrator shall compare the school census with the school enrollment at the opening of the school term and each month thereafter, or as directed by the county superintendent of schools, and report the same to the county attendance director: Provided, That any child who was or should be enrolled in a particular school, but who is at the time enrolled in another school shall be considered as attending the school in which enrolled and shall be included only in the report of attendance from the school in which the child is enrolled at the time.

If the principal, administrative head or other chief administrator of a school determines that an enrolled pupil has accumulated unexcused absences from attendance at such school for five instructional days during any one half of the instructional term, the principal, administrative head or other chief administrator

shall contact any parent, guardian or custodian of the pupil and shall hold a meeting with any person so contacted, and the pupil, and any other person that the administrator deems a relevant participant in such meeting.

**§18-8-6a. Incentive for county board participation in circuit court juvenile probation truancy programs.**

A county board that enters into a truancy program agreement with the circuit court of the county that (1) provides for the referral of truant juveniles for supervision by the court's probation office pursuant to § 49-4-711 of this code and (2) requires the county board to pay for the costs of the probation officer or officers assigned to supervise truant juveniles, shall be reimbursed for one half of the costs of the probation officer or officers, subject to appropriation of the Legislature for this purpose to the West Virginia Department of Education. For any year in which the funds appropriated are insufficient to cover the reimbursement costs, the county's costs shall be reimbursed pro rata.

**§18-8-8. Child suspended for failure to comply with requirements and regulations treated as unlawfully absent.**

If a child be suspended from school because of improper conduct or refusal of such child to comply with the requirements of the school, the school shall immediately notify the county superintendent of such suspension, and specify the time or conditions of such suspension. Further admission of the child to school may be refused until such requirements and regulations be complied with. Any such child shall be treated by the school as being unlawfully absent from the school during the time he refuses to comply with such requirements and regulations, and any person having legal or actual control of such child shall be liable to prosecution under the provisions of this article for the absence of such child from school: Provided, That the county board of education does not exclude or expel the suspended child from school.

**§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.**

(e) The Legislature finds that suspension from school is not appropriate solely for a student's failure to attend class. Therefore, a student may not be suspended from school solely for not attending class. Other methods of discipline may be used for the student which may include, but are not limited to, detention, extra class time or alternative class settings.

**REGULATIONS**

**§126-42-7. County board of education responsibilities.**

7.1. Schools shall implement WVBE and county policies as well as county and school procedures to ensure high quality delivery of their education program. In meeting this responsibility, schools shall address the following components of a high quality education program.

7.1.a. Administrative Practices.

7.1.a.6. Implement a system to monitor absences and dropout rates and, when appropriate, developing plans to reduce the student absenteeism and dropout rates.

**§126-81-1. General.**

1.1. Scope. - This legislative rule establishes guidelines for the development of county attendance policies.

**§126-81-2. Rationale.**

2.1. The WVBE recognizes that a direct relationship exists between students' daily school attendance and academic performance, graduation, and the development of good work habits. This attendance policy promotes students' daily school attendance. Each county shall be required to develop and implement a county attendance policy in accordance with this policy. Daily attendance is necessary for students to meet their schools' academic program standards as each day's learning builds on the work previously completed. While students and parents/guardians/custodians have the ultimate responsibility for daily

school attendance, the laws of West Virginia require school administrators to enforce regular attendance of compulsory school aged students, and to provide a school environment conducive to, and encouraging of, attendance.

**§126-81-3. Policy development.**

3.2. Allowable Deductions for Schools. Beginning with the 2016-2017 school year, absences that result from school approved curricular/co-curricular activities, failure of the bus to run/hazardous conditions, students not in attendance due to disciplinary measures, and school/county directed placements outside the traditional classroom environment including but not limited to homebound placement and in-school suspension.

**§126-81-4. Definitions.**

4.1. The WVBE shall encourage daily attendance and mandate that county school systems adequately address student absences including tardiness.

4.2. The WVBE shall define allowable deductions for purposes of state attendance reports and statistics. Schools shall not be held accountable for absences resulting from allowable deductions. These absences shall not be calculated in the school's/county's attendance rate.

4.3. Each county board of education shall:

4.3.a. establish an attendance policy as described in section 6.

4.3.b. employ a certified county director of school attendance as required by W. Va. Code §18-8-3.

4.3.c. support and require the county attendance director to implement and execute the duties as defined in W. Va. Code §18-8-4:

4.3.c.1. The attendance director and assistant director shall diligently promote regular school attendance through meaningful contact. They shall ascertain reasons for unexcused absences from school of students of compulsory school age and students who remain enrolled beyond the compulsory school age. They shall take such steps as are, in their discretion, best calculated to encourage the attendance of students and to impart upon the parents/guardians/custodians the importance of attendance and the seriousness of failing to attend school regularly.

4.3.c.2. In the case of three total Unexcused Absences of a student during a school year, the attendance director, assistant director, or principal shall make meaningful contact with the parent/guardian/custodian of the student to ascertain the reasons for the Unexcused Absences and what measures the school may employ to assist the student in attending and not incurring any additional Unexcused Absences.

4.3.c.3. In the case of five total Unexcused Absences, the attendance director or assistant director or principal shall again make meaningful contact with the parent/guardian/custodian of the student to ascertain the reasons for the Unexcused Absences and what measures the school may employ to assist the student in attending school and not incurring any additional Unexcused Absences.

4.3.c.4. In the case of 10 total Unexcused Absences of a student during a school year, the attendance director or assistant director may make complaint against the parent/guardian/custodian before a magistrate of the county. If it appears from the complaint that there is a probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent/guardian/custodian may be charged in a complaint. Initial service of the summons or warrant issued pursuant to the provisions of W. Va. Code §18-8-4 shall be attempted within 10 calendar days of the receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

4.3.c.5. When calculating Unexcused Absences for the purpose of making complaints against a parent/guardian/custodian before a magistrate, Unexcused Absences resulting from suspensions or expulsions from school shall not be considered.

4.3.c.6. The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in W. Va. Code §50-1-8, shall assign the case to a magistrate within 10 days of execution of the summons or warrant. The hearing shall be held within 20 days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least 10 days advance notice of the date, time, and place of the hearing.

4.3.c.7. When any doubt exists as to the age of a student absent from school, the attendance director or assistant director has authority to require a properly attested birth certificate or an affidavit from the parent/guardian/custodian of the student, stating age of the student. In the performance of their duties, the attendance director or assistant director has authority to take without warrant any student absent from school in violation of the provisions of this article and to place the student in the school in which the student is or should be enrolled.

4.3.c.8. All attendance directors and assistant directors hired for more than 200 days may be assigned other duties determined by the superintendent during the period in excess of 200 days. The county attendance director is responsible under direction of the superintendent for efficiently administering school attendance in the county.

4.3.c.9. In addition to those duties directly relating to the administration of attendance, the attendance director and assistant director shall:

4.3.c.9.A. assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

4.3.c.9.B. confer with principals and teachers on the comparison of school census and enrollment for the detection of possible non-enrollees;

4.3.c.9.C. cooperate with existing state and federal agencies charged with enforcing child labor laws;

4.3.c.9.D. promote attendance in the county by compiling data for schools and by furnishing suggestions and recommendations for publication through media, or in such manner as the superintendent may direct;

4.3.c.9.E. participate in teachers' conferences with parents/guardians/custodians and students;

4.3.c.9.F. assist in such other ways as the superintendent may direct for improving school attendance; and

4.3.c.9.G. make home visits of students who have excessive Unexcused Absences or if requested by the chief administrator, principal, or assistant principal.

4.3.c.10. The attendance director shall serve as the liaison for homeless children and youth as defined in W. Va. Code §18-8-4 and defined in McKinney-Vento Act. The attendance director shall:

4.3.c.10.A. ensure that public notice of the educational rights of students in homeless situations is disseminated where children and youth receive services;

4.3.c.10.B. ensure that parents/guardians/custodians are informed of educational and related opportunities available to their children, and are provided with meaningful opportunities to participate in the education of their children;

4.3.c.10.C. ensure that parents/guardians/custodians are informed of, and assisted in accessing, all transportation services for their children, including to the school of origin;

4.3.c.10.D. help unaccompanied youth choose and enroll in a school, after considering the youth's wishes, and provide the youth with notice of the right to appeal the county's decision;



4.3.c.10.E. immediately assist in obtaining immunizations or record of immunizations or other medical records for those students who do not have them, and assure that students are enrolled in school while the records are being obtained;

4.3.c.10.F. ensure that homeless children and youths are identified by school personnel and through coordination activities with other entities and agencies;

4.3.c.10.G. ensure that homeless children and youths enroll in, and have a full and equal opportunity to succeed in, schools of that county;

4.3.c.10.H. ensure that homeless families, children, and youth receive educational services for which such families, children, and youths are eligible including Head Start and preschool programs administered by the local educational agency, and referrals to health care services, dental services, mental health services, and other appropriate services; and

4.3.c.10.I. ensure that enrollment disputes are mediated as outlined in Paragraph (3)(E) of the McKinney-Vento Act.

4.3.c.11. The attendance director shall file with the superintendent and county board of education, at the close of each month, a report showing activities of the attendance office and the status of attendance in the county at the time due to provisions in W. Va. Code §18-8-4.

4.3.d. support and require the principal to implement and execute the duties as defined in W. Va. Code §18-8-5:

4.3.d.1. The principal shall compare school numbers with school enrollment monthly.

4.3.d.2. In the case of five total Unexcused Absences, the attendance director or assistant director or principal shall make meaningful contact with the parent/guardian/custodian of the student to ascertain the reasons for the Unexcused Absences and what measures the school may employ to assist the student in attending and not incurring any additional Unexcused Absences.

4.3.d.3. It shall be the duty of the principal of each school, whether public or private, to make meaningful contact and provide prompt reports to the attendance director, or proper assistant director, of all cases of Unexcused Absences arising within the school which require the services of an attendance worker.

4.3.d.4. A student whose educational services are guided by an existing SAT Plan, IEP, or Section 504 Plan may warrant special consideration when a pattern of single, multiple, or chronic absences exist. The student's current status should be reviewed by the SAT, IEP, or Section 504 Plan team as deemed appropriate and in accordance with state and federal laws.

4.4. Each parent/guardian/custodian is responsible for fully cooperating in and completing the enrollment process by providing:

4.4.a. immunization documentation (W. Va. Code §16-3-4),

4.4.b. copy of a certified birth certificate or affidavit (W. Va. Code §18-2-5c),

4.4.c. signed suspension and expulsion document (W. Va. Code §18-5-15), and

4.4.d. any other documents required by federal, state, and/or local policies or code.

4.5. Jurisdiction to enforce compulsory school attendance law lies in the county in which a student resides and in the county where the school in which the student is enrolled is located. When the county of residence and enrollment are different, an action to enforce compulsory school attendance may be brought in either county and the magistrates and circuit courts of either county have noncurrent jurisdiction for the trial of offenses arising under W. Va. Code §18-8-4.

4.6. Nothing in this policy is intended to limit the ability of a person having knowledge of a student's habitual absence from school from filing a petition with the circuit court pursuant to W. Va. Code §49-4-704.

4.7. §126-81-5. Responsibilities.

- 5.2. Each county's attendance policy shall address the following components:
- 5.2.a. a philosophy declaring the county board's intent to increase attendance by:
    - 5.2.a.1. creating a positive safe environment conducive to learning and committed to helping students develop responsibility, self-discipline, and other good work habits.
    - 5.2.a.2. developing a system enlisting parent/guardian/custodian support for daily school attendance by students.
  - 5.2.b. County school systems are responsible for:
    - 5.2.b.1. appointing a designated school attendance coordinator (principal or designee) who collects classroom attendance data and makes appropriate referrals to the attendance director.
    - 5.2.b.2. reporting student attendance information which reflects the allowable deductions as defined by the WVBE.
    - 5.2.b.3. defining excused and unexcused absences in compliance with W. Va. Code §18-8-1 and §18-8-2, and attendance in W. Va. 126CSR42, Policy 2510, Assuring the Quality of Education: Regulations for Education Programs (Policy 2510); provided, however, that no county may require more than a parent/guardian/custodian excuse for absences resulting from a documented chronic medical condition or a documented disability as defined in section 3.10.e and section 3.10.g.
    - 5.2.b.4. defining extenuating circumstances for absences which may require homebound/ hospital instruction as outlined in Policy 2510.
    - 5.2.b.5. setting reasonable preventive measures and consequences for student tardiness.
    - 5.2.b.6. ensuring that the county attendance policy will be posted on the county school system's website and readily available to the public.
    - 5.2.b.7. assuring that a student may not be suspended solely for failure to attend class. Other methods of discipline may include, but are not limited to, detention, extra class time, or alternative class settings.
    - 5.2.b.8. reporting all school dropouts to the WVDE.
  - 5.2.c. County school systems are responsible for:
    - 5.2.c.1. developing a process to notify students and their parents/guardians/custodians of the county attendance policy and their responsibility and accountability for regular school attendance.
    - 5.2.c.2. developing, implementing, and monitoring procedures and reasonable timelines requiring students with Excused and Unexcused Absences and to make up school work.
    - 5.2.c.3. requiring a student maintain satisfactory attendance (satisfactory being defined as no Unexcused Absences) during one complete semester following the revocation of the student's driver's license.
    - 5.2.c.4. developing an attendance appeal process for students and parents/guardians/ custodians.
  - 5.2.d. Maintenance of Records: Accurate attendance records and related documentation shall be maintained for every student enrolled in public school.
    - 5.2.d.1. An up-to-date daily record of attendance for every student shall be maintained.
    - 5.2.d.2. There shall be written procedures for: 1) notifying parents/guardians/custodians about absences; 2) monitoring absences; and 3) notifying the attendance director of an Unexcused Absence.
    - 5.2.d.3. Students who are physically absent from school must be documented as absent. This record may become a legal document.
  - 5.2.e. Preventive and Corrective Measures: To meet the developmental needs of students, preventive and corrective measures should include developing:

- 5.2.e.1. preventive and educational procedures including incentives to maintain and improve attendance and reduce tardiness.
- 5.2.e.2. procedures for notification of parents/guardians/custodians of absences and procedures for securing parent/guardian/custodian involvement to improve student attendance.
- 5.2.e.3. procedures for providing adequate counseling for issues related to attendance.
- 5.2.e.4. procedures for interagency involvement.
- 5.2.e.5. alternative plans and programs that are positive in nature and encourage improved school attendance.
- 5.2.e.6. assurances that students with a pattern of excessive absenteeism are referred to appropriate SAT/programs (Policy 2510) for appropriate intervention(s), and that these interventions have been reviewed to determine effectiveness.

**§126-81-6. County attendance policy components.**

6.1. If any provision of this policy or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this policy.

**§126-81-7. Severability.**

7.1. If any provision of this rule or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this rule.

## Substance Use

### LAWS

**§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.**

(a) A principal shall suspend a student from school or from transportation to or from the school on any school bus if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of subsection (b), section fifteen [§ 61-2-15], article two, chapter sixty-one of this code; (ii) violated the provisions of subsection (b), section eleven-a [§ 61-7-11a], article seven of said chapter; or (iii) sold a narcotic drug, as defined in section one hundred one [§ 60A-1-101], article one, chapter sixty-a of this code, on the premises of an educational facility, at a school-sponsored function or on a school bus. If a student has been suspended pursuant to this subsection, the principal shall, within twenty-four hours, request that the county superintendent recommend to the county board that the student be expelled. Upon such a request by a principal, the county superintendent shall recommend to the county board that the student be expelled. Upon such recommendation, the county board shall conduct a hearing in accordance with subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board shall expel the student.

(b) A principal shall suspend a student from school, or from transportation to or from the school on any school bus, if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Committed an act or engaged in conduct that would constitute a felony under the laws of this state if committed by an adult; or (ii) unlawfully possessed on the premises of an educational facility or at a school-sponsored function a controlled substance governed by the Uniform Controlled Substances Act as described in chapter sixty-a [§§ 60A-1-101 et seq.] of this code. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(c) A principal may suspend a student from school, or transportation to or from the school on any school bus, if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section: (i) Threatened to injure, or in any manner injured, a student, teacher, administrator or other school personnel; (ii) willfully disobeyed a teacher; (iii) possessed alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function; (iv) used profane language directed at a school employee or student; (v) intentionally defaced any school property; (vi) participated in any physical altercation with another person while under the authority of school personnel; or (vii) habitually violated school rules or policies. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

## **REGULATIONS**

### **§126-99-5. Severability.**

Appendix B: Sample Interventions and Consequences Interventions

The selection of appropriate interventions and consequences for substance abuse must be considered very carefully depending upon the severity of the behavior and potential safety concern for others in the school. The first action must be to conference with the parent or guardian and appropriate law enforcement representatives in an effort to direct the student to appropriate addiction services. Referral to tobacco cessation services/treatment and substance abuse treatment services shall be a priority intervention strategy for these behaviors.

## **Gang-related Activity**

### **LAWS**

No relevant laws found.

## **REGULATIONS**

### **§126-99-5. Severability.**

Appendix A: Behaviors and Definitions

Gang-Related Activity

Using violence, force, coercion, threat of violence or gang activity that causes disruption or obstruction to the educational process. Gangs are defined as organized groups of students and/or adults who engage in activities that threaten the safety of the general populace, compromise the general community order, and/or interfere with the school district's educational mission. Gang activity includes:

- . Wearing or displaying any clothing, jewelry, colors, or insignia that intentionally identifies the student as a member or otherwise symbolizes support of a gang.
- . Using any word, phrase, written symbol, or gesture that intentionally identifies a student as a member, or otherwise symbolizes support of a gang.
- . Gathering of two or more persons for purposes of engaging in activities or discussions promoting gangs.
- . Recruiting student(s) for gangs.

## **Bullying, Harassment, or Hazing**

### **LAWS**

#### **§18-2-33. Rules for antihazing.**

(a) The Legislature hereby finds that hazing has become a problem in a limited number of public school-sponsored student organizations and that legal liability has already resulted from some of those activities. It is the intent of this section that problems with hazing in public school-sponsored student organizations be addressed.

(b) The State Board shall promulgate legislative rules in accordance with article three-b [ §§ 29A-3B-1 et seq.], chapter twenty-nine-a of this code that addresses hazing in the public school system. The rules shall include at least the following:

- (1) A definition of hazing;

- (2) A definition of a public school-sponsored student organization that includes both cocurricular and extracurricular activities;
- (3) A method to advise students and employees of the problems associated with hazing;
- (4) Appropriate penalties or procedures for establishing penalties for students who haze while engaged in the activities of a public school-sponsored student organization; and
- (5) Methods to prevent hazing in public school-sponsored organizations.

(c) The State Board shall consider the antihazing law set forth in article sixteen [ §§ 18-16-1 et seq. ], chapter eighteen in drafting the rules required by this section.

(d) Nothing in this section or in the policy promulgated in accordance with this section may be construed to prevent a suspension or expulsion executed in accordance with section one-a [ § 18A-5-1a ], article five, chapter eighteen-a of this code.

#### **§18-2C-1. Legislative findings.**

The Legislature finds that a safe and civil environment in school is necessary for students to learn and achieve high academic standards. The Legislature finds that harassment, intimidation or bullying, like other disruptive or violent behavior, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe, nonthreatening environment.

The Legislature further finds that students learn by example. The Legislature charges school administrators, faculty, staff and volunteers with demonstrating appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment, intimidation or bullying.

#### **§18-2C-2. Definitions.**

(a) As used in this article, "harassment, intimidation or bullying" means any intentional gesture, or any intentional electronic, written, verbal or physical act, communication, transmission or threat that:

(1) A reasonable person under the circumstances should know will have the effect of any one or more of the following:

- (A) Physically harming a student;
- (B) Damaging a student's property;
- (C) Placing a student in reasonable fear of harm to his or her person; or
- (D) Placing a student in reasonable fear of damage to his or her property;

(2) Is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or emotionally abusive educational environment for a student; or

(3) Disrupts or interferes with the orderly operation of the school.

(b) As used in this article, an electronic act, communication, transmission or threat includes but is not limited to one which is administered via telephone, wireless phone, computer, pager or any electronic or wireless device whatsoever, and includes but is not limited to transmission of any image or voice, email or text message using any such device.

#### **§18-2C-3. Policy prohibiting harassment, intimidation or bullying.**

(a) Each county board 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, a school bus, at a school bus stop 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;
  - (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; and
  - (11) A requirement that each county board shall input into the uniform integrated regional computer information system (commonly known as the West Virginia Education Information System) described in section twenty-six [§ 18-2-26], article two of this chapter, and compile an annual report regarding the means of harassment, intimidation or bullying that have been reported to them, and the reasons therefor, if known. The West Virginia Department of Education shall compile the information and report it annually beginning July 1, 2012, to the Legislative Oversight Committee on Education Accountability.
- (c) Each county board shall adopt the policy and submit a copy to the State Superintendent of Schools by December 1, 2011.
- (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 September 1, 2011.
- (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.

**§18-2C-4. Immunity.**

A school employee, student or volunteer is individually immune from a cause of action for damages arising from reporting said incident, if that person:

- (1) In good faith promptly reports an incident of harassment, intimidation or bullying;
- (2) Makes the report to the appropriate school official as designated by policy; and
- (3) Makes the report in compliance with the procedures as specified in policy.

**§18-2C-5. Policy training and education.**

- (a) Schools and county boards are encouraged, but not required, to form bullying prevention task forces, programs and other initiatives involving school staff, students, teachers, administrators, volunteers, parents, law enforcement and community members.
- (b) To the extent state or federal funds are appropriated for these purposes, each school district shall:
  - (1) Provide training on the harassment, intimidation or bullying policy to school employees and volunteers who have direct contact with students; and
  - (2) Develop a process for educating students on the harassment, intimidation or bullying policy.

(c) Information regarding the county board policy against harassment, intimidation or bullying shall be incorporated into each school's current employee training program upon employment and renewed every three years thereafter.

**§18-2C-6. Liability.**

Except as provided in section four [§ 18-2C-4] of this article, nothing in this article prohibits a victim from seeking redress under any other provision of civil or criminal law.

**§18A-5-1c. Bill of rights and responsibilities for students and school personnel.**

(b) In recognition of the findings in this section, the following Bill of Rights and Responsibilities for Students and School Personnel is established:

(5) The right to attend a school and ride on a bus that is free from bullying.

**§49-4-717. Sexting educational diversion program; requirements.**

(b) The West Virginia Supreme Court of Appeals may develop an educational diversion program for minors who are accused of activity proscribed by article eight-a or eight-c, chapter sixty-one of this code. As a part of any specialized educational diversion program so developed, the following issues and topics should be included:

(1) The legal consequences of and penalties for sharing sexually suggestive or explicit materials, including applicable federal and state statutes;

(2) The nonlegal consequences of sharing sexually suggestive or explicit materials including, but not limited to, the effect on relationships, loss of educational and employment opportunities, and being barred or removed from school programs and extracurricular activities;

(3) How the unique characteristics of cyberspace and the Internet, including searchability, replicability and an infinite audience, can produce long-term and unforeseen consequences for sharing sexually suggestive or explicit materials; and

(4) The connection between bullying and cyber-bullying and minors sharing sexually suggestive or explicit materials.

**REGULATIONS**

**§126-99-5. Severability.**

Section 1. Addressing Inappropriate Behavior with Meaningful Interventions and Consequences The purpose of this policy is to provide schools with guidance that creates and ensures an orderly and safe environment that is conducive to teaching and learning. Inappropriate behaviors include but are not limited to harassment, intimidation, bullying, substance abuse, and/or violence. All interventions and consequences are in effect on all school property and at all school-sanctioned events, including extracurricular activities. Each county will implement proactive, preventative, and responsive programs, outline investigatory and reporting procedures, and delineate meaningful interventions and consequences in response to inappropriate behavior.

**Dating and Relationship Violence**

**LAWS**

No relevant laws found.

**REGULATIONS**

No relevant regulations found.



# ***Prevention, Behavioral Intervention, and Supports***

## **State Model Policies and Implementation Support**

### **LAWS**

#### **§18-2-13. Character education integration.**

(d) The state board shall assist county boards in developing in-service training regarding integrated character education as provided in this section.

(e) The State Department of Education is encouraged to utilize any existing moneys available to the department for existing character development programs, along with any new funds appropriated for the purposes of this section, to secure the maximum amount of any federal funding available for which the state department is eligible to receive for implementing character development in the schools.

#### **§18-2C-3. Policy prohibiting harassment, intimidation or bullying.**

(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 September 1, 2011.

#### **§18-9F-9. Crisis Response Plan.**

(a) The state board in conjunction with the Division of Homeland Security and Emergency Management shall promulgate by December 31, 2011, a legislative rule in accordance with article three-b [ §§ 29A-3B-1 et seq.], chapter twenty-nine-a of this code, and if necessary may promulgate an emergency rule in accordance with said article, for the establishment of an up-to-date, school specific crisis response plan at every school in the state. In developing the rule, the state board shall consider plans currently being developed as part of the safe schools initiative currently underway by the School Building Authority and the Division of Homeland Security and Emergency Management. In addition, those portions of a school's access safety plan created pursuant to section three [ § 18-9F-3] of this article may be used as a portion of the school's school specific crisis response plan if there are any overlapping requirements. The rule shall provide for at least the following:

(1) A model school crisis response plan for use by each school in the state, including a uniform template which shall be used by each school to file the plan, including at least the following information, in a secure electronic system identified by the Division of Homeland Security and Emergency Management:

(F) Policies and procedures for enforcing school discipline and maintaining a safe and orderly environment during the crisis.

### **REGULATIONS**

No relevant regulations found.

## **Multi-tiered Frameworks and Systems of Support**

### **LAWS**

No relevant laws found.

## **REGULATIONS**

### **§126-67-3. Comprehensive school counseling program description.**

3.1. The CSCP is an integral part of the total school program and is aligned with the school's mission. The CSCP is a proactive, systemic approach to assist students with the acquisition of attitudes, knowledge, skills, and behaviors necessary to maximize student success and preparation for a variety of postsecondary options. The CSCP provides universal prevention for all students, targeted interventions for at-risk students, and intensive interventions for the most at-risk students. The CSCP is standards-based and designed to developmentally and sequentially address the WVSSS within each programmatic level. The CSCP utilizes school and community data to identify student needs in relation to the CSCP and to set annual priorities for the WVSSS. A certified school counselor, in collaboration with school and community stakeholders, will develop an Annual CSCP Plan in order to coordinate and implement a CSCP designed to address student needs. The CSCP contains four distinct delivery systems.

### **§126-67-4. Counties board responsibilities.**

4.1. Each county board of education shall ensure that the CSCP:

4.1.e. is aligned with the West Virginia School Counseling Model, a three-tiered system of student support that provides universal prevention, targeted interventions, and intensive interventions.

### **§126-67-5. Delivery components of comprehensive school counseling program.**

5.1. This section defines components of a standards-focused and evidence-based CSCP to be addressed by county policy and monitored by county and school leadership. Delivery components include:

5.1.c. Responsive Services are provided when events and situations in students' lives or in the school climate and culture impedes student success. Responsive services offer preventive activities and programs to address the identified needs of students in each school, as well as evidence-based interventions to address targeted student needs. The services include working with at-risk students to provide the help and support needed to ensure grade level success. Usually short-term in nature, responsive services include individual and small group counseling, academic and behavior intervention plans, crisis prevention and response, consultation with parents/guardians and other school staff, and referrals to school and community resources. Some students may require an immediate and expert response to assist with an academic, emotional, or behavioral crisis. In cases where students require ongoing support or therapy, the counselor makes appropriate referrals and works with families to secure appropriate resources within the school or community. Schools identify who will coordinate and follow-up on each referral. The school counselor collaborates with stakeholders to create a school-wide, prevention-based approach to individual and school crises and has a crisis plan in place to address the mental health component of common school-wide crises. The school crisis team educates other stakeholders to assist with school-wide crisis preparedness, prevention, intervention, and response, outlining responsibilities and best practices in the school crisis planning and response.

## **Prevention**

### **LAWS**

#### **§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.**

(g) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary

actions. These policies shall encourage the use of alternatives to discipline practices, provide for the training of school personnel in alternatives to discipline practices and provide for encouraging the involvement of parent(s), guardian(s) or custodian(s) in the maintenance of school discipline. To promote a teaching and learning environment free from substantial classroom disturbances, each county board shall ensure that each school implements a tier system policy, with teacher input, to provide a framework for student behaviors and punishments. The policy shall be clear and concise with specific guidelines and examples. The principal shall support the teacher in the discipline of the students if proper cause and documentation is provided following the schoolwide discipline policy. The teacher may not be reprimanded if their actions are legal and within the structure of the county board's policy for student behavior and punishment. The county board policies shall also include an appeal procedure whereby a teacher may appeal to the county superintendent if a school principal refuses to allow the exclusion of a student from the classroom or if a teacher believes the school principal has prematurely ended the exclusion of a student from the classroom. The county boards shall provide for the immediate incorporation and implementation in schools of a preventive discipline program which may include the responsible student program and a student involvement program, which may include the peer mediation program, devised by the West Virginia Board of Education. Each county board may modify those programs to meet the particular needs of the county. The county boards shall provide in- service training for teachers and principals relating to assertive discipline procedures and conflict resolution. The county boards also may establish cooperatives with private entities to provide middle educational programs, which may include programs focusing on developing individual coping skills, conflict resolution, anger control, self-esteem issues, stress management and decision making for students, and any other program related to preventive discipline.

## **REGULATIONS**

### **§126-99-2. Purpose.**

2.1. The West Virginia Board of Education (WVBE) recognizes the need for students, teachers, administrators, and other school personnel to have a safe and supportive educational environment. Public schools should undertake proactive, preventive approaches to ensure a positive school climate and culture that fosters learning and personal-social development. This rule requires county boards of education to design and implement procedures to create and support continuous school climate and culture improvement processes within all schools that will ensure an orderly and safe environment that is conducive to learning.

## **Social-emotional Learning (SEL)**

### **LAWS**

#### **§18-2-13. Character education integration.**

- (a) The state board shall establish a comprehensive approach to integrate character education into all aspects of school culture, school functions and existing curriculum.
- (b) The state board shall require all public schools that operate from preschool to grade twelve to develop and integrate components of character development into their existing curriculum. The schools may incorporate such programs as "life skills", "responsible students", or any other program encompassing any of the following components:
- (1) Honesty;
  - (2) Caring;
  - (3) Citizenship;
  - (4) Justice;
  - (5) Fairness;

- (6) Respect;
- (7) Responsibility;
- (8) Voting;
- (9) Academic achievement;
- (10) Completing homework assignments;
- (11) Improving daily attendance;
- (12) Avoiding and resolving conflicts;
- (13) Alternatives to violence;
- (14) Contributing to an orderly positive school environment;
- (15) Participating in class;
- (16) Resisting social peer pressures to smoke, drink and use drugs;
- (17) Developing greater self-esteem and self-confidence;
- (18) Effectively coping with social anxiety;
- (19) Increasing knowledge of the immediate consequences of substance abuse;
- (20) Increasing knowledge of the consequences of ones actions;
- (21) The corrupting influence and chance nature of gambling; and
- (22) The value of decent, honest work.

(c) Character education shall be integrated into each public school curriculum by September 1, 2001.

(d) The state board shall assist county boards in developing in-service training regarding integrated character education as provided in this section.

(e) The State Department of Education is encouraged to utilize any existing moneys available to the department for existing character development programs, along with any new funds appropriated for the purposes of this section, to secure the maximum amount of any federal funding available for which the state department is eligible to receive for implementing character development in the schools.

### **REGULATIONS**

No relevant regulations found.

## **Trauma-informed Practices**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

#### **§126-99-5. Severability.**

Section 6. Preventing Child Sexual Abuse

WVDE shall establish standards, effective July 1, 2019, for Preventing Child Sexual Abuse (PCSA) training requirements of all public school employees focused on developing skills, knowledge, and capabilities related to preventing child sexual abuse and recognizing and responding to suspected abuse and neglect.

The required PCSA training shall include comprehensive instruction and information to better equip schools and their employees to recognize and prevent child sexual abuse, including: • recognizing effects of Adverse Childhood Experiences (ACEs) and providing trauma-informed care. Public school employees shall be required to complete a PCSA training beginning July 1, 2019. The training shall be at least a cumulative four hours of instruction on the elements identified in this section and shall occur during non-instructional time. Training will not be assigned during teachers' planning time. A skills renewal training is

required every two years thereafter. The mode of delivery for the trainings may include in-person or e-learning instruction and may include a series of trainings or modules. The WVBE will provide e-learning modules that cover the required standards and certificates of satisfactory completion. Should the county boards of education choose to provide in-person training, the standards stated above shall be covered, and the county boards of education shall provide the WVBE with a list of employees who have completed the required training. The WVBE shall provide certificates of satisfactory completion for the employee and the employer documenting that the employee completed the required training.

## **Mental Health Literacy Training**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

## **School-based Behavioral Health Programs**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

#### **§126-42-7. County board of education responsibilities.**

7.1.h. Health and Psychological Services. School health services are coordinated through the certified school nurse to provide early identification of educational deficits and communicable disease, daily support and care for students with specialized health care needs during the instructional day with linkage, and follow-up care to services as required in W. Va. 126CSR25A, Policy 2422.7, Standards for Basic and Specialized Health Care Procedures (Policy 2422.7), and W. Va. 126CSR51, Policy 2423, Health Promotion and Disease Prevention. Emphasis is placed on preventive services, health promotion, and education to support academic success, reduce absenteeism, and promote lifetime health and wellness.

7.1.h.1. School psychological services facilitate the interpersonal and academic development of all students and foster the social/emotional health and the academic success of students. School psychologists assist teachers and other school personnel with assessment information, academic and behavior intervention plans, and understanding student implications in relation to school performance and safe school considerations.

#### **§126-67-5. Delivery components of comprehensive school counseling program.**

5.1. This section defines components of a standards-focused and evidence-based CSCP to be addressed by county policy and monitored by county and school leadership. Delivery components include:

5.1.c. Responsive Services are provided when events and situations in students' lives or in the school climate and culture impedes student success. Responsive services offer preventive activities and programs to address the identified needs of students in each school, as well as evidence-based interventions to address targeted student needs. The services include working with at-risk students to provide the help and support needed to ensure grade level success. Usually short-term in nature, responsive services include individual and small group counseling, academic and behavior intervention plans, crisis prevention and response, consultation with parents/guardians and other school staff, and referrals to school and community resources. Some students may require an immediate and expert response to assist with an academic, emotional, or behavioral crisis. In cases where students require ongoing support or therapy, the counselor makes appropriate referrals and works with families to secure appropriate resources within the school or community. Schools identify who will coordinate and

follow-up on each referral. The school counselor collaborates with stakeholders to create a school-wide, prevention-based approach to individual and school crises and has a crisis plan in place to address the mental health component of common school-wide crises. The school crisis team educates other stakeholders to assist with school-wide crisis preparedness, prevention, intervention, and response, outlining responsibilities and best practices in the school crisis planning and response.

## ***Monitoring and Accountability***

### **Formal Incident Reporting of Conduct Violations**

#### **LAWS**

##### **§18-2C-3. Policy prohibiting harassment, intimidation or bullying.**

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

- (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.

##### **§18-8-5. Duties of principal, administrative head or other chief administrator.**

It shall be the duty of the principal, administrative head or other chief administrator of each school, whether public or private, to make prompt reports to the county attendance director, or proper assistant, of all cases of unexcused absences arising within the school which require the services of an attendance worker. Such reports shall be on the form prescribed for such purpose, by telephone, or in person, and shall include essential information about the child and the name and residence of any parent, guardian or custodian of a child.

It shall also be the duty of each principal, administrative head or other chief administrator of each public school to ascertain the report promptly the name of any parent, guardian or custodian of any child of compulsory school age as defined in this article who was or should be enrolled in the school reporting and who has not enrolled in any school that year. By way of ascertaining the status of school attendance, each principal, administrative head or other chief administrator shall compare the school census with the school enrollment at the opening of the school term and each month thereafter, or as directed by the county superintendent of schools, and report the same to the county attendance director: Provided, That any child who was or should be enrolled in a particular school, but who is at the time enrolled in another school shall be considered as attending the school in which enrolled and shall be included only in the report of attendance from the school in which the child is enrolled at the time.

##### **§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.**

(d) The actions of any student which may be grounds for his or her suspension or expulsion under the provisions of this section shall be reported immediately to the principal of the school in which the student is enrolled. If the principal determines that the alleged actions of the student would be grounds for suspension, he or she shall conduct an informal hearing for the student immediately after the alleged actions have occurred. The hearing shall be held before the student is suspended unless the principal believes that the continued presence of the student in the school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, in which case the student shall be suspended immediately and a hearing held as soon as practicable after the suspension.

**§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.**

(c) A school principal subject to the authority of the State Board of Education who discovers a violation of § 61-7-11a(b) of this code shall report the violation as soon as possible to:

- (1) The State Superintendent of Schools. The State Board of Education shall keep and maintain these reports and may prescribe rules establishing policy and procedures for making and delivering the reports as required by this subsection; and
- (2) The appropriate local office of the State Police, county sheriff or municipal police agency.

**REGULATIONS**

**§126-99-5. Severability.**

Chapter 3 Procedures for Addressing Allegations of Inappropriate Behaviors

Section 1. Procedures for Reporting Complaints of Inappropriate Behavior School employees are responsible for assuring a safe and supportive school climate and culture. When incidents of inappropriate behavior are witnessed by school staff, the behavior shall be addressed consistently as outlined in this policy.

Inappropriate behaviors observed by students or guests must be reported to the appropriate personnel for action to be taken according to county policy.

County boards of education shall develop procedures to assure that any person who believes he or she is a victim or witness to a violation of Policy 4373 has an identified mechanism to report the alleged acts immediately to the appropriate official(s) designated by the county. These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the West Virginia Human Rights Commission, initiating civil action, or seeking redress under the state criminal statutes and/or federal law.

County boards of education shall develop appropriate procedures for investigating, reporting, responding, and determining consequences for the failure of an employee to appropriately respond to violations of Policy 4373, in accordance with W. Va. § 126CSR142, Policy 5310, Performance Evaluation of School Personnel, in a manner that promotes understanding and respect.

County boards of education and the WVDE shall develop procedures to assure that any person who believes he or she has been the victim or a witness of religious, ethnic, racial or sexual harassment, or violence by a student, teacher, administrator, or other school personnel toward a student, teacher, administrator, or other school personnel has an identified mechanism to report the alleged acts immediately to an appropriate official(s) designated in county policy. These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the West Virginia Human Rights Commission, initiating civil action, or seeking redress under the state criminal statutes and/or federal law.

All alleged incidents of harassment or violence observed by faculty or staff must be reported to the appropriate official(s) and appropriate action should be taken as specified in Section 2 of this chapter.



## Parental Notification

### LAWS

#### **§18-8-4. Duties of attendance director and assistant directors; complaints, warrants, and hearings.**

- (d) In the case of three total unexcused absences of a student during a school year, the attendance director, his or her assistant, or the principal shall make meaningful contact with the parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences and what measures the school may employ to assist the student in attending and not incurring any additional unexcused absences.
- (e) In the case of five total unexcused absences, the attendance director, his or her assistant or the principal shall again make meaningful contact with the parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences and what measures the school may employ to assist the student in attending school and not incurring any additional unexcused absences.
- (f) In the case of 10 total unexcused absences of a student during a school year, the attendance director or assistant may make a complaint against the parent, guardian, or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent, guardian, or custodian may be charged in a complaint. Initial service of a summons or warrant issued pursuant to the provisions of this section shall be attempted within 10 calendar days of receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

#### **§18-8-5. Duties of principal, administrative head or other chief administrator.**

If the principal, administrative head or other chief administrator of a school determines that an enrolled pupil has accumulated unexcused absences from attendance at such school for five instructional days during any one half of the instructional term, the principal, administrative head or other chief administrator shall contact any parent, guardian or custodian of the pupil and shall hold a meeting with any person so contacted, and the pupil, and any other person that the administrator deems a relevant participant in such meeting.

#### **§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.**

(c) The teacher, may exclude from his or her classroom or school bus any student who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who behaves in a manner that obstructs the teaching or learning process of others in the classroom; who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a student; who willfully disobeys a school employee; or who uses abusive or profane language directed at a school employee. Any student excluded shall be placed under the control of the principal of the school or a designee. 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 specifies the specific type of disciplinary action, if any, that was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of the action to the parent(s), guardian(s), or custodian(s). When a student is excluded from a classroom or a school 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 the school bus only after the principal, teacher and, if possible, the parent(s), guardian(s), or custodian(s) of the student have held a conference to

discuss the student's disruptive behavior patterns, and the teacher and the principal agree on a course of discipline for the student and inform the parent(s), guardian(s), or custodian(s) of the course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting. The Legislature finds that isolating students or placing them in alternative learning centers may be the best setting for chronically disruptive students. The county board shall create more alternative learning centers or expand its capacity for alternative placements, subject to funding, to correct these students' behaviors so they can return to a regular classroom without engaging in further disruptive behavior.

## **REGULATIONS**

### **§126-81-4. Definitions.**

4.3.c.2. In the case of three total Unexcused Absences of a student during a school year, the attendance director, assistant director, or principal shall make meaningful contact with the parent/guardian/custodian of the student to ascertain the reasons for the Unexcused Absences and what measures the school may employ to assist the student in attending and not incurring any additional Unexcused Absences.

4.3.c.3. In the case of five total Unexcused Absences, the attendance director or assistant director or principal shall again make meaningful contact with the parent/guardian/custodian of the student to ascertain the reasons for the Unexcused Absences and what measures the school may employ to assist the student in attending school and not incurring any additional Unexcused Absences. [...]

4.3.d.2. In the case of five total Unexcused Absences, the attendance director or assistant director or principal shall make meaningful contact with the parent/guardian/custodian of the student to ascertain the reasons for the Unexcused Absences and what measures the school may employ to assist the student in attending and not incurring any additional Unexcused Absences.

### **§126-81-5. Responsibilities.**

5.2.c. County school systems are responsible for:

5.2.c.1. developing a process to notify students and their parents/guardians/custodians of the county attendance policy and their responsibility and accountability for regular school attendance. [...]

5.2.d. Maintenance of Records: Accurate attendance records and related documentation shall be maintained for every student enrolled in public school.

5.2.d.2. There shall be written procedures for: 1) notifying parents/guardians/custodians about absences; 2) monitoring absences; and 3) notifying the attendance director of an Unexcused Absence. [...]

5.2.e. Preventive and Corrective Measures: To meet the developmental needs of students, preventive and corrective measures should include developing:

5.2.e.2. procedures for notification of parents/guardians/custodians of absences and procedures for securing parent/guardian/custodian involvement to improve student attendance.

### **§126-99-5. Severability.**

Section 2. Guidelines for Specific Responses to Inappropriate Behavior

A student is entitled to an informal hearing when faced with an out-of-school suspension of 10 days or less. At this hearing, the principal must explain why the student is being suspended, and the student must be given the opportunity to present reasons why she/he should not be suspended. However, a student whose conduct is detrimental to the safety of the school may be suspended immediately and a hearing held as soon as practical after the suspension. Other procedures the school must follow when dealing with out-of-school suspensions are outlined in W. Va. Code § 18A-5-1 and § 18A-5-1a and include:

-parent or guardian must be notified promptly in all cases of suspension.

# Data Collection, Review, and Reporting of Discipline Policies and Actions

## LAWS

### **§18-2C-3. Policy prohibiting harassment, intimidation or bullying.**

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

(11) A requirement that each county board shall input into the uniform integrated regional computer information system (commonly known as the West Virginia Education Information System) described in section twenty-six [§ 18-2-26], article two of this chapter, and compile an annual report regarding the means of harassment, intimidation or bullying that have been reported to them, and the reasons therefor, if known. The West Virginia Department of Education shall compile the information and report it annually beginning July 1, 2012, to the Legislative Oversight Committee on Education Accountability.

### **§18-8-4. Duties of attendance director and assistant directors; complaints, warrants, and hearings.**

(j) In addition to those duties directly relating to the administration of attendance, the county attendance director and his or her assistant directors also shall perform the following duties:

(4) Promote attendance in the county by compiling data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in any manner directed by the county superintendent.

### **§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.**

(l) Each suspension or expulsion imposed upon a student under the authority of this section shall be recorded in the uniform integrated regional computer information system (commonly known as the West Virginia Education Information System) described in subsection (f), section twenty-six [§ 18-2-26], article two, chapter eighteen of this code.

(1) The principal of the school at which the student is enrolled shall create an electronic record within twenty-four hours of the imposition of the suspension or expulsion.

(2) Each record of a suspension or expulsion shall include the student's name and identification number, the reason for the suspension or expulsion and the beginning and ending dates of the suspension or expulsion.

(3) The state board shall collect and disseminate data so that any principal of a public school in West Virginia can review the complete history of disciplinary actions taken by West Virginia public schools against any student enrolled or seeking to enroll at that principal's school. The purposes of this provision are to allow every principal to fulfill his or her duty under subsection (b), section fifteen-f [§ 18-5-15f], article five, chapter eighteen of this code to determine whether a student requesting to enroll at a public school in West Virginia is currently serving a suspension or expulsion from another public school in West Virginia and to allow principals to obtain general information about students' disciplinary histories.

**§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.**

(c) A school principal subject to the authority of the State Board of Education who discovers a violation of § 61-7-11a(b) of this code shall report the violation as soon as possible to:

- (1) The State Superintendent of Schools. The State Board of Education shall keep and maintain these reports and may prescribe rules establishing policy and procedures for making and delivering the reports as required by this subsection; and
- (2) The appropriate local office of the State Police, county sheriff or municipal police agency.

**REGULATIONS**

**§126-42-7. County board of education responsibilities.**

7.1. Schools shall implement WVBE and county policies as well as county and school procedures to ensure high quality delivery of their education program. In meeting this responsibility, schools shall address the following components of a high quality education program.

7.1.a. Administrative Practices.

7.1.a.5. Participate in the West Virginia Education Information System (WVEIS) and other WVDE data collections through adherence to data collection calendars and guidance documentation, which are developed and maintained through the WVDE data governance structure per W. Va. 126CSR94, Policy 4350, Procedures for the Collection, Maintenance and Disclosure of Student Data, to ensure compliance with state and federal reporting requirements and to support the population and sustainability of the state's longitudinal data system for educational decision making.

**§126-99-5. Severability.**

Section 5. Procedures for Reporting Action on Substantiated Incidents Schools shall accurately track incidents of inappropriate behavior in order to utilize data for school climate/culture improvement efforts and to create documentation to support actions taken to intervene in inappropriate behavior patterns. The WVEIS provides schools with the platform to report all incidents of inappropriate behavior at the classroom level and above. The primary value of this data rests at the school and county level and is necessary for development and monitoring of Policy 4373. All inappropriate behaviors as described in Chapter 2 Section 2, Levels 1, 2, 3, and 4 shall be reported through:

- teacher-level documentation of inappropriate behavior leading to interventions, consequences, and/or referrals to the principal;
- Principal-level WVEIS data entry of teacher level documentation and administrative disciplinary actions. This data shall be entered by the principal and/or other authorized staff; or
- county superintendent-level WVEIS data entry of county board of education actions resulting from expulsion hearings. This data shall be entered by the county superintendent and/or other authorized staff.

Incidents of inappropriate behaviors reported into WVEIS in accordance with this policy will be used by the WVDE to comply with federal and state reporting requirements.

# ***Partnerships between Schools and Law Enforcement***

## **Referrals to Law Enforcement**

### **LAWS**

#### **§18-8-6a. Incentive for county board participation in circuit court juvenile probation truancy programs.**

A county board that enters into a truancy program agreement with the circuit court of the county that (1) provides for the referral of truant juveniles for supervision by the court's probation office pursuant to § 49-4-711 of this code and (2) requires the county board to pay for the costs of the probation officer or officers assigned to supervise truant juveniles, shall be reimbursed for one half of the costs of the probation officer or officers, subject to appropriation of the Legislature for this purpose to the West Virginia Department of Education. For any year in which the funds appropriated are insufficient to cover the reimbursement costs, the county's costs shall be reimbursed pro rata.

#### **§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.**

(c) A school principal subject to the authority of the State Board of Education who discovers a violation of § 61-7-11a(b) of this code shall report the violation as soon as possible to:

- (1) The State Superintendent of Schools. The State Board of Education shall keep and maintain these reports and may prescribe rules establishing policy and procedures for making and delivering the reports as required by this subsection; and
- (2) The appropriate local office of the State Police, county sheriff or municipal police agency.

### **REGULATIONS**

#### **§126-99-5. Severability.**

Section 6. Collaboration with Law Enforcement

Police can enter schools if they suspect a crime has been committed, have a warrant for an arrest or search, or if their assistance has been requested by school officials. It is the duty of the school officials, teachers, and students to cooperate with the police and each other to ensure that the rights of all involved persons are respected.

## **School Resource Officer (SRO) or School Security Officer (SSO) Training or Certification**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

## **Authorizations, Memoranda of Understanding (MOUs), and/or Funding**

### **LAWS**

#### **§18-5-48. Safety and security measures for school facilities; Safe Schools Fund created.**

(b) As used in this section, "safety and security measures" means action taken by a county board of education or multicounty vocational center that improves the security of a school facility and the safety of the students within such facility, including, but not limited to, hiring a school resource officer, installing weapon detection systems, upgrading facility doors or windows.

#### **§18-9F-3. School access safety plan.**

(b) The safety plan shall include at least the following:

(3) Recommendations for effective communication and coordination between school facilities, local law-enforcement agencies and local emergency services agencies in the county.

### **REGULATIONS**

#### **§126-99-5. Severability.**

Section 6. Collaboration with Law Enforcement Police can enter schools if they suspect a crime has been committed, have a warrant for an arrest or search, or if their assistance has been requested by school officials. It is the duty of the school officials, teachers, and students to cooperate with the police and each other to ensure that the rights of all involved persons are respected.

Prevention Resource Officers (PRO). PRO are certified police officers, working fulltime within a public school. The PRO duties, salary, and responsibilities should be determined through an agreement with the county board of education and the authorized police department. The principal is the immediate supervisor while the PRO officer is present in the school. There may be a time during the course of PRO duties when the officer's position as law enforcement would take precedence.

## **Threat Assessment Protocols**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

## **State-Sponsored, Publicly Available Websites or Other Resources on School Discipline**

Safe, supportive learning environments use disciplinary policies and practices that help students stay out of the justice system, while ensuring academic engagement and success for all students. The following resources provided by West Virginia provide additional context to state policy and regulations and, in some cases, may support the readers' efforts to provide a positive disciplinary school climate.

<i>Title</i>	<i>Description</i>	<i>Website address (if applicable)</i>
<i>Website</i>		
Bullying Prevention, West Virginia Department of Education (WVDE)	Provides an overview of bullying prevention in West Virginia schools and links to training resources for teachers and outside sources for bullying prevention.	<a href="https://wvde.us/wv-school-counselors/mental-behavioral-health-resources-and-initiatives/bullying-prevention/">https://wvde.us/wv-school-counselors/mental-behavioral-health-resources-and-initiatives/bullying-prevention/</a>
Leadership Support, WVDE	Provides an overview of the Officer of Leadership Support with descriptions and links to subtopics such as safe and supportive schools and other related resources.	<a href="https://wvde.us/leadership-system-support/">https://wvde.us/leadership-system-support/</a>
Safe and Supportive Schools, WVDE	Addresses school culture and climate, positive behavioral interventions and supports (PBIS), bullying prevention, and trauma sensitive schools with related resources.	<a href="https://wvde.us/leadership-system-support/safe-supportive-schools/safe-schools-toolkit/safe-and-supportive-schools/">https://wvde.us/leadership-system-support/safe-supportive-schools/safe-schools-toolkit/safe-and-supportive-schools/</a>
Safe Schools Toolkit, WVDE	Provides resources for school safety and violence prevention including policy and laws, crisis prevention and response plan template, crisis planning resources, safe schools helpline, and training resources.	<a href="https://wvde.us/leadership-system-support/safe-supportive-schools/safe-schools-toolkit/">https://wvde.us/leadership-system-support/safe-supportive-schools/safe-schools-toolkit/</a>
West Virginia Tiered System of Supports (WVTSS), WVDE	Provides information and resources regarding WVTSS including an overview, reference guide, framework toolkit, and additional resources.	<a href="https://wvde.us/west-virginia-tiered-system-of-support-wvtss/">https://wvde.us/west-virginia-tiered-system-of-support-wvtss/</a>

<i>Title</i>	<i>Description</i>	<i>Website address (if applicable)</i>
<b>Documents</b>		
Data Analysis, Research, and Program Evaluation, WVDE	Reports and research briefs on harassments, intimidation or bullying, school climate, and student discipline referrals and interventions.	<a href="https://wvde.us/data-analysis">https://wvde.us/data-analysis</a>
Response to Intervention: An Introduction (2012), WVDE	Brief research review provides an introduction to response to intervention (RTI), including how it is defined, reasons for its growing popularity, an introduction to an emerging body of research, a brief discussion of what it all means, and suggestions about directions for future research.	<a href="https://wvde.us/wp-content/uploads/2018/01/LitReview_ResponseToIntervention2012.pdf">https://wvde.us/wp-content/uploads/2018/01/LitReview_ResponseToIntervention2012.pdf</a>
Manual for Expected Behavior in Safe and Supportive Schools (Policy 4373), WVDE	Electronic Manual of Policy 4373 including overview presentations on policy.	<a href="http://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=51038&amp;Format=PDF">http://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=51038&amp;Format=PDF</a>
West Virginia Standards for Effective Schools, WVDE	Guidance document consists of seven standards with individual function statements and indicators that outlines expectations for excellence, provides rubrics for self-reflection and drive continuous improvement for all schools in the state.	<a href="https://wvde.us/wp-content/uploads/2019/12/StandardsEffectiveSchool-Revision-8.19.19.pdf">https://wvde.us/wp-content/uploads/2019/12/StandardsEffectiveSchool-Revision-8.19.19.pdf</a>
<b>Other Resources</b>		
Addressing Chronic Absenteeism in Our Schools (March 2020), WVDE	PowerPoint presentation developed to train educators for guidance on best practices to prevent student chronic absenteeism.	<a href="https://wvde.us/wp-content/uploads/2020/03/2020-WVDE-SC-Conf.-Attendance-presentation.pdf">https://wvde.us/wp-content/uploads/2020/03/2020-WVDE-SC-Conf.-Attendance-presentation.pdf</a>
Discipline Management System; WOW Training Guide, WVDE	Webinars, PowerPoints, and trainings regarding the Discipline Management System (DMS).	<a href="https://wveis.k12.wv.us/WVEIS_Documents/training/West%20Virginia%20Discipline%20Management%20System.pdf">https://wveis.k12.wv.us/WVEIS_Documents/training/West%20Virginia%20Discipline%20Management%20System.pdf</a>