

**PRESTON COUNTY BOARD OF EDUCATION**

**FILE: 8 – PERSONNEL MANAGEMENT**

**File: 8-43 Endnotes**

**Last Reviewed: 6-28-10**

**Next Review: 7-01-12**

**Endnotes**

**File: 8 Personnel Management**

**U.S. Constitution:**

Fourteenth Amendment: Guarantees equal protection of all citizens under the existing laws and guarantees due process regarding all legal proceedings.

**West Virginia Constitution:**

The several sections of Article XII require that each county provide a thorough and efficient system of free schools.

**West Virginia Codes:**

- § 5-11-1 thru §5-11-19 -- Human rights legislation.
- § 6C-2-1 thru 7----- Public employees grievance procedure
- § 8-4-11 ----- Special election and special municipal election officials.
- § 15-1F-1 ----- Leave of absence for public officials and employees for drills, parades, active duty.
- § 15-1F-1b ----- Tolling of license and registration requirements.
- § 15-2C-1 ----- Providing qualified entities access to the West Virginia Central Abuse Registry.
- § 16-3D-3----- Compulsory testing for tuberculosis of school children and school employees, x-rays required for reactors, etc.
- § 16-9A-1----- Legislative intent
- § 16-9A-2----- Sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, or chewing tobacco to persons under eighteen; penalties for first and subsequent offense.
- § 16-9A-3----- Use or possession of tobacco or tobacco products by persons under the age of eighteen years; penalties.
- § 16-9A-4----- Use of tobacco or tobacco products in certain areas of certain public schools prohibited; penalty.
- § 18-1-1 ----- Definitions.
- § 18-2-5----- Powers and duties of state board, public school entrance age.
- § 18-2-5a ----- State board rules to be filed with Legislature.
- § 18-2-7b ----- Programs in drug prevention and violence reduction.
- § 18-2E-4----- School report cards
- § 18-2E-5----- Process for improving education; office of education performance audits; education standards; school accreditation and school systems approval; etc.
- § 18-2E-6----- Falsifying reports; penalty.
- § 18-2E-8----- Creating jobs through education.
- § 18-3-4----- Proceedings to enforce school laws; removal of school officials; etc.
- § 18-4-1 ----- Election and term of superintendent; interim superintendent; acting superintendent
- § 18-4-2----- Qualifications of county superintendent; health certificate; disability;
- § 18-4-4----- Compensation of superintendent
- § 18-4-10 ----- Duties of the superintendent

- § 18-5-1a ----- Eligibility and training of board members
- § 18-5-5 ----- Corporate character of county board; general powers; etc.
- § 18-5-13 ----- Authority of boards generally
- § 18-5-15 ----- School term; exceptions; levies; ages of persons to whom schools are open.
- § 18-5-15a ----- Study of multicultural education for school employees.
- § 18-5A-5 ----- Public school faculty senate established; election of officers; powers and duties.
- § 18-5A-6 ----- Establishment of school curriculum teams.
- § 18-5B-4 ----- Innovation zones; required plans; plan approval; state board rule.
- § 18-5B-5 ----- Approval of innovation zone plans; waiver of statutes, policies, rules or interpretations.
- § 18-5B-6 ----- Employee approval of innovation plan application and plan; transfer of employees.
- § 18-5B-8 ----- Teacher vacancies in an innovation zone; job postings exceeding certain qualifications and requirements; approval of postings.
- § 18-7A-14b ----- Purchasing retirement credit for temporary disability.
- § 18-7A-38 ----- Employment of retired teaches as substitutes.
- § 18-7B-7 ----- TDCR plan
- § 18-7B-a ----- TDCR plan closed June 30 2005
- § 18-7B-8 ----- Voluntary participation in TDCR
- § 18-7d-1 thru 11 ----- Retirement merger legislation
- § 18-9A-2 ----- Public school support definitions.
- § 18-9A-9 ----- Foundation allowances for regional educational service agencies.
- § 18-20-2(d) ----- Annual training for aides who deal with violent students.
- § 18A-1-1 ----- School personnel definitions.
- § 18A-2-1 ----- Employment in general.
- § 18A-2-2 ----- Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; etc.
- § 18A-2-2a ----- Leaves of absence for teachers and service personnel.
- § 18A-2-3 ----- Employment of substitute teachers and retired teachers as substitutes in areas of critical need and shortage; employment of prospective employable professional personnel.
- § 18A-2-4 ----- Commercial driver's license for school personnel; reimbursement of costs.
- § 18A-2-5 ----- Employment of service personnel limitations.
- § 18A-2-6 ----- Continuing contract status for service personnel; termination.
- § 18A-2-7 ----- Assignment, transfer, promotion, demotion, suspension, recommendation for dismissal of school personnel by superintendent; hearing on the transfer.
- § 18A-2-7a ----- Statewide job bank.
- § 18A-2-8 ----- Suspension and dismissal of school personnel by board; appeal.
- § 18A-2-8a ----- Notice to probationary personnel of rehiring or nonrehiring; hearing.
- § 18A-2-10 ----- Physical examinations as condition of employment.
- § 18A-2-11 ----- Employees' rights to attorney's fees and costs.
- § 18A-2-12 ----- Performance evaluations of school personnel; professional personnel evaluation process.
- § 18A-3-1 ----- Teacher Preparation Program
- § 18A-3-3 ----- Renewal of certificates; permanent certification
- § 18A-3-2a ----- Authority of state superintendent to issue certificates; kinds of certificates.
- § 18A-3-2b ----- Beginning teacher internship.
- § 18A-3-2c ----- Training through the principal's academy.
- § 18A-3-2d ----- Beginning principal's internship.
- § 18A-3-3 ----- Renewal of certificates; permanent certification.
- § 18A-3-3a ----- Reimbursement for coursework.
- § 18-3-6 ----- Revocation of teaching certificates.
- § 18A-3-8 ----- County professional staff development councils.
- § 18A-3-9 ----- County service personnel staff development councils.
- § 18A-3-10 ----- Criminal history check of applicants for licensure by the state department of education.
- § 18A-3A-6 ----- Attendance of professional development programs outside the employment term.
- § 18A-4-2b ----- National Board for professional teaching certificates.
- § 18A-4-5 ----- Salary equity among the counties; state salary supplement.
- § 18A-4-7 ----- Substitute teachers pay.
- § 18A-4-7a ----- Employment, promotion and transfer of professional personnel; seniority.

- § 18A-4-7b ----- Calculation of seniority for professional personnel.
- § 18A-4-7c ----- Selecting professional educators for summer program.
- § 18A-4-8 ----- Employment term and class titles of service personnel; definitions; beginning work station.
- § 18A-4-8a ----- Service personnel minimum monthly salaries.
- § 18A-48b ----- Seniority rights for school service personnel; posting positions on web.
- § 18A-4-8c ----- Seniority rights for personnel employed by multi-county vocational centers.
- § 18A-4-8e ----- Competency testing for service personnel.
- § 18A-4-8f ----- Seniority rights, school consolidation.
- § 18A-4-8g ----- Determination of seniority for service personnel.
- § 18A-4-10 ----- Personal leave for illness and other causes; leave banks; substitutes; leave donation.
- § 18A-4-10a ----- Bonus for unused days of personal leave.
- § 18A-4-10c ----- Personal leave banks for care givers.
- § 18A-4-10d ----- Use of personal leave days by surviving spouse in certain circumstances.
- § 18A-4-14 ----- Duty-free lunch and daily planning period for certain employees.
- § 18A-4-15 ----- Employment of service personnel substitutes.
- § 18A-4-16 ----- Extracurricular assignments.
- § 18A-4-21 ----- Ten day waiting period before a board may post a position following the death of an employee.
- § 18A-5-1 ----- Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; 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 pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception.
- § 18A-5-1c ----- Bill of Rights for students and employees.
- § 18A-5-2 ----- Holidays; closing of schools; time lost because of such; special Saturday classes.
- § 18A-5-3 ----- Exemption from jury service.
- § 18A-5-3a ----- Answering witness subpoenas.
- § 18A-5-4 ----- Educational Meetings.
- § 18A-5-5 ----- Records; reports by professional and other personnel.
- § 18A-5-8(g) ----- Restrictions on the transfer of mentors and aides who work with autistic students and those who require one-on-one service.
- § 21-3-17 ----- Employers not to require payment of fees for medical examination as condition of employment; enforcement.
- § 21-5-4 ----- Payment of employee wages at the time of separation from county.
- § 21-5D-4 ----- Family leave.
- § 23-2-1 ----- Workers compensation.
- § 23-4-6 ----- Classification of and criteria for disability benefits.
- § 29-12-5a ----- Liability insurance for county boards of education, their employees and members, the county superintendent, etc.
- § 29-6-28 ----- Leave time for organ donation.
- § 46A-2A-101 ----- Requiring consumers' notification of information security breach.
- § 49-1-3 ----- Definitions relating to abuse and neglect.
- § 49-6A-2 ----- Persons mandated to report suspected abuse and neglect.
- § 49-6A-5 ----- Reporting procedures.
- § 49-6A-6 ----- Immunity from liability.
- § 49-6A-8 ----- Failure to report penalty.
- § 49-6A-9 ----- Establishment of child protective services; general duties and powers; cooperation of other state agencies.
- § 49-6A-10 ----- Educational programs.
- § 49A-6-1, 2, 5, 6, 8 ----- All of these codes relate to child abuse and neglect.
- § 55-7-18a ----- Qualified immunity for disclosing adverse job-related employee information
- § 60A-2-201 thru
- § 60A-2-1213 ----- Uniform Controlled Substances Act; standards and schedules.

§ 60A-4-412(a)(b) ----- Defeating Drug and Alcohol Screening Tests; Penalties  
§ 61-2-10b----- Penalties for certain crimes against school employees  
§ 61-2-15 ----- Assault, battery on school employees; penalties.  
§ 61-8D-1----- Child sexual exploitation  
§ 61-8D-5----- Sexual abuse or exploitation of children  
§ 61-10-15----- Pecuniary interest of county and district officers, teachers, and school officials in contracts; exceptions; offering or giving compensation; penalties.

### **Relevant Court Cases:**

**Bledsoe v. BOE, 394 S.E.2d 885 (1990)** – Where school board employee commits criminal act involving employee's occupational responsibilities, rational nexus (reasonable relationship) exists and employees may be dismissed.

**BOE v. Bowers, 396 S.E.2d 166 (1990)** – Central office administrators do not accrue seniority while occupying administrative positions that are separate and distinct from their overall seniority as professional personnel unless an administrative certificate with a specific endorsement is required for the specific central office position being held.

**BOE v. Jefferson County Educ. Assoc., 393 S.E.2d 653 (1990)** – Public employees have no right to strike, in absence of express legislation or, at the very least, appropriate statutory provisions for collective bargaining, mediation, and arbitration.

**BOE OF Mercer County v. Owensby, 526 S.E.2d 831 (1999)** – No non-employee shall be employed for a teaching position by a hiring board of education until each qualified permanent employee and each qualified teacher on the preferred recall list shall have been offered the opportunity for re-employment in position for which they are qualified (West Virginia code, 18A-2-2).

**BOE v. Wirt, 453 S.E.2d 402 (1994)** – Elementary school custodian was entitled to a hearing prior to his termination for alleged incidents of improper touching of students.

**Bolyard v. B.O.E. Grant Count, 589 S.E.2d 523 (2003)** – A teacher does not have a clear legal right to resign from her contract with the board if she does not tender her resignation before the first Monday in April of the then current year. Nor does the board have a legal duty to accept a teacher's resignation submitted after that date.

**Breza v. BOE, 497 S.E.2d 548 (1997)** – Teacher was entitled to out-of-state experience for salary purpose. School personnel laws and regulations are to be strictly construed in favor of the employee.

**Brown v. Wood County BOE, 400 S.E.2d 213 (1990)** – A local board of education may utilize indicators of performance with respect to a given standard other than indicators expressly delineated in local policy if the board promptly notifies the teacher of the use of any such "employee-specific" indicator and provides the teacher with an opportunity to improve before taking any employment action.

**Crow v. Wayne County B.O.E. No. 31626 (June 17, 2004)** – The legislature contemplated that school jobs be either professional or of a service type and they cannot be both. The melding of professional and service duties into one job, regardless of whether it is formally designated "professional" or "service," is counter to the legislative design of the classification system. Positions must be described as either when posted as either "professional" or "service".

**DeVito v. BOE, 317 S.E.2d 159** – The authority to dismiss an employee under §18A-2-8 must be based on just cause listed within the code and must be exercised reasonably, not arbitrarily or capriciously.

**Hall v. Pizzino, 263 S.E.2d 886 (1980)** – A county superintendent is a public officer and may only be removed by laws pertaining to public officers including court action.

**Harry v. BOE, 506 S.E.2d 319 (1998)** – Misconduct by a school employee that can be characterized as sexual harassment can constitute a basis for the termination of the offending employee's employment.

**Hazelwood v. Mercer County BOE, 488 S.E.2d 480 (1997)** – Service personnel do not retain seniority rights when service is interrupted voluntarily.

**Hudok v. Randolph County BOE, 415 S.e.2d 897 (1992)** – The plain language of WV Code §21-5D-4 mandates unpaid parental leave for up to twelve weeks, after the exhaustion of all annual and personal leave, during any twelve-month period, because of the birth or adoption of a child of an employee covered by the Parental Leave Act.

**Keatley v. BOE, 490 S.E.2d 306** – The certification requirements for professional personnel (WV Code 18A-4-7a) permits interviewing or hiring an applicant who does not physically possess the required certification, but who has completed the requirements for certification at the time of the interview or date of hiring and is waiting for the certification results.

**Napier v. B.O.E. Mingo County, 591 S.E.2d 106 (2003)** – WVC §18A-4-8a(7) permits a county board of education to modify the daily work schedule of a special education transportation aide after the school year begins and without the employee’s consent in order to reflect the daily schedule of the bus to which she is assigned and to accommodate fewer or greater numbers of students as their needs dictate.

**State ex rel. Melchiori v. BOE, 425 S.E.2d 251 (1992)** –Where boards of education seek to transfer teachers to positions for which they are certified, but have no practical experience, as the result of a reduction-in-force, the court held that a county board of education must make a showing that its assignment of a displaced teacher is sound when the teacher is assigned to instruct in an area for which she is certified, abut has not been employed to teach, where an alternative assignment in an area in which the teacher has previously been employed to teach is available under the seniority framework.

**State ex rel. Serdich v. Preston County BOE, 488 S.E.2d 34 (1997)** – When a board of education receives information which leads it to know, or reasonably expect, that a teacher’s absence will prospectively extend for twenty consecutive employment days, then there is an opening (WV Code 18A-4-7a), and the board is required to notify qualified personnel on the recall list referred to in the statute.

**State ex rel. Wilson v. Truby, 281 S.E.2d 231 (1981)** – School personnel regulations and laws are to be strictly construed in favor of the employee.

**Townshend v. BOE, 396 S.E.2d 185 (1990)** – Board of education policy which prohibited one spouse from supervising the other spouse within a county school system was reasonable exercise of board's supervisory authority to prevent favoritism, conflict of interest, or appearance of either.

**Webster County BOE v. Johns, 447 S.E.2d 599 (1994)** – Employee applied for and was qualified for kindergarten aide position; thus, employee was entitled to position, rather than the individual who did not apply for but received the position.

**West Virginia Educ. Assoc. v. Preston County BOE, 297 S.E.2d 444 (1982)** – County school superintendent’s nomination of his wife for a central administrator’s position violates criminal statute §61-10-15 against self-dealing and nepotism by public employees.

**Wines v. Jefferson County B.O.E., 582 S.E.2d 826 (2003)** –School personnel regulations and laws are to be strictly construed in favor of the employee.

**Woo v. BOE, 504 S.E.2d 644 (1998)** -- In order to dismiss a school board employee for acts perform at a time and place separate from employment, the board must demonstrate a “rational nexus” between the conduct performed outside of the job and the duties the employee is to perform. This “rational nexus” exists in at least two circumstances: (1) If the conduct directly affects the performance of the occupational responsibilities of the teacher; or (2) if, without contribution on the part of the school officials the conduct has become the subject of such notoriety as to significantly and reasonably impair the capability of the particular teacher to discharge the responsibilities of the teaching position. (Woo was involved in drug use)

## **State Board Policies:**

<b><u>Policy</u></b>	<b><u>Topic of the Policy</u></b>
SBP 1461	Drug-Free Workplace Policy
SBP 2320	A Process for Improving Education Performance Based Accreditation System
SBP 2421	Racial, Sexual, religious/Ethnic Harassment and Violence Policy
SBP 2510	Assuring the Quality of Education: Regulations for Education Programs
SBP 4336	West Virginia School Transportation Regulations
SBP 5202	Minimum Requirements for the Licensure of Professional/Paraprofessional Personnel and Advanced Salary Classifications
SBP 5300	Board of Education Relations with School Personnel
SBP 5310	Performance Evaluation of School Personnel
SBP 5500	County Professional Staff Development Councils
SBP 5500.02	County Service Personnel Staff Development Councils
SBP 5500.03	Skills for Principals
SBP 5612	Use of Personal Leave Benefits with Workers' Compensation Benefits
SBP 5899	Beginning Principal Internships
SBP 5900	Beginning Educator Internship Program
SBP 5902	Employee Code of Conduct

### **Federal References:**

Age Discrimination Act, 29 U.S.C.A. §621  
Civil Rights Act of 1964, Title VII, 42 U.S.C.A. §2000E-2  
Controlled Substance Act, 21 U.S.C. §802  
Discrimination Based on Sex, Title IX, 20 U.S.C.A. §1681  
Equal Pay Act, 29 U.S.C.A. §206  
Family Medical Leave Act, 29 u.s.c. §§2601, 2611, and 2612  
Omnibus Transportation Employee Testing Act of 1991  
Rehabilitation Act of 1973 (Amended 1990), 29 U.S.C. §794  
Fair Labor Standards Act

[Home](#)