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HIGHLIGHTS OF LEGISLATION ENACTED AT THE 2011 REGULAR SESSION AFFECTING PUBLIC EDUCATION

By the Education Law Group at Bowles Rice McDavid Graff & Love LLP

Senate Bill 186 **Relating to Issuing Subpoena to Aid in** **Criminal Investigations Involving Certain** **Crimes Against Minors**

In Effect June 9, 2011

[Read the Entire Bill](#)

For criminal investigations involving certain criminal sexual offenses against minors, new sections of the West Virginia Code authorize Magistrate and Circuit Court judges to issue subpoenas upon reasonable suspicion that an electronic communications system or service, or a remote computing service, has been used in the commission of such a crime. An “electronic communications system” includes any computer facilities or related electronic equipment for the electronic storage of wire or electronic communications. An “electronic communications service” is any service that provides users with the ability to send or receive electronic communications. A “remote computing service” means the provision to the public of computer storage or processing services by means of an electronic communications system. The form by which a

law enforcement agency applies for such a subpoena shall be approved by the West Virginia Supreme Court of Appeals and shall include, if available, the IP address, email address, telephone number, or other identifier suspected of being used in the commission of the offense. *W. Va. Code § 62-1G-2(a),(b).*

In response to the subpoena, an electronic communications system or service, or a remote computing service, may be required to produce names, addresses, telephone connections, session records, subscriber identifiers, and means and sources of payment for services. However, a law enforcement agency may not examine the contents of electronic communications without a warrant. *W. Va. Code § 62-1G-2(b),(c).*

Senate Bill 186 prohibits the recipient of the subpoena from disclosing to the account holder the existence of the subpoena and the response to the subpoena. The bill also limits the liability of the systems and services to which subpoenas are directed, and it permits them to charge a fee to the law enforcement agency, not to exceed the actual cost of providing the information. *W. Va. Code § 62-1G-2(d),(e),(g).*



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Senate Bill 213 Relating to Crimes Using Computers, Telephones and Electronic Devices

In Effect June 9, 2011

[Read the Entire Bill](#)

An existing misdemeanor criminal statute makes it unlawful, with the intent to harass or abuse another person, to use a computer to (1) make contact with another without disclosing his or her identity with the intent to harass or abuse; (2) make contact with a person after being requested by the person to desist from contacting them; (3) threaten to commit a crime against any person or property; or (4) cause obscene material to be delivered or transmitted to a specific person after being requested to desist from sending such material. *W. Va. Code § 61-3C-14a(a)*.

The statute is amended to cover any such communications made by or to a mobile phone, personal digital assistant, or other electronic communication device. The criminal statute is also amended to cover the transmission of text messages, emails, photographs, videos, images or other non-voice data. *W. Va. Code § 61-3C-14a*.

These changes may in certain instances be helpful in addressing cyber-bullying that occurs through the use of such devices and communications.

Senate Bill 228 Creating Local Solution Dropout Prevention and Recovery Act

In Effect March 12, 2011

[Read the Entire Bill](#)

Based upon legislative findings about reducing the dropout rate and improving high school completion rates, Senate Bill 228 establishes “Local Solution Dropout Prevention and Recovery Innovation Zones” as a separate category of innovation zones. The goals are to increase graduation rates, reduce the number of dropouts, allow greater opportunities for schools and communities to collaborate in planning and implementing evidence-based solutions, provide a testing ground for

innovative approaches, measure the effects on graduation rates of specific innovations, and document strategies that work. *W. Va. Code § 18-5B-11(a),(b)*.

A high school, a group of schools comprised of a high school and any of its feeder elementary and middle schools, or a school district whose graduation rate is below 90 percent may become a Local Solution Dropout Prevention And Recovery Innovation Zone. All the requirements and procedures of the preexisting “School Innovation Zones Act” apply to Local Solution Dropout Prevention and Recovery Innovation Zones, including those governing the designation, application, approval, waivers, employee approval, employee transfers, progress reviews, reports, revocations, and job postings, with certain modifications. Additionally, once a Local Solution Dropout Prevention And Recovery Innovation Zone application is approved by the school employees, it cannot be submitted to the county superintendent and board unless it is first approved by 80 percent of the local school improvement council members at a meeting where a quorum is present. The State Board of Education is directed to adopt rules to implement the new zones. *W. Va. Code § 18-5B-11(c),(c)(1),(c)(5)*.

An application for designation as a Local Solution Dropout Prevention and Recovery Innovation Zone must include, at a minimum, a description of the dropout prevention and recovery strategies to be implemented in the zone and an explanation of the exceptions to rules, policies, interpretations, and statutes required to implement the plan. Exceptions cannot be granted to any assessment program administered by the State Department of Education, any provision of the No Child Left Behind Act, or a host of West Virginia school personnel statutes. *W. Va. Code § 18-5B-11(c)(2)*.

In evaluating an application for designation as a Local Solution Dropout Prevention and Recovery Innovation Zone, the State Board is required to consider, at a minimum, evidence that other individuals, entities, and community organizations are involved as partners to collectively work with the applicant to achieve the goals of the dropout prevention and recovery plan;



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the level of commitment and support by various school and community interests; the potential for the applicant's success in building community awareness of the dropout problem and implementing the dropout prevention and recovery plan; and the applicant's implementation of the statewide early warning indicators of students at risk of not completing high school, along with a plan of interventions to increase the number of high school graduates. *W. Va. Code § 18-5B-11(c)(3)*.

The bill creates a special revenue fund, the "Local Solutions Dropout Prevention and Recovery Fund," to be administered by the State Board of Education solely for the purposes of the statute. *W. Va. Code § 18-5B-11(d)*.

In addition to provisions for Local Solution Dropout Prevention and Recovery Innovation Zones, Senate Bill 228 authorizes county boards that have posted the position of attendance director and received no fully certified applicants to employ a person who holds a professional administrative certificate and meets the special and professional qualifications established by the county board. In such cases the person hired is not required to obtain attendance director certification. *W. Va. Code § 18-8-3(b)*.

Finally, the legislation directs the State Board to develop a statewide electronic system to provide schools, through WVEIS, with easily identifiable early warning indicators of students at risk of not graduating from high school. At a minimum, the system must incorporate data on individual students' attendance, academic performance, and disciplinary infractions. *W. Va. Code § 18-8-6(c)(7)*.

Senate Bill 328 **Relating to Issuance, Disqualification,** **Suspension and Revocation of Drivers' Licenses**

In Effect June 9, 2011
[Read the Entire Bill](#)

A host of amendments to the laws governing commercial drivers' licenses and privileges include the disqualification of an individual from driving a commercial motor vehicle if convicted

of driving such a vehicle while engaged in texting. A driver is considered to be engaged in texting if operating a motor vehicle with the engine running, including while temporarily stopped because of traffic, a traffic control device, or other momentary delays. However, a driver is not considered to be operating a motor vehicle when the driver has moved the vehicle to the side of or off of a highway and halted in a location where the vehicle can safely remain stationary, regardless of whether the motor is running. *W. Va. Code § 17E-1-13(c)(9)*.

Senate Bill 373 **Requiring School Building Authority Allocate** **and Expend Certain Moneys For Vocational** **Programs at Comprehensive Middle Schools**

In Effect July 1, 2011
[Read the Entire Bill](#)

Under this legislation, the School Building Authority is authorized, by resolution, to temporarily finance the cost of projects for public schools, to include comprehensive high and middle schools, through the issuance of loans, notes, and similar debt instruments. However, at any one time the principal amount of all such temporary financings may not exceed \$16 million. *W. Va. Code § 18-9D-4c*.

Based upon a finding by the Legislature that it is important to increase career technical education opportunities at the middle and junior high school level, the SBA is required, when planning the construction of a middle or junior high school which has been approved by the SBA, to provide funding for comprehensive career technical education facilities to be located, if feasible, on the same site at the school. When a county board applies to construct a comprehensive career technical education facility for an existing middle or junior high school, the SBA must provide technical assistance in developing a plan for construction. Once the plan is developed, the SBA is directed to consider funding based upon: (1) the county board's ability to provide local funds for the construction of the comprehensive career technical education facilities; (2) the size of the existing middle and junior high schools; (3) the age and



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physical condition of the existing career technical education facilities; (4) the potential for improving the graduation rate; and (5) other criteria that the SBA considers appropriate. The SBA is expressly authorized, upon application by a county board, to spend moneys for major improvement projects for vocational programs at comprehensive middle schools. *W. Va. Code §§ 18-9D-15(b)(4); 18-9D-19a(a),(c),(d).*

S. B. 373 directs the State Board of Education to adopt a rule that defines a comprehensive middle school. Among other things, the rule must include certain specified provisions covering a comprehensive curriculum, technology to provide 24/7 personalized learning, digital individualized student portfolios of mastery and progression, and seamless integration with the secondary school curriculum. *W. Va. Code § 18-9D-19a(b).*

Senate Bill 382 **Specifying Activities Entitling Certain Members of National Guard or Reserve to Leave of Absence**

In Effect May 25, 2011
[Read the Entire Bill](#)

An amendment to an existing statute identifies additional activities that entitle permanently employed public officials and employees who are also members of the National Guard or Armed Forces Reserve to a military leave without loss of pay or status.

Under existing law, such persons are entitled to such leave when ordered, by properly designated authority, to engage during business hours in drills, parades, and other duty, or to engage in field training or active service of the state. The amendment adds inactive duty training, funeral details, service schools, annual training, and other full-time national Guard duty under federal law. Leave for all of these reasons is limited to a maximum of 30 working days, not to exceed 240 hours, in any calendar year. *W. Va. Code § 15-1F-1(a).*

Senate Bill 507 **Continuing Broadband Deployment Council**

In Effect May 26, 2011
[Read the Entire Bill](#)

This bill extends the life of the Broadband Deployment Council. Originally scheduled to sunset on December 31, 2011, the Council will now end on December 31, 2014, unless sooner terminated or continued by the Legislature. *W. Va. Code § 31-15C-14.*

Senate Bill 592 **Requiring Schools Have Crisis Response Plans**

In Effect June 9, 2011
[Read the Entire Bill](#)

The State Board of Education in conjunction with the Division of Homeland Security and Emergency Management is required by December 31, 2011, to adopt a rule for the establishment of an up-to-date, school-specific crisis response plan (“CRP”) at every school in West Virginia. In doing so, the State Board is to consider plans currently being developed under the safe schools initiative of the School Building Authority and the Division. Portions of a school’s access safety plan created under *W. Va. Code § 18-9F-3* may be used as a portion of a school’s CRP if there are any overlapping requirements. *W. Va. Code § 18-9F-9(a).*

The State Board’s rule must include, at least, a model school CRP for use by each school, as well as a uniform template that each school must use to file its plan. Senate Bill 592 specifies the minimum information that the State Board’s model and template must cover: (1) the school employee in charge during a crisis and a designated substitute; (2) a communication plan to be used during a crisis; (3) protocols for responding to immediate physical harm of students, faculty or staff and to traumatic events, including the period after the events have concluded; (4) disaster and emergency procedures to respond to earthquakes, fire, flood, other natural disasters, explosions or other events or conditions in which death or serious injury is



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likely; (5) crisis procedures for safe entrance to and exit from the school by students, parents, and employees, including an evacuation and lock down plan; and (6) policies and procedures for enforcing school discipline and maintaining a safe and orderly environment during the crisis. *W. Va. Code § 18-9F-9(a)(1)*.

Under the legislation, the State Board's rule will require that school CRPs be filed with the county board of education by August 1, 2013, with and filed in a secure electronic system identified by the Division of Homeland Security and Emergency Management. The rule must also provide necessary safeguards, to be approved by the Division, for the protection of parts of each school-specific CRP that may be considered critical infrastructure information, law enforcement sensitive information, and information that is for official use only. The State Board rule will require annual review and necessary updating of the model plan and uniform template, as well as of each school's specific CRP. *W. Va. Code § 18-9F-9(a)(2),(3),(4),(6)*.

Each school-specific plan must be developed by a crisis response planning team in consultation with local social services agencies and local first response agencies including police, fire, emergency medical services, emergency management, and any other local entities that the school's crisis response planning team thinks appropriate. A school's crisis response planning team may consist of the school's LSIC or a separate planning team consisting of the principal, two teachers, one service employee, and two parents of children attending the school. The school may include on its crisis response planning team a county board member, a school counselor, a member from local law-enforcement, the local county emergency services director, and one student in grade 10 or higher if the school has those grades. *W. Va. Code § 18-9F-9(a)(5),(7)*.

The legislation requires the State Board to develop procedures for informing and training school personnel on any actions required of them to effectuate the school's CRP. The State Board is also to devise a model template for redacted copies of each CRP suitable for public inspection and notice of the

plan to parents. With respect to non-public schools, the State Board's rule must devise procedures for them to establish, file, and update CRPs that cover the same items as required of public schools. *W. Va. Code § 18-9F-9(a)(8),(9),(10)*.

County boards must keep a copy of each current school CRP on file. They must also provide a copy to each local emergency response agency that has a role in a plan. The local agencies must maintain the copy with necessary safeguards for the information. Beginning with the 2012-2013 school year, annual notice must be sent home to all parents and guardians alerting them to the existence of the CRP for their children's school and of their right to review a redacted copy at the county board office. *W. Va. Code § 18-9F-9(b)*.

Senate Bill 612 Exempting Certain Schools and School Districts From Certain Statutory Provisions

In Effect June 9, 2011

[Read the Entire Bill](#)

A new West Virginia Code provision sets forth any waivers of school statutes granted by the Legislature upon recommendation of LSICs and the Legislative Oversight Commission on Education Accountability. *W. Va. Code § 18-5A-3a(a)*.

One such waiver is set forth. It waives provisions of the beginning teacher internship statute for the sole purpose of allowing the Cabell County Board of Education to implement a comprehensive new teacher induction program. *W. Va. Code § 18-5A-3a(b)*.

Senate Bill 612 also amends the Code section in which the Legislature approves exceptions to statutes as set forth in innovation zone plans. This year the Clay County Board of Education is granted an exception from *W. Va. Code § 18-5-15* so that persons over the age of 21 may enroll without charge in the school district's iREAD program and, upon successful completion be awarded a high school diploma. *W. Va. Code § 18-5B-10(b)(5)*.



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House Bill 2464

Adding Additional Requirements to the Ethics Act

In Effect July 1, 2011

[Read the Entire Bill](#)

Public officials are required by this legislation to disclose certain additional information on the financial disclosure statements that they must annually file with the West Virginia Governmental Ethics Commission.

For the most part, the additional information concerns financial information about spouses. A spouse is defined to mean any individual who is legally married to and cohabits with the person filing the statement. Spousal financial information must now be disclosed in 8 of the 13 categories of financial information that public officials disclose about themselves. Less spousal information need be disclosed under certain conditions by those public officials whose public service is as a member of a board, commission, or agency for which no compensation is authorized by statute *W. Va. Code § 6B-2-7(a),(b)*.

Prior to House Bill 2464 taking effect, public officials filing the annual financial disclosure statement had to list the name and address of each business in which they have or, during the past year had, an interest of \$10,000 or 5% ownership. The bill removes the requirement to report businesses in which an official has or had 5% ownership, but retains the \$10,000 threshold for reporting a business interest. It also makes clear that business interests include, but are not limited to, interests in non-publicly owned businesses; publicly or privately traded stocks, bonds, or securities, including those held in self-directed retirement accounts; and commercial real estate. In the separate category of every source of income over \$1,000, an amendment clarifies that distributions from retirement accounts must be reported if they qualify. The statute will now require disclosure of any for-profit business or nonprofit organization of which the reporting party is a director or officer. Persons filing the annual report will also have to disclose the name and business address of any child or step-child who is at least 18 years old and is employed by state, county, or municipal government. *W. Va. Code § 6B-2-7(a)(3),(4),(5),(11),(12)*.

Other amendments to the Governmental Ethics Act require the Ethics Commission to publish, on the Internet or in print, a list of all persons who violate any deadline for filing a financial disclosure statement. The Commission must make all financial disclosure statements available for inspection upon request. The financial disclosure of certain candidates and state-level officers must be posted on the Internet. The Ethics Commission has discretion to publish any other financial disclosure on the Internet. When the Commission posts financial disclosure statements on the Internet, it must exclude personal information such as signatures, home addresses, and mobile and home telephone numbers. *W. Va. Code § 6B-2-6(b)*.

House Bill 2505

Adding Synthetic Cannabinoids and Hallucinogens and Stimulants to the Schedule I List of Controlled Substances (K2)

In Effect April 11, 2011

[Read the Entire Bill](#)

H. B. 2505 adds certain cannabinoids, hallucinogens, and stimulants to the Schedule I list of controlled substances. Schedule I substances have a high potential for abuse and either have no accepted medical use in treatment in the United States or lack accepted safety for use in treatment under medical supervision. The added substances include those known as “K2,” “Spice,” “bath salts,” and “plant feeder.” *W. Va. Code § 60A-2-204(d)(32),(e)(4), (e)(8)*.

House Bill 2550

Interstate Compact on Educational Opportunity for Military Children

In Effect June 8, 2011

[Read the Entire Bill](#)

With the passage of this bill, West Virginia enters into and enacts into law the “Interstate Compact on Educational Opportunity for Military Children.” It also establishes the West Virginia Council for Educational Opportunity for Military Children.



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The purpose of the Compact is to remove public school barriers to educational success faced by school-aged children enrolled in grades K through 12 who are in the household of an active duty uniformed services member (including members of the Guard and Reserve pursuant to active duty orders under federal law).

The Compact aims to ease the educational effects of military families' frequent moves and the deployment of parents. Among its provisions are these:

- If official education records cannot be released to a student's parents or guardians for the purpose of the student's transfer to a school in another state, the custodian of records in the sending state must prepare and furnish to the parents a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission on Educational Opportunity for Military Children. Upon receipt of the unofficial records, the school in the receiving state must enroll and appropriately place the student based upon information in the unofficial records pending validation by the official records.
- At the same time that the school in the receiving state enrolls and conditionally places a student, it must also request the student's official education records from the school in the sending state. The sending school must process and furnish the records within ten days unless the rules of the Interstate Commission establish another time period.
- A county board must allow a student 30 days from the date of enrollment to obtain any required immunizations unless the rules of the Interstate Commission establish another time period. Where a series of immunizations is required, the student must obtain the initial vaccination within 30 days of enrollment unless the rules of the Interstate Commission establish another time period.
- Regardless of the student's age, he or she must be permitted to enroll in the grade level in West Virginia, including kindergarten, that is commensurate with the grade level in which the student was enrolled in the sending state at the time of transition.
- Regardless of age, a student who satisfactorily completed the prerequisite grade level in the sending state is eligible for enrollment in the next highest grade level in West Virginia.
- A student who transfers to West Virginia before or during the school year must be initially placed in courses based on the courses in which he or she was enrolled in the sending state and/or on the educational assessment conducted in the sending state if the courses are offered at the school to which the student is transferring. These include Honors, Advanced Placement, vocational, technical, and career pathways courses. A school may perform subsequent evaluations to ensure appropriate placement and continued enrollment of the student in any course.
- A transferring student must initially be placed in educational programs based on current educational assessments conducted at the sending school, or based upon participation or placement in like programs in the sending state. The programs include gifted and talented programs and English as a Second Language. The receiving school may perform subsequent evaluations to ensure appropriate placement.
- A West Virginia school must initially provide to a transfer student with disabilities comparable services based on his or her current IEP. It must also make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing Section 504 or Title II plan, so as to provide the students with equal access to education. The school may perform subsequent evaluations to ensure appropriate placement.
- A student whose parent or legal guardian is on active duty and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support zone posting must be granted



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additional excused absences at the discretion of the county superintendent in order to visit with the parent or guardian relative to such leave or deployment.

- A special power of attorney relative to the guardianship of a child of a military family is sufficient for purposes of enrollment and all other actions requiring parental participation and consent.
- A county board may not charge local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a school district other than that of the custodial parent. Such a child may continue to attend the school in which he or she was enrolled while residing with the custodial parent.
- The State Board of Education and county boards must facilitate the opportunity for transitioning military children to be included in extracurricular activities, regardless of application deadlines, to the extent the children are otherwise qualified.
- To facilitate on-time graduation of children of military families, the State Board of Education and county boards must incorporate certain procedures. These include: either the waiver of specific courses required for graduation if a student has satisfactorily completed similar course work in another local education agency, or providing reasonable justification for the denial; where a waiver is denied to a student who would otherwise qualify to graduate from the sending school, providing an alternate means of acquiring required coursework so that the student may graduate on time in the receiving school district; and, if a student transferring at the beginning of or during the senior year is ineligible to graduate in West Virginia after all alternatives have been considered, working with the sending state to ensure that the student receives a diploma from the sending state if he or she meets the graduation requirements of the school in the sending state.

The purpose of the West Virginia Council for Educational Opportunity for Military Children is to coordinate the activities of county boards and other entities in West Virginia under the Compact. Its members are the State Superintendent of Schools, a county superintendent from a county with a high concentration of military children (appointed by the Governor), a representative of a military installation in West Virginia (appointed by the Governor), a representative of the executive branch of state government (appointed by the Governor), a member of the West Virginia Senate (appointed by the Senate President), and a member of the House of Delegates (appointed by the Speaker of the House). To administer and manage the state's participation in the Compact, the Governor is to select a Compact Commissioner.

House Bill 2556

Resetting the Expiration Date of Provisions That Allow the Employment of Retired Teachers as Substitutes Beyond the Post-Retirement Employment Limit

In Effect February 23, 2011

[Read the Entire Bill](#)

The Legislature enacted House Bill 2556 to reinvigorate provisions of W. Va. Code § 18A-2-3 that at one time allowed county boards in certain instances to annually use retired teachers as substitutes in areas of critical need and shortage for an unlimited number of days without affecting their monthly retirement benefits. Those provisions, which expired on June 30, 2010, are modified. As modified, they will next expire on June 30, 2014. *W. Va. Code § 18A-2-3(c)(7)*.

To so use retired teachers as substitutes, a county board must, as before, annually adopt or renew a policy recommended by the county superintendent. Policies must incorporate the same categories of information and the same provisions as under the prior practice. Each new or renewed policy must then be approved by the State Board of Education. The county superintendent's affidavit that is required before a county may employ a substitute beyond the post-retirement employment limitation must now be filed not only with the Retirement Board, but also with the State Board of Education. In addition



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to provisions required under the prior practice, the affidavit must now state the critical need and shortage area position filled by each retired person, the date the retired person gave notice to the county board of his or her intent to retire, and the effective date of the retired person's retirement. *W. Va. Code § 18A-2-3(c)(2)*.

As before, the State Board of Education must annually, before February 1, make a report to the Joint Committee on Government and Finance, with a copy to the Legislative Oversight Commission on Education Accountability. In addition to indicating the effectiveness of the reinvigorated statute in expanding the use of retired teachers to address areas of critical need and shortage, the reports must now include, by county, the additional information county superintendents are required to include in their affidavits. *W. Va. Code § 18A-2-3(c)(6)*.

House Bill 2557

Extending the Time For the Board of Education of Upshur County to Meet As a Levying Body

In Effect February 14, 2011

[Read the Entire Bill](#)

The Upshur County Board of Education receives an extension until May 31, 2011, of the time to meet as a levying body, set the levying rate, and certify its actions to the Auditor. The extension is to allow the Board to submit to the voters, at a special election, the question of approving a bond issue.

House Bill 2648

Increasing the Faculty Senate Allotment for Classroom Teachers and Librarians

In Effect July 1, 2011

[Read the Entire Bill](#)

This legislation increases by \$50 the annual faculty senate allotment to each classroom teacher and librarian for the purchase of academic materials, supplies, and equipment to enhance instruction. The allotment will now total \$100 per instructional year. *W. Va. Code § 18-5A-5(b)(1)*.

House Bill 2709

Allowing County School Boards to Enter Into Energy-Saving Contracts

In Effect March 1, 2011

[Read the Entire Bill](#)

An amendment to the statute regulating energy-savings contracts between county boards and qualified providers increases by five years the permissible length of energy-savings contracts and lease-purchase contracts for the purchase and installation of energy conservation measures. The new limit is 15 years. School boards must continue to have the option of terminating the agreements during each fiscal year. *W. Va. Code § 18-5-9a(f)*.

House Bill 2765

Relating to the Retirement Plans Administered by the West Virginia Consolidated Public Retirement Board

In Effect March 8, 2011

[Read the Entire Bill](#)

In order to ensure the continued qualification under federal tax laws of the retirement plans administered by the West Virginia Consolidated Public Retirement Board, this legislation addresses how the plans will provide certain death benefits to the survivors of plan members or participants who die on or after January 1, 2007, while performing qualified military service. It also addresses the treatment of differential wage payments received by any plan participant or member. *W. Va. Code § 5-10D-10(a)*.

House Bill 2864

All relating to the Creation of a Misdemeanor Crime of Unlawful Restraint in the First and Second Degree

In Effect June 9, 2011

[Read the Entire Bill](#)

The crime of unlawful restraint, to be distinguished from kidnapping, is set forth in a new section of the West Virginia Code. By restraint, the law means restricting a person's movement without his or her consent. *W. Va. Code § 61-2-14g(c)*.



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The crime occurs when any person without legal authority intentionally restrains another, and does so with the intent that the other person not be allowed to leave the place of restraint. The restraint must be by physical force, or by overt or implied threat of violence, or by actual physical restraint, but without the intent to obtain any other concession or advantage such as money. Offenses are punishable by jail confinement for not more than a year and/or a fine of not more than \$1,000. *W. Va. Code § 61-2-14g(a)*.

The new statute identifies two affirmative defenses to any prosecution for unlawful restraint. The first is that the defendant acted reasonably and in good faith to protect the person from imminent physical danger. The other is that the person restrained was less than 18 years old and that the actor was a parent or legal guardian, or a person acting under the authority of a parent or legal guardian of the child, or a teacher or other school employee acting under in loco parentis authority granted by *W. Va. Code § 18A-5-1*, and that his or her sole purpose was to assume control of such child. *W. Va. Code § 61-2-14g(b)*.

The new law does not apply to law enforcement officers in the lawful exercise of their duties. *W. Va. Code § 61-2-14g(d)*.

House Bill 2879 **Providing a Salary Increase For** **All Eligible State Employees**

In Effect March 12, 2011
[Read the Entire Bill](#)

Under House Bill 2879, the state minimum annual base salary of teachers at the Bachelor's Degree level and above is increased by \$1,488, effective July 1, 2011 (with lesser increases in the state minimum base pay at the 4th class, 3rd class, and 2nd class salary levels). The state minimum monthly base pay of service employees is increased by two percent effective July 1, 2011, with a monthly minimum increase of \$50 per month and a maximum of \$120. *W. Va. Code §§ 18A-4-2(a), 18A-4-8a(1)*.

Effective July 1, 2011, the amounts indicated on the State Equity Supplement Pay Scale for service personnel are increased by \$37 across-the-board. Effective July 1, 2013, salary equity for both professional and service employees will be calculated by comparing the average of the ten (rather than five) highest county salary schedules to the lowest county salary schedule. Additionally, the Legislative Oversight Commission on Education Accountability is directed to study, during the 2011 interim meetings, whether to recommend that the State Equity Supplement Schedule and the State Equity Supplement Pay Scale should be established in statute. *W. Va. Code § 18A-4-5*.

The bill also repeals *W. Va. Code § 18A-4-5c*, which required that certain funds be apportioned between teachers and service personnel in such proportion as necessary to align these personnel more closely with their counterparts in contiguous states. The repealed section also required the State Board of Education to thoroughly and comprehensively compare West Virginia school personnel salaries to those in surrounding states.

House Bill 2939 **Clarifying the Definition of Compensation For** **Purposes of Calculating Required Contributions** **to the Public Employees Retirement System**

In Effect June 6, 2011
[Read the Entire Bill](#)

Among other things, House Bill 2939 expressly provides that for purposes of withholding contributions for the Retirement System and for purposes of calculating a member's final average salary, consideration shall not be given to any lump sum or other payment to a member that does not constitute regular salary or wage payment. The excluded payments are said to include, but are not limited to, attendance or performance bonuses, one-time flat fee or lump sum payments, payments paid as a result of excess budget, or employee recognition payments. The Consolidated Public Retirement Board is given the final power to decide whether the payments shall be considered compensation for purposes of this provision. *W. Va. Code § 5-10-2(8)*.



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House Bill 3116

Relating to the Authority of School Curriculum Teams and Local School Collaborative Processes

In Effect June 10, 2011

[Read the Entire Bill](#)

The school curriculum team statute is amended to make clear that its purpose is to (1) provide opportunities for school personnel to have a direct voice in the operation of their schools and create a culture of shared decision-making to raise student achievement; (2) encourage the use of different high-quality models of education delivery to meet a variety of student needs; (3) increase high-quality educational opportunities for students in order to close achievement gaps; and (4) provide increased school-level freedom and flexibility to those schools that have achieved exceptional levels of results-driven accountability. *W. Va. Code § 18-5A-6(b).*

School curriculum team powers and duties are expanded to include establishing, for approval by the county board, the assessments, instructional strategies, and programs that the team determines are best suited to promote student achievement and achieve State Board of Education content standards for required courses. However, if the school has achieved AYP or has received distinction or an exemplary school accreditation, the school may, without the necessity of county board approval, use the assessments, instructional strategies, and programs established by the curriculum team, subject to certain limitations that were already a part of the statute. If the school later fails to achieve AYP or receives any accreditation status other than distinction or exemplary, the school may not implement the curriculum team's recommendation of assessments, instructional strategies, and programs without county board approval. *W. Va. Code § 18-5A-6(c)(3),(d),(e).*

At any school that has achieved AYP or received distinction or exemplary accreditation status, the faculty senate, with the approval of the principal, may establish a process for teacher collaboration to improve instruction or learning under *W. Va. Code § 18-5C-2* to take the place of the school's

curriculum team, strategic planning committee, technology team, and/or school support team, but without having to follow the application and approval process of that statute. *W. Va. Code § 18-5A-6(h).*

House Bill 3145

Providing a One-Time Bonus to Certain Annuitants of the Public Employees Retirement System and the State Teachers Retirement System

In Effect June 8, 2011

[Read the Entire Bill](#)

As a result of this bill, a one-time bonus of \$1,200 will be paid on July 27, 2011, to retirees of the Teachers Retirement System who have 20 years of credited service as a contributing member and an annual retirement annuity of not more than \$7,200. The bonus is payable pro rata to any beneficiaries of a qualifying retirant who currently receive an annuity or other benefit payable by the retirement system. *W. Va. Code § 18-7A-26v.*

House Bill 3225

Expanding the Definition of Harassment, Intimidation or Bullying

In Effect June 30, 2011

[Read the Entire Bill](#)

The definition of "harassment, intimidation, or bullying" is expanded. The law already covered intentional gestures and intentional written, verbal, or physical acts or threats. It now also covers intentional electronic communications and transmissions. These include, but are not limited to, electronic acts, communications, transmissions, or threats administered by telephone, wireless phone, computer, pager, or any electronic or wireless device whatsoever. They include, as well, the transmission of any image or voice, email, or text message using such a device. *W. Va. Code § 18-2C-2.*

County board policies on harassment, intimidation, or bullying must now expressly prohibit the harassment, intimidation, or bullying of any student on a school bus or at a school bus stop. County boards are well advised to incorporate into their policies



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other changes made by H. B. 3225. The legislation requires the State Board of Education to develop and issue a model policy by September 1, 2011. *W. Va. Code § 18-2C-2(b)(1),(d)*.

Finally, the bill requires all county boards to input into WVEIS the means of harassment, intimidation, or bullying that have been reported to them, and the reasons therefor, if known. The State Department of Education must compile the information into an annual report to the Legislative Oversight Committee on Education Accountability beginning July 1, 2012. *W. Va. Code § 18-2C-3(b)(11)*.

RESOLUTIONS

House Resolution No. 12 Breast Cancer Awareness

[Read the Entire Resolution](#)

In this resolution, the House of Delegates recognizes the importance of breast cancer awareness, early detection, and

annual screenings. West Virginia's middle and high schools are encouraged to help promote breast cancer awareness by hosting "pink" sports and recreational events during the month of October. Certified copies of the resolution are to be sent to all middle and high school principals.

House Concurrent Resolution No. 45 Barriers Facing Deaf or Hard of Hearing Children and Their Families

[Read the Entire Resolution](#)

The Legislature directs the Joint Committee on Government and Finance to study the educational and communication barriers facing children in West Virginia who are deaf or hard of hearing and their families. The Joint Committee is also to study the adequacy and enforcement of current laws that address those barriers. The resolution asks the Joint Committee to report its findings and recommendation to the regular legislative session in 2012, together with drafts of any legislation necessary to effectuate its recommendations.



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