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HIGHLIGHTS OF LEGISLATION ENACTED AT THE 2014 REGULAR SESSION AND FIRST SPECIAL SESSION AFFECTING PUBLIC EDUCATION IN WEST VIRGINIA

By the Education Law Group at Bowles Rice LLP

Senate Bill 209

Allowing Special Needs Students to Participate in Graduation Ceremonies

In effect March 6, 2014

[Read the Entire Bill](#)

Senate Bill 209 requires each county board of education to adopt a policy allowing students with disabilities, whose individualized education programs provide for a modified diploma, to participate in the graduation ceremony of their same grade classmates upon written request by the parent or legal guardian. However, a student's participation in the graduation ceremony does not itself justify terminating, denying or declaring the student ineligible for continued special education services. The legislation states that a county board "shall also permit the student to continue receiving his or her special education services." *W. Va. Code § 18-20-1(c)*.

Senate Bill 252

Allowing Certain Expelled Students to Return to School through Juvenile Drug Court

In effect June 6, 2014

[Read the Entire Bill](#)

The expulsion provisions of West Virginia's Safe and Protective Schools Act are amended to add a factor that a county superintendent must use, if applicable, in determining whether to reduce a student's mandatory 12-month expulsion: successful completion or making satisfactory progress toward successful completion of Juvenile Drug Court. *W. Va. Code § 18A-5-1(a)(i)(2)(E)*.

Under a new section of West Virginia Code, when a student is expelled from school, the county board of education, superintendent, principal, parent, guardian or custodian may refer the student to a Juvenile Drug Court. If the court's judge determines that the student is an appropriate candidate for Juvenile Drug Court, the court takes jurisdiction over the student in the same manner as it does over all other persons in Juvenile Drug Court. This includes the ability to issue any sanctions available to the court, such as temporary detention. *W. Va. Code § 18A-5-1d(a),(b)*.

If the county superintendent is notified by the Juvenile Drug Court that the student successfully completed the Juvenile Drug Court or is making satisfactory progress toward successful



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completion, the superintendent must arrange a meeting of the Juvenile Drug Court treatment team, the court and the student assistance team to discuss the student's history, progress and potential for improvement. The student assistance team then must recommend to the superintendent whether to reduce the student's expulsion period and reinstate the student in school. The final decision is the superintendent's, who makes a written report to the county board detailing the reasons for or against school reinstatement. A superintendent who reduces the expulsion period must also submit to the county board, principal, faculty senate and local school improvement council the statement already required by the Act in such instances. If a student is to be reinstated, he or she must be returned to school no later than the tenth regular school day following the Juvenile Drug Court's notification of the superintendent. *W. Va. Code § 18A-5-1d(c).*

Senate Bill 253

Clarifying Code for Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth

In effect June 6, 2014

[Read the Entire Bill](#)

In 2012 the Legislature directed the Secretary of the Department of Health and Human Services to select a community-based organization to establish a special four-year community-based pilot project to identify, implement and document best practices that can be replicated in other communities. The local county school superintendent is among the persons and entities with which the designated community-based organization was directed to collaborate. *W. Va. Code § 18-21-2.*

S.B. 253 fine tunes the language of statutes governing the demonstration project, but makes no significant changes to the project as originally enacted. *W. Va. Code §§ 18-21-2; 18-21-4.*

Senate Bill 391

Providing Salary Increase for Teachers and School Service Personnel

In effect July 1, 2014

[Read the Entire Bill](#)

This legislation increases the state minimum salary schedules for professional and service employees. It also expresses the Legislature's goal to increase the state minimum salary, including the equity supplement, for teachers with zero years of experience and an A.B. degree to at least \$43,000 by fiscal year 2019. *W. Va. Code §§ 18A-4-2; 18A-4-8a.*

Senate Bill 452

Relating to TRS Annuity Calculation of Member with Reciprocal Service Credit

In effect May 20, 2014

[Read the Entire Bill](#)

S.B. 452 defines "teacher final average salary" for purposes of calculating the annuity of a member who leaves a position covered by the West Virginia Public Employees Retirement System and within five years is employed in a position covered by the State Teachers Retirement System from which he or she retires, and vice versa. "Teacher final average salary" is defined to mean a member's final average salary computed according to the law governing the teacher system. The legislation requires that in computing a person's teacher final average salary, the compensation, if any, received by the member for services rendered in positions covered by the public system shall be used in the same manner as if the compensation were received for services covered by the teacher system. *W. Va. Code §§ 5-13-2; 5-13-4.*

Senate Bill 1009

Relating to Computation of Local Share for Public School Support Purposes

In effect March 14, 2014

[Read the Entire Bill](#)

Senate Bill 1009 expressly states the legislative intention to hereafter compute local share based upon actual real property values rather than assumed assessed real property values, and to compute the annual amount of local share without reference to whether the county's real property assessments were at least 54 percent of market value in the prior year. *W. Va. Code § 18-9A-11(b).*



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To those ends, the bill repeals, retrospectively to June 30, 2013, provisions of former *W. Va. Code § 11-1C-5b* requiring the use of assumed assessed real property values that are based upon an assessment ratio study instead of actual real property values in computing local share for public school support. It likewise repeals, retrospectively to June 30, 2013, provisions of former *W. Va. Code § 18-9A-2a* requiring that the annual amount of local share for which a county board of education is responsible be increased where, during the prior year, the real property assessments in that county were not at least 54 percent of market value as indicated by the assessment ratio study.

Additionally, S.B. 1009 requires that for fiscal years beginning after June 30, 2014, the State Board of Education use 96 percent of total assessed public utility valuation in the calculation of local share, as well as a four percent loss reduction. *W. Va. Code § 18-9A-11(a)(1),(2)*.

Finally, the legislation removes altogether provisions requiring county boards of education to provide funding for public libraries from discretionary retainage. Instead, the Legislature now merely encourages county boards to support public libraries within their counties. *W. Va. Code § 18-9A-11(f),(g)*.

House Bill 3156

Granting a Labor Organization a Privilege from Being Compelled to Disclose Any Communication or Information the Labor Organization or Agent Received or Acquired in Confidence from an Employee

In effect June 6, 2014

[Read the Entire Bill](#)

House Bill 3156 protects certain communications and information that a public employee gives in confidence to an employee organization or its agent acting as his or her representative for an actual or potential grievance. Under this new section of the West Virginia Code, if the communication or information is germane to the employee's grievance or potential grievance, the employee organization or agent cannot be compelled to disclose it as part of a grievance proceeding. This

is true even if the employee does not belong to the organization, and even after the end of the employee's relationship with the association or employer. *W. Va. Code § 6C-2-8(a),(b)*.

Nevertheless, an employee organization or agent must disclose the communication or information to the employer when necessary to (1) prevent certain death or substantial bodily harm, (2) prevent the employee from committing a crime, fraud or an act reasonably certain to result in substantial injury to the financial interests or property of another or to rectify or mitigate any such action after it has occurred, or (3) comply with a court order or other law. Disclosure is also mandated when the communication or information constitutes an admission that the employee committed a crime. *W. Va. Code § 6C-2-8(d)*.

In four other situations, the legislation grants discretion to an employee organization or its agent to disclose the confidential communications and information: (1) to get legal advice about complying with a court order or other law, (2) to establish a claim or defense in a controversy with the employee, (3) to establish a defense to a criminal charge or civil claim based on conduct in which the employee was involved, and (4) to respond to allegations in a proceeding about the performance of professional duties on behalf of the employee. *W. Va. Code § 6C-2-8(e)*.

Significantly, the new rule does not apply to written communications. Nor does it protect an employee from having to disclose the facts underlying confidential communications and information. The rule is inapplicable in circuit court and other proceedings outside the grievance procedure. It is also preempted by any state or federal law that requires an employee organization or its agent to disclose the confidential communication or information. *W. Va. Code § 6C-2-8(a),(b),(c),(g)*.

House Bill 4003

Granting Dual Jurisdiction to Enforce Truancy Policies against Students Who Live in One County and Attend School in Another

In effect June 2, 2014

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As a result of House Bill 4003, when a student's school and residence are not in the same county, an action to enforce compulsory school attendance may be brought in either county. The magistrate court and circuit court of either county have jurisdiction to try offenses arising under the truancy laws. *W. Va. Code § 18-8-2(d)*.

House Bill 4005 Relating to Criminal Offenses for Child Abuse and Child Neglect

In effect June 6, 2014
[Read the Entire Bill](#)

House Bill 4005 creates the criminal offense of child abuse by a parent, guardian or custodian that creates a substantial risk of bodily injury, with misdemeanor penalties for a first or second offense. Conviction of a third or subsequent offense is a felony. The legislation clarifies it does not forbid a parent, guardian or custodian from providing reasonable discipline to a child. *W. Va. Code § 61-8D-3(d),(f)*.

House Bill 4005 also creates the criminal offense of child neglect by a parent, guardian or custodian that creates a substantial risk of bodily injury, with misdemeanor penalties for a first or second offense. Conviction of a third or subsequent offense is a felony. The legislation clarifies that it is not criminal neglect for a parent, guardian or custodian to permit a minor child to participate in athletic or similar activities that, if done properly, are not inherently dangerous, regardless of whether participation creates a risk of bodily injury. Nor is it neglect to exercise discretion in choosing a lawful method of educating a minor child or in making decisions regarding the nutrition and medical care provided to a minor child based upon religious conviction or reasonable personal belief. *W. Va. Code §§ 61-8D-1(7); 61-8D-4(c),(d)*.

In addition to paying a fine and/or serving time in jail, a person convicted of any of the above misdemeanors may be required to complete appropriate counseling. But he or she is not required to register as a person convicted of child abuse or neglect and may not, solely because of the misdemeanor conviction, have

custody, visitation or parental rights automatically restricted. However, a person convicted of any of the felony offenses under the bill must be declared to be an abusing parent. *W. Va. Code §§ 61-8D-3(e); 61-8D-4(f)*.

House Bill 4006 Relating to the Possession and Distribution of Child Pornography

In effect June 6, 2014
[Read the Entire Bill](#)

Existing law makes it a crime to possess, transmit, transport, distribute or exhibit material depicting minors in sexually explicit conduct. House Bill 4006 adds the offense of accessing such materials with intent to view. It also imposes an enhanced penalty for the crimes of possessing, accessing with intent to view, transporting, receiving or distributing such files or materials. The enhanced penalty is based on the number of images in a digital, photographic or video format that depict minors engaging in sexually explicit conduct or acts of bestiality involving a child. For images on video film or similar media, the new law assigns a number of images based on the length of the video film or similar media. A video clip lasting five minutes or less is considered to constitute 75 images. A video clip longer than five minutes is deemed to constitute 75 images for every two minutes in length that it exceeds five minutes. *W. Va. Code § 61-8C-3*.

House Bill 4208 Banning Synthetic Hallucinogens

In effect June 6, 2014
[Read the Entire Bill](#)

The Uniform Controlled Substances Act is amended to, among other things, modify the lists of scheduled controlled drugs. For example, all substances containing dihydrocodeinone are made Schedule II controlled substances, Tramadol hydrochloride is made a Schedule IV controlled substance, and other synthetic drugs, such as synthetic cannabinoids, are added to the schedules. The bill also modifies how buprenorphine and naloxone may be prescribed. *W. Va. Code §§ 60A-1-101 (Definitions); 60A-2-204*



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(Schedule I); 60A-2-206 (Schedule II); 60A-2-208 (Schedule III); 60A-2-210 (Schedule IV); 60A-2-212 (Schedule V); 60A-3-308 (Prescriptions).

House Bill 4228

Repealing or Removing Certain Portions of Education-Related Statutes that Have Expired

In effect June 6, 2014

[Read the Entire Bill](#)

House Bill 4228 repeals numerous school statutes, many of which had expired or were outdated: *W. Va. Code § 11-8-16a* (immediate levies authorized pursuant to Better Schools Amendment); *W. Va. Code § 18-2-17* (pilot program for delivery of leftover prepared foods from schools and penal institutions to the homeless and needy; commission for distribution of surplus foods; powers and duties; definitions; program continuance); *W. Va. Code § 18-2E-5b* (review of system of education performance audits by the state board; reports to legislative oversight commission on education accountability); *W. Va. Code § 18-2E-8b* (audit of state board policies; legislative findings; report to legislative oversight commission; required plan of improvement; exemptions from determination of accreditation status); *W. Va. Code § 18-2G-1 through 3* (school library media improvement grant program) *W. Va. Code § 18-5-15e* (study on school equity); *W. Va. Code § 18-5-38* (exception for school board meetings in 1961); *W. Va. Code § 18-7-1 through 3* (adult literacy education program); *W. Va. Code § 18-9A-6b* (allocation of growth of local share); *W. Va. Code § 18-9A-14a* (incentive for administrative efficiency); *W. Va. Code § 18-9A-19* (county request schedule); *W. Va. Code § 18-9C-1 through 8* (state aid for construction, renovation and remodeling of school buildings and equipping of the same); *W. Va. Code § 18A-3-1c* (study of training, certification and licensing; report to legislative oversight commission on education accountability at December, 2001, interim meetings; collaboration on sources of funding for education and training for reduction in force; teacher to gain additional certification in areas of critical need and shortage); *W. Va. Code § 18A-3-1d* (study of alternative certification

programs); *W. Va. Code § 18A-4-10b* (demonstration of exemplary teaching techniques); *§ 18A-4-14a* (study on daily planning periods).

House Bill 4237

Prohibiting the Sale, Distribution and Use of Electronic Cigarettes, Vapor Products and Other Alternative Nicotine Products to Persons under the Age of Eighteen

In effect June 6, 2014

[Read the Entire Bill](#)

The existing prohibition against selling, giving or furnishing to a minor any cigar, cigarette, snuff, chewing tobacco or tobacco product is expanded to cover any “tobacco-derived product, alternative nicotine product, or vapor product.” The new categories include, but are not limited to, electronic cigarettes and similar devices, as well as products containing tobacco-derived nicotine intended for human consumption, whether smoked, breathed, chewed, absorbed, dissolved, inhaled, vaporized, snorted, sniffed or ingested by any other means. Excluded are certain products regulated by the United States Food and Drug Administration. *W. Va. Code § 16-9A-2(a),(b),(d)*.

In addition to being convicted of a misdemeanor, an employee who sells or furnishes any tobacco or tobacco-derived product to minors may be dismissed for cause. A minor who possesses a tobacco product or tobacco-derived product is subject to the same community service requirements and fines that already apply to a minor’s possession of cigarettes. A person who uses a tobacco product or tobacco-derived product in any school or in or on any building or grounds used for instructional purposes by a school, may be convicted of a misdemeanor the same as for the use of cigarettes under existing law. As was already true of cigarettes, tobacco-derived products may not be sold in vending machines except in establishments where minors are not permitted to be. *W. Va. Code § 16-9A-8*.



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House Bill 4283 **Raising the Minimum Wage**

In effect June 6, 2014

[Read the Entire Bill](#)

In this bill, the Legislature increases the \$7.25 per hour minimum wage that employers must pay to employees. The new West Virginia minimum hourly wage will be \$8.00 beginning January 2, 2015, and \$8.75 beginning January 2, 2016, unless the federal minimum hourly wage is greater, in which case the federal wage will prevail. *W. Va. Code § 21-5C-2(a)*.

As before, the state and its political subdivisions, including county boards of education, are among the employers who must pay their employees at least the minimum hourly wage. *W. Va. Code § 21-5C-1*.

House Bill 4284 **Pregnant Workers Fairness Act**

In effect June 4, 2014

[Read the Entire Bill](#)

House Bill 4284 establishes the Pregnant Workers Fairness Act. The Act makes it unlawful for a covered employer, including county boards of education, to (1) not make reasonable accommodations to the known limitations related to a job applicant's or employee's pregnancy, childbirth or related medical condition unless the employer can demonstrate that accommodation would impose an undue hardship on the employer's operations; (2) deny employment opportunities to an applicant or employee, if the denial is based on the employer's refusal to make reasonable accommodations to the known limitation related to the person's pregnancy, childbirth or related medical condition; (3) require an applicant or employee affected by pregnancy, childbirth or related medical conditions to accept an accommodation that she chooses not to accept; or (4) require an employee to take leave under any law or policy if another reasonable accommodation can be provided to the known limitations related to the employee's pregnancy, childbirth or related medical conditions. *W. Va. Code §§ 5-11B-1; 5-11B-2*.

The West Virginia Human Rights Commission is charged with proposing rules to carry out the Act. The rules will identify some reasonable accommodations that shall be provided to a job applicant or employee affected by such known limitations unless the employer can demonstrate that doing so would impose an undue hardship. *W. Va. Code § 5-11B-4*.

The same powers, procedures and remedies provided to the Human Rights Commission, the Attorney General or any person alleging a violation of the West Virginia Human Rights Act apply under the Pregnant Workers Fairness Act. It is likewise unlawful for anyone to discriminate against a person because he or she has opposed any act or practice outlawed by the Act or because the individual made a charge, testified, assisted or participated in any way in an investigation, proceeding or hearing under the Act. *W. Va. Code § 5-11B-3*.

House Bill 4298 **Changing the Experience Requirements and** **Composition of the Members of the** **West Virginia Ethics Commission**

In effect June 6, 2014

[Read the Entire Bill](#)

The number of members of the Ethics Commission is reduced from twelve to nine: a person who served in the Legislature, a person who served as an elected or appointed county official, a person who served as an elected or appointed municipal official, a person who served as an elected school board member, a person from a rural area, and four citizen members. There is no longer a prohibition against lobbyists serving on the commission, nor a ban on persons who hold political party office or participate in a campaign relating to a referendum or other ballot issue. *W. Va. Code §§ 6B-2-1*.

House Bill 4302 **Relating to Elections for Public School Purposes**

In effect June 4, 2014

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This House Bill designates the county commission as the board of canvassers to canvass the returns of levy elections and bond elections called by the county board of education. *W. Va. Code §§ 11-8-17(b)(2); 13-1-13.*

House Bill 4316 **Creating the Student Data Accessibility,** **Transparency and Accountability Act**

In effect June 6, 2014

[Read the Entire Bill](#)

House Bill 4316 enacts the Student Data Accessibility, Transparency and Accountability Act. The lengthy and detailed Act requires the State Department of Education to create and make publicly available a data inventory and index of individual student data fields in the student data system, to include any individual student data required to be reported by state and federal education mandates, any individual student data proposed for inclusion in the student data system, and any individual student data the department collects or maintains with no currently identified purpose. The State Department must also develop and publish policies and procedures to comply with all relevant state and federal privacy laws and policies, to include policies and procedures restricting access to data in the statewide longitudinal data system, requiring posting of inter-agency data-sharing agreements and informing parents of their right to opt out of sharing their child's data, specifying criteria to be used to approve research and data requests, and educating students and parents about student privacy rights. *W. Va. Code § 18-2-5h.(a),(c).*

The Act restricts the State Department's transfer of confidential student or redacted data. It also requires the Department to develop a detailed data security plan that includes guidelines for authentication of authorized access to data, privacy compliance standards, privacy and security audits, plans and procedures for security breaches and notifications, data retention and disposition policies, data security safeguards such as encryption, and protections to be included in vendors' contracts. Before any new student data can be included in the state student

data system, notice must be given to the general public for a comment period of at least 60 days, and the State Board of Education must approve. *W. Va. Code § 18-2-5h(c).*

County school districts are forbidden by the Act to report to the state certain individual student data: juvenile delinquency records, criminal records, medical and health records, and student biometric information. *W. Va. Code § 18-2-5h(d).*

Individual schools are forbidden to collect individual student data about political affiliation and beliefs, religion and religious beliefs and affiliations, sexual orientation and beliefs of the student and his or her family, and firearm ownership by the student or a family member. Schools are prohibited from collecting individual student information collected through "affective computing," defined as "human-computer interaction in which the device has the ability to detect and appropriately respond to its user's emotions and other stimuli." *W. Va. Code § 18-2-5h(a)(12),(e).*

A data governance manager, to be appointed and supervised by the State Superintendent of Schools, will have primary responsibility for privacy policy. The manager must assure that the use of technologies sustains rather than erodes privacy protections, assure compliance with state and federal privacy laws, evaluate legislative and regulatory proposals involving the State Department's handling of student data, conduct a privacy impact assessment of proposed State Board and State Department rules, establish policies to implement Fair Information Practice Principles, establish and operate a department-wide Privacy Incident Response Program, establish a process for parents to complain about privacy violations and for their complaints to be resolved, and build a culture of privacy across the State Department and transparency to the public. *W. Va. Code § 18-2-5h(f).*

Finally, the Act reiterates that parents have the right to inspect and review their child's education record maintained by the school and to request student data specific to their child's record. School districts are required to provide parents and



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guardians with a copy of their child's educational record upon request. Whenever possible, an electronic copy must be provided if requested, and the identity of the person requesting the information must be verified. *W. Va. Code § 18-2-5b(g)*.

House Bill 4365

Relating to Employer Remittance and Reporting of Teachers Retirement System Member Contributions to the Retirement Board

In effect June 3, 2014

[Read the Entire Bill](#)

Under existing law, if a person who was or is a member of the Public Employees Retirement System becomes a contributing member of Teachers Retirement System for more than three years, he or she can request credit in the Teachers Retirement System for service previously credited by the Public Employees Retirement System. In such case, the individual's accumulated contributions to the Public Employees Retirement System are transferred to the Teachers Retirement System. If they are less than the contributions the person would have made had he or she been under the Teachers Retirement System during the period when he or she was a member of the Public Employees Retirement System, the individual must pay the difference into the Teachers Retirement System. House Bill 4365 adds the requirement that the individual pay interest on the latter amount, compounded annually from the date the additional contribution would have been made if the person had been under the Teachers Retirement System to the date of payment. *W. Va. Code § 18-7A-17(f)*.

House Bill 4373

Relating to Driver Education Programs

In effect June 5, 2014

[Read the Entire Bill](#)

As a result of House Bill 4373, the State Department of Education and county superintendents of schools are relieved from licensing commercial driver education schools. Public schools are no longer required to provide drivers education courses to out-of-school youths and adults. The State Board

of Education may treat a public school student's successful completion of a commercial driving school's course as meeting the requirement that the pupil be offered the opportunity by the school district to complete an approved driver education course. *W. Va. Code §§ 18-6-1; 18-6-8*.

The legislation prohibits school districts from charging students for the comprehensive course in driver education. It also empowers them to offer driver education in summer school. *W. Va. Code § 18-6-2(a)*.

The State Superintendent of Schools is authorized to issue a permit or other certificate to instructors who do not qualify for the professional certificate in driver education, but only if the recipient is subject to a criminal history check. The permit or certificate may not be given permanent status, but may be renewed. When providing instruction in the public schools, the recipient must be employed by a county board under a contract stating the duties to be performed, specifying a rate of pay equivalent to that for professional educators who accept similar duties as extra assignments, and providing for liability insurance. The individual, who must complete an orientation program approved by the State Department, may not be considered a county board employee for purposes of salary and benefits other than as specified in the contract. *W. Va. Code § 18-6-2(c)*.

House Bill 4384

Requiring Teachers of Students with Special Needs to Either Be Present at an Individualized Education Program Meeting or Read and Sign a Copy of the IEP

In effect June 2, 2014

[Read the Entire Bill](#)

Under House Bill 4384, if a student with exceptional needs is enrolled in a teacher's class, and if the teacher did not participate in the meeting to develop the student's individualized education program, he or she must acknowledge reading and understanding the student's IEP by signing a copy. The teacher must also help the student succeed in class by making any needed or identified accommodations and modifications. The legislation emphasizes



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that its requirements apply to all teachers, including, but not limited to, teachers of music, musical education, and driver education. *W. Va. Code § 18-20-1c(b)*.

House Bill 4392

Regulating Persons Who Perform Work on Heating, Ventilating and Cooling Systems and Fire Dampers

In effect June 4, 2014

[Read the Entire Bill](#)

To protect the health, safety and welfare of the public, as well as public and private property, House Bill 4392 requires that beginning on January 1, 2016, persons who perform work on heating, ventilating and cooling systems must be licensed by the Commissioner of Labor, and persons who perform work on fire dampers must be licensed by the State Fire Marshall. The Commissioner of Labor and Fire Marshall are required to propose rules providing standards and procedures for issuing and renewing licenses. The bill also defines the scope of practice for heating, ventilating and cooling technicians and technicians-in-training. *W. Va. Code §§ 21-16-1; 21-16-3; 21-16-4; 29-3D-1, 29-3D-3(b)*.

A person lacking a license who performs or offers to perform work that requires a license is guilty of a misdemeanor carrying a fine and, for third and subsequent offenses, a jail sentence. The same penalties apply to an employer who authorizes an unlicensed person to perform such work. *W. Va. Code §§ 21-16-8; 29-3D-7*.

Exemptions to the HVAC technician license requirement are created for a person working on the heating, ventilating and cooling system in a single family dwelling owned by the person or a member of his or her immediate family; a person performing such work at a manufacturing plant or industrial establishment that employs him or her; a person who performs only electrical or plumbing work on an HVAC system within the scope of his or her electrical or plumbers license; and a person who performs routine maintenance as a direct employee of the owner or operator of the facility where the HVAC equipment is located. *W. Va. Code § 21-16-3*.

Exemptions to the license requirement for persons working on fire dampers are created for a person personally performing damper work on a single family dwelling owned or leased, and occupied, by that person, and a person who performs damper work at a manufacturing plant or industrial establishment as an employee of the operator. *W. Va. Code § 29-3D-3(c)*.

The bill requires the Commissioner of Labor and Fire Marshall to propose rules for investigating complaints and revoking or suspending licenses, including appeal procedures. No political subdivision of the state, including county boards of education, may mandate additional licensing requirements or other evidence of competence beyond those required by the Commissioner of Labor and Fire Marshall for work on HVAC systems or dampers. *W. Va. Code §§ 21-16-5; 21-16-9; 29-3D-4; 29-3D-8*.

House Bill 4608

Defining Dyslexia and Dyscalculia

In effect June 6, 2014

[Read the Entire Bill](#)

This new section of West Virginia Code explains the importance of recognizing the characteristics of specific learning disabilities, including dyslexia and dyscalculia, and embracing widely-adopted and consistent standards to prepare teachers of reading and related literacy skills for specialized instruction and competent intervention. House Bill 4608 defines dyslexia and dyscalculia for those purposes. It also directs the State Board of Education to ensure that students receive necessary and appropriate screenings and early assessments; that individualized education programs for students with specific learning disabilities are consistent with the provisions of the bill; and that parents are provided ongoing information and education about specific learning disabilities and the services available to students. *W. Va. Code § 18-20-10*.



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House Bill 4618 Establishing Transformative System of Support for Early Literacy

In effect June 3, 2014

[Read the Entire Bill](#)

In 2009 the Legislature authorized “critical skills instruction support programs” for third and eighth grade students. Senate Bill 1001, adopted that year, directed the State Board of Education to adopt rules encouraging and assisting county boards in operating programs for students in grades three and eight who were not mastering language arts and mathematics adequately for success at the next grade level. The support programs were to occur during and after the instructional day and during the summer, and serve students recommended by the student assistance team or their classroom teacher.

This year’s House Bill 4618 replaces those provisions with what is termed a “transformative system of support for early literacy.” Predicated upon findings about the importance of all students reading proficiently by the end of third grade, the bill requires the State Board to adopt rules to effectuate the new system. At a minimum, the new rules must meet 10 requirements, the first of which is the development of a comprehensive, systemic approach to close the reading achievement gap by third grade by targeting school readiness, the attendance gap, summer learning loss and an intervention framework for student and learning supports. *W. Va. Code § 18-2E-10(a),(b).*

The State Board’s rules must ensure that all children can access early learning experiences prior to first grade; promote regular school attendance and limit chronic absenteeism in the early grades; support county boards in operating targeted extended day and extended year reading programs; develop a culture of literacy by maximizing family engagement; support high quality schools prepared for systems of intervention for children not reaching grade level proficiency; ensure the employment of qualified teachers and service personnel; create a program for distributing appropriations to support early literacy; support transportation and healthy foods for after school and extended

year literacy programs; and provide for receiving applications and annual reports from county boards. *W. Va. Code § 18-2E-10(b).*

The statute provides that if a student in grades kindergarten through three is recommended by the student assistance team or classroom teacher for additional assistance in one or more key standards of English Language Arts, the student may be required to attend a tuition-free extended year early literacy instructional support program as a condition for promotion, but only if the student has already been provided additional academic help through an in-school or after-school program, and if the county board has an extended year early literacy support program. The extended year program may be provided at a central location. *W. Va. Code § 18-2E-10(c),(d),(g).*

County boards must prepare to implement the transformative system by planning to ensure the developmental and academic progress of all students through student assistance teams, and by performing a needs assessment to determine the potential capacity requirements for the system of support for early learners. *W. Va. Code § 18-2E-10(h).*

The new legislation must not be construed to prohibit classroom teachers from recommending the retention of students for lack of mastery of subject matter and preparation for subject matter at the next grade level, nor to affect the individualized education plans of exceptional students. All provisions of the bill are subject to the availability of funds. If a county board lacks adequate funds for full implementation of the transformative system of support for early literacy, it may implement the program in phases that first address kindergarten, then grades one and two, and then third grade. *W. Va. Code § 18-2E-10(e),(f),(k).*

House Bill 4619 Authorizing Innovation School Districts

In effect June 6, 2014

[Read the Entire Bill](#)

House Bill 4619 directs the State Board of Education to give priority for a period of four years to innovation zone applications that include the establishment of entrepreneurship education



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programs as curricular offerings for students. To receive the priority, an application must have a program strategy that includes the active involvement of one or more partners from the business community in program delivery. However, there is no requirement that the State Board grant all such applications, and the State Board is not prohibited from approving qualified applicants for innovation zones that do not propose to establish entrepreneurship education programs. *W. Va. Code § 18-5B-3(d)*.

The bill also allows for the creation of a new category of innovation zones: innovation school districts. Innovation school districts are intended to provide an additional tool for school systems in collaboration with community and business partners to plan and implement new approaches to improve the performance and progress of students, schools and school systems. H.B. 4619 requires broad participation and collaboration in the establishment of an innovation school district plan. Among other things, the process entails formation of a broad-based innovation school district stakeholders committee, several meetings and elections by regular school employees, at least three public town hall meetings, public notice of the proposed plan, approval by the county board and, State Board of Education approval. *W. Va. Code § 18-5B-13(f),(g)*.

A county board of education that has violated the law forbidding unlawful expenditures and deficits is not eligible to apply for innovation zone school district status. Other county boards may apply as early as January 2015 in four categories: Sparse Density County, Low Density County, Medium Density County and High Density County. Beginning July 1, 2015, the State Board may designate no more than one county from each category as an innovation school district. After July 1, 2016, it may designate one additional county from each category. All applications will be judged on a competitive basis. *W. Va. Code § 18-5B-13(c)*.

Innovation school district plans may include, but are not limited to, methods to provide greater collaboration to plan and implement systemic approaches that include evidence based solutions to increase graduation rates, reduce dropouts and increase achievement; innovative approaches to revitalize vocational and technical education; allowing input from personnel regarding appropriate professional development,

supports, resources and working conditions; utilizing virtual school courses; providing greater autonomy for the county board; and allowing site-based collaboration on matters such as spending for student services, recruiting teachers, strengthening new and emerging teachers, alternative teacher certification, and reducing burdensome requirements on staff. *W. Va. Code § 18-5B-13(e)*.

Designation as an innovation school district allows a county board to request exceptions to statutes, policies, rules and interpretations in order to implement the strategies contemplated in its plan. A board may submit multiple requests of that kind under a process to be delineated by the State Board of Education. The process will require the county board to describe the program or initiative the school district intends to implement, explain why the requested exception is necessary, explain how the exception will further the overall innovation school district plan, and certify that the request for an exception was approved by vote of all regular employees. The State Board can approve exceptions to its own policies and to State Superintendent interpretations. Only the Legislature can approve exceptions to state statutes. *W. Va. Code § 18-5B-13(h)*.

School districts are forbidden to seek exceptions to any required statewide assessment program, the federal No Child Left Behind Act and the Individuals with Disabilities Education Improvement Act, statutes and policies related to student and employee health and safety, the West Virginia ethics laws and opinions, the West Virginia Open Governmental Meetings Act, the West Virginia Freedom of Information Act, laws and policies related to financial or academic reporting or transparency, requirements to protect the civil rights of students and employees, and various West Virginia personnel laws regulating the filling of vacancies, transfers of personnel and reductions in force. *W. Va. Code § 18-5B-13(h)*.

The designation of an innovation school district is for a period of five years. The State Board may, upon request by a county board, extend the designation for two years if necessary to pursue items in its plan that have not been completed. The State Board is also authorized to revoke a school district's designation as an innovation school district. *W. Va. Code § 18-5B-13(i)*.

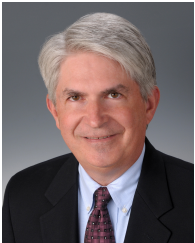


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