



Uniform policies stir discussion, but busing off agenda

House Education approves eight bills

Regional jails and regionalization Story on page 17

By Howard M. O’Cull, Ed.D.

The House Education Committee on Thursday approved five bills and tabled one measure. That committee has adopted 15 bills this session.

The governor’s busing bill, however, which was slated for discussion Thursday, was taken off the agenda.

The HEC adopted legislation Thursday that would increase the focus of Regional Education Service Agencies (RESAs) on school improvement. The bill, which originated in committee, does not yet have a bill number.

Another proposal would create a school aid formula “allowance for student health services.” It also includes a “diabetes care plan” that would be fully implemented by 2007.

The remaining measures relate to school uniforms (**House Bill 2997**), a change in tuition fees reimbursement for teachers (**HB2603**), and a measure that provides a salary supplement for providers of Medicaid-eligible services in public schools (**HB2012**).

The committee, on a motion by Del. David Perry, D-Fayette, tabled a measure (**HB3055**) that would require the state Secondary Schools Activities Commission to have at least two separate com-

petition classes at the end-of-year interscholastic athletic tournaments.

Busing bill pulled

The committee leadership pulled the governor’s busing proposal (**HB3040**) that was to have been on the agenda until yesterday morning. According to various sources, HEC members and House leadership are “scared” about some of the bill’s provisions, especially those relating to bus travel times, as recommended by the West Virginia Board of Education.

Some legislators also are concerned about cost (the West Virginia Department of Education has yet to finish its fiscal note), while others say the measure’s processes are cumbersome, including a required separate vote on travel times that may exceed statutory limits.

Another concern is whether the WVBE would grant waivers and, if it didn’t, how counties could afford it if they are not able to consolidate schools, based on declining enrollments.

Gov. Joe Manchin III, in a Monday press conference, said he supported the measure because it is good public policy and a way to shield school children from long bus rides.

See **BUSING OFF AGENDA** on page 3

Overview

STATS

Day of Session:	38
Days Remaining:	22
Bills Introduced (not including pre-filed bills):	1,671
Education Bills (WVSBA count):	358

INSIDE

- NCLB forces licensure debate.....2
- Challenge Academy bill.....7
- State Board Perspective.....9
- Mezzatesta may be transportation official.....9
- Board rules should allow public comment.....10
- Administrative Perspective.....12
- Guest Perspective.....13

QUOTE

“What’s best for the child, to have them in the classroom more, or on the bus?”

—Gov. Joe Manchin III at a Monday press conference on his busing proposal that would limit bus travel times. The measure was pulled from a House Committee agenda March 17.

FY06 officers elected

School security gets top marks at WC

See **Leadership Conference** on page 2

Debbie Thompson of Pleasants County was elected as incoming West Virginia School Boards Association President at the association’s FY06 Annual Business Meeting (ABM) that coincided with the Winter Conference in Charleston last week.

Lyle Spencer of Nicholas County is president-elect, and delegates elected Kim Cooper of Raleigh County vice president. Carlene Frederick of Calhoun County was elected Financial Officer. Spencer and Frederick are in line to be the first association presidents from their respective boards.

In other association business last week, ABM delegates moved to consider full support of the governor’s proposed busing bill, pending review of a final copy of the bill and a favorable recommendation from WVSBA Executive Director Howard M. O’Cull, Ed.D., who

See **SCHOOL SECURITY** on page 6

More West Virginians off to college since 2000

NCLB forces teacher licensure debate

By Jason B. Keeling

The federal No Child Left Behind Act requires teachers to be “highly qualified.” About 2,000 West Virginia teachers have permits or out-of-field certificates, which do not fulfill this NCLB requirement, according to Karen Huffman, Ed.D., director of the West Virginia Department of Education’s Office of Professional Preparation.

These type certificates are issued only in emergencies when a position cannot be filled by a traditional instructor.

However, alternative teaching certificates, which are granted to individuals who do not possess a traditional teacher education degree, do meet the definition, and the WVDE has initiated **House Bill 2528**, which would maintain current standards for granting such certificates, but streamline the responsibilities given to K-12 educators and administrators for overseeing non-traditional teachers as they complete the three-phase program to receive a professional

teaching certificate.

Changing alternative certificate requirements

The amendments would require alternative-certificate teachers to first possess a bachelor’s degree and then receive 18 college semester hours in traditional teaching curriculum. A support team composed of a principal, classroom teacher, higher education faculty person, and a curriculum supervisor oversees an alternative certificate teacher.

Under the bill, modifications would be made to phase one by requiring daily observation of these teachers rather than full supervision, and phase three would require a formal evaluation once the phase is completed, rather than bi-weekly critiques.

Currently, alternative certificate teachers must complete 200 hours of formal instruction, overseen by a support team. HB2528

See LICENSURE DEBATE on page 5

Contact WVSBA for assistance with training requirements

Leadership conference May 20-21 in Morgantown

By Shirley Davidson

The West Virginia School Boards Association’s Spring Leadership Conference is set for May 20-21 at Lakeview Scanticon Resort in Morgantown.

While the program isn’t yet final, it will feature a post-legislative session with WVSBA Counsel Howard E. Seuffer Jr. This program previously was covered during the annual Spring Training Teleconference. Watch for leadership conference agenda updates in future association publications and on our Web site, www.wvsba.org.

The registration form for the May conference will be sent to executive secretaries March 21. This is the last WVSBA session before the June 30 FY05 deadline for the required seven hours of training. Please contact your county board office to register and make lodging arrangements with Lakeview. If you have special needs, contact me at (304) 346-0571 or sdavidson@wvsba.org.

Third-quarter training credit hour reports (through the Winter Conference) will be mailed to board members and superintendents the first week of April. Please contact me by March 31 with questions about training hours. If you have training hours, outside of WVSBA training, that needs approved, please contact the WVSBA office by April 5. The superintendent training video we provided last year counts for 1.25 hours’ training. Members are required to view that video before they evaluate superintendents.

Finally, based on a recent change in rules regarding receipt of training hours, three of the required seven hours of training can be acquired through videos, except for extraordinary circumstances such as illness. Please do not hesitate to contact Shirley Davidson at the WVSBA office if you have problems or concerns about training.

The WVSBA Fall Conference is Sept. 16-17 at the Radisson in Morgantown. We will provide details later.

The WVSBA/West Virginia Board of Education Training Standards Review Committee will meet April 15 to approve upcoming association programming and to consider non-WVSBA training proposals.

— Davidson is WVSBA Administrative Assistant

The Legislature provides county board of education members, state policymakers, school administrators, and others information, opinion and commentary regarding West Virginia legislative issues. This publication does not necessarily reflect the official views, opinions or policies of the WVSBA, unless specifically stated.

W.Va. School Boards Association
PO Box 1008
Charleston, WV 25324
(304) 346-0571
(304) 346-0572 fax

WVSBA.ORG

Dr. Rodney C. Thompson (Wayne), President
thompsonchiropractic@msn.com
Howard M. O’Cull, Ed. D., Executive Director, Editor
hocull@wvsba.org
Diane Slaughter, APR, CAE, Layout and Design
info@homesteadlane.com
Shirley M. Davidson, Administrative Assistant,
Production and Circulation
sdavidson@wvsba.org

BUSING OFF AGENDA

Continued from page 1

Whether the bill will make it back to the HEC's agenda is unknown. If the measure is adopted by the committee, it faces at least three more committee hurdles – House Finance, Senate Education and Finance — and an almost certain conference committee, as well as House and Senate floor consideration.

The Senate Education leadership hasn't warmed to the bill or concept, according to various sources.

Dr. Howard M. O'Cull, executive director of the West Virginia School Boards Association, will meet with HEC leadership today to discuss WVSBA's take on the proposal, as directed by the WVSBA Executive Board and delegates to the association's Annual Business Meeting last week.

Restructuring RESAs

Under terms of the proposed RESA legislation, the state superintendent of schools would employ RESA directors for each of the state's eight service agencies. The bill allows the state superintendent to "divide the state into contiguous geographical regions and designate an agency to serve each area.

"Each of the state's counties shall be contained within a single service area and all counties located within the boundaries of each agency, as determined by the state superintendent, shall be members of that agency."

Superintendent would set agency standards

The legislation also allows the state superintendent to "establish and annually revise statewide standards for service delivery by the agencies."

RESA directors would administer their agencies and could hire as necessary with the "approval of the state superintendent and upon the recommendation of the executive director..." (Current employees are grandfathered in.)

The measure requires RESAs, under direction of the state superintendent, to provide "technical assistance to low-performing schools and school systems and (to) provide high quality, targeted staff development designed to enhance the performance and progress of students in the public schools."

The RESAs will base "all decisions" regarding delivery of the above services on "meeting the needs of the counties in their service areas...(in terms of each county's five-year strategic plan."

County boards will select council

County boards will select a regional council (county board members and superintendents), with the state superintendent given the ability to appoint other representatives of various agencies and organizations.

Provision consolidates county functions

An amended bill provision would allow RESAs, in addition to providing services as outlined above, to continually explore other

"possibilities for the delivery of services on a regional basis which will facilitate equality in the education offerings among counties in their service areas."

To this end, RESAs may "permit the delivery of high-quality education programs at a lower per-student cost, strengthen the cost-effectiveness of education funding resources, reduce administrative and operational costs, including the consolidation of administrative, coordinating and other county level functions into region level functions, and promote the efficient administration and operation of the public school systems generally."

Services may relate to "technical, operational, programmatic and professional offerings," and will be offered "to the extent (they) will not impede the primary goal of school system improvement..."

Nurses bill creates diabetes care plans

The nurses bill requires the West Virginia Board of Education, in conjunction with the state Department of Health and Human Resources and county boards, to adopt guidelines for the development and implementation of individual diabetes care plans, including a student plan at the request of a parent or guardian.

Other guidelines must address regular plan review, staff development, emergency care, allowable actions, and information necessary for teachers and other school personnel to assist the student.

Guidelines will be implemented in the 2007-2008 school year.

The uniform bill is largely based on Kanawha County's policy but some committee members fear students could be excluded from extracurricular activities or face in-school suspension for noncompliance.

Counties could hire more nurses

The student health services part of the bill creates an allowance for additional nurses beginning with the 2005 school year.

The positions wouldn't count toward the school aid formula professional personnel and instructional personnel ratios.

The legislation based county eligibility for additional funded positions by applying a ratio of one nurse per 1,500 students (net enrollment), or major fraction thereof, in Grades Pre-K-12, minus the number of school nurses now employed. These positions will be filled based on available funding.

The amount of funds a county would receive per position is based on the state average contracted salary for nurses plus fixed charges, retirement and Public Employees Insurance Agency coverage.

Based on bill language, the following counties would receive funds to employ one additional nurse: Cabell, Calhoun, Clay, Fayette, Greenbrier, Hardy, Lincoln, Mason, Mingo, Morgan, McDowell, Pocahontas, Putnam, Roane, Tyler and Wetzel.

These counties would receive funds to employ two additional nurses: Harrison, Marion, Mercer, Raleigh, Wayne and Wyoming.

Preston and Taylor counties would be funded one existing nursing position due to their current deficit.

As with **HB2578**, the bill makes a number of legislative findings, including a general intent to further examine the school aid formula with the changing educational environment and to address

See **BUSING OFF AGENDA** on page 4

BUSING OFF AGENDA

continued from page 3

staffing and other needs of the public schools.

Uniform enforcement concerned delegates

The committee spent the most time discussing the uniforms bill that would revise current law for county implementation of uniform policies. The bill is largely based on Kanawha County's policies and practices with uniforms, according to HEC counsel David Mohr.

The bill maintains the requirements for state and county policies on student uniforms, but shifts the decisions in large part to individual schools. At least 60 percent of the parents at a particular school must vote in favor of a uniform policy before it can be considered, along with the agreement of the school principal, faculty senate and the Local School Improvement Council (LSIC).

The principal must obtain the permission of the county superintendent and must appoint and chair a committee comprising school professional and service personnel, parents and students (fourth grade and above) to formulate the school's uniform policy.

The bill has extensive provisions addressing school level uniform policies, including the types and colors of uniforms, measures to encourage or compel compliance – this section fomented considerable committee discussion – exemptions (such as for religious reasons), and ways to provide financial assistance.

While a section of the bill says a student may not be suspended, expelled or receive a lower grade for failure to wear a uniform, some HEC members were afraid students could be excluded from participating in co-curricular and extracurricular activities, as well as face in-school suspension.

Del. Patrick Lane, R-Kanawha, was unsuccessful in amending the bill to prevent in-school suspensions for uniform noncompliance. Del. Sharon Spencer, D-Kanawha, also was unsuccessful in an effort to prohibit students from participating in athletics and other activities for noncompliance.

The legislation was discussed in 2004 interim meetings, largely in response to a successful effort by Sen. H. Truman Chafin, D-Mingo, to amend a House-passed bill to include a requirement for uniforms. That action was late in the 2004 regular session, when legislators agreed upon an interim study instead.

Reimbursing teachers for tuition

The other two bills, **HB2603** and **HB2012**, relate to tuition reimbursement and salary supplements for Medicaid-eligible services in the public schools, respectively.

Under terms of **HB2603**, the West Virginia Department of Education could waive a statutory requirement relating to how teachers are reimbursed for tuition and required fees for college coursework completed toward certification renewal and additional endorsements in shortage areas.

According to Mohr, the bill section (§18A-3-3a) was amended in 2002 and phased in through a 50-50 formula between the two areas for the first year, and applied in proportion to the number of applications submitted. No more than 75 percent of funds, however, could be appropriated to either category.

The proposal would allow the WVDE to disregard the 75 per-

cent limitation if, during the final processing of the fiscal year, the 75 percent limitation would result in funds remaining, with qualified applicants – due to the limitation – not being reimbursed.

Supplements for Medicaid service providers

HB2012 would require county boards to reserve 7 percent of their Medicaid reimbursements for services provided by county personnel, using that money for salary supplements for the personnel who provide these services.

Under terms of the bill, the amount of supplement due an employee is the total amount of reimbursement received from the services provided by all employees in or under that job title (such as speech pathologists) divided by the number of employees in the job title who are eligible to bill for the reimbursement.

The supplement would be distributed twice a year.

Giving the small guys a chance in tournaments

The tabled bill, **HB3055**, is sponsored by House Judiciary Committee Chairman Jon Amores, D-Kanawha. According to committee discussion the measure was aimed at "equalizing" competition for girls' soccer and swimming teams.

Del. Danny Wells, D-Kanawha, said the measure is unnecessary because all but one of the 24 swimming teams in the state is from a class AAA school. He also said fewer than 50 percent of the state's schools have soccer teams and most of them are in the same WVSSAC classification. "I don't see the need for this bill," he said.

Other committee members, mostly from rural areas, said the measure would encourage more students to compete in athletics and that it would allow for "equalization" of talent. Del. Otis Leggett, R-Ritchie, said some students won't participate in athletics because even if their team wins in their division, they then face other teams drawn from a more populous student base.

"They have no chance of winning," he said.

Del. Greg Eldridge, D-Lincoln, said the measure would allow competition between AA and A division schools. In the end, however, the committee accepted Perry's motion, although Education Chairman Tom Campbell, D-Greenbrier, said he may get more information about the bill's impact for consideration next week.

Two separate diabetes care bills have been introduced this session.

—O'Cull is West Virginia School Boards Association Executive Director

Sources say some delegates are 'scared' about the busing bill's provisions relating to bus travel times.

The Legislature

WATCH FOR THE LATEST ON EDUCATION LEGISLATION.

LICENSURE DEBATE

continued from page 2

places more focus on higher education, given that three college hours equate to 45 hours of classroom instruction over a semester. So once completed, the 18 college hours would equate to 270 hours of classroom instruction.

Some House Education Committee members, including Dels. Linda Longstreth, D-Marion, and Dale Stephens, D-Cabell, on March 10 said they are concerned that professionally certified teachers are blocked from filling positions once an alternative certificate is issued.

Huffman said those vacancies only become available when professionally certified teachers do not fill them. Discussion revealed that permit teachers cannot be “bumped” either, and that superintendents maintain discretion for renewing such alternative contracts.

The bill also would limit alternative certifications to shortage areas, as defined locally, which often arise in courses such as foreign language, mathematics, and the sciences.

The bill was referred to an education subcommittee.

Keeping at-risk students in state programs

The House Education Committee also heard comments from Mark Spangler, director of the Davis Stewart School in Greenbrier County, and a representative of the Pressley Ridge School in Wood County. Both are institutional programs for at-risk students primarily referred through the West Virginia Department of Health and Human Resources.

These six- to nine-month programs first provide behavioral remediation, then focus on getting students interested in education. The Davis Stewart School works to eventually integrate students into Greenbrier County schools, where students are still monitored by Davis Stewart staff.

The DHHR and WVDE last year spent \$26.2 million to provide such services within institutions outside of West Virginia, according to Spangler, who has been involved in the introduction of **HB2334**, which would curb the number of students transferred out-of-state.

“The mentality that it’s from somewhere else, so it has to be better, must change,” Spangler said, urging committee members to consider the bill.

House Education Chairman Thomas Campbell, D-Greenbrier, concurred that more focus should be placed on in-state placements, but indicated some occasions merit using out-of-state institutions, particularly in border counties.

Understanding the School Aid Formula

The Joint Committee on Education on March 15 received an extensive review of the state’s school aid formula from Joe Panetta, director of the WVDE’s office of school finance.

The Public School Support Program, as it is officially referred to

in state law, contains seven funding steps: 1) funds professional educators, which includes teachers, librarians, counselors, nurses, attendance directors, curriculum specialists, principals, assistant principals, superintendents, and assistant superintendents; 2) funds service personnel (state law outlines over 75 types of service staff); 3) funds fixed charges, which primarily consist of employee benefits; 4) funds 85 to 90 percent of the operating costs for student transportation; 5) provides an allowance for administrative costs of \$150 per professional educator; 6) provides an allowance for other current expenses, substitutes, and faculty senates; and 7) funds instructional improvement programs.

Funding for the first three steps is based on enrollment, the fourth step is determined by actual expenditures, and the remaining steps are determined by the Legislature, according to Panetta.

The sum of these steps is known as the Total Foundation Allowance, which indicates the state-recognized cost of annually operating public education in West Virginia. Local share is the total of county school systems’ regular levy tax collections.

Each county’s local share is subtracted from its foundation allowance, which determines the amount it will receive from the state.

More West Virginians going to college

Members of the Higher Education Policy Commission presented before the Joint Committee on Education on March 17, outlining the state’s financial aid options, focusing mainly on the PROMISE Scholarship, the Higher Education Grant Program, and the Higher Education Adult Part-Time Student (HEAPS) Grant Program.

The number of high-school graduates enrolling in state colleges has increased from 44.76 percent in 2001 to 49.75 percent in 2003, while the number of graduates enrolling out-of-state has decreased from 11.61 percent in 2001 to 9.64 percent in 2003, according to HEPC figures.

Since 2002, 11,054 PROMISE Scholarships have been accepted. Approximately \$39 million has been estimated to fund the scholarship in fiscal 2006.

Del. John Doyle, D-Jefferson, on Thursday provided the House Education Committee an overview of state higher education since the 2000 passage of **Senate Bill 653**. Doyle was closely involved with that reorganization bill, which he said was prompted by the state’s dismal statistics as compared nationally that year, including the lowest college-going rate, the lowest percentage of population with any college education, and the lowest literacy rate.

Since that time, the state has achieved parity with the national college-going rate, a greater number of master’s degrees have been obtained, and community colleges are more recognized by the public, he said.

— *Keeling is owner of Keeling Strategic Communications based in Cross Lanes.*

The number of high-school graduates enrolling in state colleges increased nearly 5 percent from 2001 to 2003. About \$39 million is budgeted for PROMISE scholarships in FY2006.

SCHOOL SECURITY

continued from page 1

worked with the Governor's Office to develop the proposal. (See article on page 1.)

Upon O'Cull's recommendation, the Executive Board deferred consideration for filing an amicus brief in the Mingo County Board of Education suit. If the Executive Board subsequently decides to file the amicus, it will be narrowly styled in regard to the state superintendent's inherent powers *in* system interventions. This is based on what O'Cull and some legal scholars contend is "mixed language" concerning which constitutional entity – the West Virginia Board of Education or state superintendent – will have general supervision of the state's public schools, including matters regarding school interventions.

Additionally, the Executive Board will appoint a committee to draft proposed legislation relating to board interventions. That committee's work will be styled after the outline the executive director provided in a recent commentary. (Refer to Feb. 25 issue of *The Legislature*.)

Incoming president Thompson will appoint that committee. As O'Cull envisions the committee, it will include advisory members.

Business session actions

These are among other actions regarding legislative issues, which constituted most of the Executive Board and ABM actions. Based on these actions, the association will:

- Support the governor's "healthy schools" measure "in concept," with concern about its costs.
- Promote passage of the governor's governmental waiver bill, although there are unanswered questions regarding intent and practical impact.
- Defer an offer to join the Coalition Against Collective Bargaining for Public Employees (CACBPE). The effort is spearheaded by the West Virginia Professional Educators group, the state's third-largest teachers' organization, which opposes collective bargaining.
- Monitor developments regarding **House Bill 2365**, especially a proposed section that prohibits members from abstaining on motions brought before the board.
- Consider final language relating to "sharing of administrative services."

In other action, the association:

- Agreed to rearrange its affiliate membership program, concentrating instead on a paid advertising approach. Due to the nature of its programming, vendors have little time to exhibit. Additionally, some legal and ethical questions have been raised concerning corporate sponsorship that benefits the association. The same would apply to other organizations, including the state Association of School Administrators, according to Lew Brewer of the state Ethics Commission.
- Consented to the appointment of four WVSBA members to visit National School Boards Association (NSBA) offices to discuss WVSBA's membership in the national organization, which has been suspended for the past two years. With NSBA dues set at about \$20,289 – 6.31 percent of the association's budget – WVSBA hasn't joined the national group—the only state association in the nation which isn't a member. Based on WVSBA research, larger states like Texas pay dues

that amount to less than one percent of their budgets. For instance, the Texas Association's budget is \$41.4 million, and its NSBA dues total \$82,217 or .002 percent of its budget. Similarly, the Pennsylvania Association's budget is \$6.06 million, and its dues are \$74,914 or .012 percent of its budget. And, the Ohio Association's budget is \$5.3 million, with its dues set at \$73,353 or .013 percent of its budget.

Winter Conference review

In Winter Conference programming matters, all sessions generally were well received, except for the First General Session led by Doug Eadie. While many members commented on the value of the session, they considered it too long and unsuitable for a large audience.

In an e-mail to WVSBA, Eadie said his program may have received two distinct evaluations: Board members who found it an interesting, thought-provoking new perspective and those who thought what he said didn't apply to West Virginia.

"I feel strongly that school boards in West Virginia can use the techniques I discussed to strengthen their governing work, despite the constraints, and I trust that was clear to many," he said.

O'Cull said similar programs have been presented, but that changes in ideals toward governance are hard to realize and take much time and thought. "It'll take more than one workshop," he said.

The WVSBA staff, based on WC evaluations, is redesigning meeting formats. The longer session of Friday afternoons will be broken into a 1½-hour general session, and a series of concurrent workshops. Attendees will attend either the general session first or workshops and vice versa.

The "security" workshop will be expanded into a general session about topics such as Homeland Security, gangs in schools (including rural settings), methamphetamine production and its effect on children in particular and similar concerns. This was the highest-rated conference program.

The "small schools" workshop won't be repeated, but the staff wants to add a program about rural schooling. The programming will be relevant to all county boards, according to O'Cull. He said it will include findings of the Bill and Melinda Gates Foundation about schooling in rural and urban areas.

The association's Fall Conference will be Sept. 16-17 in Morgantown at the Radisson.

A training session is scheduled at the Lakeview Scanticon Resort and Conference Center in Morgantown on May 20-21. The traditional post-legislative briefing will be at this session in lieu of the spring training teleconference.

For more information about association programs, please contact Shirley Davidson, conference registrar at sdavidson@wvsba.org or (304) 346-0571.

The 2005 Winter Conference was the 18th such meeting.

Wisdom

*"A man who wants to lead
the orchestra must turn
his back on the crowd."*

– Anonymous

Individual actions bill on to Judiciary

By Howard M. O’Cull, Ed.D.

The House Education Committee on March 10 passed a bill that could result in county board members’ removal from office when acting in an individual capacity without consent of law.

That bill is **House Bill 2365**, which has been referred to House Judiciary. West Virginia School Boards Association Executive Director Howard M. O’Cull, Ed.D., worked with HEC to develop a compromise bill.

Under terms of the proposal adopted by the HEC, board members found guilty of violating the law could be removed from office – the proposed code section says ‘may’ – by a three-judge panel, with the charge being “malfeasance.”

This move will protect county board members from frivolous charges and allegations, O’Cull said.

HEC also amended §18-5-4 so that “when a question is put to a vote of the board, any member having a direct personal or pecuniary interest therein shall announce this fact and request to be excused from voting.

“The member may be excused from voting if in the opinion of the presiding chair the disqualifying interest affects the member directly and not as one of a class.”

That language, according to HEC counsel David Mohr, is based on House of Delegates’ “Rule 49,” which requires delegates to vote unless a matter affects them personally and not as part of a group per se.

Other action

In other action Tuesday (March 15), HEC approved three bills, including a proposal that would designate the Mountaineer Challenge Academy, located at Camp Dawson near Kingwood in Preston County, as a special alternative education program.

The Challenge Academy is a National Guard Youth Challenge program operated by the state Adjutant General, based on dollars placed in that agency’s “unclassified account,” according to committee testimony.

Under terms of **HB3018**, the Challenge Academy’s alternative education programs would be for at-risk students who aren’t succeeding in traditional public schools.

To join the program, the student would have to be a dropout, according to testimony provided by Challenge Academy officials and Mohr.

The committee-endorsed measure would require the West Virginia Board of Education to promulgate rules allowing for cooperation in notifying Challenge Academy officials of dropouts, federal Child Nutrition programs, and access to Adult Basic Education services.

Rules also must specify that National Guard policies and procedures have precedence.

Additional WVBE rules must address the competencies students must master, and consideration for a GED degree for some students.

A final bill provision states that nothing compels the Academy to be operated as an alternative program or to be subject to any other laws governing the public schools, except by its consent.

A second committee-endorsed bill, **HB2837**, would require personal finance instruction to be integrated into the existing public school curricula – no separate course would be required, however.

According to HEC chairman Tom Campbell, D-Greenbrier, the state Treasurer’s Office is promoting this bill, which the HEC adopted last year. It wasn’t considered by Senate Education.

A final bill authorizes the director of the Division of Rehabilitation Services to allow youth or civic groups to use Rehab facilities if they pay a reasonable fee.

The bill is necessary, according to Mohr, because of a finding in the Division’s 2004 audit that said the agency must have statutory authorization to collect rental revenues.

Thus, the bill grants Rehabilitation Services this right and enables it to use the revenues.

Challenge Academy helps kids who want to change

In discussing the Challenge Academy proposal, academy director Hugh P. Dopson told the committee the goal was for students to “get a credential” that will allow them to succeed in schooling, the military or workforce.

He said the program currently includes 92 students, with 113 initially enrolling. They have the capacity for 180 students, 40 of whom must be females, he said. Principals often refer students to the program, according to Dopson.

Dopson said the program, which stresses a well-structured environment, high expectations, and academic and physical rigor, is successful. He acknowledged, however, that “a child has to want to change his or her life if it’s (Challenge Academy) going to work for them.”

Mohr, echoing Dopson’s sentiments, said the program may work because it addresses the needs of students who don’t necessarily succeed in traditional public schools. “The current school situation may be part of the problem,” Mohr said.

Committee members had a number of questions, including funding. Mohr and Challenge Academy officials said the academy doesn’t want to take money from county boards because it is funded through the Adjutant General’s budget, using a 50-50 match from the federal government.

Board members found guilty of acting on their own outside the law could be removed from office for ‘malfeasance,’ as determined by a three-judge panel. This move will protect county board members from frivolous charges and allegations, O’Cull said.

Safe Schools. Coaches. Principal mentorships. An omnibus school service personnel bill. A prediction that the West Virginia Department of Education was losing power. These were among issues reported in the Feb. 24, 1995 issue of *The Legislature*.

In regard to safe schools, the House passed its version of former Gov. Gaston Caperton's recommended bill by voice vote, although Senate Education, then led by Chairman Lloyd G. Jackson, D-Lincoln, sharply retooled the measure, **House Bill 2073**, with support of the Senate Judiciary Committee.

The perennial issue of whether school athletic coaches must be professional educators was aired – yet another time – by the House Education Committee (HEC). Then Mercer County Board President John Shott, who didn't seek re-election in 2004, represented the West Virginia School Boards Association, supporting the notion that county boards should have discretion in hiring coaches – as long as they received training from the state Secondary Schools Activities Commission (WVSSAC) and as long as they primarily were used for “shortage” areas such as the coaching of soccer and similar sports.

The principal mentorship notion was one that required principals to have a mentor. Primary impetus for the program originated with the Southern Region Educational Board (SREB). The proposal was watered-down considerably in the HEC, with then Del. Greg Martin, D-Ohio, saying in this publication, “I'm afraid this program will only lead to inbreeding. Some principals are confrontational,

negative and do not like change.”

Then Del. Warren “Randolph” McGraw, D-Raleigh, was able to get the HEC to add a series of amendments that weakened the bill, according to *The Legislature*.

The omnibus school service personnel bill – among the last pieces of such legislation – included a provision allowing county boards to make the 1994 “cooks-per-meals” ratio optional. It also had other provisions, including one relating to multi-county vocational center secretaries who became “executive secretaries.”

In the déjà vu corner, then House Speaker Chuck Chambers, D-Cabell and Senate President Earl Ray Tomblin, D-Logan, concluded legislators were becoming more conservative and leaning more to the “right,” using the adoption of a proposal that would have eliminated the state Women's Commission as one example. Commission opponents argued the group promoted “liberal” causes such as abortion. It passed the House, but died in the Senate.

Finally, Basil Legg, a former staff attorney with the West Virginia Department of Education (WVDE), said the department was “losing power,” citing the creation of such entities as the Center for Professional Development (CPD), the Education Professional Standards Board, the state grievance board and a gubernatorial facilities committee to back up his assertions. Then State Superintendent Henry R. Marockie, Ed.D., pointed out that, at least in terms of the facilities committee, it had an advisory role. Legg now resides in North Carolina. – *The Legislature*, Feb. 24, 1995.

CHALLENGE ACADEMY

continued from page 7

Mohr, in answer to a question, said if a student drops out of school after the end of October, the board will retain funds for that student.

Dopson said all teachers were certified by the West Virginia Department of Education. The bill was approved by the HEC last year, but died in the Senate Education Committee.

RESAs want to do more, share personnel

In other deliberations late last week, the HEC received a presentation regarding Regional Education Service Agencies (RESAs). RESA III Executive Director Chuck Nichols presented the program on behalf of all eight RESAs, with each RESA executive director present.

Nichols discussed a laundry list of RESA-related services, saying RESAs do what the “counties want us to do,” including bulk purchasing, technology services to schools and counties such as computer repair, and providing low-cost, high-incidence programs such as audiology services.

He then suggested programs the RESAs could undertake, including serving as a bridge between pre-K education and higher education. More specific program proposals included a desire for greater involvement in professional staff development, distance learning, working with professional development schools (**HB4669** –2004 session), providing access to curricula services outside the school day, and sharing personnel.

The latter proposal matches a primary West Virginia School Boards Association legislative priority.

Several HEC members commented on RESAs and RESA funding, which has been “zeroed” in the governor's budget. Vice Chairman Larry Williams, D-Preston, said RESAs can “play a big role (in education) but we need to get more efficiency out of the RESAs.”

Del. Walter Duke, R-Berkeley, asked if RESA lines had been reconfigured since they were created in 1972. According to Nichols, there have been one or two county adjustments.

SEC expands tuition waivers for military children

The Senate Education Committee on March 15 adopted **Senate Bill 126**, which would expand the number of people eligible for college tuition waivers and monetary allocations to include children of deceased members of the U.S. Armed Forces.

The bill also applies to children of members of the Armed Forces reserve units called by the president to active duty in armed combat.

The bill removes the eligibility requirement that a child must attend a state education or training institution; increases the age limit from age 22 to age 25; requires that the applicant be enrolled in a post-secondary education or training institution; and, eliminates the requirement that the child be domiciled in this state for the preceding 12 months.

The bill also increases the limit on the allocation to eligible applicants from \$500 per year to \$2,000.

Applicants may attend a private or out-of-state institution. If an applicant is receiving a tuition waiver at a state institution, he or she may receive the scholarship allocation.

A final bill provision says acceptance of the tuition waiver doesn't limit a child's acceptance of other scholarships or grants for which he or she is eligible.

–O'Cull is WVSBA Executive Director.

State board battles bullying, safety issues

By Barbara Fish

The West Virginia Board of Education recently announced the creation of a taskforce to research safety issues in all West Virginia schools. The Protect Our Students Taskforce will include Board of Education members and West Virginia Department of Education staff.

"It is of great concern to the board that our students are sometimes placed in an unsafe school environment," said WVBE President Barbara Fish. "Bullying or any other disrespectful behavior on the part of students or school employees on the playing

field or in a classroom is unacceptable and the board has a responsibility to keep these kids safe."

The Protect Our Students Taskforce initially will identify problems and look for solutions to issues that are pervasive in West Virginia schools. If necessary, the responsibility of this taskforce may expand as the group investigates collective problems.

"One board educational goal is to ensure that all students and school personnel develop and promote responsibility, citizenship, strong character and healthful living," Fish said. "This goal can only be achieved if we have safe schools."

County bus drivers reportedly plan to protest

Mezzatesta may be transportation official

The *Charleston Gazette* reported that Hampshire County Board of Education officials are eliminating former delegate Jerry Mezzatesta's \$60,000-a-year position as a board office "community specialist."

According to HCBOE officials, Mezzatesta, due to his seniority, can be reassigned as transportation director, a move that has enraged bus operators in the county, according to the *Gazette*. The drivers plan to protest against Mezzatesta at upcoming board meetings.

Bus operators reportedly are opposed to the potential move for another reason. In 2003, Mezzatesta, then House Education Committee chairman, alleged that West Virginia school bus operators were overpaid and under-worked. He said bus drivers had "priced themselves out of the market."

He also supported a bill that would have allowed county boards to enter into contracts with public transportation agencies, such as Kanawha Regional Transit (KRT). Bus drivers said that was the first step in a plan to privatize school transportation services statewide.

The *Legislature* provided extensive coverage of the 2003 legislation, with West Virginia School Boards Association Executive Director Howard M. O'Cull, Ed.D., writing an analysis piece in the Feb. 28 issue entitled, "Public/Private Transportation: Is WVSSPA in Mezzatesta's sights?" (WVSSPA is the acronym for the West Virginia School Service Personnel Association, then headed by Ken Legg.)

WVSSPA officials widely distributed reprints of that column throughout the state and, later in the summer, O'Cull, in a *Gazette* op-ed piece, defended Mezzatesta's right to promote innovative ideas.

In another Hampshire development, county board members who attended the Association's Winter Conference were surprised at a HCBOE attorney's alleged action to "silence" those who come to board meetings to speak about the Mezzatesta issue.

Most members said the matter could have been taken up in executive session – as some boards have said they do occasionally. Newspaper accounts reported that Bowles Rice McDavid Graff & Love attorney Norwood Bentley, when a citizen was speaking, advised the board that comments being made might place the board in a "libelous situation."

In an Associated Press article, Bentley said, "You can't take an employee of a school board to task in an open session. It's not the public's meeting – it's the school board's meeting."

At the WVSBA Winter Conference, state Ethics Commission Director Lew Brewer said the citizens' remarks include elements of free speech and must be respected as such. He's written a commentary on page 10, outlining his thoughts.

Lastly, the West Virginia Department of Education is preparing a report concerning "capacity" efforts the HCBOE must complete to comply with a February report of the Office of Education Performance Audits. In that report, numerous financial and personnel violations were found.

O'Cull, in his role as part of the WVDE Improvement Team, has developed board objectives for members to follow to develop the capacity measures outlined by the WVDE.

Privately, some WVDE officials said the HCBOE has become too caught up, especially in the legal process, to "see the forest for the trees."

Board attorneys, however, said that if the board made hasty decisions the county could face greater costs, especially if personnel matters are involved. They also contend some actions might not be covered by the state Board of Risk and Insurance Management. Board attorneys also said they are waiting for a report from the WVDE that outlines steps for Hampshire to take in meeting department recommendations.

Additionally, Hampshire officials said they want to take a cautious approach because the board may have to pay back some grant fees which, according to the WVDE, were not spent correctly.

Ethics Commission committee can advise on Open Meetings Act

Board rules should allow public comment

By Lew Brewer

Since 1999, the Ethics Commission's Committee on Open Governmental Meetings has had authority to render written advisory opinions concerning the meaning and application of the State's Open Meetings Act. In addition to providing formal advisory opinions through this Committee, the Ethics Commission staff routinely provides training to assist governing bodies of public agencies in complying with the Act.

One question from time to time concerns limits that may be placed on individuals who participate in a public comment period provided during a meeting.

In regard to public comments during a meeting of a governing body, such as a county board of education, the Act provides only limited guidance. West Virginia Code § 6-9A-3 simply provides that "persons who desire to address the governing body may not be required to register to address the body more than 15 minutes prior to the time the scheduled meeting is to commence."

Based upon this language in the statute, the Committee advised the City of Lewisburg in Open Meetings Advisory Opinion (OMAO) 2001-30 that it was permissible in a special meeting to limit public comments to those particular matters listed on the meeting agenda. It was the practice of that particular governing body to allow comment on any subject during a public comment period at a regular meeting but to exclusively limit comments to agenda items during special meetings.

The Committee determined that this practice was not contrary to any provision in the Open Meetings Act.

The Committee on Open Governmental Meetings has similarly recognized that governing bodies may place reasonable limitations on citizens who sign up to speak during public comment periods by approving procedural rules various agencies have adopted to comply with the Act.

For example, in OMAO 2003-10, the Committee approved rules adopted by the West Virginia Lottery Commission that require speakers to provide their name, mailing address, telephone number and the subject to be addressed. In addition, their rules limit presentations to five minutes, unless otherwise permitted by the commission.

A more difficult question is presented when comments are made during a public comment period that are critical of public officials and employees, sometimes even to the point of becoming defamatory. The question of exercising content-based limitations on public comment is not directly addressed by the Open Meetings Act and has not previously been the subject of an opinion from the Committee.

In fact, this question is largely governed by our federal constitution, particularly the provisions in the First Amendment that protect the right of free speech.

In general terms, the Constitution does not guarantee anyone the right to speak or otherwise participate in a public meeting by addressing comments to or asking questions of the members of a governing body. However, once a public body allows a public com-

ment period, the U.S. Supreme Court, in *Perry Educ. Ass'n v. Perry Local Educator's Ass'n*, 460 U.S. 37 (1939), determined that this creates a "limited" public forum, thereby opening public property to use by the public as a place for expressive activity.

For example, in *Baca v. Moreno Valley Unified School District*, 936 F. Supp. 719 (1996), a federal court invalidated a rule that permitted expression of laudatory or neutral comments regarding employee conduct or performance while prohibiting negative or critical comments on the same issue.

In a similar vein, courts generally frown upon limitations that exclude persons from participating in a public forum based upon their residency, voter registration status, or ownership of property, such as someone who does not own taxable property in a municipality or county. Consequently, part of our standard advice to governing bodies is not to discriminate in allowing public comment by local residents while excluding someone who lives in another community or state.

Based upon the Supreme Court's ruling in *Perry*, federal courts routinely conclude that any content-based prohibition on public comment must be narrowly drawn to effectuate a compelling state interest. Moreover, the New York Committee on Open Government, which functions much like our Committee on Open Governmental Proceedings, has previously concluded that once the performance of a board member or employee has become a topic for public discussion, the governing body may not validly restrict comments regarding such person, whether neutral, positive or negative. Accordingly, a governing body should exercise extreme caution before it adopts a general policy that limits comment that is critical of public officials or public employees.

On the other hand, the Open Meetings Act specifically states in § 6-9A-3 that "(t)his article does not prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised." Thus, just as the First Amendment does not guarantee anyone the right to yell "fire" in a crowded theater, when there is no fire present, governing bodies remain free to adopt and enforce reasonable rules and policies that prevent verbal interruptions, including shouting or other outbursts, as well as speech or signs that contain clearly slanderous comments or obscene language.

Public officials sometimes face the unenviable task of making the call between what is merely critical, and therefore permissible, and what is a defamatory false statement that unfairly harms someone's reputation. By adopting rules that permit reasonable comment, while proscribing those actions that are clearly out of bounds in a public forum, a governing body can narrow the scope of situations where a presiding official is called upon to make an immediate call on the propriety of a presentation without the benefit of definitive guidance.

The Committee on Open Meetings is available to render a formal advisory opinion on whether any procedural rules adopted by a governing body are inconsistent with any provision in the Open Meetings Act.

— Brewer is EC executive director

Legislators question floor bill figures

Some members of the House and Senate education committees are privately questioning the policy merits of a measure that would provide a 1,400-student floor for counties with considerable declines in student population, especially rural and sparsely-populated counties.

There also are reports that some legislators, particularly in House and Senate finance committees, may amend the measure to say that its implementation is subject to “legislative appropriation” – or even to stave off funding the measure until an anticipated school aid formula study is completed. (This approach is being used on a bill relating to a ratio for school nurses, according to HEC staff members.)

In discussing the “floor legislation,” some legislators question why the “floor” in this year’s proposal is 1,400 and last year’s figure was set at about 1,200, affecting fewer counties. At any rate, legislators said the proposal will be seriously considered, especially in that it amends a section of Code relating to school aid formula “growth counties’ funding.”

The measure was introduced in both houses at the request of the West Virginia Association of School Administrators (WVASA). Delegates to the West Virginia School Boards Association Annual Business Meeting supported the bill, as well. Additionally, some legislators said a bill relating to changes in net enrollment caps helps accomplish some of the same objectives as the 1,400-floor proposal, although admittedly in more incremental terms.

WVASA officials point to the fact that three identical versions of the bill have been introduced, including one sponsored by ranking House Education members and powerful House Finance Committee Chairman Harold Michael, D-Hardy.

Stewart lifts Mingo freeze on consolidated construction

The Mingo County Board of Education last Monday met for the first time since coming under state control. Various sources said the meeting went smoothly.

In other Mingo County developments, the state superintendent lifted a freeze placed by local officials on a construction contract for a consolidated high school, clearing the way for work on the project. Most observers think that move will allow at least procedural work to begin, which might make it more difficult for a court to set aside the project, based on a 1991 Monroe County case.

The state superintendent’s decision allows MCS Construction to move forward on a preliminary estimate and budget, company president John Strickland told the *The Charleston Gazette*. In the *Gazette* article, Strickland said, “I fully understand the issues of consolidation ripping the heart out of the community, but I can’t help but think that five years from now they’re going to look back and laugh. Everything will be OK if they let us go ahead and do our jobs.”

Strickland said the firm has built schools in Monroe, Randolph and Roane counties. The West Virginia Board of Education voted Feb. 16 to take over the Mingo school system, its second such intervention.

Table games legislation a crap shoot

It appears that legislation to legalize table gaming at the state’s four racetracks is headed for crunch time at the end of the 60-day regular session. On Monday, Senate democrats delayed action on the bill until next week to first pursue the governor’s legislation to restrict lawsuits against insurance companies – a cornerstone of the governor’s tort reform measures.

On Tuesday, House Democrats met in closed-door caucus, but didn’t have a show of hands of support for table games, as some senators had hoped, according to various news media reports. Additionally, House leadership officials said the measure would narrowly pass House Judiciary and House Finance.

Governor, state board ‘can work together’

WVBE member Priscilla Haden, Kanawha, wrote an op-ed piece in *The Charleston Daily Mail* in which she said the board and Gov. Joe Manchin III are “in step” in terms of policy.

She listed a number of areas and policy initiatives she said shows that the governor and state board can work together, especially based on the WVBE’s refined goals. She said the goals, which cover such matters as curricula, efficiencies, teacher preparation and the like, “align with all Gov. Manchin wants to accomplish during his four years in office.”

Among “alignments” cited are pre-school education, increases in academic achievement, “build(ing) educational leadership,” teacher certification in critical needs areas, distance learning and technology. Haden, a former county board member, is WVBE secretary.

‘Healthy drinks’ now include Gatorade

Supporters of Gov. Joe Manchin III’s “Healthy Starts” program for school children were concerned last week after a soft-drink lobbying group successfully raised the amount of added sugar so-called “healthy drinks” can contain.

Members of the House Health and Human Resources Committee voted to increase the amount of added sugar in healthy drinks from 10 grams to 15 grams. That change allows sports drinks like Gatorade or Powerade to be considered healthy. The legislation bans sugar-added soft drinks from elementary and middle schools, while allowing them in vending machines in high schools.

Those machines, however, must be turned off during breakfast and lunch. Manchin had recommended that 50 percent of vending machines in schools be stocked with healthy, low-sugar drinks, such as water, natural juices and low-fat milk. After changing the definition of “healthy drinks,” the committee amended that to 70 percent. The bill now goes to House Finance. It didn’t have a reference to House Education.



wvsba.org

School aid formula, RESAs and athletic tourneys among discussions

House committees tackle education issues

By Martha Dean, Ed.D.

The second half of the session started with a full workload for both houses. Bills continue to be constantly introduced, but the work of the committees is more diligent. In particular, the House Education Committee met several times this week, both in full committee, jointly with the Senate, and as subcommittees.

I will devote most of my column to bills reported out of House Education and the dialogue that took place during the meetings.

Tuesday afternoon began with a presentation by Joe Panetta on the School Aid Formula. Panetta did an outstanding job of explaining the steps of the formula. Questions of members of the Education Committees reflected their knowledge of the formula.

Del. David G. Perry, D-Fayette, asked why we use the current year's enrollment to fund next year's allocations and suggested it would be better to use projected enrollment based on historical data, particularly for the counties where there is an increase in enrollment. Panetta said the data for the current year is the only accurate data available, which might mean that adjustments would need to be made if we relied on projections rather than actual enrollment.

Del. Walter E. Duke, R-Berkeley, asked about the supplemental appropriations of \$2.5 million requested in FY2004 and \$1.5 million requested in FY2003. Panetta said those requests were made to the Legislature annually if the allocation in the current budget was not sufficient to meet the need.

Sen. Jon Blair Hunter, D-Monongalia, asked about the number of non PI allowed, a sub step of Step 1. Finally, Del. Brady Paxton, D-Putnam, asked how long we had been using the second-month enrollment to determine education funding for the subsequent year. The reply was that it had been in place since at least the 1970s. Paxton then wondered whether we could find a better system so the funding wouldn't be based on data that was one year behind the budget.

After the joint session with Panetta, House Education met to consider several bills. Those include **HB2837**, which requires the State Board of Education to prescribe instruction on personal finance to be integrated into the curriculum of an appropriate existing course or courses for all students in secondary schools. It passed without dissenting vote, and is now proceeding on the Consent Calendar.

HB2783 authorizes the director of the Division of Rehabilitation Services to allow youth or other civic groups to use rehab facilities and to charge a reasonable rent. It had a second reference to finance, but this was dispensed with and the bill was placed on the Consent Calendar.

The third, and last bill considered in House Education on Tuesday was **HB3018**, a bill to designate the Mountaineer Challenge Academy as a special alternative education program. This designation would permit students to remain enrolled in their home high schools, and the home counties to count them in the second-month enrollment count, while they are at the Academy. It also passed without dissent and the second reference to finance was abrogated.

Wednesday was West Virginia College Day at the capitol. All the colleges had really great displays and there was a lot of activity in the halls outside the chambers. It was minor committee day so education didn't meet. However, **HB3054** was introduced by Del. Harold Michael, D-Hardy.

This is the bill that WVASA has designated as its first priority for this year. It removes the section of the law that makes funding increased enrollment at the discretion of the Legislature and adds a section that permits counties with fewer than 1,400 students to apply for additional funding. A companion bill, **SB475**, was introduced earlier in the Senate.

Thursday was quite busy for education as well. Higher education presented information to both House and Senate education committees concerning Financial Aid in West Virginia. David Perrine explained the West Virginia Higher Education Grant Program, designed to ensure that academically able and financially needy students in West Virginia have financial assistance for college. Then, Lisa Cole gave pertinent facts concerning the PROMISE Scholarship Program, which is not need-based, but eligibility depends on high school GPA and ACT or SAT scores.

There was also information presented on how financial aid packages are put together for students at West Virginia colleges.

Following the joint meeting, House Education met to consider six bills. To the best of my knowledge, this is the highest number of bills considered at any House Education Committee meeting this year. The first bill considered, **HB3055**, would require two classes of competition in all end-of-year interscholastic athletic tournaments.

There was quite a bit of discussion on this bill. Del. Danny Wells, D-Kanawha, who writes a sports column for *The Charleston Gazette*, pointed out that in swimming there were only 24 schools that sponsor the sport and all but one of them are AAA schools. Confusion grew following his comment and, after much discussion, Del. Perry moved to table the bill.

HB2603 relates to the reimbursement of tuition, registration and other required fees for coursework completed by teachers toward certification renewal and additional endorsement in a shortage area. It was phased in 50-50 between the two allowable areas for the first year and, thereafter, applied in proportion to the number of applications submitted, but would not allow more than 75 percent of the funds to be spent on either category.

This bill would allow the department to disregard the 75 percent limitation if money is left in the account. It passed out of the committee with little discussion.

HB2977 would allow school-level implementation of student uniform policies. There was a great deal of discussion concerning this bill mostly centering on whether a student could be punished for not wearing a uniform if the school adopted such a policy. The great concern seemed to be that a student might be disciplined for failure to wear a uniform in such a way that they would miss instruction (Del. Patrick Lane, R-Kanawha) or miss out on extracurricular activities (Del. Sharon Spencer, D-Kanawha). Del. Lane of-

See **EDUCATION ISSUES** on page 14

The media has a moral contract with viewers and readers to be truthful

Blind ‘objectivity’ can be disastrous

Editor’s Note: Although this article isn’t about education-related issues per se, it provides food for thought concerning the role of journalists and how journalism shapes news and what we know or, more importantly, think about events in the news.

By Chris Hedges

Balance and objectivity, without a strong commitment to the truth, can turn journalism into farce. It was impossible to witness the army massacres in El Salvador or the murder of children by Bosnian Serb snipers in Sarajevo without being revolted. I hated these crimes. I took risks, along with many of my colleagues, to expose and explain them. And I wanted, through my reporting, to get the world to wake up and put an end to the wholesale murder of innocents.

This commitment, however, was effective only when we were rigorous about telling the truth. It is this moral core, this belief that we can contribute to an open society and make the world a better place, that keeps me and other reporters focused on truth as well as balance and objectivity.

In Kosovo, the Serbian police would enter villages, separate the men from the women, and then lead the men off to be executed. The Serbs closed the roads to mask their killings. Reporters, photographers and camera crews would often walk, sometimes a few miles, to get into the villages and report the massacre. We always contacted Serb authorities, as we should have, to print their response. But balance, pushed to its absurd conclusion, would mean giving the killers equal time. Objectivity, as defined by those who never leave air-conditioned broadcast booths, would ask us not to feel anything as we stood over the bodies of fathers and sons. We always walked away and thought that we had not done enough. And, to be honest, I have sat with reporters and photographers hours later in seedy hotel rooms as they wept. And I have wept myself.

There is a danger to this kind of moral engagement. It becomes tempting to turn opposition groups or leaders into the embodiment of our ideals. The Salvadoran rebels and the Muslim-led government in Bosnia were painted by some not as they were, but as reporters wanted them to be. This is the Achilles’ heel of many well-meaning reporters, who have not seen enough of the world to understand that today’s victims are often tomorrow’s victimizers, that we cannot create the world in our own image. The moral outrage that led them to expose war crimes was often canceled out by their immaturity. They served as little more than propagandists for opposition groups. These kinds of reporters played into the hands of those who had an interest in covering up the crimes we were trying to expose. They diminished our credibility, our most potent weapon. Their failure was not one of balance or objectivity. Their failure was the believing that moral engagement justified promoting or defending a cause. They would have profited from reading *Homage to Catalonia*, the Spanish Civil War memoir of George Orwell, whose moral scrutiny never wavered, even when he watched it appropriated and used by those he despised.

The moment the Serbs pulled out of Kosovo my job changed

from reporting on Kosovar Albanians who were being murdered and abused by Serbs to writing the stories of the elderly Serb couples who were being terrorized by bands of Kosovar Albanian thugs. The Kosovar Albanian leadership soon felt betrayed and became hostile. The Serbs, who had excoriated me in Belgrade, started to translate my stories in the local press. These moments are never easy and often very lonely, even among colleagues. But real reporters never have many powerful friends. They never forget that their job is to give a voice to those who would not have a voice without them. And they know enough about human nature to be wary of all who hold power.

The failure of the coverage leading up to the invasion of Iraq was the failure to be wary of the powerful, the failure to listen to those who are not our own. Stories about an imminent Iraqi threat, which turned out to be false, were splattered across the pages of the nation’s most prominent newspapers. There were voices, important voices, that questioned the assertions, but they were largely unheard because the media ignored them. This failure was also, and perhaps more important, a failure to honor the moral contract that journalists have with viewers and readers to be truthful, even when it means challenging conventional wisdom and ferreting out unpleasant facts.

Those who defend the prewar coverage argue that reporters are only as good as their sources. They say they reported accurately the falsehoods leaked to them by those who sought to wage war. By making such an argument they are also saying they are morally neutral, that they are little more than conduits for lies, half-truths and truths all rolled into one unintelligible message. They forget the contract.

There is a concerted attempt to destroy this contract. Balance and objectivity have become code words to propagate the insidious and cynical moral disengagement that is destroying American journalism. This moral disengagement gives equal time, and sometimes more than equal time, to those who spread falsehoods and distort information. It tacitly sanctions the dissemination of lies. It absolves us from making moral choice. It obscures and often shuts out the truth.

This sophistry has come to characterize the circus that goes by the name of journalism on cable news shows. Facts on television are largely interchangeable with opinions. The television reporter, like a game show host, makes sure each warring party has his or her time to vent. The veracity of what is said is irrelevant. But the disease of moral neutrality is no longer confined to the poseurs on television, who are, after all, entertainers posing as journalists. It is seeping into those organizations that are still attempting to report the news. Objectivity is not the same as moral disengagement. Balance does not mean giving everyone the same space. We are more than dutiful court stenographers. Journalists have a contract with viewers and readers. This contract was broken. We must make sure it is not broken again.

—Hedges was a foreign correspondent and is author of “War Is a Force That Gives Us Meaning.” Reprinted by permission.

Broken homes also disrupt school life

Bills aimed at strengthening marriage

By Sen. Steve Harrison

Divorce causes or contributes to many problems in our society. The intent of two bills which introduced this legislative session is to help reduce the divorce rate in West Virginia.

These bills are **Senate Bill 208**, which establishes a marriage-license discount if applicants complete premarital counseling, and **SB469**, the Covenant Marriage Act.

Why would such bills be of interest to members of county boards of education? One issue which should concern county school board members is the disruption that broken homes create for children. There is no question an unhappy and unstable life at home can have a negative impact on performance at school.

Therefore, proposals that encourage stable marriages can also help enable our educators to focus more time teaching and less time dealing with problems related to the home life of students.

SB208 passed the Senate Judiciary Committee and now is in the Senate Finance Committee. The bill encourages couples to receive premarital counseling by giving them a 20 percent discount on their marriage license fee if they do so. This bill is almost identical to a bill that passed the Senate in 2004 but was not acted upon by the House of Delegates. Several other states have enacted similar bills.

The premarital counseling course outlined in SB208 must last at least four hours and cover the topics of: (1) conflict management; (2) communication skills; (3) financial responsibilities; and (4) children and parenting responsibilities.

The discount provided by the bill would not be a large dollar amount but it would be a small step to encourage couples to receive

premarital counseling.

Encouraging development of more loving and stable families

SB469 would establish the Covenant Marriage Act in West Virginia. The bill has the same goal as SB208 but is more comprehensive. It was introduced March 7 and has been referred to the Senate Judiciary Committee. This proposal is based on a law passed in Louisiana a few years ago. Arizona and Arkansas also have enacted similar statutes.

Couples who choose the Covenant Marriage option would agree to receive premarital counseling and also agree to receive marital counseling before pursuing a divorce. The bill requires a waiting or "cooling-off" period before a divorce is granted, with a few exceptions such as adultery or abuse. These requirements are designed to encourage couples not to rush into or rush out of marriage.

The two proposed laws outlined in this article would be optional for West Virginia couples preparing to become husband and wife. While neither bill will provide the total solution for creating stronger marriages in our state, both are steps that could help reduce the divorce rate.

If such proposals become law, they should help to encourage the development of more loving and stable families. This will be beneficial to parents, children, educators and society as a whole.

—Harrison, R-Kanawha County, represents the Eighth Senatorial District. He is a former member of the House Education Committee and a graduate of Brown University.

EDUCATION ISSUES

continued from page 12

ferred an amendment and Del. Spencer offered an amendment to his amendment.

After it was determined how to handle this procedurally, Spencer's amendment to the amendment was defeated and then Lane's amendment was defeated. The original bill then passed and will go to its second reference, Judiciary.

A bill originating in committee adds responsibilities to RESAs for providing technical assistance to low-performing schools. To assist in making these changes possible, the responsibility for forming and overseeing the RESAs, along with the authority to employ their directors are moved from the State Board to the State Superintendent. The bill passed and eleven sponsors were designated.

Another bill originating in committee was presented. This bill creates an allowance for student health services. WVASA has suggested that one nurse per county be funded in a separate step of the formula. Del. Larry A. Williams, D-Preston, has been working on this law, which would create an allowance for additional nurse positions beginning with the 2005 school year in §18-9A-4a.

These funds would not be within the 53.5 professionals per thousand students currently in Code. It would fund additional nurses to bring the ratio in all counties up to one nurse per 1,500 students

final bill discussed was **HB2012**, which would require county boards to set aside 7 percent of the Medicaid reimbursement money to pay those Medicaid providers a salary supplement. The supplement would be distributed twice a year and divided equally among similar providers, as I understand it. To me, this means that all speech therapists who provide services under Medicaid would receive the same supplement regardless of the amount of money each actually generates.

There is some concern about the record-keeping needed to comply with this law. Steve Haid was at the committee meeting and offered justification for the law.

A final note: On Thursday, **HB3080** was introduced by Dels. Stemple, Manchin, Williams, Campbell, Michael, Perry, Boggs and Pethel. I have not seen the bill but it appears from its brief description to be the same issue as **HB3054**, introduced on Tuesday, which dedicates funding for counties with increased enrollment and those with a net enrollment of 1,400 or fewer students.

We hope to have one or both of these bills active in the House Education Committee.

—Dean is executive director of the West Virginia Association of School Administrators

WVSBA Recognizes 2005 Business Affiliates

PLATINUM

Acordia Employers Service

Charleston, WV
www.acordiaservices.com
Contact: Gary Waskey
gary_waskey@acordia.com

American Dairy Association /Dairy Council Mid East

Columbus, OH
www.drink-milk.com
Contact: June Wedd
jwedd@drink-milk.com

Associates In Rehabilitation

Pittsburgh, PA
www.associnrehab.com
Contact: Drew Rotz
drotz@associnrehab.com

Bowles Rice McDavid Graff & Love LLP

Charleston, WV
www.bowlesrice.com
Contact: Howard Seufer, Esq.
hseufer@bowlesrice.com

Cedar Lakes Conference Center

Ripley, WV
www.cedarlakes.com
Contact: Ron Grimes
rgrimes@access.k12.wv.us

The EdVenture Group

Morgantown, WV
www.theEdVenturegroup.org
Contact: Donna Casto
djcasto@edvgroup.org

Eperitus: Insight for Education

Richmond, VA 23113
www.eperitus.com
Contact: Dr. Carl Chafin
cchafin@eperitus.com

Keeling Strategic Communications

Cross Lanes, WV
www.keelingstrategic.com
Contact: Jason Keeling
jason@keelingstrategic.com

Williamson Shriver Gandee Architects Inc.

Charleston, WV
www.wsgarch.com
Contact: Joe Evans
jevans@wsgarch.com

W.Va. Assistive Technology System

Morgantown, WV
Contact: Jeanne Grimm
jgrimm@hsc.wvu.edu

GOLD

E.T. Boggess Architect, Inc.

Princeton, WV
www.etbarchitects.com
Contact: Todd Boggess, AIA
todd@etbarchitects.com

Turner Construction Company

Pittsburgh, PA
www.turnerconstruction.com
Contact: Betsy Kane
bkane@tcco.com

SILVER

AEL Inc.

Charleston, WV
www.ael.org
Contact: Dr. Keith Smith
smithk@ael.org

Dell

Lexington, KY
www.dell.com/k12
Contact: Kristen Reed
kristen_reed@dell.com

Maffei Strayer Furnishings

Pittsburgh, PA
www.mstrayerfurn.com
Contact: Lindsay Marler
lmarler@mstrayerfurn.com

**Interested businesses or
organizations may
contact Jason Keeling at
304.989.3262 for
Affiliate details.**

Bill Abstract

Editor's Note: *The following is a listing of education and selected education-related bills, with action current through Wednesday, March 16, 2005 for most bills. For information relating to any of the measures listed, contact West Virginia School Boards Association Executive Director Howard M. O'Cull, Ed.D., or visit the West Virginia Legislature's Web site at www.legis.state.wv.us.*

Senate

Senate Bill 94. Provides county boards flexibility in the statutory order of required activities to occur on school calendar Instructional Support and Enhancement (ISE) days. Approved by Senate Education Committee (Senate Education) Feb. 22. Passed Senate 2/28/05. Referred to House Education Committee, then House Finance Committee.

SB126. Relates to educational benefits for children of deceased military personnel (killed in action). Senate Education approved 3/16/05. Referred to Senate Finance Committee (Senate Finance).

SB153. Revises state Ethics Act legislation enacted during 2005 Special Session in part due to revising language relating to a "gag order" against those filing Ethics Commission complaints that was included in the January legislation; other provisions. Passed Senate 2/17/05. Referred to House Judiciary Committee (House Judiciary).

SB212. Provides higher education employees the annual experience increment that is paid to state employees. Approved by Senate Education 2/22/05. Referred to Senate Finance 2/23/05.

SB248. Voids the requirement that education technology expenditures be made in accordance with the West Virginia Education Technology Strategic Plan (ETSP). In that Strategic Plan members weren't appointed by former Gov. Bob Wise, the legislation allows various entities, including the West Virginia Department of Education, to expend technology moneys, including dollars for the Basic Skills and SUCCESS programs. Approved by Senate Education Committee Feb. 22. Passed Senate 2/28/05. Referred to House Education Committee (House Education), then House Finance Committee (House Finance).

SB261. Provides for special election proposing constitutional amendment designated as the "Pension Bond Amendment." Passed Senate 2/24/05. Passed House 2/24/05. Governor signed 3/8/05; Legislative Action Completed.

SB282. Continues School Building Authority of West Virginia (state Sunset legislation). Passed Senate 3/1/05. Referred to House Government Organization Committee (House Government Organization).

SB347. Authorizes approval of rules of the Higher Education Policy Commission and Council for Community and Technical College Education. Senate Education adopted 3/3/05. Senate Adopted 3/9/05. Referred House Education.

SB401. Relates to governing boards of the newly-established New River Community and Technical College and the Community and Technical College of Shepherd University. Senate Education approved 3/3/05. Senate Adopted 3/9/05. Referred to House Education.

House

House Bill 2012. Requires county boards to reserve 7 percent of Medicaid reimbursements for services provided by county personnel as a salary supplement. House Education Committee approved 3/17/05. Referred to House Finance.

HB2015. Provides employers immunity from civil liability for job-related information disclosed regarding their former employees. Passed House 2/16/05. Referred to Senate Judiciary Committee (Senate Judiciary).

HB2286. Relates to the sounding of "Taps" at veterans' honors funerals. Passed House 2/18/05. Passed Senate 2/21/05. Referred to governor 2/23/05. Governor signed 2/25/05; Legislative Action Completed.

HB2328. Provides precedential application to the Ethics Commission's written Opinions regarding open governmental meetings. Passed House 2/21/05. Referred to Senate Government Organization Committee (Senate Government Organization), then Senate Judiciary.

HB2350. Corrects provision in law relating to certification standards in other states and their application to teachers who may apply for certification in West Virginia. House Education Committee approved 3/1/05. House approved 3/7/05. Referred to Senate Education.

HB2365. Prohibits county board members from acting individually or singularly unless authorized by law. House Education Committee adopted March 11. Referred to House Judiciary.

HB2466. Removes some obsolete Code references from stature; other provisions. House Education Committee approved 3/1/05. House approved 3/7/03. Referred to Senate Education, then Senate Finance. Senate Education adopted 3/11/04. Referred to Senate Finance.

HB2525. Eliminates requirement that West Virginia Department of Education conduct independent evaluation of effectiveness of character education programs, including Responsible Students Program (RSP). House Education Committee adopted March 8. House adopted 3/11/05. Referred to Senate Education.

HB2527. Allows school service personnel competency tests to be given at multi-county vocational centers at option of employee. House Education Committee adopted March 8. House adopted 3/11/05. Referred to Senate Education.

HB2578. Increases school aid formula net enrollment limits for professional and school service personnel. House Education approved 3/1/05. Referred to House Finance.

HB2603. Relates to reimbursement of tuition, registration and other required fees for course work completed by teachers. House Education adopted 3/17/05. Referred to House Finance.

HB2783. Authorizes the Director of the Division of Rehabilitation Services to allow youth or other civic groups to use Rehab facilities and to charge a fee. House Education approved 3/15/05. House Second Reading (Consent Calendar).

HB2837. Prescribes a personal finance instruction in secondary schools. House Education approved 3/15/05. House Second Reading (Consent Calendar).

See BILLABSTRACT on page 17

Funding troubles may outweigh modernization benefits

Counties pay unfair jail consolidation costs

Editor's Note: As the Legislature appears to move more in the direction of heightened regional services (under the Regional Education Service Agency Model primarily), this column by Patti Hamilton, executive director of the West Virginia Association of Counties, explores how "regionalization" of jails has affected county governments in terms of cost.

While most researchers and government officials contend regionalized services may save money through efficiencies and economies of scale, literature and experiential evidence doesn't necessarily support that. (The same can be made about some school consolidations.) This is a point I made in a December 1993 monograph about regionalized services and decentralization.

Hamilton writes:

The regional jail system in West Virginia began when county jails were coming under fire for noncompliance with federal standards and were going to have to spend millions of dollars to meet those standards. The first regional jail opened in the early 1990s to serve the Eastern Panhandle and the last one will open soon in Randolph County to serve that area, while the last of the county jails will close.

What good has come from this? Counties have been relieved of the tremendous liability of operating jails and they were not forced to borrow funds to upgrade their jails. The regional jail system is modern, meets federal standards, and can achieve some economies of scale that county jails could not.

What have counties lost? Counties have lost control of the costs, even though they pay for all operation and maintenance of the regional jails. The state pays the administrative portion of jail costs. There are three county officials on the Regional Jail Authority Board but they do not constitute a majority.

The best illustration of the loss of control is state employees getting a pay raise from the Legislature. The counties pay for those pay raises of the regional jails' employees, often to the detriment of county employees. If PEIA or liability insurance costs increase for the jails, counties pick up the tab even though those same costs are increasing for counties.

Last year Cabell County had the highest regional jail bill at \$3 million. It is strapping the budget of our second-largest county. However, the problem goes deeper than costs alone.

We need to look at the jailable offenses that are created by the Legislature each year; the pre-trial time that felons spend in jails, even though they ultimately are incarcerated in state prisons; the standards for parole, alternative sentencing and community corrections; the role of the judiciary; and a host of other factors that contribute to the high incarceration rate even while our overall crime rate in West Virginia is low.

In worst-case scenarios, counties barely will be able to meet their constitutional obligation to fund the constitutional offices with little left for the "extras" that receive funding from counties. These extras range from much-needed water extension projects to libraries and a myriad of worthwhile expenditures in between.

The problem is too complex to be solved in one legislative session, even though a variety of bills have been introduced to address it. Many legislators question the need of jail penalties for nonviolent and white-collar crimes. Awareness has been raised but the issue may call for a more thorough interim study.

Cost-sharing also has been discussed as a remedy. One county recently studied the incarcerations for February and found that 48 percent of those incarcerated were arrested by municipal law enforcement, 33 percent by the county sheriff's deputies, and 15 percent by state police. Among others, the idea that the arresting entity pay for at least the initial 24 hours of incarceration has been debated for years.

The time has come to ask, "Why are counties paying costs of incarceration?" It is not a constitutional requirement; it is in statute. Offenders who are incarcerated have violated state laws, not county laws.

In another generation, no one will remember the existence of county jails and county officials of the future will wonder why they are footing the bills!

Counties might barely be able to fund their constitutional offices with little left for much-needed water projects, libraries and other worthwhile expenditures.

future will wonder why they are footing the bills!

BILL ABSTRACT

continued from page 16

HB2977. Relates to authorizing school-level implementation of student uniform policies. House Education approved 3/17/05. Referred to House Judiciary.

HB3018. Relates to designation of Mountaineer Challenge Academy as a special alternative education program. House Education approved 3/15/05. House Second Reading (Consent Calendar).

HB3055. Requires the state Secondary Schools Activities Commission to have at least two separate classes of competition at all end-of-year interscholastic athletic tournaments. House Education tabled 3/17/05.

Originating Bill – Increases Regional Education Service Agencies (RESAs) focus on school improvement. House Education approved 3/17/05. Referred to House.

Originating Bill – Creates allowance for student health services. House Education approved 3/17/05. Referred to House Finance.

Editor's Note: Comprehensive Bill Almanac will be posted on www.wvsba.org March 22.

Sound Bites

“The objective is to protect our children, especially our youngest children, from long bus rides.” –Gov. Joe Manchin III at a Monday press conference, endorsing his busing proposal.

“A child has to change his or her life, or it’s not going to work for them.” –Mountaineer Challenge Academy official Hugh Dopson discussing the benefits of the alternative program.

“We’re still deploying soldiers to the field.” –West Virginia Adjutant General Tackett answering a question about West Virginia National Guard members.

“We’ll let this ‘fly’ over there.” –Sen. Jon Blair Hunter, D-Monongalia, commenting on the Senate’s bill regarding scholarships for children of U.S. military personnel killed in the line of duty and its lack of specific scholarship provisions for survivors of U.S. Air Force personnel. A state official said the measure was originally drafted prior to the Air Force’s separation from the U.S. Army in the 1940s.

“I don’t see a need for this bill.” –Del. Danny Wells, D-Kanawha, discussing a bill that would require the state Secondary Schools Activities Commission (WVSSAC) to have two classes of competition in all end-of-the-year interscholastic athletic tournaments. Wells is a sports writer.

Meanwhile in Minnesota...

Several thousand parents, students, teachers, and other school employees recently rallied at the Minnesota State Capitol, calling for more education funding from the state.

The *Minneapolis Star Tribune* said it probably was the largest education rally at the Capitol in recent years, drawing more than 175 busloads of participants. The crowd, many of whom had to stand in the snow, chanted “No More Excuses!” and “Fund Our Schools!”

The rally came at a time when the debate over school funding is shifting into high gear at the Legislature, reports *Star-Tribune* reporter Norman Draper. Because this is a budget year, the Minnesota Legislature and Gov. Tim Pawlenty will decide how much money schools get the next two years.

Everybody wants schools to get increased funding this year, it’s just a matter of how much and where it will come from that’s creating the differences.

– Source Minneapolis Star Tribune



The Legislature

West Virginia School Boards Association
PO Box 1008
Charleston, WV 25324