Document B
COUNTY BOARD OF EDUCATION POLICY ACTIONS AND OPPORTUNITIES UNDER THE 2019 REGULAR AND SPECIAL SESSION LEGISLATION AFFECTING WEST VIRGINIA’S PUBLIC SCHOOLS

Attorney Howard Seufer

August 1, 2019
# TABLE OF CONTENTS

County boards of education are required to adopt these policies that, until now they have not been required to have: .................................................. 1

1. RIF “qualifications” policies................................................................. 2

2. Public charter schools........................................................................ 4

3. Open enrollment policies.................................................................. 5

4. Alternatives that LSICs propose to the operation of a school. .......... 7

County boards of education must revise these policies that they were already required, by law, to have: ................................................................. 9

1. Salary schedules .............................................................................. 10

2. Reduction in force policies................................................................. 11

County boards may wish to modify these policies that they were already required, by law, to have, and which the new legislation allows, but does not require, them to modify: ................................................................. 12

1. Laterality policies ............................................................................ 13

2. Promoting school board effectiveness.............................................. 14

Although not required by law, county boards sometimes have these policies, not listed above, that should be examined for changes necessitated or expressly allowed by new legislation: ................................................................. 15

1. Employee discipline policies............................................................. 16

2. Local school improvement council policies .................................... 17

3. Professional seniority policies.......................................................... 19

4. Personal leave policies .................................................................... 20

5. Posting policies ................................................................................ 21
6. Transportation policies ................................................................. 22

7. Attendance Policies .................................................................. 23

Although not required to do so, county boards might want to take advantage of new opportunities by adopting policies that are discretionary under the legislation: ......................................................... 24

1. Exceptional needs expense fund policies ................................... 25

2. Additional teacher compensation policies ................................. 26
COUNTY BOARDS OF EDUCATION ARE REQUIRED TO ADOPT THESE POLICIES THAT, UNTIL NOW THEY HAVE NOT BEEN REQUIRED TO HAVE
1. RIF "QUALIFICATIONS" POLICIES

"Every county board must adopt a policy defining "qualifications" for purposes of the revised rules under House Bill 206 governing the reduction in force of professional employees and the recall of professionals from the preferred recall list. Counties are supposed to apply the policies right now in making some decisions about recalling professionals from the preferred list."

House Bill 206 declares that, in the case of professional employees, “all decisions on reductions in force shall be based on qualifications.” West Virginia Code § 18A-4-7a(l).

Accordingly, the bill changes the longstanding rule for identifying the teacher to be transferred when reducing the number of classroom teaching positions in an elementary school. The “least qualified classroom teacher” in the school, instead of the least senior, must now be recommended for transfer. In its emphasis on qualifications, the bill also amends a provision that applies when a county board reduces the number of teachers at a specific grade level in an elementary school. Now, the “least qualified teacher in the grade level that needs to be reduced,” instead of the least senior teacher in the grade level to be reduced, is the one whose job is eliminated and has the option, in some instances, of bumping the school’s “least qualified” classroom teacher, instead of the school’s least senior classroom teacher. West Virginia Code § 18A-4-7a(s).

A related change was made to the Code subsection that describes the recall rights of professionals whose names are on the preferred list. Previously defined as a right to be recalled to open professional positions based on seniority, the right is now one to be recalled based on qualifications as defined in the county board policy. West Virginia Code § 18A-4-7a(l).

For purposes of these new reduction-in-force and preferred recall rules, the meaning of “qualifications” is left to each county board of education, to be set forth in a written policy. The statute prohibits a board from using salary in the definition of qualifications. It also requires the county board to consider whether to adopt the same criteria that continue to govern the assessment of candidates for posted professional vacancies: (1) appropriate certification, licensure, or both; (2) amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the required certification area; (3) the amount of course work, degree level, or both in the relevant field and degree level, generally; (4) academic achievement; (5) in the case of a classroom teaching position or the position of principal, certification by the National Board for Professional Teaching Standards; (6) specialized training relevant to the performance of the duties of the job; (7) past performance evaluations conducted pursuant to West Virginia Code § 18A-2-12 and § 18A-3C-2 or, in the case of a classroom teacher, past evaluations of the applicant’s performance in the teaching profession; (8) seniority; (9) other measures or indicators upon which the relative qualifications of the applicant may fairly be judged; (10) in the case of transfer or recall to a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and (11) in the case of transfer or recall to a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to West Virginia Code § 18-5A-5 by the faculty senate of the school at which the employee will be performing a majority of his or her duties. West Virginia Code § 18A-4-7a(l).
After considering whether to include the 11 criteria in its definition of qualifications, a county board may apparently adopt a policy that includes none or less than all of them. However, a curious provision of the House bill states that if the board decides to include any of the 11 criteria in its qualifications policy, it may do so “only after considering personnel whose last performance evaluation conducted pursuant to [the evaluation statutes] is less than satisfactory.” *West Virginia Code § 18A-4-7a(l)(2).*

Apart from the provisions for reducing elementary school classroom teacher positions, above, and despite the bill’s declaration that “all decisions on reductions in force shall be based on qualifications,” the new law does not require or even authorize a county board of education to use its county policy on “qualifications” to determine which professional employees will lose jobs in a reduction in force. Rather, the legislation specifies that the selection of professional employees to be released from employment during a reduction in force must be based on three factors. The first two factors are, as under pre-existing law, seniority, and certification/licensure. The third consideration, new to the process, is “performance evaluations.” *West Virginia Code § 18A-4-7a(m).*
2. PUBLIC CHARTER SCHOOLS

"County boards are required by House Bill 206 to have policies governing their duties as authorizers of public charter schools, including, among other issues, the processes by which they will, as authorizers, review and act on applications to establish public charter schools; conduct ongoing oversight and evaluation of public charter schools; and determine whether to renew public charter school contracts. The policies may be impacted by public charter school rules the State Board of Education is required to adopt on or before January 1, 2020, and rules that the State Board may adopt after that date. Because the deadline for the first public charter school applications is August of 2020, and because county boards are given only 90 days to approve or reject applications after they are filed, county boards are advised to place a priority on developing these policies."
3. OPEN ENROLLMENT POLICIES

"Every county board must adopt an open enrollment policy governing inter-county student transfers, to take effect July 1, 2020, that meets the requirements of House Bill 206."

For many years, a statute has provided that a student residing in one county can attend public school in another West Virginia county if the school boards of both counties approve the transfer. When a transfer occurs, the student, if full-time, is counted, for state aid purposes, in the net enrollment of the district to which the pupil transfers. But, if the student transfers on only a part-time basis, the student continues to be counted for that purpose in the net enrollment of the district of residence. Additionally, the two school districts are supposed to agree on a tuition to be paid by the county board of the student’s residence to the receiving board, not to exceed the difference between the state aid per pupil received by the two counties. The student, parent, or guardian cannot be required to pay a fee or tuition for the transfer. A county board’s refusal to consent to a student transfer can be appealed by the parent or guardian to the State Superintendent of Schools under a process established by the State Board of Education. West Virginia Code § 18-5-16; West Virginia Code § 18-5-16a.

Under House Bill 206, those provisions remain in effect until July 1, 2020. Student transfer agreements made under those provisions prior to July 1, 2020, will remain in effect on and after that date. West Virginia Code § 18-5-16(i); West Virginia Code § 18-5-16a.

For school years beginning on or after July 1, 2020, House Bill 206 requires every county board of education to, instead, adopt and implement an open enrollment policy that permits inter-county student transfers without charging tuition and without requiring approval of the school board of a student’s county of residence. The policy must clearly articulate any admission criteria, application procedures, transportation provisions, timelines for open enrollment periods, and restrictions on transfers due to building capacity limits. A parent or guardian will still be allowed to appeal, per State Board of Education policy, a county board’s refusal to accept a student’s transfer. West Virginia Code § 18-5-16(c); West Virginia Code § 18-5-16(d).

In its open enrollment policy, a county board may give enrollment preference to students (1) who are siblings of students already enrolled through open enrollment; (2) who have completed tenth grade, have become nonresidents due to family relocation, and wish to complete their education in a specific school; (3) who are children, grandchildren, or legal wards of employees; (4) whose legal residence is more proximate to a school in the receiving county, whether calculated by miles or travel time; and (5) who reside in a part of a county where topography, impassable roads, long bus rides, or other conditions prevent their practicable transportation to a school within the county of residence and where a school in a contiguous county is more easily accessible. A county will also have to comply with all enrollment requirements for children in foster care or who meet the McKinney-Vento Homeless Assistance Act’s definition of unaccompanied youth. West Virginia Code § 18-5-16(c)(1); West Virginia Code § 18-5-16(c)(2).

A county board educating a nonresident student under these new provisions is authorized, but not required, to provide transportation to the student. However, school boards do not have to uniformly provide nonresident student transportation. In deciding whether to furnish transportation to a
student from another county, a school board may consider whether the student meets the eligibility criteria for free and reduced lunch and milk. However, in the case of a student with disabilities who has an individualized education program requiring transportation, the receiving board will be required to provide transportation to and from school, or to and from an agreed pickup point on a regular transportation route, or "for the total miles traveled each day for the nonresident student to reach the school." *West Virginia Code § 18-5-16(c)(3).*
4. ALTERNATIVES THAT LSICS PROPOSE TO THE OPERATION OF A SCHOOL

"House Bill 206 requires each county board of education to establish a process to evaluate the operation of an approved LSIC alternative to the operation of a school."

The preexisting version of West Virginia Code § 18-5A-3 permitted local school improvement councils, by vote of two-thirds of their members, to propose alternatives to the operations of their schools. Under the statute, any such proposal had to meet or exceed the high quality standards established by the State Board of Education and had to be intended to (1) increase administrative efficiency, (2) enhance the delivery of instructional programs, (3) promote community involvement in the local school system, or (4) improve, in general, the school’s educational performance.

The statute required that any such proposal contain certain information. It also established a process by which each proposal would be considered, including proposals that required the waiver of a State Superintendent of Schools interpretation or a policy or rule of the state or county board of education. If a waiver request of that nature involved policies or interpretations affecting employees, a majority of the local affected employee group had to agree. In the case of proposed waivers of state statute or legislative rule, an LSIC could directly ask the Legislative Oversight Commission on Education to consider whether to recommend that the Legislature grant the request.

Under that process, all LSIC proposals for alternatives to the operations of the school were submitted to the State Board of Education for review and either approval or disapproval. Although the State Board was required to consult with the county board in reviewing a proposal, the county board’s approval of the proposal was not required. In approving a proposal, the State Board was required to establish a process to evaluate the operation of the alternative.

House Bill 206 not only continues to permit LSICs to propose alternatives to the operations of their schools; it also expressly encourages them to do so. It no longer requires that every proposal both meet or exceed the State Board’s high quality standards and have, as its purpose, one of the four enumerated outcomes listed above. It is enough that a proposal is one to enable a school to meet or exceed the high quality standards or one that seeks any one of the four enumerated outcomes. The legislation expands the list of sanctioned outcomes to include proposals to promote business partnerships, as well as proposals to promote parent involvement in the school. West Virginia Code § 18-5A-3(a).

A two-thirds vote of LSIC members is still required before a proposal will be considered. In the case of a proposal involving the waiver of policies, rules, or interpretations affecting employees, a majority of the local affected employee group must still agree, but that requirement now also applies to any proposal involving the waiver of a state statute affecting employees. West Virginia Code § 18-5A-3(c).
House Bill 206 directs LSICs to submit their proposed alternatives to the county board instead of the State Board. After requesting any additional information or clarifications from the LSIC, a county board must approve or disapprove the proposal and return it to the LSIC with a statement of reasons for the action taken. *West Virginia Code § 18-5A-3(d).*

Approval by the county board constitutes a grant of any requested waiver of county policies or rules. If an approved proposal requires waiver of any State Board policies or rules, the county board must send the approved proposal to the State Board for final determination. The State Board’s approval of the proposal constitutes a grant of the waiver. Similarly, if a county-approved proposal requires a waiver of a State Superintendent’s interpretation, the county board must send it to the State Superintendent, whose approval of the proposal constitutes a grant of the waiver. If the proposal requires waiver of a state statute, the county board must send it to the Legislative Oversight Commission on Education Accountability, which will determine whether to recommend an appropriate Act of the Legislature. *West Virginia Code § 18-5A-3(d)(1); West Virginia Code § 18-5A-3(d)(2); West Virginia Code § 18-5A-3(d)(3); West Virginia Code § 18-5A-3(d)(4).*

The county board of education, instead of the State Board, is responsible for establishing a process to evaluate the operation of an approved LSIC alternative to the operation of the school. *West Virginia Code § 18-5A-3(d)(6).*
COUNTY BOARDS OF EDUCATION MUST REVISE THESE POLICIES THAT THEY WERE ALREADY REQUIRED, BY LAW, TO HAVE
1. **SALARY SCHEDULES**

"County salary schedules should be revised to reflect the across-the-board salary increases under House Bill 206 in the minimum state salaries of professional and service employees, as well required increases in minimum state salaries for certain math and special education teachers."

For the 2019-2020 school year, and continuing thereafter, each annual salary figure appearing on the 2018-2019 state minimum salary schedule for teachers is increased by $2,120. *West Virginia Code § 18A-4-2(b)*.

Effective July 1, 2019, and solely for purposes of the state salary schedule, three additional years of experience are credited to each classroom teacher who provides math instruction in his or her certified area for at least 60% of the time that he or she instructs students. If this causes a teacher’s years of experience to exceed the maximum years of experience provided on the salary schedule, the teacher must nevertheless be paid the additional amount equivalent to three additional years of experience. *West Virginia Code § 18A-4-2(d)*.

Effective July 1, 2019, and solely for purposes of the state salary schedule, three additional years of experience are credited to each classroom teacher certified in special education and employed as a full-time special education teacher. If this causes a teacher’s years of experience to exceed the maximum years of experience provided on the salary schedule, the teacher must nevertheless be paid the additional amount equivalent to three additional years of experience. *West Virginia Code § 18A-4-2(e)*.

For the 2019-2020 school year, and continuing thereafter, each monthly salary figure appearing on the 2018-2019 state minimum pay scale for service employees is increased by $115. *West Virginia Code § 18A-4-8a(a)(1)*.
2. REDUCTION IN FORCE POLICIES

"To the extent not covered in a separate RIF “qualifications” policy (above), a county’s reduction in force policy should be modified to reflect the various changes under House Bill 206 for determining which professional employees will lose their jobs and be released or transferred in a reduction in force, which of them will be placed on the preferred recall list, and what rights persons on the preferred list have when applying for openings."

Apart from the provisions for reducing elementary school classroom teacher positions, above, and despite the bill’s declaration that “all decisions on reductions in force shall be based on qualifications,” the new law does not require or even authorize a county board of education to use its county policy on “qualifications” to determine which professional employees will lose jobs in a reduction in force. Rather, the legislation specifies that the selection of professional employees to be released from employment during a reduction in force must be based on three factors. The first two factors are, as under pre-existing law, seniority, and certification/licensure. The third consideration, new to the process, is “performance evaluations.” West Virginia Code § 18A-4-7a(m).

As to the role of performance evaluations in identifying professionals to be let go in a reduction in force, the legislation contains just one provision, and it is permissive, instead of mandatory. The statute provides that a county board “may” release from employment any classroom teacher who has unsatisfactory evaluations for the previous two consecutive years, regardless of years of service, instead of releasing less senior teachers with satisfactory performance evaluations. West Virginia Code § 18A-4-7a(m)(1).
COUNTY BOARDS MAY WISH TO MODIFY THESE POLICIES THAT THEY WERE ALREADY REQUIRED, BY LAW, TO HAVE, AND WHICH THE NEW LEGISLATION ALLOWS, BUT DOES NOT REQUIRE, THEM TO MODIFY.
1. LATERALITY POLICIES

"Laterality policies could conceivably be modified now that House Bill 206 does not mandate that, in considering the rank of each professional position, a county board must consider each job’s title; nature of responsibilities; salary level; certification, licensure, or both; and days in the period of employment."

House Bill 206 amends the rule requiring county boards to adopt policies that define which professional positions are to be treated as lateral when, to avoid release during a reduction in force, a professional employee may be entitled to bump another professional. In formulating and amending their laterality policies, counties used to have a mandatory duty to consider the rank of each position in terms of title; nature of responsibilities; salary level; certification, licensure, or both; and days in the period of employment. The amendment states that along with days in the period of employment, counties now “may” consider the first four of those indicators in defining lateral positions. West Virginia Code § 18A-4-7a(n).
2. PROMOTING SCHOOL BOARD EFFECTIVENESS

"House Bill 206 reiterates the duty to have policies to promote school board effectiveness and sets a new deadline of January 2020 for each board to have such policies."

For more than 15 years, county boards of education have been under a duty to have policies to promote school board effectiveness. Boards have also been required to review the policies annually, on or before August 1.

House Bill 206 reiterates the requirement, setting a new deadline of January 2020 for each board to have such policies. As before, the policies must address direct links between the county board of education and its local school improvement councils and faculty senates; direct links between the county board and the community at large; periodic review of personnel policies; broad guidelines for oversight, accountability, and long-range plans; and data-based decision-making. However, county boards are no longer required to file the policies and policy amendments with the State Board of Education. West Virginia Code § 18-5-14(a).

The legislation mandates that a county board meet, at least annually, with the LSIC of each school that is determined, under the State Board of Education’s accountability system, to be low-performing. County boards are permitted, but no longer required, to meet with representatives of the remaining LSICs. West Virginia Code § 18-5-14(a)(1)(A).

At least 30 days before each such required meeting, a county board of education must give the LSIC an agenda for the meeting. The agenda must require the school’s principal and LSIC chair (or a member designated by the chair) to address (1) the dialogue that occurred in the LSIC’s meeting(s) with parents, students, school employees, business partners, and other interested parties where participants were allowed to suggest how to address issues affecting the school’s academic performance; (2) any reports by the county superintendent about the school’s performance and progress; and (3) any issues designated by the county board concerning the school’s performance, curriculum, and progress in meeting the school’s improvement plan and relevant parts of the county’s strategic improvement plan. In addition to the required annual meeting, the county board can, throughout the year, make written requests for information from the LSIC of a low performing school or hold community forums to receive input from the affected community. West Virginia Code § 18-5-14(a)(1)(B); West Virginia Code § 18-5-14(a)(1)(C).
ALTHOUGH NOT REQUIRED BY LAW, COUNTY BOARDS
SOMETIMES HAVE THESE POLICIES, NOT LISTED ABOVE, THAT
SHOULD BE EXAMINED FOR CHANGES NECESSITATED OR
EXPRESSLY ALLOWED BY NEW LEGISLATION
1. EMPLOYEE DISCIPLINE POLICIES.

"Employee discipline policies should be reviewed to be sure they do not unnecessarily restrict the county board’s authority under Senate Bill 632 to suspend and dismiss school employees on new grounds."

Suspension and Dismissal of School Personnel

Senate Bill 632 adds two grounds for the suspension or dismissal of a school employee.

The first is a finding of abuse by the State Department of Health and Human Resources. In such a case, the discharged employee is not permitted to institute a grievance to challenge the action on that ground by itself. *West Virginia Code § 18A-2-8(a); West Virginia Code § 18A-2-8(b).*

The second new ground for the suspension or dismissal of a school employee is a conviction of, a guilty plea to, or a plea of no contest to a misdemeanor, where the misdemeanor charge has a rational nexus between the conduct and performance of the employee’s job. An employee charged with such a misdemeanor may, pending final disposition of the charges, be reassigned to duties not involving direct pupil interaction. *West Virginia Code § 18A-2-8(a); West Virginia Code § 18A-2-8(c).*

The legislation also allows a county board of education to take “necessary steps to suspend or dismiss any person in its employment at any time should the health, safety, and welfare of students be jeopardized or the learning environment of other students has been impacted.” *West Virginia Code § 18A-2-8(d).*

County superintendents must now report to the State Superintendent of Schools when any employee is suspended or dismissed under West Virginia Code § 18A-2-8. The report must include the rationale for that action. The State Superintendent must maintain a confidential database of all such reports, accessible only by county human resource directors, superintendents, and the State Superintendent. *West Virginia Code § 18A-2-8(c).*
2. LOCAL SCHOOL IMPROVEMENT COUNCIL POLICIES

House Bill 206 makes significant changes to the membership and operations of LSICs, including a repeal of the requirement that each LSIC hold an annual stakeholders meeting on effective discipline policies, a new requirement that each LSIC hold an annual stakeholders meeting for positive and interactive dialogue about the school’s academic performance and standing, and a change in the requirement that all LSICs meet annually with the county board. Three provisions of House Bill 206 affect the membership of local school improvement councils. The first is a new rule prohibiting any of the parent members of an LSIC from being simultaneously employed at the school in any capacity. (Previously, one of the three parent members could be so employed.) The second adds an at-large member to each LSIC, to be appointed, like the other two at-large members, by the principal. Unlike the other two at-large members, the additional at-large member need not reside in the school’s attendance area or represent business or industry. The third provision replaces one that allowed the vocational director or principal to appoint two more members of a vocational-technical school LSIC. The new provision applies not only to vocational-technical schools, but also to the LSICs of comprehensive middle schools and comprehensive high schools. It requires the school’s director or principal, as applicable, to appoint up to four additional LSIC members from the categories of employer, employer-sponsored training program, apprenticeship program, and/or post-secondary education. West Virginia Code § 18-5A-2(a)(4); West Virginia Code § 18-5A-2(a)(5); West Virginia Code § 18-5A-2(a)(5).

Previously, an LSIC chair could not serve more than two consecutive one-year terms. LSIC chairs are no longer term-limited. West Virginia Code § 18-5A-2(f).

School principals must now notify LSIC members at least five employment days, instead of two, before the annual organizational meeting. Under prior law, the notice had to be written. It can now be either written or given by electronic means. Notice of all other LSIC meetings continues to be the responsibility of the LSIC chair. As before, notice given by the chair must be written; the statute does not give the chair the option of giving notice by electronic means. The chair must now give notice five employment days in advance of a meeting instead of two days in advance. West Virginia Code § 18-5A-2(e); West Virginia Code § 18-5A-2(f); West Virginia Code § 18-5A-2(g).

The legislation repeals the requirement that local school improvement councils annually conduct a meeting to engage the public, students, school employees, and others in a dialogue about effective discipline policies. It also removes the requirement that LSICs annually develop and deliver a report to the countywide council on productive and safe schools. Instead, each LSIC must now annually conduct at least one meeting to engage parents, students, school employees, business partners, and other interested parties in a “positive and interactive dialogue” regarding the school’s academic performance and the school’s standing as determined by measures adopted by the State Board of Education. Participants in the meeting must be given an opportunity to make specific suggestions on how to address issues affecting the school’s academic performance. The issues may include parent and community involvement, the learning environment, student engagement, attendance, supports for at-risk students, curricular offerings, resources, and the capacity for school
improvement. The meeting must be announced ten employment days in advance. *West Virginia Code § 18-5A-2(h).*

Under House Bill 206, the LSICs of only those schools deemed to be low performing under the State Board's accountability system are required to meet annually with the county board of education. At the meeting, the principal and LSIC chair (or another designated member) must address the dialogue from the meeting, *above,* concerning the school's academic performance and standing, as well as any other matters identified by the county board in the meeting agenda the board provides to the LSIC. The president and chair may, at the same meeting, provide any other information, comments, or suggestions the LSIC wishes to bring to the county board's attention. Anything presented by the LSIC at this meeting must be submitted to the school board in writing. *West Virginia Code § 18-5A-2(l).*

In addition to receiving the school's cooperation in implementing certain policies and programs already identified in the LSIC statute, an LSIC is now entitled to the school's cooperation in implementing policies and programs to encourage students to adopt safe and healthy lifestyles, as well as policies and programs to communicate to students the common skills and attributes that employers seek in prospective employees. *West Virginia Code § 18A-5-2(l)(6); West Virginia Code § 18A-5-2(l)(7).*
3. PROFESSIONAL SENIORITY POLICIES

“Professional seniority policies that include provisions for breaking seniority ties should be modified to reflect the new rule of House Bill 206 for breaking seniority ties when two or more teachers initially employed on or after July 1, 2019, have the same certification and the same seniority date.”

Under statutory provisions untouched by House Bill 206, professional employee seniority is expressed as a quantity, rather than as a date, e.g., “two years” instead of “August 15, 2017.” Professional seniority also accrues in all areas of a teacher’s licensure, and not in each separate certification area, regardless of whether the employee achieved some certifications later than others. *West Virginia Code § 18A-4-7a(g); West Virginia Code § 18A-4-7a(i); West Virginia Code § 18A-4-7a(j); West Virginia Code § 18A-4-7a(k); West Virginia Code § 18A-4-7b.*

Prior to House Bill 206, in making seniority-based decisions among professionals who were tied in seniority, county boards were required to use a random process to break the tie. The result of the tiebreaker established the relative seniority of the individuals for purposes of the decision. Unlike the corresponding rule for service employees, the professional seniority provision did not state that the result of a tiebreaker was permanent. If a seniority-based decision had to later be made among the same employees while they had the same seniority, county boards typically conducted new tiebreakers. A special rule applied in breaking seniority ties among principals when making decisions on reductions in force; those ties were to be resolved based on “qualifications.”

The new legislation, in addressing seniority ties among professional employees, eliminates all the previous provisions for breaking seniority ties among professional employees. It replaces them with a single new rule that applies only when two or more persons, initially employed as regular teachers on or after July 1, 2019, have “the same certification” and the same seniority “date” (a term that is not defined). In such cases, “all employees” with an identical seniority date and the same certification must, within 30 days of when the tie occurred, participate in a random tiebreaker. The outcome of the tiebreaker will, for the duration of the participating employees’ careers with the county board of education, govern their relative seniorities within the certification as long as they have the same seniority date. The statute no longer contains a separate “qualifications” rule for breaking seniority ties among principals. *West Virginia Code § 18A-4-7a(h).*

The Legislature made two other changes to the seniority laws. One frees county boards from having to annually compile and make available to employees a list of all professional personnel, their areas of certification, and their seniority. The other entitles personnel in public charter schools “to continue to accrue seniority” in the same manner as if employed in a noncharter public school in the county “for the purpose of employment in noncharter public schools.” *West Virginia Code § 18A-4-7a(v).*
4. PERSONAL LEAVE POLICIES

“As per House Bill 206, personal leave policies addressing “leave without cause” should now reflect that professional and service employees may, each school year, use four days of paid personal leave without regard to the cause of the absence, instead of only three.”

Professional employees are now permitted, during each school year, to use four days of paid personal leave, instead of only three, without regard to the cause of the absence. *West Virginia Code § 18A-4-10(a)(3).*

Service employees are now permitted, during each school year, to use four days of paid personal leave, instead of only three, without regard to the cause of the absence. *West Virginia Code § 18A-4-10(a)(3).*
5. POSTING POLICIES

"Existing county policies that address the posting and re-posting of classroom teacher vacancies should be reviewed to be sure that the policies do not misstate the rule, liberalized by House Bill 206, for re-posting classroom teacher vacancies."

Prior to House Bill 206, county boards of education were permitted to re-post classroom teacher openings a second time to attract more qualified applicants, but only if fewer than three individuals applied during the initial posting. As amended, the statute does not restrict the re-posting of a classroom teacher vacancy to situations where there are less than three applicants under the initial posting. Nor does it limit the number of re-postings for a classroom teacher vacancy, provided that the opening is filled within 30 days of the end of the first posting period if one or more qualified persons apply under any of the postings. West Virginia Code § 18A-4-7a(q)(r).
6. TRANSPORTATION POLICIES

"Under House Bill 206, the open enrollment policy that each county must adopt to regulate inter-county student transfers beginning July 1, 2020 (above) may implicate student transportation issues that a board will want to address in any existing student transportation policy, particularly as to IEP-mandated transportation of students with disabilities."

A county board educating a nonresident student under these new provisions is authorized, but not required, to provide transportation to the student. However, school boards do not have to uniformly provide nonresident student transportation. In deciding whether to furnish transportation to a student from another county, a school board may consider whether the student meets the eligibility criteria for free and reduced lunch and milk. However, in the case of a student with disabilities who has an individualized education program requiring transportation, the receiving board will be required to provide transportation to and from school, or to and from an agreed pickup point on a regular transportation route, or "for the total miles traveled each day for the nonresident student to reach the school." West Virginia Code § 18-5-16(c)(3).
7. ATTENDANCE POLICIES

"County attendance policies may have to be revised to reflect the steps that House Bill 206 requires attendance directors, assistant attendance directors, or principals to take when students, in one school year, accumulate three unexcused absences, and when students, in one school year, accumulate five unexcused absences."

Previously, when a student had three total unexcused absences during a school year, the attendance director or assistant attendance director had to serve written notice on the parent, guardian, or custodian advising that the student’s attendance was required, and that if the student accumulated five unexcused absences, a conference with the principal or a designee would be required. When the student had five total unexcused absences during a school year, the attendance director or assistant director had to serve written notice that the parent, guardian, or custodian, along with the student, must report to the school for that conference to discuss and correct the circumstances causing the unexcused absences.

House Bill 206 replaces those requirements. Now, once a student has three unexcused absences in a school year, the attendance director, assistant director, or principal must “make meaningful contact” with the parent, guardian, or custodian to learn the reasons for the unexcused absences and what measures the school may employ to assist the student in attending school and not incurring additional unexcused absences. West Virginia Code § 18-8-4(b).

When the student has five total unexcused absences in a school year, the very same procedure is now required. The attendance director, assistant director, or principal must “make meaningful contact” with the parent, guardian, or custodian to learn the reasons for the unexcused absences and what measures the school may employ to assist the student in attending school and not incurring additional unexcused absences. West Virginia Code § 18-8-4(c).
ALTHOUGH NOT REQUIRED TO DO SO, COUNTY BOARDS MIGHT WANT TO TAKE ADVANTAGE OF NEW OPPORTUNITIES BY ADOPTING POLICIES THAT ARE DISCRETIONARY UNDER THE LEGISLATION
1. EXCEPTIONAL NEEDS EXPENSE FUND POLICIES

"House Bill 206 allows county boards to establish, from surplus funds, Exceptional Needs Expense funds for the benefit of student who are likely to perform better outside the public school setting."

County boards of education are now authorized to establish from surplus funds, by policy, an Exceptional Needs Expense Fund for the benefit of students who are likely to perform better outside the public school setting. *West Virginia Code § 18-5-48.*

Without limiting the provisions that a county might include in its policy, House Bill 206 states that the policy's provisions "may" include (1) allowing the county board to spend excess funds or donated funds on services and materials that are necessary for a student's education success but are not met within the public school district; (2) the amount of funds to be deposited into the fund annually, which may vary based on the availability of surpluses; (3) the qualifying expenses for which the funds may be used; (4) measures to protect against improper use of the funds, such as an audit of all expenditures related to an individual student for services outside the district; (5) conditions under which payments from the fund will cease; (6) eligibility requirements for service providers that can accept payments from the fund; and (7) a requirement that overpayments recaptured from refunded expenditures revert to the fund. *West Virginia Code § 18-5-48.*
2. ADDITIONAL TEACHER COMPENSATION POLICIES

"Under House Bill 206, county boards may provide additional compensation to teachers assigned and certified to teach in subject areas in which the county has a critical need and shortage of fully certified teachers, and/or who are assigned in geographical areas or schools of the county with high rates of turnover in experienced teachers, and/or who, in addition to regular teaching duties, are assigned to provide certain support and supervision to other teachers and licensure candidates."

County boards of education are now specifically permitted to provide additional compensation to teachers in three categories. The first category consists of teachers who are assigned and fully certified to teach in a subject area in which the county board finds it has a critical need and shortage of fully certified teachers. The second category consists of those who teach in schools that are in remote geographical locations or in schools that have experienced high rates of turnover in experienced teachers. The third category consists of teachers who, in addition to regularly assigned teaching duties, are assigned as a master teacher, academic coach, or other title with duties that include providing strong school-based support and supervision to assist licensure candidates in a clinical internship, beginning teachers, and other teachers at the school to improve professional practice as set forth in the county's comprehensive system of support for teacher and leader induction and professional growth. West Virginia Code § 18A-4-5a(a)(3); West Virginia Code § 18A-4-5a(a)(4); West Virginia Code § 18A-4-5a(a)(5).
These materials are presented with the understanding that the information provided is not legal advice. Due to the rapidly changing nature of the law, information contained in these materials may become outdated. Anyone using information contained in these materials should always research original sources of authority and update this information to ensure accuracy when dealing with a specific matter. No person should act or rely upon the information contained in these materials without seeking the advice of an attorney.