

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**ENGROSSED**

### **House Bill 4776**

BY DELEGATES GEARHEART, ELLINGTON, SMITH,  
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[Introduced January 16, 2024; Referred

to the Committee on Education]



1 A BILL to amend and reenact §18A-5-1 of the Code of West Virginia, 1931, as amended, relating  
2 to adding elementary schools into school disciplinary measures added during the 2023  
3 Regular Session of the Legislature.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

**§18A-5-1. Authority of teachers and other school personnel; exclusion of students having  
infectious diseases; suspension or expulsion of disorderly students; corporal  
punishment abolished.**

1 (a) The teacher shall stand in the place of the parent(s), guardian(s), or custodian(s) in  
2 exercising authority over the school and has control of all students enrolled in the school from the  
3 time they reach the school until they have returned to their respective homes, except where  
4 transportation of students is provided, the driver in charge of the school bus or other mode of  
5 transportation shall exercise such authority and control over the students while they are in transit  
6 to and from the school.

7 (b) Subject to the rules of the state Board of Education, the teacher shall exclude from the  
8 school any student known to have, or who is suspected of having, any infectious disease, or any  
9 student who has been exposed to any infectious disease and shall immediately notify the proper  
10 health officer or medical inspector of the exclusion. Any student so excluded may not be  
11 readmitted to the school until he or she has complied with all the requirements of the rules  
12 governing those cases or has presented a certificate of health signed by the medical inspector or  
13 other proper health officer.

14 (c) The teacher, may exclude from his or her classroom or school bus any student who is  
15 guilty of disorderly conduct; who in any manner interferes with an orderly educational process;  
16 who behaves in a manner that obstructs the teaching or learning process of others in the  
17 classroom; who threatens, abuses or otherwise intimidates or attempts to intimidate a school  
18 employee or a student; who willfully disobeys a school employee; or who uses abusive or profane

19 language directed at a school employee. Any student excluded shall be placed under the control  
20 of the principal of the school or a designee. The excluded student may be admitted to the  
21 classroom or school bus only when the principal, or a designee, provides written certification to  
22 the teacher that the student may be readmitted and specifies the specific type of disciplinary  
23 action, if any, that was taken. If the principal finds that disciplinary action is warranted, he or she  
24 shall provide written and, if possible, telephonic notice of the action to the parent(s), guardian(s),  
25 or custodian(s). When a student is excluded from a classroom or a school bus two times in one  
26 semester, and after exhausting all reasonable methods of classroom discipline provided in the  
27 school discipline plan, the student may be readmitted to the classroom or the school bus only  
28 after the principal, teacher and, if possible, the parent(s), guardian(s), or custodian(s) of the  
29 student have held a conference to discuss the student's disruptive behavior patterns, and the  
30 teacher and the principal agree on a course of discipline for the student and inform the parent(s),  
31 guardian(s), or custodian(s) of the course of action. Thereafter, if the student's disruptive behavior  
32 persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student  
33 to another setting. The Legislature finds that isolating students or placing them in alternative  
34 learning centers may be the best setting for chronically disruptive students. The county board  
35 shall create more alternative learning centers or expand its capacity for alternative placements,  
36 subject to funding, to correct these students' behaviors so they can return to a regular classroom  
37 without engaging in further disruptive behavior.

38 (d) When a grade six through 12 teacher, excluding an elementary school teacher,  
39 determines that the behavior of the student is disorderly conduct, is interfering with an orderly  
40 educational process, or obstructs the teaching or learning process of others in the classroom:  
41 (1) The student may be excluded from that teacher's classroom and if excluded may not  
42 re-enter that teacher's classroom for at least the remainder of the instructional day;  
43 (2) If the student is excluded pursuant to subdivision (1) of this subsection;

44 (A) The principal shall communicate with the teacher within 24 hours of the student being  
45 excluded from the teacher's classroom about the exclusion;

46 (B) The teacher has 24 hours to create an electronic record and place the report of this  
47 action into the West Virginia Education Information System (WVEIS), without any repercussion to  
48 the teacher; and

49 (C) If the student is removed from a classroom a total of three times in one month for one  
50 or more of the behaviors set forth in this subsection, the student shall receive as determined by  
51 the principal an in-school suspension, an out-of-school suspension, or may be considered for  
52 placement in an alternative learning center if one is available within the school district.

53 (e) The Legislature finds that suspension from school is not appropriate solely for a  
54 student's failure to attend class. Therefore, a student may not be suspended from school solely  
55 for not attending class. Other methods of discipline may be used for the student which may  
56 include, but are not limited to, detention, extra class time, or alternative class settings.

57 (f) Corporal punishment of any student by a school employee is prohibited.

58 (g) Each county board is solely responsible for the administration of proper discipline in  
59 the public schools of the county and shall adopt policies consistent with the provisions of this  
60 section to govern disciplinary actions. These policies shall encourage the use of alternatives to  
61 discipline practices, provide for the training of school personnel in alternatives to discipline  
62 practices, and provide for encouraging the involvement of parent(s), guardian(s) or custodian(s)  
63 in the maintenance of school discipline. To promote a teaching and learning environment free  
64 from substantial classroom disturbances, each county board shall ensure that each school  
65 implements a tier system policy, with teacher input, to provide a framework for student behaviors  
66 and punishments. The policy shall be clear and concise with specific guidelines and examples.  
67 The principal shall support the teacher in the discipline of the students if proper cause and  
68 documentation is provided following the schoolwide discipline policy. The teacher may not be  
69 reprimanded if their actions are legal and within the structure of the county board's policy for

70 student behavior and punishment. The county board policies shall also include an appeal  
71 procedure whereby a teacher may appeal to the county superintendent if a school principal  
72 refuses to allow the exclusion of a student from the classroom or if a teacher believes the school  
73 principal has prematurely ended the exclusion of a student from the classroom. The county boards  
74 shall provide for the immediate incorporation and implementation in schools of a preventive  
75 discipline program which may include the responsible student program and a student involvement  
76 program, which may include the peer mediation program, devised by the West Virginia Board of  
77 Education. Each county board may modify those programs to meet the particular needs of the  
78 county. The county boards shall provide in-service training for teachers and principals relating to  
79 assertive discipline procedures and conflict resolution. The county boards also may establish  
80 cooperatives with private entities to provide middle educational programs, which may include  
81 programs focusing on developing individual coping skills, conflict resolution, anger control, self-  
82 esteem issues, stress management and decision making for students, and any other program  
83 related to preventive discipline.

84 (h) For the purpose of this section:

85 (1) "Student" includes any child, youth or adult who is enrolled in any instructional program  
86 or activity conducted under board authorization and within the facilities of, or in connection with,  
87 any program under public school direction: *Provided*, That, in the case of adults, the student-  
88 teacher relationship shall terminate when the student leaves the school or other place of  
89 instruction or activity;

90 (2) "Teacher" means all professional educators as defined in §18A-1-1 of this code and  
91 includes the driver of a school bus or other mode of transportation; and

92 (3) "Principal" means the principal, assistant principal, vice principal or the administrative  
93 head of the school, or a professional personnel designee of the principal or the administrative  
94 head of the school.

95 (i) Teachers shall exercise other authority and perform other duties prescribed for them by  
96 law or by the rules of the state board not inconsistent with the provisions of this chapter and  
97 chapter 18 of this code.

98                   (j) A teacher may remove a student in grades pre-k through 5 only under the following  
99                   circumstances:

100 (1) Through documentation by the teacher that the student's behavior is repeatedly  
101 interfering with the teacher's instruction and classmates' ability to learn. If the teacher determines  
102 that the student has consistently shown unruly, disruptive, or abusive behavior and affects his or  
103 her classmates' abilities to learn or if the student shows violent and aggressive behaviors, causing  
104 or intending to cause physical harm, to the teacher or the students in the classroom setting.

105        (2) The student may not be returned to that teacher's classroom without the teacher's  
106        consent unless the discipline committee, established by each individual school, determines that  
107        such placement is the best or only alternative available. If the student was removed from the  
108        teacher's class due to any physically harming behaviors or the intent to physically harm, the  
109        student may not be returned to the teacher's class without the teacher's consent and the teacher  
110        may not be coerced to consent.

111        (3) Not later than the third day of class after the day on which a student is removed from  
112        class by the teacher under this section, or by the school principal or other appropriate  
113        administrator under this section, the school discipline team shall schedule a conference including  
114        the teacher who requested removal of the student, the guardian of the student, and principal. The  
115        student may not be returned to the regular classroom pending the conference. Following the  
116        conference, and whether or not each requested person is in attendance after valid attempts to  
117        require the persons attendance, the school discipline team shall take consideration of the factors  
118        under this section and shall order the placement of the student for a period consistent with the  
119        schoolwide discipline policy.

120        (4) Before ordering the suspension, expulsions, removal to a disciplinary alternative  
121        education program, or placement in another classroom, the school discipline team shall consider  
122        whether the student acted in self-defense, the intent or lack of intent at the time the student  
123        engaged in the conduct, the students disciplinary history, and whether the student has a disability  
124        that substantially impairs the students capacity to appreciate the wrongfulness of the students  
125        conduct regardless of whether the decision of the behavior coordinator concerns a mandatory or  
126        discretionary action.

127        (5) Exceptions may be made when a student's behavior is characteristic of his or her  
128        diagnosis and is addressed in that student's IEP plan or 504 plan.