

Wayne County Board of Education
Policies Update: (Service Personnel) (9)

- ***Policy 4120 (Service Personnel: Employment of Service Personnel)***
- ***Policy 4120.01 (Service Personnel: Food Service Personnel)***
- ***Policy 4120.12 (Service Personnel: Areas of Critical Need and Shortage for Substitute Bus Operators)***
- ***Policy 4125 (Service Personnel: Competency Testing for Service Personnel)***
- ***Policy 4160.02 (Service Personnel: Physical Examination/Qualifications for School Bus Operators)***
- ***Policy 4162 (Service Personnel: Drug and Alcohol Testing of CDL License Holders)***
- ***Policy 4213 (Service Personnel: Student Supervision and Welfare by Service Personnel)***
- ***Policy 4217 (Service Personnel: Weapons)***
- ***Policy 4340 (Service Personnel: Grievance Procedure)***

***Your comments concerning these policy should be sent
in writing (mail or email) to:***

***Mr. Todd Alexander
Superintendent
Wayne County Board of Education
PO Box 70
Wayne, WV 25570
Email: talexand@k12.wv.us***

***These policies are out for public comment for 10 working days beginning
Wednesday, April 15, 2026 through Tuesday, April 28, 2026***

Book	Public Comment Period 4/15/26 thru 4/28/26
Section	First Reading - Agenda 4/14/26
Title	EMPLOYMENT OF SERVICE PERSONNEL
Code	po4120
Status	
Adopted	May 26, 2015
Last Revised	September 10, 2024

4120 - **EMPLOYMENT OF SERVICE PERSONNEL**

The Board of Education recognizes that it is vital to the successful operation of the ~~District~~ County that positions created by the Board be filled with qualified and competent personnel.

The Board shall not employ for the first time any person who has not obtained a high school diploma or general educational development certificate (GED) or who is not enrolled in an approved adult education course by the date of employment in preparation for obtaining a GED: Provided, however, that such employment is contingent upon continued enrollment or successful completion of the GED program; Provided further, that this paragraph shall not apply to school bus drivers who are twenty-one (21) years of age or older: Provided further, that this paragraph shall not apply to cooks or custodians.

[x] All applications for employment shall be referred to the Personnel Office.

The employment of service personnel shall be made by the Board only upon nomination and recommendation of the Superintendent. **(x)** When any recommended candidate has been rejected by the Board, the Superintendent shall make a substitute recommendation at such time as an appropriate notice and agenda item is provided.

A Board shall make decisions affecting promotions and the filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel on the basis of seniority, qualifications and evaluation of past service.

- A. Seniority begins on the date that s/he enters into his/her assigned duties. For the purpose of filling vacancies, seniority is accumulated within particular classification categories of employment as those classification categories are referred to in WV Code 18A-4-8. If requested by the employee, the Board must show valid cause why an employee with the most seniority is not promoted or employed in the position for which s/he applies.
- B. Qualifications means that the applicant holds a classification title in his/her category of employment and must be given first opportunity for promotion and filling vacancies. Other employees then must be considered and shall qualify by meeting the definition of the job title that relates to the promotion or vacancy as defined in WV Code 18A-4-8. Achieving a passing score on the State competency test shall conclusively demonstrate the qualification of an applicant for a classification title. Once an employee passes the competency test of a classification title, the applicant shall be fully qualified to fill vacancies in that classification category of employment (see Competency Testing for Service Personnel, Policy 4125). Qualified applicants shall be considered in the following order:
 1. regularly employed service personnel who hold a classification title within the classification category of the vacancy;
 2. service personnel who have held a classification title within the classification category of the vacancy whose employment has been discontinued due to a reduction-in-force;
 3. regularly employed service personnel who do not hold a classification title within classification category of the vacancy;

4. service personnel who have not held a classification title within the classification category of the vacancy and whose employment has been discontinued due to a reduction-in-force;
5. substitute service personnel who hold a classification title within the classification category of the vacancy;
6. substitute service personnel who do not hold a classification title within the classification category of the vacancy; and
7. new service personnel.

The assignment of an aide to a particular position within a school is based on seniority within the aide classification category if the aide is qualified for the position.

The assignment of a custodian to work shifts in a school or work site is based on seniority within the custodian classification category.

Due to the shortages of substitutes in service personnel positions, a service personnel may substitute on a day-to-day basis in a position outside of their regular full-time position; provided, that a service personnel may not substitute in another position if: a qualified substitute is available to fill the shift; the shift interferes with their regular duties and/or responsibilities; and the service personnel assuming the shift is not properly certified and trained for that position.

All persons employed for the first time in a position as Supervisor of Transportation or in a multi-classification position that includes this title shall have five (5) years of experience working in the transportation department of a ~~district~~ county board. Experience working in the transportation department shall consist of serving as a bus operator, bus aide, assistant mechanic, mechanic, chief mechanic or in a clerical position within the transportation department.

All persons employed for the first time in a position as a director, assistant director, or coordinator of transportation shall possess a commercial driver's license within one (1) year of employment except that this requirement shall not apply to persons who are multiclassified, hold multiple job titles, or provide documentation from a physician that they have a medical diagnosis that renders them physically unqualified to obtain a commercial driver's license.

A service employee with the class title of "school bus supervisor" must either currently be certified to operate a bus or have previously been certified to operate a bus.

A spouse of the Superintendent or a Board member may be employed by the Board as a service employee, provided that the Board member whose spouse is being considered for such employment must not participate in any way in the discussion or vote and must leave the Board meeting during such discussion and vote. In the case of the Superintendent's spouse who is considered for such employment, the Superintendent must not participate in any way in the discussion.

The Board will not employ as service personnel the unemancipated children or, except for a spouse, a dependent (IRS criteria) of the Superintendent or any member of the Board. Otherwise, the Board may employ the Superintendent's or a Board member's relatives, including his/her parent or parent-in-law, brother or sister, brother-in-law or sister-in-law, child, son-in-law or daughter-in-law, grandparent, or grandchild. When any such relative of a Board member is employed as a service employee, the related Board member shall not participate in any way in the discussion or vote on the employment, and the Board member shall leave the Board meeting during the discussion and vote. In the case of the Superintendent's relative, the Superintendent shall not participate in the discussion. Thereafter, the Board member may not vote on a personnel matter involving his/her relative unless the matter affects the relative as a member of a profession or occupation, or as a member of a class of at least five (5) persons.

[x] No individual shall be appointed to a service personnel position in which s/he would be responsible for supervising his/her spouse, or in which s/he would be supervised by his/her spouse.

[] No individual shall be appointed to a service personnel position in which s/he would be responsible for supervising a member of his/her immediate family, or in which s/he would be supervised by a member of his/her spouse. A service personnel employee's immediate family members are his/her spouse, parent or parent-in-law, brother or sister, brother-in-law or sister-in-law, child, son-in-law or daughter-in-law, grandparent, or grandchild.

[x] Any person who intentionally misstates facts material to his/her qualifications for employment or the determination of salary shall be subject to dismissal by the Board.

[x] Prior to recommending a candidate to the Board, the Superintendent shall ascertain that the applicant for employment for a service personnel position is qualified in that s/he holds or has held a classification title in the required category of employment or has achieved a passing score on the West Virginia State Board of Education's competency test for the classification title of the vacancy.

Beginning July 1, 2014, any person previously employed as an aide in a pre-kindergarten or kindergarten program (refer to WV Code 18-5-18) and who is employed in the same capacity on and after that date and any new person employed in that capacity in a pre-kindergarten or kindergarten program on and after that date shall hold the position of either Early Childhood Classroom Assistant Teacher I, Early Childhood Classroom Assistant Teacher II or Early Childhood Classroom Assistant Teacher III. Any person employed as an aide in a pre-kindergarten or kindergarten program ~~that who~~ is eligible for full retirement benefits before July 1, 2020, may remain employed as an aide in that position and upon application, shall be granted an Early Childhood Classroom Assistant Teacher II, permanent authorization by the State Superintendent.

Paraprofessional in Federally-Funded Programs

Effective with the 2017-18 school year, all paraprofessionals in Federally-funded programs must meet applicable West Virginia State certification and licensure requirements.

The Superintendent shall prepare procedures for the recruitment and selection of all service personnel.

***The provisions of this policy are entirely contained in the listed statutes and do not constitute any opinion or intent of the Board of Education.**

Cross Reference:

po4125 - COMPETENCY TESTING FOR SERVICE PERSONNEL

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West Virginia State Board of Education policy 5000

West Virginia State Board of Education policy 5202

WV Code 5-11-9a, 15-1F-8. 18A-2-1, 18A-4-8, 18A-4-8b, 18A-4-8e, 18A-4-8g

WV Code 18-5-18

Cross References

po4125 - COMPETENCY TESTING FOR SERVICE PERSONNEL

Book	Public Comment Period 4/15/26 thru 4/28/26
Section	First Reading - Agenda 4/14/26
Title	FOOD SERVICE PERSONNEL
Code	po4120.01
Status	
Adopted	May 26, 2015
Last Revised	October 11, 2022

4120.01 - **FOOD SERVICE PERSONNEL**

Employment of food service personnel must comply with all Federal and State laws and regulations.

The employment term for food service personnel may not be less than ten (10) months. A month is defined as twenty (20) employment days. The beginning and closing dates of the ten (10) month employment term may not exceed forty-three (43) weeks. The Board of Education may contract food service personnel for a longer term, and, if on a yearly or twelve (12) month basis, may be employed by calendar months.

Food service personnel employed for the first time must ~~hold a high school diploma or general education development certificate (GED) or Test Assessing Secondary Completion (TASC) certificate or be enrolled in an approved adult education course for TASC completion at the time of employment and~~ pass the West Virginia State Board of Education's competency test for the classification category of the job. The cafeteria manager class title is included in the same classification category as cooks and has the same competency test.

The Board shall make decisions affecting promotions and the filling of any food service personnel positions of employment or jobs on the basis of seniority, qualifications and evaluation of past service.

An employee's seniority begins on the date that s/he enters into his/her assigned duties and is accumulated within particular job classification categories as those classification categories are referred to in WV Code 18A-4-8e.

Qualifications shall mean that the applicant holds a classification title in his/her category of employment. ~~The cafeteria manager class title shall be included in the same classification category as a Cook I, II, and III.~~

[x] A qualified employee with satisfactory evaluations shall be considered before those employees with an unsatisfactory evaluation regardless of seniority.

Applicants shall be considered in the following order:

- A. regularly employed food service personnel who are employed in the classification category of the vacancy
- B. service personnel who have held a classification within the classification category of the vacancy whose employment has been discontinued due to a reduction-in-force
- C. regularly employed service personnel who are not employed in the classification category of the vacancy
- D. service personnel who have not held a classification title within the classification category of the vacancy and whose employment has been discontinued due to a reduction-in-force
- E. substitute service personnel who hold a classification title within the classification category of the vacancy
- F. substitute service personnel who do not hold a classification title within the classification category of the vacancy;
and

G. new service personnel

The Board shall post and date notices of all job vacancies of established existing or newly created positions in conspicuous places for all school service employees to observe for at least five (5) working days, as well as on the ~~District's~~ **County's** website. The notice of the job vacancies shall include the job description, the period of employment, the amount of pay and any benefits and other information that is helpful to the employees to understand the particulars of the job. After the five (5) day minimum posting period, all vacancies shall be filled within twenty (20) working days from the posting closing date. Job postings for vacancies shall be written so as to ensure that the largest possible pool of qualified applicants may apply. Job postings may not require criteria ~~which that~~ are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant.

The Board will not employ as food service personnel the unemancipated children or, except for a spouse, a dependent (IRS criteria) of the Superintendent or of any member of the Board. Otherwise, the Board may employ the Superintendent's or a member's relatives, including his/her parent or parent-in-law, brother or sister, brother-in-law or sister-in-law, child, son-in-law or daughter-in-law, grandparent, or grandchild. When any such relative of a Board member is employed as a food service employee, the related Board member shall not participate in any way in the discussion or vote on the employment, and the Board member shall leave the Board meeting during the discussion and vote. In the case of the Superintendent's relative, the Superintendent shall not participate in any way in the discussion. Thereafter, the Board member may not vote on a personnel matter involving his/her relative unless the matter affects the Board member's relative as a member of a profession or occupation, or as a member of a class of at least five (5) persons.

☒ No individual shall be appointed to a food service personnel position in which s/he would be responsible for supervising his/her spouse, or in which s/he would be supervised by his/her spouse.

☐ No individual shall be appointed to a food service personnel position in which s/he would be responsible for supervising a member of his/her immediate family, or in which s/he would be supervised by a member of his/her spouse. A food service employee's immediate family members are his/her spouse, parent or parent-in-law, brother or sister, brother-in-law or sister-in-law, child, son-in-law or daughter-in-law, grandparent, or grandchild.

☒ Any person who intentionally misstates facts material to his/her qualifications for employment or the determination of salary shall be subject to dismissal by the Board.

The Board shall employ and the Superintendent, subject to the approval of the ~~District~~ **County** Board, shall assign substitute food service personnel on the basis of seniority to perform any of the following duties:

A. to fill the temporary absence of another food service employee;

B. to fill the position of a regular food service employee who either requests a leave of absence from the Board in writing and is granted the leave in writing by the Board, or is on workers' compensation and absent;

If such an absence is to extend beyond thirty (30) working days, the Board shall post the position of the absent employee under the procedure set forth above for filling vacancies in established existing or newly created positions. If a substitute service person is employed to fill the position of the absent employee and is employed in the position for, twenty (20) or more working days, the substitute service person acquires regular employee status with the exception of regular employee job bidding rights, does not accrue regular seniority, and is accorded all other rights, privileges and benefits pertaining to the position until the regular employee returns to the position or ceases to be employed by the Board. If a regular or substitute employee fills a vacancy related in any manner to a leave of absence or the absence of an employee on workers' compensation as provided above, upon termination of the absence the employee shall be returned to his/her original position or status.

C. to perform the service of a food service employee who is authorized to be absent from duties without loss of pay;

D. to temporarily fill a vacancy in a permanent position caused by severance of employment by the resignation, transfer, retirement, permanent disability, dismissal for cause, or death of the regular food service employee who has been assigned to fill the position;

Within twenty (20) working days from the commencement of the vacancy, the Board shall fill the vacancy under the procedures set forth above. The person hired to fill the vacancy shall have and shall be accorded all rights, privileges and benefits pertaining to the position.

E. to fill the vacancy created by a regular food service employee's suspension;

If the suspension is for more than thirty (30) working days, the Board shall post the position of the suspended employee under the procedures set forth above for filling vacancies in established existing or newly created positions. If a substitute service employee is employed to fill the suspended employee's position, the substitute acquires regular employment status with the exception of regular employee job-bidding rights, does not accrue regular seniority, and is accorded all rights, privileges and benefits pertaining to the position until the termination by the Board becomes final or the suspended employee is returned to employment. If the suspended employee is not returned to his/her job, the Board shall fill the vacancy under the procedures set out above for filling vacancies in established existing or newly created positions.

- F. to temporarily fill a vacancy in a newly created food service position prior to employment of food service personnel on a regular basis.

Absences of food service personnel shall be filled in the following manner:

- A. Regular food service employees employed in the same building or working station as the absent food service employee and in the same classification category of employment as the absent employee, shall be first offered the opportunity to fill the position of the absent employee on a rotating and seniority basis, with a substitute food service employee then filling the regular employee's position. A regular employee assigned to fill the position of an absent employee shall be given the opportunity to hold that position throughout the absence.
- B. If no regular food service employees fill the position of the absent employee under that procedure, then the food service substitute with the greatest length of service time in the vacant category of employment, that is, from the date s/he began his/her assigned duties as a substitute in that particular category of employment, shall be given priority in accepting the assignment throughout the period of the regular employee's absence or until the vacancy is filled on a regular basis under the procedures set out above for filling vacancies in established existing or newly created positions. All food service substitutes shall be employed on a rotating basis according to the length of their service time until each substitute has had an opportunity to perform similar assignments.

Food Service personnel are classified as follows:

- A. "Cafeteria Manager" means a person ~~referred to in the Cook III classification who is~~ employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, monitoring freezers and temperatures on equipment, communicating with the food service supervisor or food service director, ~~monitoring freezers and temperatures on equipment, communicating with the food service supervisor or food service director,~~ preparing financial reports, and keeping records pertinent to food services of a school ~~and maintaining that an appropriate time per day will be for ordering/emailing and paperwork as needed.~~
- B. "Cook I" means a person employed as a cook's helper.
- C. "Cook II" means a person employed to interpret menus and to prepare and serve meals in a food service program of a school, or a person who has been employed as a "Cook I" for a period of four (4) years.
- D. "Cook III" means a person employed ~~to assist the cafeteria manager, interpret menus and to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system, and act as the cafeteria manager if that employee is absent.~~

[INSERT STAFFING RATIOS HERE IF ADOPTED]

Decisions affecting food service personnel with respect to extra-duty assignments shall be made in the following manner:

- A. An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting extra duty assignments.
- B. Other fellow employees shall then follow on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignments. The cycle then shall be repeated.

An alternate procedure for making extra-duty assignments () may (x) may not **[end of option]** be utilized. In order for an alternative procedure to be used, it must be approved both by the Board and by an affirmative vote of two-thirds (2/3's) of the food service employees within the affected classification categories. "Extra-duty assignments" are defined as irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

In order to maintain a high degree of productivity and performance, school food service employees will be evaluated periodically in compliance with adopted evaluation policies.

A grievance procedure has been adopted by the State of West Virginia to enable food service employees to reach solutions to problems which arise within the scope of their respective employment relationships to the end that good morale may be maintained, effective job performance may be enhanced and the citizens of the community may be better served. This procedure is intended to provide a fair, efficient, cost-effective, and consistent process for resolving problems.*

*All language in this policy comes directly from the statutes and WVBE policies listed below and does not reflect the independent judgment or intent of the Board of Education.

Cross References:

po4125 - COMPETENCY TESTING FOR SERVICE PERSONNEL

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Legal	WV Code 6C-2-1, et seq.
	WV Code 18A-4-8
	WV Code 18A-4-8b
	WV Code 18A-4-8e
	WV Code 18A-4-15
	West Virginia State Board of Education policy 4320

Cross References	po4125 - COMPETENCY TESTING FOR SERVICE PERSONNEL
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Book	Public Comment Period 4/15/26 thru 4/28/26
Section	First Reading - Agenda 4/14/26
Title	AREAS OF CRITICAL NEED AND SHORTAGE FOR SUBSTITUTE BUS OPERATORS
Code	po4120.12
Status	
Adopted	September 15, 2015
Last Revised	September 23, 2025

Revised Policy - Volume 17, No. 2 - August 2025

4120.12 - AREAS OF CRITICAL NEED AND SHORTAGE FOR SUBSTITUTE BUS OPERATORS

Bus Operators

The purpose of this policy, as recommended by the Superintendent, is to provide for the employment of retired bus operators as substitute bus operators on an expanded basis in this area of critical need and shortage.

The Board of Education hereby adopts the definition of "area of critical need and shortage" set forth in West Virginia Code 18A-4-15a as follows: "Area of critical need and shortage for substitute bus operators" means that the number of available qualified substitute bus operators in the county who are not retired and are available and willing to accept substitute bus operator assignments is insufficient to meet the projected need for qualified substitute bus operators.

The Board additionally finds and determines that:

- A. there presently exists within the County a critical need for substitute bus operators
- B. there is also a shortage of available qualified substitute bus operators, who are not retired, available to cover this critical need.

Accordingly, the Board hereby authorizes the employment of retired bus operators as substitute bus operators during the ~~2025-2026~~ ~~2024—2025~~ school year on an expanded basis in this area of critical need and shortage noted above as is recommended by the Superintendent. In no case shall a retired substitute bus operator be employed where there is available for employment another qualified bus operator who is not retired and who will accept the substitute assignment.

This policy shall be effective upon approval by the West Virginia Board of Education for the ~~2024—2025~~ ~~2025-2026~~ year only, subject to annual review by the County Board and re-approval by the West Virginia Board of Education.

Prior to employment of a retired bus operator as a critical need substitute bus operator beyond the post-retirement employment limitations established by the Consolidated Public Retirement Board, the county superintendent submits to the state board in a form approved by the Consolidated Public Retirement Board and the state board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired bus operators as substitutes to address its critical need and shortage, the name or names of the person or persons to be employed as a critical need substitute pursuant to the policy, the date that the person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. Upon verification of compliance with this section and the eligibility of the critical need substitute bus operator for employment beyond the post-retirement limit, the state board shall submit the affidavit to the Consolidated Public Retirement Board.

The County Board shall cooperate with the West Virginia Board of Education to verify the county's compliance with the requirements of WV Code and verify the eligibility of the critical needs substitute bus operator (i.e., adoption of local policy, prior electronic posting of position opening, retirement date effective before the first day of July, preceding at least the fiscal year during which s/he is employed, continuous and ongoing posting seeking fully qualified non-retired bus operators, and absence of a non-retired bus operator who holds qualification and training in the required area).

When a retired bus operator is employed as a substitute to fill a vacant position, the County shall continue to post the vacant position electronically and easily accessible to prospective employees until it is filled with a regularly employed bus operator who is fully qualified for the position. Such posting will only be required once at the beginning of the year and once mid-year. This does not apply when filling a bus operator position of a regular bus operator on leave of absence, nor does it apply when a position is filled with a certified bus operator, but the bus operator is not available at the time the bus operators accepts the position.

The County Superintendent shall forward a copy of this policy annually to the State Superintendent of Schools for approval by the West Virginia Board of Education prior to employment of retired bus operators on an expanded basis as substitutes in areas of critical need and shortage for bus operators.

A retired bus operator is eligible to be employed as a critical needs substitute to fill a vacant position without any loss of retirement benefits attributed to the annuity reserve only if the retired bus operator's retirement became effective before the first day of July preceding at least the fiscal year during which s/he is employed as a critical need substitute.

Every contract of employment for such retired bus operator to be employed for periods beyond the post-retirement employment limitation established by the consolidated public retirement board shall include therein the following information:

Any person who retires and begins work as a substitute bus operator within the same fiscal year shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree critical needs substitute bus operator in that fiscal year and ending with the month following the date the retiree ceases to perform service as a critical needs substitute bus operator.

Retired bus operators employed to perform expanded substitute service provided in this policy are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and shall not accrue seniority.

The West Virginia Code that authorizes this policy is scheduled to expire June 30, ~~2028~~ 2030, unless extended by the legislature.

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Legal

WV Code 18A-4-15a

Book	Public Comment Period 4/15/26 thru 4/28/26
Section	First Reading - Agenda 4/14/26
Title	Revised Policy - Volume 16, No.2 - December 2024 - COMPETENCY TESTING FOR SERVICE PERSONNEL
Code	po4125
Status	
Adopted	May 26, 2015
Last Revised	June 28, 2022

Revised Policy - Volume 16, No.2 - December 2024

4125 - COMPETENCY TESTING FOR SERVICE PERSONNEL

The purpose of ~~these tests are~~ competency tests is to determine the qualifications of new applicants seeking initial employment in a classification as either a regular or substitute employee or an existing employee for employment in another classification. Competency tests shall not be used to evaluate employees who hold the classification title in the category of their employment. The Board must use the State-approved competency test in its entirety with no additions to the test. The Board is not permitted to require additional testing for classifications or use DistrictCounty-developed tests. The Board may consider job-related factors in addition to the statutory-~~qualification~~ qualifications, if necessary, for the successful performance of the posted vacancy. Competency tests align with the classification definition in WV Code 18A-4-8.

~~Competency tests align with the classification definition in WV Code 18A-4-8. Each classification title defined and listed in WV Code 18A-4-8a shall be considered a separate classification category of employment for service personnel and shall have a separate competency test, except for those class titles having Roman numeral designations, which shall be considered a single classification of employment and shall have a single competency test. The cafeteria manager class title shall be included in the same classification category as cooks and shall have the same competency test. The executive secretary class title shall be included in the same classification category as secretaries and shall have the same competency test. The classification titles of chief mechanic, mechanic and assistant mechanic shall be included in one (1) classification title and shall have the same competency test. For multi-classified positions, the applicant must be able to pass all relevant competency tests.~~

~~Competency tests are based on classifications and include a combination of written and performance tests. The written test provides the District with the applicant's knowledge of the classification's job duties and responsibilities. The performance test demonstrates the applicant's ability to perform tasks related to the classification.~~

Successful passage of competency tests required by the State is necessary for employment by the County. For multi-classified positions, the applicant must be able to pass all relevant competency tests. A valid license/certificate from a reputable agency or institution is also acceptable for certain classifications as found in the WVDE's Service Personnel Manual located on the WVDE's website. Applicants holding a valid license/certification in certain classifications are not required to take a competency test.

Cross References

po4120 - EMPLOYMENT OF SERVICE PERSONNEL

po4120.01 - FOOD SERVICE PERSONNEL

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Legal	WV Policy 5314
	Board of Education of the County of Randolph v. Scott, No. 31691
	WV Code 18A-4-8e

Cross References

po4120 - EMPLOYMENT OF SERVICE PERSONNEL

po4120.01 - FOOD SERVICE PERSONNEL

Book	Public Comment Period 4/15/26 thru 4/28/26
Section	First Reading - Agenda 4/14/26
Title	Revised Policy - Volume 18, No. 1 - January 2026 - PHYSICAL EXAMINATION/QUALIFICATIONS FOR SCHOOL BUS OPERATORS
Code	po4160.02
Status	
Adopted	May 26, 2015
Last Revised	July 25, 2023

Revised Policy - Volume 18, No. 1 - January 2026

4160.02 - PHYSICAL EXAMINATION/QUALIFICATIONS FOR SCHOOL BUS OPERATORS

The school bus operator shall pass a physical examination from a Medical Examiner as specified by West Virginia Board of Education Policy 4336. This examination shall be conducted no earlier than April 1st to receive certification for the following school term.

The County Superintendent shall maintain a copy of the physical examination of each operator.

- A. A copy of the physical examination for designated Head Start operators is to be maintained by the employing agency.
- B. Physical examinations shall be recorded on the USDOT Medical Examination Report Form (for Commercial Driver Medical Certification). It is required that the physical examination be performed by an FMCSA-certified medical examiner because other medical providers may not be sufficiently informed regarding the physical requirements for operators to safely transport students.
- C. All operator physical examinations are considered confidential and protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191) and shall be reviewed only by approved the County's administrative staff. Designated staff of the certifying agency (WVDE) also may review this information.

~~The Superintendent has the right to require a physical and/or psychological examination from a designated healthcare provider when s/he has any reasonable questions regarding the physical ability of a school bus operator and the safety of students or the sufficiency of an annual physical examination.~~

~~The original report of the physical examination of all school bus operators, except for designated Head Start bus operators, is to be sent to the Superintendent. The original of the physical examination of designated Head Start school bus operators is to be maintained by the employing agency.~~

~~Physical examinations shall be recorded on USDOT Medical Examination Report Form (for Commercial Driver Medical Certification). It is preferred that the physical examination be performed by an FMCSA-Certified medical examiner because other medical providers may not be sufficiently informed regarding the physical requirements or operators to safely transport students.~~

~~All operator physical examinations are considered confidential and protected under the Health Insurance Portability and Accountability Act of 1996 (HIPPA) (Public Law 104-191) and shall be reviewed only by approved administrative staff. Designated staff of the certifying agency (WVDE) also may review this information when warranted.~~

The physical examination for all school bus operators shall ensure that:

- A. There is no past or present history of ~~convulsive seizures~~, epilepsy, or any other conditions that are likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle.

~~B. There is no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin. If an operator who is currently employed by the Board or a school bus operator candidate who is otherwise subject to WVBE rules governing operators is diagnosed with diabetes mellitus, that operator is eligible for employment if that operator is properly credentialed to the satisfaction of the WVDMV.~~ A school bus operator who is currently employed by the County or a school bus operator candidate who is otherwise subject to state board rules governing school bus operators and who is diagnosed with diabetes mellitus requiring insulin is not ineligible for employment as a school bus operator because of the diagnosis if the operator is issued a passenger and school bus endorsement for his/her commercial driver's license through the West Virginia Division of Motor Vehicles, subject to the following:

1. A copy of the information required to be submitted to the Division of Motor Vehicles and proof of passenger and school bus endorsement is submitted to his or her employer; and
2. The operator remains in compliance with the stipulations of and grounds for eligibility per Federal Motor Carrier Safety Administration, Division of Motor Vehicles, and State Board rules.

~~C. There is no loss of use of joints of either hand that interferes with prehension or power grasping such that the applicant cannot receive or would not be able to renew a CDL with appropriate endorsements.~~ There is no loss or impairment of any limbs that would prevent the applicant from receiving or renewing a CDL with the appropriate endorsements. A minimum of one (1) hand must be grasping the steering wheel at all times when the bus is in motion.

D. Average hearing loss in the better ear of the school bus operator shall not be greater than forty (40) decibels at 500 Hz, 1000 Hz, and 2000 Hz with or without hearing aids. The operator must first perceive a forced whisper voice in the better ear at not less than five (5) feet with or without the use of a hearing aid. When needed, an approved hearing aid with back up batteries shall be used by the school bus operator.

E. There is no current clinical diagnosis of a variety that is accompanied by:

1. myocardial infarction (heart attack)
2. angina pectoris (chest pain)
3. coronary insufficiency
4. thrombosis (blood clots)
5. stroke (mini-strokes/TIA, paralysis or weakness)
6. other infectious diseases that would prevent the operator from performing his/her duties as determined by a public health officer

F. There is no cardiovascular disease of a variety that is accompanied by:

~~There is no cardiovascular disease of a variety that is accompanied by:~~

1. syncope (fainting or passing out)
2. dyspnea (difficulty breathing or shortness of breath)
3. collapse (unconscious)
4. congestive cardiac failure
5. any protein, blood, or sugar found in the urinalysis. Such finding may indicate a need for further testing to rule out underlying medical conditions prior to the final determination that an operator is medically qualified.

If any of the above-referenced conditions in ~~1-5 above exist~~ exists, a letter from a cardiologist must be presented to the ~~District Transportation Director~~ County's director stating that the operator is medically qualified to operate a bus. When an operator is required to use a pacemaker, his/her return to work shall be approved by two (2) cardiologists not affiliated with each other. Cardiac defibrillators are prohibited.

~~G. Blood pressure is less than 140 systolic and ninety (90) diastolic (140/90). If the employee fails the blood pressure test, the operator shall provide medical evidence of three (3) separate blood pressure readings below the above levels on three (3) different days within a seven (7) day period prior to certification. These readings shall be certified~~

~~by a Medical Examiner.~~

~~When a school bus operator is required to use a pacemaker, his/her return to work shall be approved by two (2) cardiologists not affiliated with each other.~~ There is no current clinical diagnosis of high blood pressure likely to interfere with his/her ability to operate a school bus safely.

- H. While performing school bus operator duties, the school bus operator shall wear a truss for any small hernia. Large hernias shall be surgically repaired.
- I. There is no medical history or clinical diagnosis of the following ~~which that~~ interferes with the ability to operate a bus safely.
1. rheumatic disease
 2. arthritic disease
 3. muscular disease
 4. neuromuscular disease
 5. vascular disease
- J. Both eyes are functional and the school bus operator:
1. has distant visual acuity of at least 20/40 (Snellen) in each eye with or without corrective lenses;
 2. does not have monocular vision;
 3. has a field of vision no less than seventy (70) degrees in the horizontal meridian of each eye;
 4. is able to identify the colors, red, green, amber, and blue;
 5. wears corrective lenses, if necessary, while operating a bus.
- K. All operators using Continuous Positive Airway Pressure (CPAP) devices must meet requirements as follows:
1. ~~Obstructive Sleep Apnea (OSA) precludes an individual from obtaining unconditional certification to drive a commercial motor vehicle (CMV). However, it should not exclude all individuals with the disorder. An individual with an OSA diagnosis who is receiving positive airway pressure (PAP) treatment may be certified to drive if that individual meets the following criteria:~~ a diagnosis of Obstructive Sleep Apnea (OSA) prohibits certification unless the following criteria are met:
 - a. is referred to a clinician with relevant expertise
 - b. has adequate PAP established through ~~one of the following means:~~ a titration study.
 1. ~~an in-laboratory titration study;~~ or
 2. ~~an auto-titration system without an in-laboratory titration.~~
 2. Individual with OSA who have been treated with PAP may be certified if they have been successfully treated for a minimum of one (1) week. Successful PAP treatment is defined as follows:
 - a. demonstration of good compliance with treatment; and
 - b. resolution of excessive sleepiness when driving
 3. Individuals with OSA who are treated with PAP must demonstrate compliance with treatment by objective documentation.
 4. Compliance is defined as using PAP for the duration of total sleep time, or as prescribed by the treating provider

5. Optional treatment efficacy occurs with seven (7) hours or more of use during sleep; however, four (4) hours of documented time at pressure per major sleep episode is minimally acceptable.
6. ~~Based on current standards of practice, an acceptable CPAP use is at least four (4) hours per night on at least five (5) nights per week.~~
7. Prior to an operator being allowed to resume driving, the clinician must provide a statement that the treatment and the operator meet these criteria. It is the operator's responsibility to keep a log of his/her compliance and provide documentation to the ~~District County~~ director on a quarterly basis. The Board shall maintain all such records.
- L. The school bus operator shall have no mental, nervous, organic or functional disease or psychiatric disorder and take no medication likely to interfere with his/her ability to operate the bus safely. See Appendix A of West Virginia State Board of Education policy 4336. (Prescription and Over-the-Counter Medication).
- M. ~~All school bus operators shall be subject to pre-employment, random, post-accident, and reasonable suspicion drug testing for the use of certain controlled substances and alcohol as per all regulations of the U.S. Department of Transportation, Federal Highway Administration of the Omnibus Transportation Employment Testing Act (OTETA.) The County Board of Education shall provide the State Department, by certified mail, the name and Social Security number of employees who hold safety sensitive positions as described by the OTETA, and who test positive for the tested substances. The State Department shall maintain the positive test records for two (2) years.~~ All operators and County employees in safety sensitive positions who possess a CDL shall be subject to pre-employment, random, post-accident, and reasonable suspicion drug testing for the use of certain controlled substances and alcohol as per regulations of Omnibus Transportation Employee Testing Act (OTETA). Employers must provide training to all persons who supervise CDL drivers in accordance with FMCSA Section 382.603. The purpose of this training is to enable supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing described in FMCSA Section 382.307. It must include at least 60 minutes of training on alcohol misuse and sixty (60) minutes on controlled substances use (120 minutes total). For random tests, all operators and safety sensitive employees who possess a CDL, including trainees, shall be included in the USDOT drug testing pool. The pool shall be spread out evenly throughout the year. An employee who has been removed from the USDOT drug testing pool for 30 days or more shall have a pre-employment drug test prior to returning to work. The public school districts shall develop a drug testing policy for non-CDL drivers in safety sensitive positions and those shall be in a different random pool.
- N. ~~The school bus operator shall notify their supervisor and/or Medical Examiner of any illness or the use of any controlled and/or over the counter substance that may interfere with the safe operation of the school bus. See Appendix F of West Virginia State Board of Education policy 4336 (Prescription and Over the Counter Medication) as examples of drugs that may interfere with that ability.~~
- O. ~~The "Medical Examiner" has PRINTED his/her name in the designated area as well as providing his/her signature on the physical form.~~

~~All operators and District employees in safety sensitive positions who possess a CDL shall be subject to pre-employment, random, post-accident, and reasonable suspicion drug testing for the use of certain controlled substances and alcohol as per all regulations of OTETA. For random tests, all operators and safety sensitive employees who possess a CDL, including trainees, shall be included in the DOT drug testing pool. The pool shall be spread out evenly throughout the year. An employee who has been removed from the DOT drug testing pool for thirty (30) days or more shall have a pre-employment drug test prior to returning to work. The Board shall develop a drug testing policy for non-CDL drivers in safety sensitive positions and those shall be in a different random pool. For post-accident, the test for alcohol shall be administered within two hours of the accident. The post-accident test for controlled substances shall be administered as soon as practical but within thirty-two (32) hours of the accident. If either test cannot be administered within the required timelines, the employer shall maintain a record that states the reason the test could not be administered. Further information on required timelines may be found in FMCSA Section 382.303. Post-accident drug and alcohol tests shall be required after crashes according to the following chart:~~

For post-accident, the test for alcohol shall be administered within two (2) hours of the accident. The post-accident test for controlled substances shall be administered as soon as practical, but no later than thirty-two (32) hours after the accident. If either test cannot be administered within the required timelines, the employer shall maintain a record that states the reason the test could not be administered. Further information on required timelines may be found in FMCSA Section 382.303. Post-accident drug and alcohol tests shall be required after crashes according to the following chart:

Type of Accident	Citation Issued to the Driver	Test Must be Performed by Employer
Human Fatality	Yes	Yes
Human Fatality	No	No

Bodily Injury with Immediate Medical Treatment Away from Scene	Yes	Yes
Bodily Injury with Immediate Medical Treatment Away from Scene	No	Yes
Bodily Injury with Immediate Medical Treatment on the Scene	Yes	Yes
Bodily Injury with Immediate Medical Treatment on the Scene	No	Yes
Disabling Damage to Any Motor Vehicle Requiring Tow Away	Yes	Yes

Type of Accident Involved	Citation Issued to the Bus Driver	Test Must Be Performed by Employer	DOT Test or NON-DOT Test
Human Fatality	Yes	Yes	DOT Test
Human Fatality	No	Yes	DOT Test
Bodily Injury with Immediate Medical Treatment away from the Scene	Yes	Yes	DOT Test
Bodily Injury with Immediate Medical Treatment away from the Scene	No	Yes	NON-DOT Test
Disabling Damage to Any Motor Vehicle Requiring Tow Away	Yes	Yes	DOT Test
Disabling Damage to Any Motor Vehicle Requiring Tow Away	No	Yes	NON-DOT Test

~~The Board shall provide the WVDE, by certified mail, the name and Social Security number of employees who hold safety-sensitive positions as described by the OTETA, and who test positive for the tested substances. The WVDE shall maintain the positive test records for two (2) years.~~

~~The medical examiner shall print his/her name in the designated area as well as providing his/her signature on the physical form.~~

The Director shall ensure that all operators are registered with the FMCSA Drug and Alcohol Clearinghouse (Clearinghouse). S/He shall also query the Clearinghouse for current and prospective employees' drug and alcohol violations before permitting those employees to operate a CMV on public roads, and annually query the Clearinghouse for each operator the County currently employs.

Physical Qualifications for Operators

- A. The operator shall have no mental, nervous, organic, or functional disease, or psychiatric disorder, and take no medication likely to interfere with his/her ability to operate the bus safely.
- B. The duties to be performed by an operator include but are not limited to the following:
 1. walk from the operator's seat to the rear of the bus.
 2. open all emergency exits.
 3. install tire chains on a bus.
 4. raise the hood of a conventional bus and check all fluid levels.
 5. remove obstructions from windshield and under wiper blades.
 6. adjust all outside mirrors.
 7. secure a wheelchair.

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Legal West Virginia Board of Education policy 4336
 WV Code 16-3D-3(c)
 WV Code 18A-2-4(c)

Book	Public Comment Period 4/15/26 thru 4/28/26
Section	First Reading - Agenda 4/14/26
Title	Revised Policy - Volume 17, No. 2 - August 2025 - DRUG AND ALCOHOL TESTING OF CDL LICENSE HOLDERS
Code	po4162
Status	
Adopted	May 26, 2015
Last Revised	February 11, 2020

Revised Policy - Volume 17, No. 2 - August 2025

4162 - DRUG AND ALCOHOL TESTING OF CDL LICENSE HOLDERS

The Board of Education believes that the safety of students while being transported to and from school or school activities is of utmost importance and is the primary responsibility of the driver of the school vehicle. To fulfill such a responsibility, each driver, as well as others who perform safety-sensitive functions with Board-owned and/or operated ("Board-owned") vehicles must be mentally and physically alert at all times while on duty. In addition, the Board recognizes that a drug-free and alcohol-free school and work environment is vital to workplace and school safety and to the quality of the District's educational services.

To that end, the Board has established this policy and others related to employees' health and well-being.

The Board expects all Drivers to comply with Board Policy 4122.01 on Drug-Free Workplace which prohibits the possession, use, sale, or distribution of alcohol and any controlled substance on school property at all times.

Further, the Board concurs with the Federal requirement that all Drivers should be free of any influence of alcohol or controlled substance while on duty. Therefore, participation in the alcohol and controlled substances testing program is a condition of employment for all Drivers.

Covered Employees

This policy covers all commercial driver's license (CDL) holders and regular and substitute bus drivers who operate a commercial motor vehicle while on duty, as well as other service employees who may drive students in District vehicles or inspect, service, and condition District vehicles.

Definitions

For purposes of this policy and the guidelines associated with the policy, the following definitions shall apply.

- A. The term *alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol. This term is a volume breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test as described herein.
- B. The term *controlled substance* includes the possession or use of which is unlawful pursuant to Federal, State and local laws and regulations, and any drug that is being used illegally, such as a prescription drug that was not legally obtained or not used for its intended purposes or in its prescribed quantity. The term does not include any legally-obtained prescription drug used for its intended purpose in its prescribed quantity unless such use would impair the individual's ability to safely perform safety-sensitive functions. This term includes, but is not limited to, marijuana metabolites, cocaine metabolites, amphetamines, opiate metabolites, phencyclidine (PCP).
- C. The term *controlled substance abuse* includes excessive use of alcohol as well as prescribed drugs not being used for prescribed purposes, in a prescribed manner, or in the prescribed quantity.

- D. The term *safety-sensitive functions* includes waiting to be dispatched, inspecting equipment, servicing, driving, loading or unloading District vehicles, as well as repairing, obtaining assistance, or remaining in attendance upon a disabled District vehicle. This term further includes any period in which an individual is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.
- E. The term *Driver* means all CDL holders and regular and substitute bus drivers who operate a commercial motor vehicle while on duty, as well as other service employees who may drive students in District vehicles or inspect, repair, and maintain Board-owned vehicles, and employees who drive vehicles designed to transport sixteen (16) or more people, and are required to hold a CDL.
- F. The term *while on duty* means all time from the time the CDL license holder begins to work or is required to be in readiness for work until the time s/he is relieved from work and all responsibility for performing work.
- G. The term CDL license holder means all regular and substitute bus drivers, staff members who may drive students in Board-owned vehicles or inspect, repair, and maintain Board-owned vehicles, and staff members who drive vehicles designed to transport sixteen (16) or more people (including the driver), who are required to hold a CDL.

The Board will not tolerate the possession, use, sale, or distribution of alcohol and/or any controlled substance or drug other than those approved for administration by the appropriate school personnel on school property, at any time. All CDL license holders must comply strictly with this policy. Further, the Board concurs with the Federal requirement that all CDL license holders should be free of any influence of alcohol or controlled substance while on duty.

The Superintendent shall establish a drug and alcohol testing program whereby each regular and substitute bus driver, and any other staff member who holds a CDL license, as well as any staff member performing safety-sensitive functions, is tested for the presence of alcohol in his/her system as well as for the presence of the following controlled substances:

- A. Marijuana
- B. Cocaine
- C. Opioids
- D. Amphetamines
- E. Phencyclidine (PCP)

OPTION #1

The drug tests are to be conducted in accordance with Federal and State regulations a) prior to employment, (**Controlled Substances Only**), b) for reasonable cause, c) upon return to duty after any alcohol or drug rehabilitation, d) after any accident, e) on a random basis, and f.) on a follow-up basis.

OPTION #2

The drug tests are to be conducted in accordance with Federal and State regulations a) prior to employment, b) for reasonable cause, c) upon return to duty after any alcohol or drug rehabilitation, d) after any accident, e) on a random basis, and f) on a follow-up basis.

☒ Candidates shall also be tested for the presence of alcohol in their system prior to employment.

[END OF OPTIONS]

No employee shall perform safety-sensitive functions within four (4) hours after using alcohol. No employee required to take a post-accident test shall use alcohol for eight (8) hours following the accident, or until the employee undergoes a post-accident alcohol test, whichever occurs first.

Any staff member who is subject to drug tests in accordance with this policy and who tests positive shall be:

- A. prohibited from driving any school vehicle; (☒) and using Board-owned equipment;
- B. (☒) referred to the District's Employee Assistance Program;
- C. (☒) provided information regarding drug/alcohol counseling;

D. (x) evaluated for assistance resources;

E. (x) subject to discipline, up to and including discharge, in accordance with District procedures and the terms of any applicable collective bargaining agreements.

Furthermore, if during any test the lab determines that an adulterant has been added to the specimen, then:

A. (x) the test will be considered positive and the employee shall be prohibited from driving any school vehicle and be referred to the District's Employee Assistance Program.

B. (x) the employee will be re-tested with an observed collection to prevent the addition of an adulterant to the specimen.

Any staff member who refuses to submit to a test shall be prohibited from performing or continuing to perform his/her safety-sensitive functions (e.g., driving any Board-owned vehicle) and shall be considered to have abandoned their position.

A staff member who voluntarily disclose that they have an addiction to alcohol or controlled substances may participate in the Employee Assistance Program, and will qualify for the receipt of medical insurance benefits for treatment of alcohol or substance abuse, including follow-up care, to the extent that such benefits are provided for or offered in the Board's health insurance package. Voluntary disclosure of an alcohol or drug addiction by a staff member will not subject the staff member to disciplinary action unless such disclosure is made after the staff member is selected to be tested or immediately prior to the selection of staff members to be tested. Nothing herein shall prevent the Board from disciplining a staff member for misconduct associated with his/her alcohol and/or drug use regardless of whether the employee has disclosed that s/he has an alcohol or drug addiction.

A staff member will be subject to disciplinary action, up to and including termination, for any of the following reasons:

A. reports for duty or performs work while having an alcohol concentration of 0.02 or greater;

B. reports for duty or performs work while testing positive for using a prohibited drug, or while being under the influence of a prohibited drug;

C. refuses to submit to drug and/or alcohol testing;

D. alters or attempts to alter or unduly influence alcohol and/or drug testing results;

E. fails to remain readily available for post-accident testing (including notifying his/her supervisor of his/her location, if the staff member leaves the scene of the accident prior to the submission of a post-accident test unless the staff member's departure is to obtain necessary emergency medical care).

Prior to the beginning of the testing program, the District shall provide a drug-free awareness program which will inform each CDL license holder about:

A. the dangers of illegal drug use and controlled substance and alcohol abuse;

B. Board Policy 4122.01 - Drug-Free Work Place, Policy 4161 - Fitness for Duty, Policy 4170 - Substance Abuse, and Policy 4170.01 - Employee Assistance Program;

C. the sanctions that may be imposed for a violation of Policy 4122.01 - Drug-Free Workplace.

It shall be the responsibility of any employee to report to the appropriate law enforcement office information received concerning a person who:

A. sells, gives away, distributes or markets any substance or product in this State or transports such a substance or product into this State with the intent that the substance or product will be used to defeat a drug or alcohol screening test;

B. attempts to defeat a drug or alcohol screening test by the substitution of a false sample;

C. advertises for sale or distribution any substance or product the advertised purpose of which is to defeat a bodily fluid screening test for drugs or alcohol;

D. adulterates a bodily fluid sample with the intent to defeat a drug or alcohol screening test;

E. possess adulterants for the purpose of defeating a drug or alcohol screening test; or

F. sells adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defeating a drug or alcohol screening test.

All time spent undergoing an alcohol or controlled substance test, including travel time, will be paid at the service employee's regular rate of pay, or at his/her overtime rate, if applicable. Any service employee who is not allowed to return to work while awaiting test results will be compensated during the waiting period for all work time lost, including overtime, if applicable. The Board shall pay all costs associated with the administration of alcohol and controlled substance tests. This includes testing of the "split specimen" at a Federally certified laboratory if so requested by a service employee. The Board will not pay for the employee's time while not on duty if the split specimen test results are positive.

Alcohol and drug test results shall be protected as confidential medical records as appropriate under the Americans with Disabilities Act (i.e. test results shall be provided on a right to know basis – the employee, the employer, and the substance abuse professional – and the results shall not be presented until analyzed by and reported on by one competent to understand and interpret the test results).

A tested individual, upon written request, will have access to any records relating to his/her use of drugs and alcohol, including any records pertaining to his/her drug and alcohol tests. A tested individual must provide written authorization before his/her test result can be provided to any other person except a government agency specified in the applicable Federal regulations.

All tests shall be conducted in accordance with Federal testing guidelines and be performed by a laboratory that is Federally certified (i.e., testing procedures and devices used will be as set forth in 49 C.F.R. Part 40).

The alcohol and drug testing program shall be under the direction of the Superintendent.

The Superintendent shall arrange for the required amount of training for appropriate service employee in drug recognition, in the procedures for testing, and in the proper assistance of service employees who are subject to the effects of substance abuse.

The Superintendent shall submit, for Board approval, a contract with a certified laboratory to provide the following services:

- A. testing of all first and second test urine samples
- B. clear and consistent communication with the person or entity performing the testing and/or interpreting the results
- C. methodology and procedures for conducting random test for controlled substances and alcohol
- D. preparation and submission of all required reports to the Board of Education, and to Federal and State governments as required

The Superintendent shall also select the agency or persons who will conduct the alcohol breathalyzer test and the drug collection site(s) in accordance with the requirements of the law.

Educational Materials Related to Certain Federal Regulations, Board Policies, and Procedures

CDL License Holders and other employees who perform safety-sensitive functions will be provided educational materials at the time of hire or at any time when required to operate a school vehicle. The educational materials shall explain the requirements of applicable Federal regulations and of the Board's policies and District's procedures with respect to meeting these Federal regulations. The Board designates the Director of Transportation as the individual responsible for providing educational materials to CDL License Holders and other employees who perform safety-sensitive functions. The educational materials will at a minimum include the following:

- A. the contact information for the Director of Transportation who is the individual designated by the Board to answer questions about the educational materials;
- B. a statement that all CDL License holders and other employees who perform safety-sensitive functions are subject to 49 CFR 382.601, which is a Federal regulation that addresses the misuse of alcohol and other controlled substances;
- C. information sufficient to make clear to employees the period of the workday during which they are required to comply with the regulations;
- D. information concerning prohibited conduct;

- E. the circumstances under which employees are subject to testing for alcohol and/or controlled substances;
- F. the procedures for testing for the presence of alcohol and controlled substances in order to protect the employee and the integrity of the testing process, to safeguard the validity of the test results, and to confirm the results are attributed to the correct employee, including post-accident information, procedures, and instructions required under Federal regulations;
- G. the requirement that employees must submit to alcohol and controlled substance testing as required by the regulations;
- H. an explanation of what constitutes a refusal to be tested for alcohol or controlled substances and the attendant consequences;
- I. the consequences of testing positive, including the requirements of immediate removal from safety-sensitive functions, and the procedures regarding referral, evaluation, and treatment;
- J. the consequences for a test indicating an alcohol concentration greater than 0.02 but less than 0.04;
- K. information concerning the effects of alcohol and drug misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a co-worker's); and available methods of intervening when a drug or alcohol problem is suspected (including confrontation and how to refer someone to an Employee Assistance Program or to management); and
- L. information regarding the requirement that certain personal information collected and maintained under 49 CFR 382.601 be reported to the ~~Commercial~~ **Commercial** Driver's License Drug and Alcohol Clearinghouse.

The educational materials are to be distributed to each service employee upon being hired or transferred into a covered position thereafter. Each service employee must sign a statement certifying receipt of these materials. Each employee (an organization representing Board employees) shall receive written notice of the availability of this information, and the identity of the Board's designated representative in charge of answering employee questions about the materials.

Return-to-Duty (Safety-Sensitive Positions)

Employees who are removed from performing safety-sensitive functions as a result of this policy must take and pass a return-to-duty test before returning to performing safety-sensitive functions. The return-to-duty test will not occur until after a Substance Abuse Professional (SAP) has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.

Subject to any other legal requirements, employees who are eligible to return to performing safety-sensitive functions may not do so without the approval of the Superintendent.

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Legal	West Virginia Board of Education policy 4336
	WV Code 60A-2-204
	WV Code 60A-2-206
	WV Code 60A-2-210
	WV Code 60A-2-212
	WV Code 60A-4-412(a)
	49 C.F.R. 382.101 et seq.

Book	Public Comment Period 4/15/26 thru 4/28/26
Section	First Reading - Agenda 4/14/26
Title	STUDENT SUPERVISION AND WELFARE BY SERVICE PERSONNEL
Code	po4213
Status	
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Revised Policy - Volume 16, No. 2 - December 2024

4213 - STUDENT SUPERVISION AND WELFARE BY SERVICE PERSONNEL

Service personnel shall maintain a standard of care for the supervision, control, and protection of students commensurate with their assigned duties and responsibilities under West Virginia law and are expected to establish and maintain appropriate staff/student boundaries that are consistent with their legal, and ethical duties of care for students.

The Superintendent shall maintain and enforce the following standards:

- A. An administrator who transports students in a private vehicle shall do so in accordance with Policy 8660.
- B. (x) A service personnel staff member shall report to a building administrator any accident, safety hazard, or other potentially harmful condition or situation s/he detects in a reasonably prompt manner.
- C. (x) A service personnel staff member shall immediately report to a building administrator any knowledge of threats of violence by students in a reasonably prompt manner.
- D. (x) A service personnel staff member shall not send students on any personal errands for the benefit of the staff member or other school employees.
- E. (x) A service personnel staff member shall not associate or fraternize with students at any time in any manner that may give the appearance of impropriety, including, but not limited to, the creation of or participation in any situation or activity that could reasonably be considered abusive or sexually suggestive or involve harmful substances such as illegal drugs, alcohol or tobacco. Any romantic, sexual or other inappropriate conduct, including mere communication of such nature, with a student by any staff member shall subject the offender to disciplinary action by the Board up to and including termination of employment.

If a student approaches a service employee to seek advice or to ask questions regarding a personal problem related to sexual behavior, substance abuse, mental or physical health, and/or family relationships etc., the service employee may attempt to assist the student by facilitating contact with certified or licensed individuals in the County or community who specialize in the assessment, diagnosis, and treatment of the student's stated problem. However, under no circumstances shall a service employee attempt, unless properly licensed and authorized to do so, to counsel, assess, diagnose, or treat the student's problem or behavior, nor should such classified staff member inappropriately disclose personally identifiable information concerning the student to third persons unless specifically authorized to do so by law. A report of the service employee's actions with regard to the student shall be made to the school principal or other appropriate supervisory person no later than the end of the following school day.

- F. (x) A student shall not be required to perform work or services that may be detrimental to his/her health.
- G. (x) Service personnel are strongly discouraged from engaging students on interactive media sites, such as Facebook, Twitter, Instagram, Snapchat, YouTube, Skype, blogs, etc. unless such communication has been specifically authorized by the student's principal.
- H. (x) Service personnel are prohibited from electronically transmitting any personally identifiable image of a student(s), including video, photographs, streaming video, etc. via email, texting, social media and/or online

networking media, such as Facebook, Twitter, YouTube, Instagram, Snapchat, Skype, blogs, etc. unless such transmission has been made in connection with a pre-approved curricular matter or co-curricular/extracurricular event or activity such as a school-sponsored publication or production in accordance with Policy 5722.

[x] Since most information concerning a child in school, other than directory information as described in West Virginia Department of Education policy 4350 and Policy 8330, is confidential under Federal and State laws, any staff member who shares confidential information with another person not authorized to receive the information may be subject to discipline. This includes, but is not limited to, information concerning assessments, grades, behavior, family background, and alleged child abuse.

A staff member or volunteer who suspects child abuse or neglect, or observes a child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than twenty-four (24) hours after suspecting this abuse or neglect, report the circumstances, or cause a report to be made, to the Department of Health and Human Resources, and shall also notify the person in charge of the school or facility of such suspicion. Upon such notification, the person in charge of the school or facility may supplement the report or cause an additional report to be made. In cases where the reporter believes that the child suffered serious physical abuse, or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the State Police and any law enforcement agency having jurisdiction to investigate the complaint Policy 8462.

Upon allegations that a staff member jeopardized the health, safety, welfare, or learning environment of students, at the start of the investigation into the allegation, the staff member shall be suspended, placed on administrative leave, or reassigned to duties that do not involve direct interaction with students. The principal shall report any allegations to the Superintendent within twenty-four (24) hours. The principal's report to the superintendent is in conjunction with any other mandatory reports that must be made as a mandatory reporter of suspected child abuse or neglect.

It is a felony offense for any school employee or volunteer to engage in sexual intercourse, sexual intrusion, or sexual contact with any student in the school where the person is employed regardless of age. Any teacher, principal, counselor, coach, other employee, volunteer, or school resource officer of any private or public elementary or secondary school who engages in sexual intercourse, sexual intrusion, or sexual contact with any student enrolled in any private or public elementary or secondary school regardless of the age of the student is guilty of a felony. The fact that the student may have consented to the act or that the act did not occur on school property or during a school function is not to be a defense.

If a staff member is charged with committing a felony, a misdemeanor with a rational nexus to the performance of the staff member's job, or child abuse, the Board shall, pending final disposition of the charges, suspend the staff member, place them on administrative leave, or reassign them to duties that do not involve direct interaction with students.

Pursuant to State law, any staff member or other person who has been found guilty of sexual assault in the first degree or sexual abuse in the first degree are prohibited from supervising or being responsible for supervising groups of children, including but not limited to religious organizations, Boy Scouts, Girl Scouts, 4-H organizations, sporting and scholastic teams, music, sporting, and theatre groups and camps, and summer day camps.

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Legal	West Virginia Board of Education policy 4350
	West Virginia Board of Education policy 4336
	WV Code 49-6A-2
	WV Code 61-8B-1
	WV Code 62-12-26(c)

Book	Public Comment Period 4/15/26 thru 4/28/26
Section	First Reading - Agenda 4/14/26
Title	Revised Policy - Volume 17, No. 2 - August 2025 - WEAPONS
Code	po4217
Status	
Adopted	May 26, 2015
Last Revised	April 23, 2024

Revised Policy - Volume 17, No. 2 - August 2025

4217 - WEAPONS

The Board of Education hereby finds that the safety and welfare of the citizens of this County are inextricably dependent upon assurances of safety for children attending, and the persons employed by, schools in this County.

The Board prohibits service personnel members from possessing or carrying or causing the possession or carrying of any firearm or other deadly weapon in any setting that is under the control and supervision of the Board including, but not limited to, property leased, owned, or contracted for by the Board, the site of any school-sponsored event, or in a Board-owned vehicle, including a school bus, unless such person is a law-enforcement officer acting in his/her official capacity or s/he has the express written permission of the Board or Principal to conduct programs with valid educational purposes. Any employee violating this policy shall be subject to disciplinary action, up to and including termination.

This prohibition does not apply to an individual twenty-one (21) or older who has a valid concealed handgun permit and possesses a concealed firearm while in a motor vehicle in a public school's parking lot, traffic circle, or other area of vehicular ingress or egress so long as the firearm is out of view from individuals outside the vehicle.

Further, this prohibition does not apply to an individual twenty-one (21) or older who has a valid concealed handgun permit and possesses an unloaded firearm in a locked vehicle or locked firearm case, that is on any part of school grounds used as a parking facility provided, however that the handgun case or rack is not visible to those passing by the vehicle (i.e., the case is in the vehicle trunk, glove box or other interior compartment, or in another locked container securely fixed to the vehicle.)

The term **deadly weapon** means an instrument that is designed to be used to produce serious bodily injury or death or is readily adaptable to such use. The term deadly weapon shall include, but not be limited to the following:

A. **Antique firearm** means:

1. Any firearm, including, but not limited to, a firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system which was manufactured on or before 1898;
2. Any replica of any firearm described in (A) above if such replica is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and
3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol, which is designed to use black powder, or black powder substitute, and which cannot use fixed ammunition. The term antique firearm shall not include any weapon ~~which that~~ includes a firearm frame or receiver, any firearm ~~which that~~ is converted into a muzzle-loading weapon, or any muzzle-loading weapon ~~which that~~ can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

B. Blackjack means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. The term blackjack shall include, but not be limited to, a billy club, sand club, sandbag or slapjack.

- C. **Gravity knife** means any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force and when so released is locked in place by means of a button, spring, lever or other locking or catching device.
- D. **Knife** means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle which is capable of inflicting cutting, stabbing or tearing wounds. The term knife shall include, but not be limited to, any dagger, dirk, poniard or stiletto, with a blade over three and one-half (3 1/2) inches in length, any switchblade knife or gravity knife and any other instrument capable of inflicting cutting, stabbing or tearing wounds. A pocket knife with a blade three and one-half (3 1/2) inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports or other recreational uses, or a knife designed for use as a tool or household implement shall not be included within the term knife as defined herein unless such knife is knowingly used or intended to be used to produce serious bodily injury or death.
- E. **Switchblade knife** means any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch or other releasing device in its handle.
- F. **Nunchaku** means a flailing instrument consisting of two (2) or more rigid parts, connected by a chain, cable, rope or other nonrigid, flexible or springy material, constructed in such a manner as to allow the rigid parts to swing freely so that one (1) rigid part may be used as a handle and the other rigid part may be used as the striking end.
- G. **Metallic or false knuckles** means a set of finger rings attached to a transverse piece to be worn over the front of the hand for use as a weapon and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person struck. The terms metallic or false knuckles shall include any such instrument without reference to the metal or other substance or substances from which the metallic or false knuckles are made.
- H. **Pistol** means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.
- I. **Revolver** means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.
- J. **Pepper Spray** means a temporarily disabling aerosol that is composed partly of capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose, throat, and skin that is intended for self-defense use.
- K. Other deadly weapons of like kind or character above which may be easily concealed on or about the person.
- L. Explosive, chemical, biological and radiological materials.

The term **deadly weapon** does not include any item or material owned by the school or Board, intended for curricular use, and used by the student at the time of the alleged offense solely for curricular purposes. The term deadly weapon does not include pepper spray as defined above when used by any person over the age of sixteen (16) solely for self-defense purposes.

Concealed means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried.

Firearm means any weapon ~~which that~~ will expel a projectile by action of an explosion.

The Principal or, if the violation does not occur within his/her jurisdiction, the administrator with authority, shall report any violation of this policy to the appropriate local office of the State Police, county sheriff, or municipal police agency and the State Superintendent of Schools as soon as possible after the violation occurs, and to the Superintendent immediately. Any service personnel employee who violates this policy shall be subject to disciplinary action, up to and including termination, as permitted by applicable Board policy.

Exceptions to this policy include:

- A. a law enforcement officer employed by a Federal, State, county, or municipal law enforcement agency;
- B. any probation officer in the performance of his/her duties;

- C. any home confinement supervisor employed by a county commission pursuant to State law in the performance of his/her duties;
- D. a State parole officer appointed pursuant to State law while in performance of his/her official duties;
- E. a retired law enforcement officer who meets all the requirements to carry a firearm as a qualified retired law enforcement officer under the Law Enforcement Officer Safety Act of 2004, and carries that firearm in a concealed manner, and has on his/her person official identification in accordance with that Act;
- F. a person, other than a student of a primary and secondary facility, specifically authorized by the Board of Education or principal of the school where the property is located to conduct programs with valid educational purposes;
~~(working firearms and ammunition shall never be approved)~~
- G. () working firearms and ammunition shall never be approved; [END OF OPTION]
- H. a person who, as otherwise permitted, possesses an unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly weapon in a locked motor vehicle;
- I. programs or raffles conducted with the approval of the Board or school which include the display of unloaded firearms, provided that such unloaded firearm must have first had the firing mechanism removed and the firearm must thereafter have been checked by a member of the West Virginia State Police to ensure that it is safe;
- J. air rifles and rimfire rifles possessed for the purpose of shooting teams to the extent permitted in WV Code;
- K. official mascot of West Virginia University, commonly known as "The Mountaineer", acting in his/her official capacity;
- L. official mascot of Parkersburg South High School, commonly known as the Patriot, acting in his/her official capacity;
- M. any person, twenty-one (21) years old or older, who has a valid concealed handgun permit;

That person may possess a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other areas of vehicular ingress or egress to a school provided that when s/he is occupying the vehicle, the person stores the handgun out of view from persons outside the vehicle; or when he or she is not occupying the vehicle, the person stores the handgun out of view from persons outside the vehicle, the vehicle is locked, and the handgun is in a glove box or other interior compartment, or in a locked trunk, or in a locked container securely fixed to the vehicle.

- N. (x) starter pistols, incapable of expelling a projectile by action of an explosion, when used in appropriate sporting events.

Air Rifles and Rimfire Rifles for School Teams

Air rifles and rimfire rifles are permitted for school-sponsored shooting team practices and events under the following conditions:

- A. An "air rifle" or "compressed air rifle" means a rifle, gun, or other firearm that uses compressed air or gas to propel projectiles, such as pellets, rather than relying on the explosive force of gunpowder like traditional firearms.
- B. A "rimfire rifle" means a firearm that uses rimfire ammunition, which is a type of metallic cartridge with a primer in the rim of the casing, wherein the firing pin strikes the rim, igniting the primer and propelling the bullet down the barrel.
- C. Air rifles and rimfire rifles are permitted on school buses solely during transportation to or from a school-sponsored shooting team event; on the grounds of any primary or secondary educational facility of any type for shooting team purposes; and at a school-sponsored shooting team function that is taking place in a specific area that is owned, rented, or leased by the West Virginia Department of Education, the West Virginia Secondary School Activities Commission, a county school board, or local public school.
 - 1. During the school day or at any time other than school-sponsored team events or practices, the air rifles, rimfire rifles, and ammunition shall be locked in a location where students do not have access.
 - 2. Air rifles, rimfire rifles, and ammunition stored on school buses shall be placed in a locked case and located in a specific location that is determined by the State Transportation Director or the County Transportation Director.

Service personnel employees shall report any information concerning weapons and/or threats of violence by students, staff members, or visitors to the building administrator. Failure to report such information may subject the employee to disciplinary action, up to and including termination.

18 U.S.C. 922

WV ~~State~~ Code 61-7-2

WV Code 61-7-11

WV Code 61-7-11a

WV Code 61-7-14

Cross References

po5500 - STUDENT CODE OF CONDUCT

po5600 - STUDENT DISCIPLINE

po5605 - DISCIPLINE FOR SPECIAL EDUCATION STUDENTS

po5610 - EXCLUSION FROM CLASSROOM OR SCHOOL BUS, SUSPENSION, AND EXPULSION OF STUDENTS

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Legal

18 U.S.C. 922

WV Code 61-7-2

WV Code 61-7-11

WV Code 61-7-11a

WV Code 61-7-14

Cross References

po5500 - STUDENT CODE OF CONDUCT

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EXPULSION OF STUDENTS

Book	Public Comment Period 4/15/26 thru 4/28/26
Section	First Reading - Agenda 4/14/26
Title	Revised Policy - Volume 16, No. 2 - December 2024 - GRIEVANCE PROCEDURE
Code	po4340
Status	
Adopted	May 26, 2015
Last Revised	July 23, 2024

Revised Policy - Volume 16, No. 2 - December 2024

4340 - GRIEVANCE PROCEDURE

The purpose of this policy is to provide a procedure for employees of Wayne County Schools and () _____ multi-county vocational centers and **[END OF OPTION]** their employer or agents of the employer to reach solutions to problems that arise between them within the scope of their respective employment relationships to the end that good morale may be maintained, effective job performance may be enhanced and the citizens of the community may be better served.

This policy is intended to provide a simple, expeditious and fair process for resolving problems at the lowest possible administrative level and shall be construed to effectuate this purpose. A grievance may be resolved informally by stipulation or settlement agreed to in writing by the parties. Nothing in this policy shall prohibit the exercise of any hearing right provided in WV Chapters 18 and 18A. Parties to grievances shall at all times act in good faith and make every possible effort to resolve disputes at the lowest level of the grievance procedure.

Definitions

For the purpose of this policy:

- A. **Board** means the West Virginia Public Employees Grievance Board.
- B. **Chief Administrator** means, in the appropriate context, the State Superintendent, the County Superintendent, the executive director of a regional educational service agency or the director of a multi-county vocational center who is vested with the authority to resolve a grievance. A chief administrator includes a designee, with the authority delegated by the chief administrator, appointed to handle any aspect of this grievance procedure.
- C. **Days** means working days exclusive of Saturday, Sunday, official holidays and any day in which the employee's workplace is legally closed under the authority of the chief administrator due to weather or other cause provided for by statute, rule, policy or practice.
- D. **Discrimination** means any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees.
- E. **Employee** means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

A substitute education employee is considered an employee only on matters related to days worked or when there is a violation, misapplication or misinterpretation of a statute, policy, rule or written agreement relating to the substitute.
- F. **Employee Organization** means an employee advocacy organization with employee members that has filed with the Board the name, address, chief officer and membership criteria of the organization.
- G. **Employer** means a county board of education, regional educational service agency or multi-county vocational center, or agent thereof, using the services of an employee as defined in this policy.

H. **Favoritism** means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of a similarly situated employee unless the treatment is related to the actual job responsibilities of the employee or is agreed to in writing by the employee.

I. **Grievance** means a claim by an employee alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee including:

1. any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination;
2. any discriminatory or otherwise aggrieved application of unwritten policies or practices of his/her employer;
3. any specifically identified incident of harassment;
4. any specifically identified incident of favoritism; or
5. any action, policy or practice constituting a substantial detriment to or interference with the effective job performance of the employee, or the health and safety of the employee.

Grievance does not mean:

1. any pension matter or other issue relating to public employees insurance in accordance with Article Sixteen, WV Chapter Five, retirement or any other matter in which the authority to act is not vested with the employer.
2. any matter relating to the protected classes set forth in 5-11-1 et seq. of this code.

J. **Grievance Proceeding, Proceeding** or the plural means a conference, level one hearing, mediation, private mediation, private arbitration or level three hearing, or any combination unless the context clearly indicates otherwise.

K. **Grievant** means an employee or group of similarly situated employees filing a grievance.

L. **Harassment** means repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the behavior expected by law, policy, and profession.

M. **Party** and **Parties** mean the grievant, intervenor, and employer and the Director of the Division of Personnel or his/her designee, for most State government employee grievances.

N. **Representative** means any employee organization, fellow employee, attorney or other person designated by the grievant or intervenor as his/her representative and may not include a supervisor who evaluates the grievant.

O. **Reprisal** means the retaliation of an employer toward a grievant, witness, representative or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.

Grievance Procedure Generally

Time Limits:

- A. Each grievant shall file a grievance form, signed by the grievant, within the time limits specified in this article. If more than one grievant is a party to the grievance, they may submit one (1) signed form initiating the grievance. Grievant representatives who file on behalf of one or more grievants shall provide, as part of the grievance form, the name of each grievant being represented and his or her work location. Failure to properly sign the form shall result in immediate dismissal of a grievance, without prejudice. If the initial grievance was timely filed and then dismissed without prejudice, the grievant has five days from receipt of the order of dismissal to refile the grievance. The refiled grievance must meet the requirements of this article and applicable rules of procedure.
- B. The specified time limits may be extended to a date certain by mutual written agreement or the grievance evaluator, mediator, or administrative law judge at the request of any party. The specified time limits shall be extended for cause whenever an agency representative, intervenor, or a grievant is not working because of accident, sickness, death in the immediate family or other cause for which the agency representative or grievant has approved leave from employment.

Default:

- A. The grievant or the employer prevails by default if a required response is not made by the grievant or the employer representative within the time limits established in this policy unless the employer representative or grievant is prevented from doing so directly as a result of injury, illness or a justified delay not caused by negligence or intent to delay the grievance process.
- B. Within ten (10) days of the default, the grievant or employer may file with the chief administrator a written notice of intent to proceed directly to the next level or to enforce the default. If the chief administrator objects to the default, then the chief administrator may, within five (5) days of the filing of the notice of intent, request a hearing before an administrative law judge for the purpose of stating a defense to the default. The chief administrator may assert s/he was prevented from doing so directly as a result of injury, illness or a justified delay not caused by negligence or intent to delay the grievance process, or showing that the remedy requested by the prevailing grievant is contrary to law or contrary to proper and available remedies. The administrative law judge shall determine whether the remedy is proper, available and not contrary to law.
- C. If the administrative law judge finds that the grievant or the employer has a defense to the default as permitted above, or that the remedy is contrary to law or not proper or available at law, the administrative law judge may deny the default, or modify the remedy to be granted to comply with the law or otherwise make the grievant or employer whole.

Defenses and Limitations:

- A. Timeliness. - A grievance must be filed within the time frames established in §6C-2-4 of this code. If the level one evaluator determines that the grievance was not timely filed, an order dismissing the grievance shall be issued. In no event shall a motion to dismiss be held in abeyance while other proceedings take place. This decision may be appealed to level three, and an administrative law judge shall review the order. If the dismissal is upheld an order shall be issued and the grievance shall be removed from the grievance board's docket. If the dismissal is overturned an order shall be entered stating with particularity the facts and the law found to be in error in the order below. The grievance shall be returned to level one for disposition. An administrative law judge shall decide an appeal of a dismissal for untimeliness within thirty (30) days. If the grievant proceeds directly to level three, the administrative law judge shall make a determination on timeliness prior to scheduling the level three hearing.
- B. Motion to dismiss - Any party may, at any time, file a motion to dismiss asserting that the board lacks jurisdiction under 6C-2-2(i) of this code, that the grievant has otherwise failed to state a claim under this article upon which relief may be granted, or that the grievance was not timely filed. Upon filing of such a motion, the chief administrator or administrative law judge shall immediately hold in abeyance all other proceedings, and within ten (10) days of receipt of filing, issue a ruling on the motion or schedule the motion for a hearing.
- C. Back Pay - When it is a proper remedy, back pay may only be granted for one (1) year prior to the filing of a grievance, unless the grievant shows, by a preponderance of the evidence that the employer acted in bad faith in concealing the facts given rise to the claim for back pay, in which case an eighteen (18) month limitation on back pay applies
- D. Statutory Defense - If a party intends to assert the application of any statute, policy, rule or written agreement as a defense at any level, then a copy of the materials shall be forwarded to all parties.
- E. Withdrawal and Reinstatement of Grievance - An employee may withdraw a grievance at any time by filing a written notice of withdrawal with the chief administrator or administrative law judge. The grievance may not be reinstated by the grievant unless reinstatement is granted by the chief administrator or the administrative law judge. If more than one (1) employee is named as a grievant, the withdrawal of one (1) employee does not prejudice the rights of any other employee named in the grievance.
- F. Consolidation and Groups of Similarly Situated Employees:
 - 1. Grievances may be consolidated at any level by agreement of all parties, or at the discretion of the chief administrator or administrative law judge. Provided, that a grievance that has been dismissed under the provisions of subdivisions (1) or (2) of this subsection may not be revived or consolidated with another grievance.
 - 2. Class actions are not permitted. However, a grievance may be filed by one (1) or more employees on behalf of a group of similarly situated employees. Any similarly situated employee shall complete a grievance form stating his/her intent to join the group of similarly situated employees. Only one (1) employee filing a

grievance on behalf of similarly situated employees shall be required to participate in the conference or level one hearing.

- G. Intervention - Upon a timely request, any employee may intervene and become a party to a grievance at any level when the employee demonstrates that the disposition of the action may substantially and adversely affect his/her rights or property and that his/her interest is not adequately represented by the existing parties.
- H. Representation and disciplinary action - An employee may designate and shall provide the name and contact information for the individual or organization of the representative who may be present at any step of the procedure as well as at any meeting that is held with the employee for the purpose of discussing or considering disciplinary action. An employee may not be compelled to testify against himself/herself in a disciplinary grievance hearing.
- I. Reprisal - No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in a grievance proceeding by reason of his/her participation. Reprisal or retaliation constitutes a grievance, and any person held responsible is subject to disciplinary action for insubordination.
- J. Improper classification - A supervisor or administrator responsible for a willful act of bad faith toward an employee or who intentionally works an employee out of classification may be subject to disciplinary action, including demotion or discharge.
- K. Forms - The Board shall create the forms for filing grievances, giving notice, taking appeals, making reports and recommendations, and all other necessary documents and provide them to the Grievance Board's website to be downloaded for completion and submission and for chief administrators to make available to any employee upon request.
- L. Discovery - The parties are entitled to copies of all material submitted to the chief administrator or the administrative law judge by any party.
- M. Notice - Reasonable notice of a proceeding shall be sent at least five (5) days prior to the proceeding to all parties and their representatives and shall include the date, time and place of the proceeding. If an employer causes a proceeding to be postponed without adequate notice to employees who are scheduled to appear during their normal work day, the employees may not suffer any loss in pay for work time lost.
- N. Record - Conferences may be recorded, at the discretion of the chief administrator for the sole use of aiding in issuing a decision or report. The recording shall not be transcribed, nor shall the recording be shared with the parties, or made part of the record. The recording shall be destroyed promptly after the decision has been issued. All documents admitted and the decision, agreement or report become part of the record. All the testimony at a level one and level three hearing shall be recorded by mechanical means, and a copy of the recording or transcript shall be provided to any party upon request. The Board is responsible for paying for and promptly providing a certified transcript of a level three hearing to the court for a mandamus or appellate proceeding.
- O. Grievance Decisions and reports:
 - 1. Any party may propose findings of fact and conclusions of law within twenty (20) days of an arbitration or a level three hearing.
 - 2. A decision, agreement or report shall be dated, in writing, setting forth the reasons for the decision, or outcome and transmitted to the parties and, in a private arbitration, to the Board, within the time limits prescribed. If the grievance is not resolved, the written decision or report shall include the address and procedure to appeal to the next level.
- P. Scheduling - All proceedings shall be scheduled during regular work hours in a convenient location accessible to all parties in accommodation to the parties' normal operations and work schedules. By agreement of the parties, a proceeding may be scheduled at any time or any place. Disagreements shall be decided by the chief administrator or administrative law judge presiding in the case.
- Q. Attendance and Preparation:
 - 1. The grievant, witnesses and an employee representative shall be granted reasonable and necessary time off during working hours to attend grievance proceedings without loss of pay and without charge to annual or compensatory leave credits. A grievant or an intervenor may not be on any type of leave time or worker compensation at the time of the conference, mediation, hearing, or other proceeding. The proceedings shall

be held in abeyance until the grievant returns to work: Provided, That, where the grievant has been determined to be unable to return to work, and the grievant's inability to return to work does not render the grievance moot, the grievance proceedings shall be resumed and the grievance resolved upon its merits.

2. In addition to actual time attending proceedings, the grievant and an employee representative shall be granted time off during working hours, not to exceed four (4) hours per grievance, for the preparation of the grievance without loss of pay and without charge to annual or compensatory leave credits. However, the first responsibility of any employee is the work assigned to the employee. An employee may not allow grievance preparation and representation activities to seriously affect the overall productivity of the employee as determined by the employer. An employee may be the representative in no more than five grievances per year. Time spent in preparing for and attending grievance proceedings shall be accounted for on leave request forms by stating the amount of time expended in such activities. Each employee representative shall request annual leave for any time in excess of four (4) hours per grievance spent in grievance preparation.
3. The grievant and an employee representative shall have access to the employer's equipment for purposes of preparing grievance documents subject to the reasonable rules of the employer governing the use of the equipment for non-work purposes.
4. Disagreements regarding preparation time shall be decided by the chief administrator or administrative law judge presiding in the case.

R. Grievance Files:

1. All grievance forms, decisions, agreements, and reports shall be kept in a file separate from the personnel file of the employee and may not become a part of the personnel file, but shall remain confidential except by mutual written agreement of the parties.
2. The grievant may file a written request to have the grievant's identity removed from any files kept by the employer one (1) year following the conclusion of the grievance.

S. Number of Grievances - The number of grievances filed against an employer by an employee is not, per se, an indication of the employer's or the employee's job performance.

T. Procedures and rules. - The board shall prescribe rules and procedures in compliance with this article, article three of this chapter and the state Administrative Procedures Act under chapter 29A of this code for all proceedings relating to the level three grievance procedure. Chief administrators may adopt procedural rules to govern level one proceedings. Chief administrators and administrative law judges are governed by the West Virginia Ethics Commission's legislative Code of Conduct for Administrative Law Judges, rule 158 CSR 13.

Grievance Procedural Levels

A. Level One: Chief Administrator

1. Within fifteen (15) days following the occurrence of the event upon which the grievance is based, or within fifteen (15) days of the date upon which the event became known to the employee, or within fifteen (15) days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing. The employee shall also file a copy of the grievance with the Board.
2. Conference – Upon timely request by the grievant, the chief administrator shall hold the conference within twenty (20) days of receiving the grievance. A conference is a private, informal meeting between the grievant and the chief administrator to discuss the issues raised by the grievance, exchange information and attempt to resolve the grievance. The chief administrator may permit other employees and witnesses to attend and participate in a conference to reach a resolution. The chief administrator shall issue a written decision within twenty (20) days of the conference.
3. Level One Hearing – Upon timely request by the grievant, the chief administrator shall hold a level one hearing within twenty (20) days of receiving the grievance. A level one hearing is a recorded proceeding conducted in private in which the grievant is entitled to be heard and to present evidence; the form rules of evidence and procedure do not apply, but the parties are bound by the rules of privilege recognized by law. The parties may present and cross-examine witnesses and produce documents, but the number of witnesses, motions and other procedural matters may be limited by the chief administrator. The chief administrator shall issue a written decision within twenty (20) days of the level one hearing.

4. An employee may proceed directly to level three upon the agreement of the parties or when the grievant has been discharged, suspended without pay or demoted or reclassified resulting in a loss of compensation or benefits. Level one and level two proceedings are waived in these matters.

B. Level Two: Alternative Dispute Resolution

Within fifteen (15) days of receiving an adverse written decision at level one, the grievant shall file a written request for mediation, private mediation or mediation or private-arbitration.

1. Mediation - The Board shall schedule the mediation between the parties within twenty (20) days of the request. Mediation shall be conducted by an administrative law judge pursuant to standard mediation practices and Board procedures at no cost to the parties. Parties may be represented, and the representative shall have the authority to resolve the dispute. The report of the mediation shall be documented in writing within twenty (20) days. Agreements are binding and enforceable in this state by a writ of mandamus.
2. Private Mediation – The parties may agree in writing to retain their choice of a private mediator and share the cost. The mediator shall schedule the mediation within twenty (20) days of the written request and shall follow standard mediation practices and any applicable Board procedures. Parties may be represented and shall have the authority to resolve the dispute. The report of the mediation shall be documented in writing within fifteen (15) days. Agreements are binding and enforceable in this State by a writ of mandamus.
3. Private-Arbitration – The parties may agree in writing, to retain their choice of a private arbitrator and share the cost. The arbitrator shall schedule for arbitration within twenty (20) days of the written request and shall follow standard arbitration practices and any applicable Board procedures. The Arbitrator shall render a decision in writing to all parties, setting forth findings of fact and conclusions of law on the issues submitted within thirty (30) days following the arbitration. An arbitration decision is binding and enforceable in this State by a writ of mandamus. The arbitrator shall inform the Board, in writing, of the decision within fifteen (15) days.

C. Level Three Hearing:

1. Within ten (10) days of receiving a written report stating that level two was unsuccessful, the grievant may file a written appeal with the employer and the Board requesting a level three hearing on the grievance.
2. The administrative law judge shall conduct all proceedings in an impartial manner and shall ensure that all parties are accorded procedural and substantive due process.
3. The administrative law judge shall schedule the level three hearing, and any other proceedings or deadlines, within thirty (30) days of receipt of the appeal from a lower-level decision in consultation with the parties. The location of the hearing and whether the hearing is to be made public are at the discretion of the administrative law judge. Hearings may be rescheduled at the request of either party for good cause shown or by the administrative law judge.
4. The administrative law judge may issue subpoenas for witnesses, limit witnesses, administer oaths and exercise other powers granted by rule or law.
5. Within thirty (30) days following the hearing or the receipt of the proposed findings of fact and conclusions of law, the administrative law judge shall render a decision in writing to all parties setting forth findings of fact and conclusions of law on the issues submitted.
6. The administrative law judge may make a determination of bad faith and in extreme instances allocate the cost of the hearing to the party found to be acting in bad faith. The allocation of costs shall be based on the relative ability of the party to pay the costs.

Enforcement and Appeal

- A. The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court of ~~Kanawha County~~ situated in the judicial district in which the grievant is employed.
- B. ~~A party may appeal the decision of the administrative law judge on the grounds that the decision:~~ An appeal of the decision of the administrative law judge shall be to the Intermediate Court of Appeals in accordance with State law and the Rules of Appellate Procedure.

1. ~~is contrary to law or a lawfully adopted rule or written policy of the employer~~
 2. ~~exceeds the administrative law judge's statutory authority;~~
 3. ~~is the result of fraud or deceit;~~
 4. ~~is clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or~~
 5. ~~is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.~~
- C. ~~A party shall file the appeal in the circuit court of Kanawha County within thirty (30) days of receipt of the administrative law judge's decision. The decision of the administrative law judge is not automatically stayed upon the filing of an appeal, but a stay may be granted by the circuit court upon a separate motion for a stay.~~
- D. ~~The court shall review the entire record that was before the administrative law judge, and the court may hear oral arguments and require written briefs. The court may reverse, vacate or modify the decision of the administrative law judge, or may remand the grievance to the administrative law judge or the chief administrator for further proceedings.~~

Allocation of Expenses and Attorney's Fees

- A. Any expense incurred relative to the grievance procedure at levels one, two or three shall be borne by the party incurring the expenses.
- B. In the event a grievant or employer appeals an adverse level three decision to the Intermediate Court of Appeals, or an adverse Intermediate Court of Appeals decision to the Supreme Court of Appeals of West Virginia, and the appellant substantially prevails upon the appeal, the appellant may recover court costs and reasonable attorney's fees for the appeal to be set by the court: Provided, that the provisions of this subsection shall only allow the discretionary recovery of court costs and reasonable attorney's fees from a grievant if s/he has not substantially prevailed at any level of the grievance process or in any appeal to the Intermediate Court of Appeals or the Supreme Court of Appeals of West Virginia.

Mandamus Proceeding

Any employer failing to comply with the provisions of this policy may be compelled to do so by a mandamus proceeding and may be liable to a prevailing party for court costs and reasonable attorney's fees to be set by the court.

Data Collection and Reporting Requirements

Each employer involved in a grievance matter shall maintain the forms and all records created in the grievance process, and shall provide this information to the Board in the form and manner prescribed by the Board.

Communication or Information the Labor Organization or Agent Received or Acquired in Confidence from an Employee

Except as otherwise provided by WV Code 6C-2-8, an employee organization or an agent of an employee organization may not be compelled to disclose any communication or information the employee organization or agent received or acquired in confidence from a public employee, while the employee organization or agent was acting in a representative capacity concerning a public employee grievance or an investigation of a potential public employee grievance, regardless of whether the public employee is a member of the employee organization provided that the confidentiality established by WV Code 6C-2-8 does not apply to written communications between the employee and the employee organization.

The confidentiality applies only to the extent that the communication or information is germane to a grievance or potential grievance of the employee.

The confidentiality continues after termination of:

- A. The employee's employment; or
- B. The representative relationship of the employee organization or its agent with the public employee.

The confidentiality established in WV Code 6C-2-8 protects the communication or information received or acquired by the employee organization or its agent, but does not protect the employee from being compelled to disclose, to the extent provided by law, the facts underlying the communication or information.

The protection for confidential communications established in WV Code 6C-2-8 only extends to proceedings under the public employees grievance procedure. Nothing established in WV Code 6C-2-8 may be construed to extend the confidentiality to circuit court, appellate proceedings, or other proceedings outside of the public employees' grievance procedure.

An employee organization or its agent shall disclose to the employer, as soon as possible, a communication or information, otherwise confidential as established in WV Code 6C-2-8, to the extent the employee organization or its agent reasonably believes:

- A. it is necessary to prevent certain death or substantial bodily harm;
- B. it is necessary to prevent the employee from committing a crime, fraud, or any act that is reasonably certain to result in substantial injury to the financial interests or property of another or to rectify or mitigate ~~any such~~ the action after it has occurred;
- C. the communication or information constitutes an admission that the employee has committed a crime; or
- D. it is necessary to comply with a court order or other law.

An employee organization or its agent may disclose a communication or information in order to:

- A. secure legal advice about the compliance of the employee organization or its agent with a court order or other law;
- B. establish a claim or defense on behalf of the employee organization or its agent in a controversy between the employee and the employee organization or its agent;
- C. establish a defense to a criminal charge or civil claim against the employee organization or its agent based on conduct in which the employee was involved;
- D. respond to allegations in any proceeding concerning the performance of professional duties by the employee organization or its agent on behalf of the employee; or
- E. an employee organization or its agent may disclose an otherwise confidential communication or information, as established in ~~WV Code 6C-2-8~~ WV Code 6C-2-8, without regard to whether the disclosure is made within the public employees' grievance procedure, in the following circumstances:
 - 1. The employee organization has obtained the express written or oral consent of the employee.
 - 2. The employee has, by other act or conduct, waived the confidentiality of the communication or information.
 - 3. The employee is deceased or has been adjudicated incompetent by a court of competent jurisdiction and the employee organization has obtained the written or oral consent of the personal representative of the employee's estate or of the employee's guardian.

If there is a conflict between the application of WV Code 6C-2 and any Federal or State labor law, the provisions of the Federal or other State law shall control.

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Legal WV Code 6C-2-1 through 8, 6C-3-1 et seq.