

## Clarifying When Competency Testing Must be Provided to Service Personnel

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The requirements for competency testing by county boards of education are set forth in [West Virginia Code 18A-4-8e](#), which defines the purpose of the tests as “to provide county boards of education a uniform means of determining whether . . . employees who do not hold a classification title . . . meet the definition of the classification title.” An issue often arises as to whether a county board of education is required to provide competency testing to existing regularly employed service personnel outside of the classification vacancy when others who have previously tested and passed have also applied.

For example, assume Employee “A” has been a regular employed custodian for 14 years. The county board of education posts a vacancy for a General Maintenance/Plumber II/Sanitation Plant Operator. At the time of the posting, Employee “A” is not qualified, as he has not passed the competency test for these classifications. However, Employee “B”, currently a regularly employed Cook, has previously qualified for all of the classifications in the posting by successfully passing the competency tests. Both Employee “A” and “B” apply for the vacancy.

Of course we all know that there is a “hiring priority” set forth in [West Virginia Code 18A-4-8b](#), whereby regular employees who “hold” the classification title of the posted position are entitled to be hired over all others. **So, does the county board of education have to provide Employee “A” with an opportunity to take the necessary competency tests (with required in-service preparation), so that he can attempt to qualify for the position?**

The answer is “no”. A county board of education is under no obligation to wait to fill a position while a regularly employed service employee attempts to obtain the qualifications for the position, when others have previously qualified. [West Virginia Code 18A-4-8b\(a\)](#) provides that a board of education is required to “make decisions affecting . . . the filling of any service personnel positions . . . on the basis of seniority, qualifications and evaluation of past service.” In turn, the same statute defines “qualifications” as meaning that “the applicant holds the classification title in his or her category of employment . . . and shall be given first opportunity for . . . filling vacancies.”

In turn, [West Virginia Code 18A-4-8e](#) contains several provisions which make it clear that, once an applicant has passed the applicable competency test, they are then qualified for any future vacancies in that classification. Therefore, since the statutory purpose of competency testing is to determine qualifications of applicants who do not “hold” the classification title, an applicant who has previously passed the test, but is not currently working in that job classification, is still considered to be one who “holds” the class title, having previously qualified.

These provisions have been interpreted by the Grievance Board to mean that “only if no qualified individuals apply, i.e., no applicants hold the class titles in question *or have successfully completed the competency test*, is the board obligated to offer competency testing in order for other employees to be deemed qualified through successful completion of the examination.” [Fuccy v. Hancock, 2008-0264-HanED](#). As also stated in [West Virginia Code 18A-4-8e](#), if no applicants are qualified, “other employees then shall be considered and shall qualify by meeting the definition of the job title,” i.e., be allowed to take the applicable competency test.

Should you have any questions on this issue or any issues please feel free to contact a member of [Dinsmore & Shohl's Education Law Practice Group](#).