

Where's the "Efficiency" in West Virginia Legislation from A Personnel Perspective?

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The [West Virginia Constitution](#) requires that "the legislature shall provide, by general law, for a thorough and efficient system of free schools" (W. Va. CONST. art. XII, § 1). But, the legislature, on several occasions, and more so in the past couple of years, has enacted education related legislation that in fact, makes personnel decisions seem far from *efficient*.

Below are just a few examples of West Virginia Code sections that, from a personnel decision making perspective, make it difficult to have a constitutionally mandated "efficient system of free schools" for West Virginia county boards of education.

- [West Virginia Code § 18A-4-8a\(E\)\(7\)](#) provides: "Any full-time service personnel required to work *in excess of their normal working day* during any week in which contains a school holiday for which they are paid shall be paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usually hourly rate and paid entirely from county board funds."
- [West Virginia Code § 18A-4-8](#) provides: "Without the written consent of the service person, a county board may not establish the beginning work station for a bus operator or transportation aide at any site other than a county board-owned facility with available parking. The workday of the bus operator or transportation aide commences at the bus at the designated beginning work station and ends when the employee is able to leave the bus at the designated beginning work station, unless he or she agrees otherwise in writing. The application or acceptance of a posted position may not be construed as the written consent referred to in this subsection."¹
- [West Virginia Code § 18A-4-8a\(8\)](#) provides: "No service employee may have his or her daily work schedule changed during the school year without the employee's written consent and the employee's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee."²
- [West Virginia Code § 18A-4-8b\(d\)\(3\)-\(4\)](#) provides: "(3) 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. (4) Assignment of a custodian to work shifts in a school or work site is based on seniority within the custodian classification category."³
- [West Virginia Code § 18A-4-8b\(g\)\(2\)](#) provides: "Notice of a job vacancy shall include the job description, the period of employment, the work site, the starting and ending time of the daily shift, the amount of pay and any benefits and other information that is helpful to prospective applicants to understand the particulars of the job. The notice of a job vacancy in the aide classification categories shall include the program or primary assignment of the position. Job postings for vacancies made pursuant to this section shall be written to ensure that the largest possible pool of

qualified applicants may apply. Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant."⁴

- [West Virginia Code § 18A-2-2\(1\)\(A\)](#) provides: "A continuing contract [for a teacher] may not be terminated except: By a majority of the full membership of the county board on or before February 1 of the ten current year..."⁵
- [West Virginia Code § 18A-2-7](#) provides: "The superintendent, subject only to approval of the board, may assign, transfer...[professional] school personnel...However, an employee shall be notified in writing by the superintendent on or before February 1..."⁶
- [West Virginia Code § 18A-2-6](#) provides: "The continuing contract of any [service personnel] employee shall remain in full force...unless and until terminated with written notice, stating cause or causes, to the employee, by a majority vote of the full membership of the board before February 1 of the ten current year..."⁷
- [West Virginia Code § 18A-2-7\(b\)](#) provides: "The superintendent at a meeting of the board on or before March 15 of each shall provide in writing to the board a list of all probationary teachers that he or she recommends to be rehired for the next ensuing year."⁸

From a personnel decision making perspective, it is tough to see the "efficiency" in certain West Virginia Code sections. Rather, many of the personnel decision-makers would see certain legislation as "inefficient" even when considering the rights of employees, which everyone respects and seeks to protect. The question that often seems to be forgotten during the legislative sessions when considering proposed legislation is how does this proposed legislation create a thorough and efficient system of free schools for West Virginia.⁹

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](#).

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- (1) 2007 Legislation.
 - (2) Always a hot issue when the unforeseen need arises to change a bus run.
 - (3) 2009 Legislation.
 - (4) 2010 Legislation.
 - (5) 2009 Legislation. Legislature changed the date from "the first Monday in April" to "February 1".
 - (6) 2009 Legislation. Legislature changed the date from "the first Monday in April" to "February 1".
 - (7) 2009 Legislation. Legislature changed the date from "the first day of April" to "February 1".
 - (8) 2009 Legislation. Legislature changed the date from "the first Monday in May" to "March 15".
 - (9) Not to mention the question of how is this proposed legislation in the best interest of the student.