

## What Public School Leaders Ought to Know About Recent Legislation and Related Legal Developments

Administrators Conference  
Tamarack  
July 21, 2016

Howard Seufer, Jr.  
Bowles Rice LLP




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## Bowles Rice Education Law Group



Rick Boothby      Kimberly Croyle      Howard Seufer      Rebecca Tinder

Top Ranked in Education Law




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## The Education Law Group at Bowles Rice, LLP

### Primary Attorneys

Rick Boothby - Parkersburg  
Kim Croyle - Morgantown  
Howard Seufer - Charleston  
Rebecca Tinder - Charleston

### Legal Assistants

Sarah Plantz - Charleston  
Linda Poff - Parkersburg

### Adjunct Attorneys

Mark Adkins - Construction Litigation  
Bob Bays - Eminent Domain  
Aeron Boone - Civil Litigation  
Michael Caroll - Title IX  
Mike Caryl - Taxes; PILOTs  
Kayla Cook - Title IX  
Josh Cottle - Grievances and Appeals  
Mark D'Antoni - Acquisition & Disposition of Real Estate  
Mark DeHinger - EEOC/Human Rights  
Jill Hall - Affordable Care Act; Wage & Hours  
Roger Hanshaw - Parliamentary Procedure  
Ashley Hardesty O'Dell - Civil Litigation  
Justin Harrison - ADA and Employee Leave  
Roger Hunter - Bond Issues, Levies, Lease Purchase  
Bob Kent - Civil Litigation  
Leonard Kree - Environmental Law  
Brian Peterson - Civil Litigation  
Steve Prunty - Easements  
Marlon Ray - Workers Compensation  
Jessie Rickart - Grievances, Workforce WV  
Cam Siegrist - Bond Issues and Finance  
Ken Webb - Construction Litigation




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## *Our Agenda This Morning*

- Some school law resources to help you keep up-to-date all year long
- Education law highlights of the recent regular session of the legislature
- Significant recent court and grievance decisions
- Best practices for employee discipline



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## *A Word About This Presentation*

- We speak in general terms today. The specific facts of each situation can make a difference in the legal principles that apply
- This presentation must not be treated as legal advice about any specific situation
- Due to the rapidly changing nature of the law, information in this presentation may become outdated
- When in doubt, don't act or rely upon the information contained in this presentation without seeking legal advice



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## *Some School Law Resources To Help You Keep Up-to-Date All Year Long*



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## *“School Laws of West Virginia”*

- Beware! The latest edition and its CD-ROM/electronic version are already out of date!
- Current versions of the statutes are available at the West Virginia Legislature’s website



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## *E-Updates & Alerts*



THE BOWLES RICE EDUCATION LAW GROUP  
**eNewsletter**

This education law newsletter is a publication of Bowles Rice LLP, Attorneys at Law February 2013



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## *E-Newsletter Mailing List*

- E-Newsletter Mailing List
- Send an email to Sarah Plantz:
  - [splantz@bowlesrice.com](mailto:splantz@bowlesrice.com)
- Tell Sarah:
  - Who you are
  - Your position in public education
  - Your school board’s name
  - That you want to receive the E-Newsletter



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## Highlights of 2016 State Legislation Affecting Public Education

Handout, p. 1



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## What DIDN'T Make It

- Charter Schools
- RESAs
- Common Core
- Contracting to use RESA personnel as interventionists
- Preference to certified and employed professional educators in filling coach vacancies



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## Categories of New Laws

1. Those requiring immediate attention to avoid noncompliance
2. Those that should advisedly be addressed next
3. Those that offer a glimpse of long-term developments and change



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1.  
New legislation  
requiring immediate  
attention to avoid  
noncompliance



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Senate Bill 146  
Establishing Instruction Standards  
for Early Childhood Education

*Handout p. 1*

- Beginning 2016-2017, early childhood education programs must
  - be full-day
  - provide at least 1,500 weekly minutes of instruction
  - provide at least 48,000 minutes of instruction per year
- Parent can withdraw child without “good cause”



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Senate Bill 504  
Confidentiality of Juvenile Records

*Handout p. 6*

- Protects certain recorded interviews of children in any judicial or administrative proceeding, and any related written documentation
- Court order required before publishing or duplicating
- Exceptions for access by certain persons prior to the commencement of formal proceedings
- Misdemeanor penalty



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## House Bill 4145 Carry or Use of Handgun or Deadly Weapon

*Handout p. 9*

- “Concealed carry” legislation did not open the doors to firearms in the schools
- With the same exceptions as before, it is a felony to possess a firearm or deadly weapon, with or without a permit, in school buildings, on school grounds, at school-sponsored functions
- Only one new exception: for officially-appointed probation officers in performing their duties



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## House Bill 4175 Home Schooling

*Handout p. 9*

- “Notice of intent” is no longer annual
- Provider no longer has to
  - give evidence of high school diploma or equivalent if certain other evidence is submitted
  - provide an outline of a plan of instruction
- Some annual academic assessment options are modified
- Only on request must board notify parent of services to determine special education eligibility



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## House Bill 4364 Internet Privacy Protection Act

*Handout p. 15*

- Prohibits employer from requesting or requiring that an employee or potential employee
  - disclose user name or password to access his or her personal social networking website account
  - access his or her personal account in employer's presence
  - add employer to list of contacts that can access his or her personal account



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■ **Exceptions:**

- Accessing publicly available information
- Requiring disclosure of username or password to access
  - employer-issued device
  - employer-provided account or service used in the business or obtained by employee by virtue of employment relationship

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**House Bill 4566**

**Relating to School Personnel**

*Handout p. 17*

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**“Personnel season” deadlines**

- Early notice of retirement to receive bonus
- Continuing contract resignations
- Vote to RIF-terminate continuing contracts
- Transfer list notice, hearing and vote
- Probationary non-renewal
- Date by which an opening for next year must be known in order to fill with people who are subject to RIF release
- Date by which student enrollment must be unforeseen in order to reassign personnel under the ratio and class size rules

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- Notice confirming that employees are on the transfer list need not be certified mail
  - No longer have to notify recall list service personnel of each vacancy
    - Annual notice suffices
    - Need not be certified mail
  - No longer send laterality policy changes to State Board
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- Assistant superintendent certification as superintendent
  - Reporting teacher disqualification to NASDTEC database
  - No longer have to offer or arrange pre-competency test training
  - Clarification: Fill posted service vacancies within 20 working days of posting closing date
  - “Stay put” rules
    - New Code section
  - Professionals: No change
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- Service employees
    - One school year rule:
      - Autism mentors or aides working with students with autism
      - Paraprofessionals, interpreters, aides and ECCATs working with students with exceptionalities whose IEP requires one-on-one service
    - All other service personnel
      - First year: no transfer during first half
      - Thereafter: One transfer per half, may move at start of next half
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**House Bill 4618**  
**Limitations on Use of Public Official's Name or Likeness**

*Handout p. 21*

- Prohibits public official, agent or public employee from
  - placing official's name or likeness on trinkets
  - using public funds, employees or resources to distribute, publish or display officials' name or likeness for the purpose of advertising to the public
  - placing the official's name or likeness on publicly-owned vehicles or on any educational material paid for with public funds



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- Restricts placing public official's name or likeness on a public agency's website and social media
- Provides for alternative uses of existing prohibited material after the bill's effective date



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- Provides exceptions that include:
  - name or likeness on official record, report, letterhead, document or certificate, or instructional material issued in the course of official's duties
  - also on other official documents in normal course of the public body, e.g., fax cover sheets, press release headers, office signage
  - public official's campaign-related expenditures and materials
  - items paid for with official's personal money
  - items required by law to contain official's name or likeness
  - exceptions granted by the Ethics Commission for undue hardship or for significant financial impact on public body to comply



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2.  
New legislation that  
should advisedly be  
addressed next



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Senate Bill 274  
Increasing Civil Jurisdictional  
Amount in Magistrate Courts

*Handout p. 3*

- Increases from \$5,000 to \$10,000 the amount recoverable in a Magistrate Court civil action, exclusive of interest and cost



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House Bill 4005  
Repealing Prevailing Hourly Rate  
Wage Requirement

*Handout p. 8*

- Repeals the requirement that the prevailing hourly wage rate be paid to workers employed by or on behalf of public authorities in the construction of public improvements



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## House Bill 4237 Supporting and Strengthening Families

*Handout p. 11*

- Parents and guardians may delegate the care and custody of a children to certain charitable and religious non-profit organizations, which then exercises parental and legal authority over the child
  - Special form of power of attorney
- The delegation does not deprive the parent or guardian of any rights and may be revoked



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## House Bill 4295 School Innovation Zones Act

*Handout p. 12*

- Terminates funds for School Innovation Zones and Local Solution Dropout Prevention and Recovery Zones
- Authorizes Innovation in Education schools
  - Applications and application procedure
  - Plan developed by principal and faculty, with input from others
  - Operational agreement between county board and principals
  - Assessment and review
- Innovation in Education demonstration schools



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## House Bill 4507 Employment Preference for Veterans

*Handout p. 17*

- Hiring preferences for veterans do not violate West Virginia's Human Rights Act
- However, county boards must still follow the criteria under the school laws for filling vacancies in professional and service jobs and assignments



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3.  
New legislation that is  
good to know



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- SB 13, Overtaking & Passing School Buses
  - *Handout p. 1*
- SB 476, Restrictions in School Zones
  - *Handout p. 5*
- HB 2366, Soliciting Minors with Computers
  - *Handout p. 7*
- HB 3019, Conduct Business in English
  - *Handout, p. 8*
- HB 4417, Protection from Garnishment
  - *Handout, p. 16*



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4.  
New legislation that offers  
a glimpse of long-term  
developments and change



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**Senate Bill 520**  
**Allowing PEIA to Recover**  
**Benefits or Claims Obtained**  
**Through Fraud**

*Handout p. 6*

- New criminal offenses for willful misrepresentations made to gain benefits or payment under PEIA
- Allows PEIA to recover in an administrative proceeding benefits and overpayments obtained through fraud



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**House Bill 4301**  
**Framework for Initiating**  
**Comprehensive Transformation**  
**of School Leadership**

*Handout p. 13*

- Requires the State Board, by the 2018 regular session, to recommend statutes and policies to create a system to transform school leadership



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**House Bill 4730**  
**Computer Science Courses of**  
**Instruction**

*Handout p. 23*

- Requires the State Board, by the 2017 regular session, to submit a plan to implement computer science instruction at the K-12 level, to include teaching standards and certificate requirements



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*Recent Decisions of the  
West Virginia Supreme  
Court of Appeals*

Handout, p. 25



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1.

*Ellison v. Fayette County  
Board of Education*

(employee discipline for off-campus,  
off-duty acts)



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3.

*Staats v. Jackson County  
Board of Education*

(bus operator down time)



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9.

*Lemasters v. Jackson  
County Board of  
Education*

(teacher duty outside the regular school  
day)



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10.

*Lancaster v. Ritchie  
County Board of  
Education*

(prior warnings and uncorrectable  
behavior)



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*Recent Decisions of the  
Grievance Board*

Handout, p. 28



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1. *Carr v. McDowell County*  
(insubordination)

6. *King v. Lewis County*  
(employee dress codes)

8. *Kinder v. Kanawha County*  
(uncorrectable conduct)

12. *Cline v. Braxton County*  
(pattern of non-enforcement)

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22. *McCool v. Marshall County*  
(harassment)

24. *Duncan v. Mingo County*  
(extended contract)

27. *Bailey v. Mingo County*  
(correcting errors)

28. *Yoder v. Harrison County*  
(track record; future discipline)

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38. *Cole v. Wood County*  
(teaching schedule adjustment)

47. *McCloud v. Mingo County*  
(absenteeism; track record)

49. *Bias v. Boone County*  
(hostile environment harassment)

51. *Barnett v. Cabell County*  
(seamless transition?)

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*Thank you for taking time to  
improve your understanding of  
the school laws*

*And thank you for all you do to improve  
student achievement in West Virginia's  
schools*



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