

Yes Auditors, Our Legislation Encourages “Deadhead” Travel

January 31, 2012 by [Jason Long](#) and [Denise Spatafore](#)

By now, most of us have had a chance to review the [Education Efficiency Audit of West Virginia's Primary and Secondary Education System](#) (“Audit”), conducted by Public Works LLC. The Audit resulted in more than 50 findings and recommendations. The auditors, among other things, declared that West Virginia has one of the most highly regulated education systems in the country with many details linked to state code, which results in little flexibility to modify policy and operations.

The first section of this Audit describes 56 findings and recommendations spread over six (6) state-level function areas, one of which is “Transportation”. For those of us working on a daily basis with county boards of education, transportation is always a daily issue in one way or another. Whether it’s determining the difference between extra duty and extracurricular assignments (and how to legally give them to the correct employee), step-up issues, summer seniority determinations, changes in routes (potentially causing transfer issues), or numerous other problems, there are always transportation issues. Although just a small portion of the Audit relates to transportation, one of the recommendations in this particular area caught our attention.

In particular, among other things, the Audit recommends that county boards of education utilize bus routing technology to plan school transportation routes. The Audit states, “Bus routing technology can save transportation costs by computing the shortest routes to reduce equipment, fuel, and driver expenses.” Is there a single county system in West Virginia that doesn’t have a goal to “reduce equipment, fuel, and driver expenses?” However, our “highly regulated” education system is a roadblock to achieving this goal.

For example, a few years ago (2007) the [West Virginia Legislature](#) enacted the following legislation as it related to transportation.

[West Virginia Code 18A-4-8b\(q\)](#) Without the written consent of the service person, **a county board may not establish the beginning work station for a bus operator . . . at any site other than a county board-owned facility with available parking. The workday of the bus operator . . . 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.

For many rural counties, legislation like this makes it nearly impossible to have efficiency in transportation. The legislation actually encourages “deadhead” travel in order to return the bus operator to his or her “beginning work station” after their morning run. And this “beginning work station” may be several miles from the driver’s starting point, because the “county board-owned facility” where the driver begins his/her day is nowhere near where the first student boards; again,

encouraging “deadhead” travel. If that bus driver is not returned to his or her “beginning work station” after their morning run, their “work” day continues for overtime purposes, potentially meaning that the driver will receive pay for hours of “wait” time in the middle of the day, which would not be compensated time but for this statute.

This transportation issue is just one very small example in the Audit of how our complex statutory system results in little flexibility for school systems to modify policy and operations in problem areas. When those outside the public education sector read the Audit, it is likely difficult for them to understand just how “highly regulated” our education system is, whether it relates to transportation or other issues.¹ This is especially true in the instant situation where the Audit does not reference [West Virginia Code 18A-4-8b\(q\)](#).

As the West Virginia Legislative Session begins, we will monitor any education changes that relate to the Audit recommendations. Should you have any questions on this issue or any issues please feel free to contact a member of [Dinsmore's Education Law Practice Group](#).

(1) For example, see [Where's the "Efficiency" in West Virginia Legislation from A Personnel Perspective?](#), August 2, 2010.