

# H. B. 2861

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[Introduced March 7, 2013; referred to the  
Committee on Education then Finance.]

A BILL to amend and reenact §18-2-6 of the Code of West Virginia, 1931, as amended, relating to continued enrollment of at-risk student in public school while enrolled in an alternative program that meets certain conditions; making legislative findings on at-risk students, discouraged and defeated learners and purpose for authorizing continued enrollment; authorizing county superintendent to approve continued enrollment; providing conditions under which continued enrollment may be approved; and eliminating required annual report on cooperation with challenge academy.

*Be it enacted by the Legislature of West Virginia:*

That §18-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. STATE BOARD OF EDUCATION.**

**§18-2-6. Classification and standardization of schools; standards for degrees and diplomas; certificates of proficiency; establishment of alternative education programs.**

- 1       (a) (1) The state board shall promulgate rules for the  
2 accreditation, classification and standardization of all schools in  
3 the state, except institutions of higher education, and shall  
4 determine the minimum standards for the granting of diplomas  
5 and certificates of proficiency by those schools. The certificates  
6 of proficiency shall include specific information regarding the  
7 graduate's skills, competence and readiness for employment or  
8 honors and advanced education and shall be granted, along with  
9 the diploma, to every eligible high school graduate. The  
10 certificate of proficiency shall include the program of study  
11 major completed by the student only for those students who have  
12 completed the required major courses, or higher level courses,  
13 advanced placement courses, college courses or other more  
14 rigorous substitutes related to the major, and the recommended  
15 electives.
- 16       (2) An institution of less than collegiate or university status  
17 may not grant any diploma or certificate of proficiency on any

18 basis of work or merit below the minimum standards prescribed  
19 by the state board.

20 (3) A charter or other instrument containing the right to issue  
21 diplomas or certificates of proficiency may not be granted by the  
22 State of West Virginia to any institution or other associations or  
23 organizations of less than collegiate or university status within  
24 the state until the condition of granting or issuing the diplomas  
25 or other certificates of proficiency has first been approved in  
26 writing by the state board.

27 (b) The state board shall promulgate a rule for the approval  
28 of alternative education programs for disruptive students who are  
29 at risk of not succeeding in the traditional school structure. This  
30 rule may provide for the waiver of other policies of the state  
31 board, the establishment and delivery of a nontraditional  
32 curriculum, the establishment of licensure requirements for  
33 alternative education program teachers, and the establishment of  
34 performance measures for school accreditation. This rule shall  
35 provide uniform definitions of disruptive student behavior and  
36 uniform standards for the placement of students in alternative  
37 settings or providing other interventions including referrals to

38 local juvenile courts to correct student behavior so that they can  
39 return to a regular classroom without engaging in further  
40 disruptive behavior.

41 (c) The state board shall establish up to five pilot projects at  
42 the elementary or middle school levels, or both, that employ  
43 alternative schools or other placements for disruptive students to  
44 learn appropriate behaviors so they can return to the regular  
45 classroom without further disrupting the learning environment.  
46 The state board shall report to the Legislative Oversight  
47 Commission on Education Accountability by December 1, 2010,  
48 on its progress in establishing the pilot projects and by  
49 December 1 in each year after that for the duration of the pilot  
50 projects on the effect of the projects on maintaining student  
51 discipline.

52 (d) If a student attends an approved alternative education  
53 program or the Mountaineer Challenge Academy, which is  
54 designated as a special alternative education program pursuant  
55 to section twenty-four, article one-b, chapter fifteen of this code,  
56 and the student graduates or passes the General Equivalency  
57 Development (GED) Tests within five years of beginning ninth

58 grade, that student shall be considered graduated for the  
59 purposes of calculating the high school graduation rate used for  
60 school accreditation and school system approval, subject to the  
61 following:

62 (1) The student shall only be considered graduated to the  
63 extent that this is not in conflict with any provision of federal  
64 law relating to graduation rates;

65 (2) If the state board determines that this is in conflict with  
66 a provision of federal law relating to graduation rates, the state  
67 board shall request a waiver from the United States Department  
68 of Education; and

69 (3) If the waiver is granted, notwithstanding the provisions  
70 of subdivision (1) of this subsection, the student graduating or  
71 passing the General Educational Development (GED) Tests  
72 within five years shall be considered graduated.

73 (e) The state board shall promulgate a rule to support the  
74 operation of the National Guard Youth Challenge Program  
75 operated by the Adjutant General and known as the  
76 “Mountaineer Challenge Academy” which is designated as a  
77 special alternative education program pursuant to section

78 twenty-four, article one-b, chapter fifteen of this code, for  
79 students who are at risk of not succeeding in the traditional  
80 school structure. The rule shall set forth policies and procedures  
81 applicable only to the Mountaineer Challenge Academy that  
82 provide for, but are not limited to, the following:

83 (1) Implementation of provisions set forth in section  
84 twenty-four, article one-b, chapter fifteen of this code;

85 (2) Precedence of the policies and procedures designated by  
86 the National Guard Bureau for the operation of the Mountaineer  
87 Challenge Academy special alternative education program;

88 (3) Consideration of a student participating in the  
89 Mountaineer Challenge Academy special alternative education  
90 program at full enrollment status in the referring county for the  
91 purposes of funding and calculating attendance and graduation  
92 rates, subject to the following:

93 (A) The student shall only be considered at full enrollment  
94 status for the purposes of calculating attendance and graduation  
95 rates to the extent that this is not in conflict with any provision  
96 of federal law relating to attendance or graduation rates;

97 (B) If the state board determines that this is in conflict with  
98 a provision of federal law relating to attendance or graduation

99 rates, the state board shall request a waiver from the United  
100 States Department of Education;

101 (C) If the waiver is granted, notwithstanding the provisions  
102 of paragraph (A) of this subdivision, the student shall be  
103 considered at full enrollment status in the referring county for  
104 the purposes of calculating attendance and graduation rates; and

105 (D) Consideration of the student at full enrollment status in  
106 the referring county is for the purposes of funding and  
107 calculating attendance and graduation rates only. For any other  
108 purpose, a student participating in the academy is considered  
109 withdrawn from the public school system;

110 (4) Articulation of the knowledge, skills and competencies  
111 gained through alternative education so that students who return  
112 to regular education may proceed toward attainment or attain the  
113 standards for graduation without duplication; and

114 (5) Consideration of eligibility to take the General  
115 Educational Development (GED) Tests by qualifying within the  
116 extraordinary circumstances provisions established by state  
117 board rule of a student participating in the Mountaineer  
118 Challenge Academy special alternative education program who  
119 does not meet any other criteria for eligibility.

120 (f) Nothing in this section or the rules promulgated under  
121 this section compels the Mountaineer Challenge Academy to be  
122 operated as a special alternative education program or to be  
123 subject to any other laws governing the public schools except by  
124 its consent.

125 ~~(g) The state board shall report to the Legislative Oversight~~  
126 ~~Commission on Education Accountability on or before January~~  
127 ~~1 of each year on its efforts to cooperate with and support the~~  
128 ~~Mountaineer Challenge Academy pursuant to this section and~~  
129 ~~section twenty-four, article one-b, chapter fifteen of this code.~~

130 (g) The Legislature finds that any child who is unlikely to  
131 graduate on schedule with both the skills and self esteem  
132 necessary to exercise meaningful options in the areas of work,  
133 leisure, culture, civic affairs and personal relationships may be  
134 defined as being an at-risk student. At-riskness often starts in the  
135 early grades for a student that gradually falls further behind in  
136 the essential skills of reading, writing and math, and may be  
137 accompanied by patterns of behavior such as poor attendance,  
138 inattentiveness, negative attitudes and classroom misbehavior  
139 that both are symptoms of and added catalysts for increasingly



140 defeated and discouraged learners. At least by the middle grades,  
141 students with growing skill deficits usually know they are behind  
142 other students and have good reason to feel discouraged. A  
143 growing lack of self confidence and self worth, limited optimism  
144 for the future, avoidance of school and adults and a dimming  
145 view of the relationship between effort and achievement are  
146 among the characteristics of defeated and discouraged learners.  
147 While the public schools can and are expected to address the  
148 needs of all students, minimizing the likelihood that they will  
149 become at-risk and giving additional attention to those that do,  
150 the circumstances involved with a child becoming at-risk are  
151 often complex and may include influences both within and  
152 outside of the school environment. In fragile homes, a child who  
153 is at-risk and is becoming a discouraged and defeated learner  
154 often lacks adequate support and may develop peer relationships  
155 that further exacerbate the difficulty of reengaging them in  
156 learning, school and responsible social behavior.

157 The Legislature further finds that when a student in the  
158 public schools is at-risk and is becoming a discouraged and  
159 defeated learner, the public schools should not be deterred from

160 seeking and assisting with enrollment of the student in an  
161 alternative program that helps remedy the student's  
162 discouragement, lessen their skill deficits and facilitate their  
163 return to public school successfully. For this purpose, subject to  
164 approval of the county superintendent, a student enrolled in the  
165 public schools of the county may continue to be enrolled while  
166 also enrolled in an alternative program subject to the following  
167 conditions:

168       (1) The student meets the general description of an at-risk  
169 student and exhibits behaviors and characteristics associated  
170 with a discouraged and defeated learner such as those described  
171 in this subsection;

172       (2) The alternative program is a school subject to article  
173 twenty-eight of this chapter, and complies with all requests of  
174 the county superintendent for information on the educational  
175 program and progress of the student;

176       (3) The alternative program includes a family involvement  
177 component in its program, including participation in activities  
178 that help address the challenging issues that have hindered the  
179 student's engagement and progress in learning, and the

180 participation of the student and the student's parents or legal  
181 guardian is required;

182 (4) The alternative program includes an on site boarding  
183 option for students;

184 (5) The alternative program provides an individualized  
185 education program for students designed to prepare them for a  
186 successful transition back into the public schools; and

187 (6) The parents or legal guardian of the student make  
188 application to the alternative program for enrollment of the  
189 student, agree to the terms and conditions for enrollment, and the  
190 student is enrolled.

NOTE: The purpose of this bill is to remove a deterrent to public schools to seeking and assisting the enrollment of a student, who is at-risk and is becoming a discouraged and defeated learner, in an alternative program designed to prepare them for a successful transition back into the public schools. The bill sets forth characteristics of a discouraged and defeated learner, and allows the county superintendent to approve the continued enrollment of these students in the public schools while they are enrolled in the alternative program. The alternative program must meet certain conditions outlined in the bill.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

