

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-FIRST LEGISLATURE**  
**REGULAR SESSION, 2014**



**ENROLLED**

**Senate Bill No. 209**

(BY SENATORS BEACH, MILLER, COOKMAN, WALTERS  
AND FITZSIMMONS)

[PASSED MARCH 6, 2014; IN EFFECT FROM PASSAGE.]

E N R O L L E D

## Senate Bill No. 209

(BY SENATORS BEACH, MILLER, COOKMAN, WALTERS AND  
FITZSIMMONS)

---

[Passed March 6, 2014; in effect from passage.]

---

AN ACT to amend and reenact §18-20-1 of the Code of West Virginia, 1931, as amended, relating to special programs and services for exceptional children; requiring county boards to allow student with disabilities whose individualized education plan provides for a modified diploma to participate in graduation ceremony with same grade classmates; permitting continued special education services; and prohibiting county boards from denying continuing special education services to the student due to participation in graduation ceremony.

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

That §18-20-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

**§18-20-1. Establishment of special programs and teaching services for exceptional children; modified diploma graduation.**

1           (a) In accordance with the following provisions, county  
2 boards of education throughout the state shall establish and  
3 maintain for all exceptional children between five and  
4 twenty-one years of age special educational programs,  
5 including, but not limited to, special schools or classes,  
6 regular classroom programs, home-teaching or visiting-  
7 teacher services for any type or classification as the state  
8 board shall approve. Special educational programs shall  
9 continue to be provided to those children who are at least  
10 twenty-one years of age and enrolled in the above-mentioned  
11 special education program prior to September 1, 1991, until  
12 they reach twenty-three years of age. Provisions shall be  
13 made for educating exceptional children (including the  
14 handicapped and the gifted) who differ from the average or  
15 normal in physical, mental or emotional characteristics, or in  
16 communicative or intellectual deviation characteristics, or in  
17 both communicative and intellectual deviation characteristics,  
18 to the extent that they cannot be educated safely or profitably  
19 in the regular classes of the public schools or to the extent  
20 that they need special educational provisions within the  
21 regular classroom in order to educate them in accordance  
22 with their capacities, limitations and needs: *Provided*, That  
23 for the school year beginning on July 1, 1990, provisions  
24 shall be made for educating exceptional children, including  
25 the handicapped, the gifted in grades one through eight, the  
26 pupils enrolled on July 1, 1989, in the gifted program in  
27 grades nine through twelve and the exceptional gifted in  
28 grades nine through twelve. The term "exceptional gifted"  
29 means those students in grades nine through twelve identified  
30 as gifted and at least one of the following: Behavior disorder,  
31 specific learning disabilities, psychological adjustment  
32 disorder, underachieving or economically disadvantaged.  
33 Exceptional gifted children shall be referred for identification  
34 pursuant to recommendation by a school psychologist, school  
35 counselor, principal, teacher, parent or by self-referral, at  
36 which time the placement process, including development of

37 an individualized education program, and attendant due-  
38 process rights, shall commence. Exceptional gifted children,  
39 for purposes of calculating adjusted enrollment pursuant to  
40 section two, article nine-a of this chapter, shall not exceed  
41 one percent of net enrollment in grades nine through twelve.  
42 Nothing herein shall be construed to limit the number of  
43 students identified as exceptional gifted and who receive  
44 appropriate services. Each county board of education is  
45 mandated to provide gifted education to its students  
46 according to guidelines promulgated by the state board and  
47 consistent with the provisions of this chapter. Upon the  
48 recommendation of a principal, counselor, teacher and parent,  
49 a student who does not meet the gifted eligibility criteria may  
50 participate in any school program deemed appropriate for the  
51 student provided that classroom space is available. In  
52 addition, county boards of education may establish and  
53 maintain other educational services for exceptional children  
54 as the State Superintendent of Schools may approve.

55 (b) County boards of education shall establish and  
56 maintain these special educational programs, including, but  
57 not limited to, special schools classes, regular class programs,  
58 home-teaching and visiting-teacher services. The special  
59 education programs shall include home-teaching or  
60 visiting-teacher services for children who are homebound due  
61 to injury or who for any other reason as certified by a  
62 licensed physician are homebound for a period that has lasted  
63 or will last more than three weeks. The state board shall  
64 adopt rules to advance and accomplish this program and to  
65 assure that all exceptional children in the state, including  
66 children in mental health facilities, residential institutions and  
67 private schools, will receive an education in accordance with  
68 the mandates of state and federal laws: *Provided*, That  
69 commencing with the school year beginning on July 1, 1991,  
70 all exceptional children in the state in foster care and

71 correctional facilities will receive an education in accordance  
72 with the mandates of state and federal laws.

73 (c) Each county board of education shall adopt a policy  
74 that allows a student with disabilities whose individualized  
75 education program provides for a modified diploma to  
76 participate in the graduation ceremony of his or her same  
77 grade classmates if requested in writing by his or her parent  
78 or legal guardian. The county board shall also permit the  
79 student to continue receiving his or her special education  
80 services after the graduation ceremony. The county board  
81 may not terminate, deny or declare the student ineligible for  
82 post-graduation ceremony special education services due to  
83 his or her participation in the graduation ceremony.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman Senate Committee*

.....  
*Chairman House Committee*

Originated in the Senate.

In effect from passage.

.....  
*Clerk of the Senate*

.....  
*Clerk of the House of Delegates*

.....  
*President of the Senate*

.....  
*Speaker of the House of Delegates*

\_\_\_\_\_

The within ..... this  
the ..... Day of ....., 2014.

.....  
*Governor*