

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4414

BY DELEGATES ROWAN, CAMPBELL, ROHRBACH, ESTEP-

BURTON, PYLES, C. MARTIN, BOGGS, TONEY, MANDT,

LOVEJOY AND HANNA

[Passed March 5, 2020; in effect ninety days from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §16-1-20, relating to authorizing certain modes of communication as a means
3 for acquiring language for children from birth to five years of age; making implementation
4 subject to appropriation by the Legislature; requiring reporting of measures specific to
5 language and literacy for children age three to five to advisory committee; requiring the
6 West Virginia Department of Health and Human Resources and the West Virginia
7 Department of Education to jointly select language developmental milestones from
8 existing standardized norms, to develop a family resource for use by families and service
9 providers to understand and monitor deaf and hard-of-hearing children's receptive and
10 expressive language acquisition and progress toward English literacy development;
11 requiring the West Virginia Department of Health and Human Resources and the West
12 Virginia Department of Education to prepare a list of valid and reliable existing tools for
13 assessments for service providers that can be used periodically to determine the receptive
14 and expressive language and literacy development of deaf and hard-of-hearing children;
15 requiring dissemination of the family resource and the educator tools and assessments,
16 as well as the provision of informational materials on the use of the resources, tools, and
17 assessments; imposing certain requirements on the child's individualized family service
18 plan team and individual education program team if a deaf or hard-of-hearing child does
19 not demonstrate progress in receptive and expressive language skills; requiring the West
20 Virginia Department of Health and Human Resources and the West Virginia Department
21 of Education to establish an advisory committee to solicit input from certain stakeholders
22 on the selection of language developmental milestones for children who are deaf or hard-
23 of-hearing that are equivalent to those for children who are not deaf or hard-of-hearing for
24 inclusion in the family resource; setting forth membership of advisory committee; requiring
25 the West Virginia Department of Education to annually produce an aggregated report that
26 is specific to language and literacy development of children whose primary exceptionality

27 is deaf and hard-of-hearing from birth to five years of age; and requiring that all of certain
28 activities be consistent with federal law regarding the education of children with disabilities
29 and federal law regarding the privacy of student information.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-20. Definitions and purpose.

1 (a) For the purpose of this code:

2 “English” means and includes spoken English, written English, or English with the use of
3 visual supplements;

4 “Language developmental milestones” means milestones of development aligned with the
5 existing state instrument used to meet the requirements of federal law for the assessment of
6 children from birth to five years of age, inclusive; and

7 “Language” includes American Sign Language (ASL) and English.

8 (b) For the purposes of developing and using language for a child who is deaf or hard-of-
9 hearing, the following modes of communication may be used as a means for acquiring language:
10 American Sign Language (ASL) services, spoken language services, dual language services,
11 cued speech and tactile, or a combination thereof.

12 (c) This section shall apply only to children from birth to five years of age, inclusive.

13 (d) Implementation of this code is subject to an appropriation by the legislature.

14 (e) Federal regulations for children age birth through two do not require reporting of
15 measures specific to language and literacy. However, this data is reported for children age three
16 to five and the West Virginia Department of Health and Human Resources and the West Virginia
17 Department of Education shall make this report available to the advisory committee, and available
18 to others upon request.

19 (f) The West Virginia Department of Health and Human Resources and the West Virginia
20 Department of Education through their agencies that serve children ages birth to five and their

21 families shall jointly select language developmental milestones from existing standardized norms,
22 to develop a family resource for use by families, providers, early interventionists, speech
23 pathologists, educators, and other service providers to understand and monitor deaf and hard-of-
24 hearing children's receptive and expressive language acquisition and progress toward English
25 literacy development. This family resource shall include:

26 (1) Language that provides comprehensive and neutral, unbiased information regarding
27 different modes used to learn and access language (e.g., English, American Sign Language
28 (ASL), or both) and services and programs designed to meet the needs of children who are deaf
29 or hard-of-hearing;

30 (2) Language developmental milestones selected pursuant to the process specified in this
31 section;

32 (3) Language appropriate for use, in both content and administration, with deaf and hard-
33 of-hearing children from birth to five years of age, inclusive, who use both or one of the languages
34 of American Sign Language (ASL) or English;

35 (4) Developmental milestones in terms of typical development of all children, by age range;

36 (5) Language written for clarity and ease of use by families;

37 (6) Language that is aligned with the West Virginia Department of Health and Human
38 Resources' and the West Virginia Department of Education's existing infant, toddler, and
39 preschool guidelines, the existing instrument used to assess the development of children with
40 disabilities pursuant to federal law, and state standards in language and literacy;

41 (7) Clarification that the parent(s) have the right to select which language (American Sign
42 Language (ASL), English, or both) for their child's language(s) acquisition and developmental
43 milestones;

44 (8) Clarification that the family resource is not a formal assessment of language and
45 literacy development, and that a family's observations of their children may differ from formal

46 assessment data presented at an individualized family service plan (IFSP) or individual education
47 program (IEP) meeting; and

48 (9) Clarification that the family resource may be used during an individualized family
49 service plan (IFSP) or individual education program (IEP) meeting for purposes of sharing the
50 family's observations about their child's development.

51 (g) The West Virginia Department of Health and Human Resources and the West Virginia
52 Department of Education shall also prepare a list of valid and reliable existing tools or
53 assessments for providers, early interventionists, speech pathologists, educators, and other
54 service providers that can be used periodically to determine the receptive and expressive
55 language and literacy development of deaf and hard-of-hearing children. These educator tools
56 and assessments:

57 (1) Shall be in a format that shows stages of language development;

58 (2) Shall be used by providers, early interventionists, speech pathologists, educators, and
59 other service providers to determine the progressing development of deaf and hard-of-hearing
60 children's receptive and expressive language acquisition and developmental stages toward
61 English literacy;

62 (3) Shall be selected from existing instruments or assessments used to assess the
63 development of all deaf and hard-of-hearing children from birth to five years of age, inclusive;

64 (4) Shall be appropriate, in both content and administration, for use with children who are
65 deaf and hard-of-hearing;

66 (5) May be used, in addition to the assessment required by federal law, by the
67 individualized family service plan (IFSP) team and individual education program (IEP) team, as
68 applicable, to track deaf and hard-of-hearing children's progress, and to establish or modify
69 individualized family service plans (IFSPs) and individual education programs (IEPs); and

70 (6) May reflect the recommendations of the advisory committee established pursuant to
71 §16-1-20(e) of this code.

72 (h) To promote the intent of this code, the West Virginia Department of Health and Human
73 Resources and the West Virginia Department of Education shall:

74 (1) Disseminate the family resource developed to families of deaf and hard-of-hearing
75 children, as well as providers, early interventionists, speech pathologists, educators, and related
76 service personnel; and

77 (2) Disseminate the educator tools and assessments selected to local educational
78 agencies for use in the development and modification of individualized family service plans
79 (IFSPs) and individual education programs (IEPs);

80 (3) Provide informational materials on the use of the resources, tools, and assessments
81 to assist deaf and hard-of-hearing children in becoming linguistically ready for formal school entry
82 (either itinerant services, West Virginia Universal PreK/PreK Special Needs, or Kindergarten)
83 using the mode(s) of communication and language(s) chosen by the parents.

84 (i) If a deaf or hard-of-hearing child does not demonstrate progress in receptive and
85 expressive language skills, as measured by one of the educator tools or assessments, or by the
86 existing instrument used to assess the development of children with disabilities pursuant to federal
87 law, as applicable, the child's individualized family service plan (IFSP) team and individual
88 education program (IEP) team shall, as part of the process required by federal law, explain in
89 detail the reasons why the child is not meeting the language developmental milestones or
90 progressing towards them, and shall recommend specific strategies, services, and programs that
91 shall be provided to assist the child's success toward English literacy development.

92 (j) The West Virginia Department of Health and Human Resources and the West Virginia
93 Department of Education shall establish an advisory committee to solicit input from stakeholders
94 identified herein on the selection of language developmental milestones for children who are deaf
95 or hard-of-hearing that are equivalent to those for children who are not deaf or hard-of-hearing,
96 for inclusion in the family resource developed pursuant to this section.

97 (k) The advisory committee shall be comprised of volunteer individuals representing all
98 known modes of communication, specifically including the following:

99 (1) One parent of a child who is hard-of-hearing who uses the dual languages of American
100 Sign Language (ASL) and English;

101 (2) One parent of a child who is deaf or hard-of-hearing who uses assistive technology to
102 communicate with spoken English;

103 (3) Two or three credentialed providers, early interventionists, speech pathologists,
104 educators, or other service providers of deaf or hard-of-hearing children who are knowledgeable
105 in the use of the dual languages of English and American Sign Language (ASL);

106 (4) Two or three credentialed providers, early interventionists, speech pathologists,
107 educators, or other service provider of deaf or hard-of-hearing children who are knowledgeable
108 in the use of assistive technology to communicate with spoken English;

109 (5) One expert who researches or is knowledgeable in the research regarding language
110 outcomes for deaf and hard-of-hearing children using American Sign Language (ASL) or English;

111 (6) One expert who researches or is knowledgeable in the research regarding language
112 outcomes for deaf and hard-of-hearing children using assistive technology to communicate with
113 spoken English;

114 (7) One credentialed educator of deaf and hard-of-hearing children whose expertise is in
115 curriculum and instruction in American Sign Language (ASL) and English;

116 (8) One credentialed educator of deaf and hard-of-hearing children whose expertise is in
117 curriculum and instruction in assistive technology to communicate with spoken English;

118 (9) One advocate for the teaching and use of the dual languages of American Sign
119 Language (ASL) and English;

120 (10) One advocate for the teaching and use of instruction in assistive technology to
121 communicate with spoken English; and,

122 (11) One educational audiologist who can address the issues of aural habilitation and
123 assistive technology to advocate for children using spoken language in mainstream environments.

124 (l) The advisory committee may also advise the West Virginia Department of Health and
125 Human Resources and the West Virginia Department of Education on the content and
126 administration of the existing instrument used to assess the development of children with
127 disabilities pursuant to federal law, as used to assess deaf and hard-of-hearing children's
128 language and literacy development to ensure the appropriate use of that instrument with those
129 children, and make recommendations regarding future research to improve the measurement of
130 progress of deaf and hard-of-hearing children in language and literacy.

131 (m) The West Virginia Department of Health and Human Resources and the West Virginia
132 Department of Education shall provide the advisory committee with a list of existing language
133 developmental milestones from existing standardized norms, along with any relevant information
134 held by the departments regarding those language developmental milestones for possible
135 inclusion in the family resource developed pursuant to this section.

136 (n) After reviewing, the advisory committee shall recommend to the West Virginia
137 Department of Health and Human Resources and the West Virginia Department of Education
138 language developmental milestones for selection.

139 (o) Commencing on or before July 31, 2021, and on or before each July 31 thereafter, the
140 West Virginia Department of Education shall annually produce an aggregated report, using
141 existing data reported in compliance with the federally required state performance plan on children
142 with disabilities, that is specific to language and literacy development of children whose primary
143 exceptionality is deaf and hard-of-hearing from birth to five years of age, inclusive, including those
144 who are deaf or hard-of-hearing and have other disabilities, relative to their peers who are not
145 deaf or hard-of-hearing. The departments shall make this report available to the advisory
146 committee, the Legislative Oversight Commission on Education Accountability, the Legislative

147 Oversight Commission on Health and Human Resources Accountability, and available to others
148 upon request.

149 (p) All activities of the West Virginia Department of Health and Human Resources and the
150 West Virginia Department of Education in implementing this code shall be consistent with federal
151 law regarding the education of children with disabilities and federal law regarding the privacy of
152 student information.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

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Governor