

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 375

BY SENATORS RUCKER AND MARONEY

[Passed April 7, 2021; in effect 90 days from passage (July 6, 2021)]

1 AN ACT to amend and reenact §18-5-16 of the Code of West Virginia, 1931, as amended, relating
2 to county board of education open enrollment; amending provisions pertaining to the
3 contents of county board of education policies for open enrollment; prohibiting transfer
4 refusal by virtue of student transferring from approved exemption (k) school; setting forth
5 reasons for which an open enrollment application may be denied and the process for
6 application denial; and amending provisions pertaining to funding in certain instances of a
7 student transfer.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-16. Student transfers; definitions; appeals; calculating net enrollment; fees for transfer.

1 (a) *Establishment of attendance zones within counties.* — The county board may establish
2 attendance zones within the county to designate the schools that its resident students shall attend.
3 Upon the written request of any parent or guardian, or person legally responsible for any student,
4 or for reasons affecting the best interests of the schools, the superintendent may transfer students
5 from one school to another within the county. Any aggrieved person may appeal the decision of
6 the county superintendent to the county board, and the decision of the county board is final.

7 (b) *Definitions.* — For the purposes of this section, unless a different meaning clearly
8 appears from the context:

9 (1) “Nonresident student” means a student who resides in this state and who is enrolled
10 in or is seeking enrollment in a county school district other than the county school district in which
11 the student resides.

12 (2) “Open enrollment” means a policy adopted and implemented by a county board to
13 allow nonresident students to enroll in any school within the district. Open enrollment is distinct
14 from a mutual agreement of two county boards regarding mass transfer of students, as
15 contemplated in §18-5-13(f)(1)(C) of this code.

16 (c) *Enrollment policies.* — County boards shall establish and implement an open
17 enrollment policy without charging tuition and without obtaining approval from the board of the
18 county in which a student resides and transfers. This policy shall clearly outline the application
19 process nonresident students are to follow. Enrollment policies are subject to the following:

20 (1) A county board may give enrollment preference to:

21 (A) Siblings of students already enrolled through the open enrollment policy;

22 (B) Secondary students who have completed 10th grade and, due to family relocation,
23 become nonresident students, but express the desire to remain in a specific school to complete
24 their education;

25 (C) Students who are children, grandchildren, or legal wards of employees;

26 (D) Students whose legal residences, though geographically within another county, are
27 more proximate to a school within the receiving county, whether calculated by miles or
28 transportation time;

29 (E) Students who reside in a portion of a county where topography, impassable roads,
30 long bus rides, or other conditions prevent the practicable transportation of the student to a school
31 within the county, and a school within a contiguous county is more easily accessible; and

32 (F) The county board to which the student wishes to be transferred may not refuse a
33 transfer by virtue of the student transferring from a private, parochial, church, or religious school
34 holding an exemption approved pursuant to §18-8-1(k) of this code: *Provided*, That nothing in this
35 paragraph shall be construed to allow a county board to give an enrollment preference to a student
36 transferring from a private, parochial, church, or religious school holding an exemption approved
37 pursuant to §18-8-1(k) of this code.

38 (2) A county must comply with all enrollment requirements for children who are in foster
39 care or who meet the definition of unaccompanied youth prescribed in the McKinney-Vento
40 Homeless Assistance Act (42 U.S.C. § 11434a(6)).

41 (3) The county board for the county educating the nonresident student may provide an

42 adequate means of transportation to nonresident students when students have complied with the
43 procedure for obtaining authorization to attend school outside their county of residence, subject
44 to the following:

45 (A) County boards of education are not required to uniformly provide nonresident student
46 transportation, and may consider whether a nonresident student meets the eligibility criteria for
47 free or reduced price lunch and milk established within the Richard B. Russell National School
48 Lunch Act (42 U.S.C. § 1758); and

49 (B) The county board for the county educating the nonresident student shall provide
50 transportation to and from the school of attendance, or to and from an agreed pickup point on a
51 regular transportation route, or for the total miles traveled each day for the nonresident student to
52 reach the school of enrollment if the nonresident student is a student with disabilities and has an
53 individualized education program that specifies that transportation is necessary for fulfillment of
54 the program.

55 (4) An application may only be denied by a county board of education due to lack of grade
56 level capacity or if the nonresident student failed to fill out or submit the application correctly. The
57 denial shall be in writing, sent to the parent or guardian of the nonresident student and the West
58 Virginia Department of Education within three business days of the decision, and include the
59 reason and explanation for the denial and information on appealing the denial of the application.

60 (d) *Appeal*. — The State Board of Education shall establish a process whereby a parent
61 or guardian of a student may appeal to the State Superintendent the refusal of a county board to
62 accept the transfer of the student. If during the appeal process, the State Superintendent
63 discovers that the education and the welfare of the student could be enhanced, the State
64 Superintendent may direct that the student may be permitted to attend a school in the receiving
65 county.

66 (e) *Net enrollment*. — For purposes of net enrollment as defined in §18-9A-2 of this code,
67 whenever a student is transferred on a full-time basis from one school district to another district

68 pursuant to the provisions of this section, the county to which the student is transferred shall
69 include the student in its net enrollment, subject to the following:

70 (1) If a student transfers after the second month of any school year, the county to which
71 the student transferred may issue, in the following fiscal year, an invoice to the county from which
72 the student transferred for the amount, determined on a pro rata basis, that the county now
73 responsible for educating the student otherwise would have received under the state basic
74 foundation program established in §18-9A-1 *et seq.* of this code had such student been included
75 in the county's prior year's net enrollment;

76 (2) If a student in grades kindergarten through 12 transfers after the second month of any
77 school year, the county to which the student transferred may issue, in the following fiscal year, an
78 invoice to the county from which the student transferred for the amount the county now
79 responsible for educating the student otherwise would have received under aid to exceptional
80 students had such student been included in the county's prior year's child count enrollment;

81 (3) If a student in prekindergarten transfers after the child count of exceptional students is
82 certified for any school year, the county to which the student transferred may issue, in the following
83 fiscal year, an invoice to the county from which the student transferred for the amount the county
84 now responsible for educating the student otherwise would have received under aid to exceptional
85 students had such student been included in the county's prior year's child count enrollment; and

86 (4) The county from which the student transferred shall reimburse the county to which the
87 student transferred for the amount of the invoice.

88 (f) *Transfers between states.* — Transfer of students from this state to another state shall
89 be upon such terms, including payment of tuition, as shall be mutually agreed upon by the board
90 of the receiving county and the authorities of the school or district from which the transfer is made.

91 (g) No parent, guardian, or person acting as parent or guardian is required to pay for the
92 transfer of a student or for the tuition of the student after the transfer when the transfer is carried
93 out under the terms of this section.

94 (h) Nothing in this section supersedes the eligibility requirements for participation in extra-
95 curricular activities established by the Secondary School Activities Commission.

96 (i) The amendments to this section during the 2019 First Extraordinary Session of the
97 Legislature shall be effective for school years beginning on or after July 1, 2020, and the
98 provisions of this section existing immediately prior to the 2019 First Extraordinary Session of the
99 Legislature remain in effect for school years beginning prior to July 1, 2020.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2021.

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Governor