

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 375

BY SENATORS RUCKER AND MARONEY

[Originating in the Committee on Education; reported
on March 3, 2021]

1 A BILL 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; setting forth reasons
4 for which an open enrollment application may be denied and the process for application
5 denial; and amending provisions pertaining to funding in certain instances of a student
6 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. ~~These policies shall clearly articulate any~~
19 ~~admission criteria, application procedures, transportation provisions, timelines for open~~
20 ~~enrollment periods, and restrictions on transfers due to building capacity constraints~~ This policy
21 shall clearly outline the application process nonresident students are to follow. Enrollment policies
22 are subject to the following:

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

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

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

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

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

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

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

38 (3) The county board for the county educating the nonresident student may provide an
39 adequate means of transportation to nonresident students when students have complied with the
40 procedure for obtaining authorization to attend school outside their county of residence, subject
41 to the following:

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

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

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

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

63 (e) *Net enrollment.* — For purposes of net enrollment as defined in §18-9A-2 of this code,
64 whenever a student is transferred on a full-time basis from one school district to another district
65 pursuant to the provisions of this section, the county to which the student is transferred shall
66 include the student in its net enrollment, subject to the following: ~~Provided, That if, after~~

67 ~~transferring to another county, a student chooses to return to a school in his or her county of~~
68 ~~residence after the second month of any school year, the following applies:~~

69 ~~(1) The county of residence may issue an invoice to the county from which the student~~
70 ~~transferred for the amount, determined on a pro rata basis, that the county of residence otherwise~~
71 ~~would have received under the state basic foundation program established in §18-9A-1 et seq. of~~
72 ~~this code; and~~

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

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

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

89 ~~(2)~~ (4) The county from which the student transferred shall reimburse the county of
90 residence to which the student transferred for the amount of the invoice.

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

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

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

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