

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**Senate Bill 268**

BY SENATORS GRADY, RUCKER, SMITH, AND ROBERTS

[Passed March 12, 2022; in effect 90 days from passage]



1 AN ACT to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating  
2 to creating a new exemption from compulsory school attendance for a child who  
3 participates in a learning pod or microschool; defining learning pod and microschool;  
4 requiring parent or custodian to present to the county superintendent or county board a  
5 notice of intent to participate in the learning pod or microschool; establishing qualifications  
6 for person or persons providing instruction; requiring annual academic assessment of the  
7 child in one of four specified ways; requiring the results of the annual academic  
8 assessment of the child to be submitted to the county superintendent; allowing the results  
9 of the annual academic assessment to be submitted as composite results; requiring the  
10 county board upon request to notify the parents or legal guardian of the services available  
11 to assist in the assessment of the child's eligibility for special education services; requiring  
12 the county superintendent to offer such assistance as may assist the person or persons  
13 providing instruction; allowing any child participating in a learning pod or microschool to  
14 attend any class offered by the county board under certain conditions; providing that no  
15 learning pod or microschool is subject to any other provision of law relating to education  
16 other than the law pertaining to placement of video cameras in certain special education  
17 classrooms; and clarifying that learning pods and microschools are not the same as  
18 homeschooling.

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

**ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

**§18-8-1. Compulsory school attendance; exemptions.**

1 (a) Exemption from the requirements of compulsory public school attendance established  
2 in §18-8-1a of this code shall be made on behalf of any child for the causes or conditions set forth  
3 in this section. Each cause or condition set forth in this section is subject to confirmation by the  
4 attendance authority of the county. A child who is exempt from compulsory school attendance

5 under this section is not subject to prosecution under §18-8-2 of this code, nor is such a child a  
6 status offender as defined by §49-1-202 of this code.

7 (b) A child is exempt from the compulsory school attendance requirement set forth in §18-  
8 8-1a of this code if the requirements of this subsection, relating to instruction in a private,  
9 parochial, or other approved school, are met. The instruction shall be in a school approved by the  
10 county board and for a time equal to the instructional term set forth in §18-5-45 of this code. In all  
11 private, parochial, or other schools approved pursuant to this subsection, it is the duty of the  
12 principal or other person in control, upon the request of the county superintendent, to furnish to  
13 the county board such information and records as may be required with respect to attendance,  
14 instruction, and progress of students enrolled.

15 (c) A child is exempt from the compulsory school attendance requirement set forth in §18-  
16 8-1a of this code if the requirements of either subdivision (1) or subdivision (2) of this subsection,  
17 both relating to home instruction, are met.

18 (1) The instruction shall be in the home of the child or children or at some other place  
19 approved by the county board and for a time equal to the instructional term set forth in §18-5-45  
20 of this code. If the request for home instruction is denied by the county board, good and  
21 reasonable justification for the denial shall be furnished in writing to the applicant by the county  
22 board. The instruction shall be conducted by a person or persons who, in the judgment of the  
23 county superintendent and county board, are qualified to give instruction in subjects required to  
24 be taught in public elementary schools in the state. The person or persons providing the  
25 instruction, upon request of the county superintendent, shall furnish to the county board  
26 information and records as may be required periodically with respect to attendance, instruction,  
27 and progress of students receiving the instruction. The state board shall develop guidelines for  
28 the home schooling of special education students including alternative assessment measures to  
29 assure that satisfactory academic progress is achieved.

30           (2) The child meets the requirements set forth in this subdivision: *Provided*, That the  
31 county superintendent may, after a showing of probable cause, seek from the circuit court of the  
32 county an order denying home instruction of the child. The order may be granted upon a showing  
33 of clear and convincing evidence that the child will suffer neglect in his or her education or that  
34 there are other compelling reasons to deny home instruction.

35           (A) Upon commencing home instruction under this section the parent of a child receiving  
36 home instruction shall present to the county superintendent or county board a notice of intent to  
37 provide home instruction that includes the name, address, and age of any child of compulsory  
38 school age to be instructed and assurance that the child shall receive instruction in reading,  
39 language, mathematics, science, and social studies, and that the child shall be assessed annually  
40 in accordance with this subdivision. The person providing home instruction shall notify the county  
41 superintendent upon termination of home instruction for a child who is of compulsory attendance  
42 age. Upon establishing residence in a new county, the person providing home instruction shall  
43 notify the previous county superintendent and submit a new notice of intent to the superintendent  
44 of the new county of residence: *Provided*, That if a child is enrolled in a public school, notice of  
45 intent to provide home instruction shall be given on or before the date home instruction is to begin.

46           (B) The person or persons providing home instruction shall submit satisfactory evidence  
47 of a high school diploma or equivalent, or a post-secondary degree or certificate from a regionally  
48 accredited institution, or from an institution of higher education that has been authorized to confer  
49 a post-secondary degree or certificate in West Virginia by the West Virginia Council for  
50 Community and Technical College Education or by the West Virginia Higher Education Policy  
51 Commission.

52           (C) Annually, the person or persons providing home instruction shall obtain an academic  
53 assessment of the child for the previous school year in one of the following ways:

54           (i) The child receiving home instruction takes a nationally normed standardized  
55 achievement test published or normed not more than 10 years from the date of administration

56 and administered under the conditions as set forth by the published instructions of the selected  
57 test and by a person qualified in accordance with the test's published guidelines in the subjects  
58 of reading, language, mathematics, science, and social studies. The child is considered to have  
59 made acceptable progress when the mean of the child's test results in the required subject areas  
60 for any single year is within or above the fourth stanine or, if below the fourth stanine, shows  
61 improvement from the previous year's results;

62 (ii) The child participates in the testing program currently in use in the state's public  
63 schools. The test shall be administered to the child at a public school in the county of residence.  
64 Determination of acceptable progress shall be based on current guidelines of the state testing  
65 program;

66 (iii) A portfolio of samples of the child's work is reviewed by a certified teacher who  
67 determines whether the child's academic progress for the year is in accordance with the child's  
68 abilities. The teacher shall provide a written narrative about the child's progress in the areas of  
69 reading, language, mathematics, science, and social studies and shall note any areas which, in  
70 the professional opinion of the reviewer, show need for improvement or remediation. If the  
71 narrative indicates that the child's academic progress for the year is in accordance with the child's  
72 abilities, the child is considered to have made acceptable progress; or

73 (iv) The child completes an alternative academic assessment of proficiency that is  
74 mutually agreed upon by the parent or legal guardian and the county superintendent.

75 (D) A parent or legal guardian shall maintain copies of each student's Academic  
76 Assessment for three years. When the annual assessment fails to show acceptable progress, the  
77 person or persons providing home instruction shall initiate a remedial program to foster  
78 acceptable progress. The county board upon request shall notify the parents or legal guardian of  
79 the child, in writing, of the services available to assist in the assessment of the child's eligibility  
80 for special education services. Identification of a disability does not preclude the continuation of  
81 home schooling. In the event that the child does not achieve acceptable progress for a second

82 consecutive year, the person or persons providing instruction shall submit to the county  
83 superintendent additional evidence that appropriate instruction is being provided.

84 (E) The parent or legal guardian shall submit to the county superintendent the results of  
85 the academic assessment of the child at grade levels three, five, eight, and 11, as applicable, by  
86 June 30 of the year in which the assessment was administered.

87 (3) This subdivision applies to both home instruction exemptions set forth in subdivisions  
88 (1) and (2) of this subsection. The county superintendent or a designee shall offer such  
89 assistance, including textbooks, other teaching materials and available resources, all subject to  
90 availability, as may assist the person or persons providing home instruction. Any child receiving  
91 home instruction may upon approval of the county board exercise the option to attend any class  
92 offered by the county board as the person or persons providing home instruction may consider  
93 appropriate subject to normal registration and attendance requirements.

94 (d) A child is exempt from the compulsory school attendance requirement set forth in §18-  
95 8-1a of this code if the requirements of this subsection, relating to physical or mental incapacity,  
96 are met. Physical or mental incapacity consists of incapacity for school attendance and the  
97 performance of school work. In all cases of prolonged absence from school due to incapacity of  
98 the child to attend, the written statement of a licensed physician or authorized school nurse is  
99 required. Incapacity shall be narrowly defined and in any case the provisions of this article may  
100 not allow for the exclusion of the mentally, physically, emotionally, or behaviorally handicapped  
101 child otherwise entitled to a free appropriate education.

102 (e) A child is exempt from the compulsory school attendance requirement set forth in §18-  
103 8-1a of this code if conditions rendering school attendance impossible or hazardous to the life,  
104 health, or safety of the child exist.

105 (f) A child is exempt from the compulsory school attendance requirement set forth in §18-  
106 8-1a of this code upon regular graduation from a standard senior high school or alternate  
107 secondary program completion as determined by the state board.

108 (g) A child is exempt from the compulsory school attendance requirement set forth in §18-  
109 8-1a of this code if the child is granted a work permit pursuant to the subsection. After due  
110 investigation the county superintendent may grant work permits to youths under the termination  
111 age designated in §18-8-1a of this code, subject to state and federal labor laws and regulations.  
112 A work permit may not be granted on behalf of any youth who has not completed the eighth grade  
113 of school.

114 (h) A child is exempt from the compulsory school attendance requirement set forth in §18-  
115 8-1a of this code if a serious illness or death in the immediate family of the child has occurred. It  
116 is expected that the county attendance director will ascertain the facts in all cases of such  
117 absences about which information is inadequate and report the facts to the county superintendent.

118 (i) A child is exempt from the compulsory school attendance requirement set forth in §18-  
119 8-1a of this code if the requirements of this subsection, relating to destitution in the home, are  
120 met. Exemption based on a condition of extreme destitution in the home may be granted only  
121 upon the written recommendation of the county attendance director to the county superintendent  
122 following careful investigation of the case. A copy of the report confirming the condition and school  
123 exemption shall be placed with the county director of public assistance. This enactment  
124 contemplates every reasonable effort that may properly be taken on the part of both school and  
125 public assistance authorities for the relief of home conditions officially recognized as being so  
126 destitute as to deprive children of the privilege of school attendance. Exemption for this cause is  
127 not allowed when the destitution is relieved through public or private means.

128 (j) A child is exempt from the compulsory school attendance requirement set forth in §18-  
129 8-1a of this code if the requirements of this subsection, relating to church ordinances and  
130 observances of regular church ordinances, are met. The county board may approve exemption  
131 for religious instruction upon written request of the person having legal or actual charge of a child  
132 or children. This exemption is subject to the rules prescribed by the county superintendent and  
133 approved by the county board.



134 (k) A child is exempt from the compulsory school attendance requirement set forth in §18-  
135 8-1a of this code if the requirements of this subsection, relating to alternative private, parochial,  
136 church, or religious school instruction, are met. Exemption shall be made for any child attending  
137 any private school, parochial school, church school, school operated by a religious order, or other  
138 nonpublic school which elects to comply with the provisions of §18-28-1 *et seq.* of this code.

139 (l) Completion of the eighth grade does not exempt any child under the termination age  
140 designated in §18-8-1a of this code from the compulsory attendance provision of this article.

141 (m) A child is exempt from the compulsory school attendance requirements set forth in  
142 §18-8-1a of this code if the child is an eligible recipient participating in the Hope Scholarship  
143 Program, as provided for in §18-31-1 *et seq.* of this code and provides a notice of intent to  
144 participate in the Hope Scholarship Program to the county superintendent. The county  
145 superintendent shall enter the following into the West Virginia Education Information System  
146 (WVEIS):

147 (1) The filing of the notice of intent pursuant to this subsection;

148 (2) In the case of a Hope Scholarship recipient who chooses an individualized instructional  
149 program, annually, the child's test results or determination that a student is making academic  
150 progress commensurate with his or her age and ability, as applicable, pursuant to §18-31-8(a)(4)  
151 of this code; and

152 (3) In the case of an eligible recipient enrolling in a participating school, annually, the filing  
153 of a notice of enrollment pursuant to §18-31-11(a)(6) of this code.

154 (n) A child is exempt from the compulsory school attendance requirement set forth in §18-  
155 8-1a of this code if the child participates in a learning pod or microschool pursuant to this  
156 subsection.

157 (1) For the purposes of this subsection:

158 (A) "Learning pod" means a voluntary association of parents choosing to group their  
159 children together to participate in their elementary or secondary academic studies as an

160 alternative to enrolling in a public school, private school, homeschool, or microschool, including  
161 participation in an activity or service provided to the children in exchange for payment; and

162 (B) "Microschool" means a school initiated by one or more teachers or an entity created  
163 to operate a school that charges tuition for the students who enroll and is an alternative to enrolling  
164 in a public school, private school, homeschool, or learning pod.

165 (2) Upon beginning participation in a learning pod or microschool pursuant to this  
166 subsection, the parent or legal guardian of the child participating shall present to the county  
167 superintendent or county board a notice of intent to participate in a learning pod or microschool  
168 that includes the name, address, and age of any child of compulsory school age participating and  
169 assurance that the child shall receive instruction in reading, language, mathematics, science, and  
170 social studies, and that the child shall be assessed annually in accordance with this subsection.  
171 The person providing instruction shall notify the county superintendent upon termination of  
172 participation in a learning pod or microschool for a child who is of compulsory attendance age.  
173 Upon establishing residence in a new county, the person providing instruction shall notify the  
174 previous county superintendent and submit a new notice of intent to the superintendent of the  
175 new county of residence: *Provided*, That if a child is enrolled in a public school, notice of intent to  
176 participate in a learning pod or microschool shall be given on or before the date participation is to  
177 begin.

178 (3) The person or persons providing instruction shall submit satisfactory evidence of a high  
179 school diploma or equivalent, or a post-secondary degree or certificate from a regionally  
180 accredited institution, or from an institution of higher education that has been authorized to confer  
181 a post-secondary degree or certificate in West Virginia by the West Virginia Council for  
182 Community and Technical College Education or by the West Virginia Higher Education Policy  
183 Commission.

184 (4) Annually, the person or persons providing instruction shall obtain an academic  
185 assessment of the child for the previous school year in one of the following ways:

186 (A) The child participating in a learning pod or microschool takes a nationally normed  
187 standardized achievement test published or normed not more than 10 years from the date of  
188 administration and administered under the conditions as set forth by the published instructions of  
189 the selected test and by a person qualified in accordance with the test's published guidelines in  
190 the subjects of reading, language, mathematics, science, and social studies. The child is  
191 considered to have made acceptable progress when the mean of the child's test results in the  
192 required subject areas for any single year is within or above the fourth stanine or, if below the  
193 fourth stanine, shows improvement from the previous year's results;

194 (B) The child participates in the testing program currently in use in the state's public  
195 schools. The test shall be administered to the child at a public school in the county of residence.  
196 Determination of acceptable progress shall be based on current guidelines of the state testing  
197 program;

198 (C) A portfolio of samples of the child's work is reviewed by a certified teacher who  
199 determines whether the child's academic progress for the year is in accordance with the child's  
200 abilities. The teacher shall provide a written narrative about the child's progress in the areas of  
201 reading, language, mathematics, science, and social studies and shall note any areas which, in  
202 the professional opinion of the reviewer, show need for improvement or remediation. If the  
203 narrative indicates that the child's academic progress for the year is in accordance with the child's  
204 abilities, the child is considered to have made acceptable progress; or

205 (D) The child completes an alternative academic assessment of proficiency that is  
206 mutually agreed upon by the parent or legal guardian and the county superintendent.

207 (5) A parent or legal guardian shall maintain copies of each student's Academic  
208 Assessment for three years. When the annual assessment fails to show acceptable progress, the  
209 person or persons providing instruction shall initiate a remedial program to foster acceptable  
210 progress. The county board upon request shall notify the parents or legal guardian of the child, in  
211 writing, of the services available to assist in the assessment of the child's eligibility for special

212 education services. Identification of a disability does not preclude the continuation of participation  
213 in a learning pod or microschool. In the event that the child does not achieve acceptable progress  
214 for a second consecutive year, the person or persons providing instruction shall submit to the  
215 county superintendent additional evidence that appropriate instruction is being provided.

216 (6) The parent, legal guardian, learning pod, or microschool shall submit to the county  
217 superintendent the results of the academic assessment of the child with the same frequency  
218 prescribed in §18-8-1(c)(2)(E) of this code: *Provided*, That instead of the academic assessment  
219 results being submitted individually, the learning pod or microschool may submit the school  
220 composite results.

221 (7) The county superintendent or a designee shall offer such assistance, including  
222 textbooks, other teaching materials and available resources, all subject to availability, as may  
223 assist the person or persons providing instruction. Any child participating in a learning pod or  
224 microschool may upon approval of the county board exercise the option to attend any class  
225 offered by the county board as the person or persons providing instruction may consider  
226 appropriate subject to normal registration and attendance requirements.

227 (8) No learning pod or microschool which meets the requirements of this subsection is  
228 subject to any other provision of law relating to education: *Provided*, That any learning pod or  
229 microschool which has a student requiring special education instruction must comply with the  
230 provisions of §18-20-11 of this code, including, but not limited to, placement of video cameras for  
231 the protection of that exceptional student.

232 (9) Making learning pods and microschools subject to the home instruction provisions and  
233 requirements does not make learning pods and microschools the same as homeschooling.

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

.....  
*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*

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The within ..... this the.....  
Day of ....., 2022.

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*Governor*