

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 2195

FISCAL  
NOTE

By Delegate Jennings

[Introduced January 11, 2023; Referred to the  
Committee on Education]

1 A BILL to amend and reenact §18-2E-10 of the Code of West Virginia, 1931, as amended, relating  
2 to providing for a multi-tiered system of support intervention for grade level literacy and  
3 numeracy by end of third grade; making findings; replacing transformative intervention  
4 framework with multi-tiered system of support; addressing both reading and mathematics;  
5 requiring early learning reporting system and specifying uses; specifying minimum  
6 information and notice to parent or guardian; providing for professional learning for certain  
7 teachers and specifying subjects; ensuring certain training and instruction be provided by  
8 education preparation programs that prepare candidates seeking licensure for elementary  
9 education; removing redundant language; providing for data from the early learning  
10 reporting system to be used to inform classroom teacher's recommendation regarding  
11 grade level retention; requiring county board implementation; requiring reports by state  
12 board; requiring certain legislative appropriation and other funds be used for  
13 implementation; requiring retention in third grade of public school and public charter school  
14 student who demonstrate minimal grade level understanding and ability upon  
15 recommendation of teacher and student assistance team; providing exceptions; requiring  
16 students starting in the fourth grade who score below proficient in English language arts or  
17 mathematics on general summative assessment to continue to be provided intervention  
18 until grade level proficient.

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

## **ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

**§18-2E-10. Transformative system of support for early literacy Multi-tiered system of support intervention for grade level literacy and numeracy by the end of the third grade; pre-service and in-service teacher training; notice to parent or guardian; third grade retention policy with exceptions; interventions continuing in fourth grade for students below proficient.**

1 (a) The Legislature finds that:

2 (1) In the early learning years, ensuring that each student masters the content and skills  
3 needed for mastery at the next grade level is critically important for student success;

4 (2) Best practices for a comprehensive approach to Early and Elementary learning  
5 instruction indicate appropriate and sufficient emphasis in all content areas are provided.  
6 Developmentally appropriate integration of literacy, numeracy and other content is utilized to  
7 provide rigor based on student's prior experiences, knowledge and developmental levels.

8 ~~(2)~~ (3) Students who do not demonstrate grade-level proficiency in reading and  
9 mathematics by the end of third grade become increasingly less likely to succeed at each  
10 successive grade level and often drop out of school prior to graduation;

11 ~~(3)~~ (4) State board policy requires every school to establish a process for ensuring the  
12 developmental and academic progress of all students. This process is to be coordinated by a  
13 school student assistance team that reviews student developmental and academic needs that  
14 have persisted despite being addressed through instruction, intervention, and as applicable,  
15 supports for personalized learning. Ensuring the developmental and academic success of all  
16 students requires every school to implement, in an equitable manner, programs during and after  
17 the instructional day at the appropriate instructional levels that contribute to the success of  
18 students; and

19 ~~(4)~~ (5) To ensure that all students read and perform mathematics proficiently by the end of  
20 third grade, a statewide comprehensive approach to early literacy and numeracy is required. This  
21 approach shall focus on intensive supports during the early learning years which include schools  
22 and engaged communities mobilized to remove barriers, expand opportunities, and assist parents  
23 in fulfilling their roles and responsibilities to serve as full partners in the success of their children.

24 (b) The state board shall, in accordance with ~~the provisions of article three-b, chapter~~  
25 ~~twenty-nine-a~~ §29A-3B-1 et seq. of this code, promulgate legislative rules as necessary to  
26 effectuate the provisions of this section. The rules shall provide for at least the following:

27 (1) Development of a comprehensive, systemic approach to close the reading and  
28 mathematics achievement gap gaps by third grade, which targets school readiness, the  
29 attendance gap, summer learning loss and ~~a transformative intervention framework for student~~  
30 ~~and learning supports~~ implements a multi-tiered system of support intervention framework;

31 (2) Ensuring all West Virginia children have access to high quality early learning  
32 experiences that focus on healthy learners as part of the school readiness model, resulting in  
33 increased populations of children on target for healthy development prior to entering first grade;

34 (3) Closing the attendance gap to certify West Virginia children attend school regularly and  
35 limit chronic absenteeism in the early grades;

36 (4) Assisting county boards in establishing and operating targeted, sustained extended  
37 day and extended year reading and mathematics programs to ensure grade level proficiency and  
38 battle summer learning loss;

39 (5) Establishing and maintaining an early learning reporting system to gauge the extent to  
40 which students in grades pre-K through three are progressing toward proficiency in English  
41 language arts and mathematics standards. Teachers in grades pre-K through three must identify  
42 students with deficiencies in English language arts and/or mathematics and implement targeted  
43 and/or intensive intervention for those students through a multi-tiered system of support  
44 throughout the school year.

45 ~~(5)~~ (6) Maximizing family engagement to result in the development of a culture of literacy  
46 and numeracy from birth through third grade which shall at least include:

47 (A) Providing the parent or guardian with regular updates to inform them of their child's  
48 progress toward proficiency in English language arts and mathematics;

49 (B) Ensuring the parent or guardian is informed of and have access to resources which  
50 they may utilize to improve their child's literacy and numeracy skills;

51 (C) Ensuring the parent or guardian is informed of the importance of grade level literacy  
52 and numeracy by the end of the third grade and the measures that will be employed pursuant to

53 this section to improve the literacy and numeracy skills of children who are not meeting the  
54 standards, as well as the grade three retention policy and the exceptions; and

55 (D) The parent or guardian of any student in pre-K through grade three who exhibits a  
56 deficiency in reading or mathematics at any time during the school year must be notified in writing  
57 no later than 15 days after the identification of the deficiency, and the written notification must  
58 include the following:

59 (i) That his or her child has been identified as having a deficiency in reading and/or  
60 mathematics and an improvement plan will be developed by the teacher, principal, other pertinent  
61 school personnel, and the parent(s);

62 (ii) A description of the current services that are provided to the child;

63 (iii) A description of the proposed research-based reading and/or mathematics  
64 interventions and supplemental instructional services and supports that will be provided to the  
65 child that are designed to remedy the identified area(s) of deficiency;

66 (iv) Strategies for the parent or guardian to use at home to help their child succeed in  
67 reading and/or mathematics; and

68 (v) That if the child's reading and/or mathematics deficiency is not corrected by the end of  
69 grade three, the child may not be promoted to grade four unless an exemption is met.

70 ~~(6) (7) Supporting high quality schools and a workforce prepared to address early literacy~~  
71 ~~and numeracy identification of interventions, and implementation of a system of intervention for~~  
72 ~~children not reaching grade level proficiency through a multi-tiered system of support including,~~  
73 ~~but not limited to, professional learning for kindergarten, first, second, third, and fourth grade~~  
74 ~~teachers on the following:~~

75 (A) The Department approved early learning reporting system and multi-tiered system of  
76 support to ensure teachers have the knowledge and skill to administer the systems and use the  
77 data to inform instruction based on student needs;

78 (B) Comprehensive training on the science of reading and numeracy instruction to ensure  
79 all teachers have the knowledge and skill to teach all students to read and perform mathematics at  
80 grade level, including students with dyslexia or dyscalculia; and

81 (C) Job-embedded, on-site teacher training on evidence-based reading and mathematics  
82 instruction and data-based decision making that provides immediate feedback for improving  
83 instruction.

84 ~~(7)~~ (8) Ensuring the employment of qualified teachers and service personnel in accordance  
85 with the provisions of section thirty-nine, article five of this chapter and section seven-c, article  
86 four, chapter eighteen-a §18-5-39 and §18A-4-7c of this code to provide instruction to students  
87 enrolled in early literacy and numeracy support programs including, but not limited to, ensuring  
88 that educator preparation programs prepare candidates seeking licensure for elementary  
89 education with training and instruction to:

90 (A) Effectively teach foundational reading and mathematics skills and implement reading  
91 instruction using high-quality instructional materials;

92 (B) Provide effective instruction and interventions for students with reading and math  
93 deficiencies, including students with characteristics of dyslexia or dyscalculia; and

94 (C) Understand and use student data to make instructional decisions.

95 ~~(8)~~ (9) Creating a formula or grant-based program for the distribution of funds appropriated  
96 specifically for the purposes of this section or otherwise available for the support of a targeted,  
97 multi-tiered system of support intervention comprehensive system of support for early literacy and  
98 numeracy;

99 ~~(9)~~ (10) Providing support for transportation and healthy foods for students required to  
100 attend after-school and extended year early literacy and numeracy instructional support programs  
101 and supervision at the school that accommodates the typical work schedules of parents; and

102 ~~(40)~~ (11) Receiving from county boards any applications and annual reports required by  
103 rule of the state board.

104 (c) A student in grades kindergarten through three ~~who is recommended by the student~~  
105 ~~assistance team or the student's classroom teacher for additional assistance in one or more of the~~  
106 ~~key standards of English Language Arts including reading, speaking and listening, writing or~~  
107 ~~language~~ may be required to attend an extended year early literacy and numeracy instructional  
108 support program as a condition for promotion if:

109 (1) The student has been provided additional academic help through the multi-tiered  
110 system of support intervention which may include an in-school or after-school early literacy and  
111 numeracy instructional support program and, prior to the end of the school year, the student  
112 assistance team or the student's classroom teacher recommends that further additional academic  
113 help is needed for the student to be successful at the next grade level; and

114 (2) The county board has established ~~an~~ a multi-tiered system of support intervention for  
115 early literacy and numeracy instructional support program during the extended year for the  
116 student's grade level.

117 (d) County boards shall provide high-quality educational facilities, equipment and services  
118 to support a multi-tiered system of support intervention for early literacy and numeracy  
119 instructional support programs established pursuant to this section. Extended year programs may  
120 be provided at a central location for kindergarten through third graders who qualify for the  
121 program.

122 (e) This section may not be construed to prohibit a classroom teacher from recommending  
123 the grade level retention of a student in any of the grades pre-kindergarten through grade three  
124 based upon the student's lack of mastery of the subject matter and preparation for the subject  
125 matter at the next grade level. Data from the early learning reporting system will be used to inform  
126 the classroom teacher's recommendation.

127 (f) This section may not be construed to affect the individualized education plans of  
128 exceptional students.

129 (g) This section may not be construed to limit the authority of the county board to establish  
130 an extended year program in accordance with ~~section thirty-nine, article five of this chapter~~ §18-5-  
131 39 of this code. County boards may not charge tuition for enrollment in early literacy and numeracy  
132 instructional support programs established pursuant to this section.

133 (h) Each county board shall ~~prepare to~~ implement the provisions of this section and the  
134 provisions of the state board rule required by subsection (b) of this section. ~~The preparations shall~~  
135 ~~at least include planning, ensuring~~ The county board shall establish a process for ensuring the  
136 developmental and academic progress of all students through the auspices of student assistance  
137 teams as currently required by state board policy and ~~performing~~ perform a needs assessment to  
138 determine the potential capacity requirements for the system of support for early learners.

139 (i) The state board shall provide a report describing the ~~proposed~~ implementation of the  
140 ~~transformative system of support~~ multi-tiered system of support intervention for early literacy and  
141 numeracy to the Legislative Oversight Commission on Education Accountability on or before July  
142 ~~1, 2014~~ July 1, 2023.

143 (j) The state board shall provide a comprehensive report regarding the status of the  
144 ~~transformative system of support~~ multi-tiered system of support intervention for early literacy and  
145 numeracy to the Legislative Oversight Commission on Education Accountability, the Joint  
146 Committee on Government and Finance, and the Governor on ~~November 1, 2014~~ November 1,  
147 2023, and annually on November 1 on each year thereafter. The report shall address, at a  
148 minimum, the progress of the program throughout the state, its effect on student achievement and  
149 the sources of the funding both available to and used by the program.

150 (k) Legislative appropriations to the State Board of Education – State Department of  
151 Education Early Literacy Program shall be used for the implementation of the provisions of this  
152 section along with other funds available for providing a high-quality education. ~~The provisions of~~  
153 ~~this section are subject to the availability of funds from legislative appropriation or other sources~~  
154 ~~specifically designated for the purposes of this section~~. If a county board determines that adequate



155 ~~funds are not available for full implementation of a transformative system of support for early~~  
156 ~~literacy in the county, the county board may implement its program in phases by first establishing~~  
157 ~~early literacy instructional support programs in the early readiness grades (Kindergarten), then the~~  
158 ~~primary grades (Grades 1-2), and then establishing an early literacy instructional support program~~  
159 ~~for the third grade once the county board determines that adequate funds are available.~~

160 (l) Effective for the school year beginning July 1, 2025, and thereafter, a public school  
161 student or public charter school student who generally demonstrates a minimal understanding of,  
162 and ability to apply, grade level English language arts or mathematics knowledge, skills and  
163 abilities, or both, relative to the West Virginia College and Career Readiness Standards at the end  
164 of the third grade shall upon the recommendation of the teacher and the student assistance team  
165 be retained in the third grade for the ensuing school year subject to the following exceptions:

166 (1) A student with disabilities whose Individual Education Plan indicates that participation  
167 in the statewide summative assessment is not appropriate, consistent with state law;

168 (2) A student identified as an English language learner who has had less than three years  
169 instruction in English as a second language;

170 (3) A student with disabilities who participates in the statewide summative assessment,  
171 has an Individual Education Plan or section 504 plan that reflects that the student has received  
172 intensive intervention for more than two years and still demonstrates a deficiency and who was  
173 previously retained in any of the grades pre-K through three;

174 (4) A student who is in the process of a special education referral or evaluation for  
175 placement in special education, has been diagnosed as having a significant impairment, including  
176 dyslexia, or is a child with a disability if the student's individualized education program team and  
177 student's parent or guardian agree that promotion is appropriate based on the student's  
178 Individualized Education Plan;

179 (5) A student who has received intensive intervention for two or more years, still  
180 demonstrates a deficiency and who was previously retained in any of the grades pre-K through

181 three for a total of two years: *Provided*, That the student shall continue to receive intensive  
182 intervention in grade four;

183 (6) A student who demonstrates an acceptable level of performance on an alternative  
184 standardized assessment approved by the State Board;

185 (7) A student who attends an extended year learning program following the third grade and  
186 has attained proficiency; and

187 (8) The parent or guardian of a student requests promotion of their child to the fourth grade  
188 notwithstanding the recommendation of the teacher and the student assistance team: *Provided*,  
189 That the child is required to attend an extended year program prior to promotion to the fourth  
190 grade.

191 (m) Starting in fourth grade, students who score below proficient in English language arts  
192 or mathematics on the West Virginia General Summative Assessment shall continue to be  
193 provided targeted and/or intensive intervention through a multi-tiered system of support until the  
194 student demonstrates grade level proficiency in English language arts and/or mathematics on the  
195 West Virginia General Summative Assessment.

NOTE: The purpose of this bill is to provide for a multi-tiered system of support intervention for grade level literacy and numeracy by end of third grade and require the State Board of Education to administer a K-3 reading and mathematics proficiency program.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.