

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 2596

By Delegates Toney, Statler, Vance, Ellington,

Cooper, Shamblin, Foggin, and Heckert

[Originating in the Committee on Education; January 17, 2023]

1 A BILL to amend and reenact §18-5-16 of the Code of West Virginia, 1931, as amended, relating to
2 denying transfers to other schools by students who are suspended or expelled from a
3 school for certain conduct and open enrollment; clarifying the circumstances in which a
4 county board shall permit the transfer of resident and nonresident students; amending
5 provisions pertaining to the contents of county board of education policies for open
6 enrollment; modifying the process for transfer application denials and appeals; and
7 requiring county boards and the State Department of Education to report annually on the
8 number of transfer approvals and denials made pursuant to open enrollment policies.

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 within its district that its resident
3 students shall typically attend. Provided, That a county board may permit any eligible elementary,
4 middle or high school resident student to apply for enrollment in any school with grade level
5 capacity and existing programs and services currently outside any established attendance zone in
6 which the student resides. ~~Upon the written request of any parent or guardian, or person legally~~
7 ~~responsible for any student, or for reasons affecting the best interests of the schools, the~~
8 ~~superintendent may grant transfer students from one school to another within the county.~~ Upon the
9 written request of any parent or guardian, or person legally responsible for any resident student,
10 the superintendent may grant a resident student's transfer request from one school or program to
11 another within the county so long as grade level capacity and the program and services exist at the
12 time of the request. Counties with a critical need shortage policy may further review the request to
13 determine if appropriate staffing is available in the requested grade, program, service, or content
14 area. A superintendent may not transfer a resident student from one school to another within the

15 county for reasons affecting the best interests of the schools without the consent of the student's
16 parent or legal guardian. Any aggrieved person may appeal the decision of a transfer or denial of
17 transfer by the county superintendent to the county board, and the decision of the county board is
18 final. When making enrollment decisions, a county superintendent or county board may not
19 distinguish between students on the basis of residential or potential disability status. A county
20 superintendent or county board may determine if appropriate staff, resources, services and
21 programs are in place to meet the disability needs of the student at the requested school. A
22 decision of the county board may be appealed to the state superintendent of schools, whose
23 decision shall be final.

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

26 (1) "DRF" means the Disciplinary Referral Form system used in §18A-5-1a of this code.

27 (4) (2) "Nonresident student" means a student who resides in this state and who is enrolled
28 in or is seeking enrollment in a county school district other than the county school district in which
29 the student resides.

30 (2) (3) "Open enrollment" means a policy adopted and implemented by a county board to
31 allow nonresident students to enroll in any school within the district. Open enrollment is distinct
32 from a mutual agreement of two county boards regarding mass transfer of students, as
33 contemplated in §18-5-13(f)(1)(C) of this code.

34 (c) *Enrollment policies for nonresident students.* — County boards shall establish and
35 implement an open enrollment policy for nonresident students without charging tuition and without
36 obtaining approval from the board of the county in which a student resides and transfers. This
37 policy shall clearly outline the application process nonresident students are to follow establish an
38 open enrollment process and enrollment application period for nonresident students to enroll in
39 any school within the district. The process for enrollment application shall be clearly publicized to
40 parents and the general public, including dates and timelines, and shall be made available on the

41 board's website. As part of the open enrollment policy, county boards shall also establish a
42 process for nonresident students to enroll in any school within the district on a case-by-case basis
43 at any time during the academic year so long as all other requirements are met including that the
44 student has not previously transferred within the same school year. The open enrollment policy
45 shall not discriminate against nonresident students on the basis of their residential address or any
46 potential disability status. Enrollment policies are subject to the following:

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

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

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

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

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

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

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

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

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

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

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

82 (4) An application may only be denied by a county board of education due to lack of grade
83 level capacity, lack of programs or services due to areas identified in the county board critical need
84 policy, ten total unexcused absences of a student during a school year, or if the student has been
85 suspended or expelled for a level three or level four offense according to the DRF system in §18A-
86 5-1a(a), §18A-5-1a(b) or §18A-5-1a(c) of this code. ~~or if the nonresident student failed to fill out or~~
87 ~~submit the application correctly.~~ The denial shall be in writing, sent to the parent or guardian of the
88 nonresident student and the West Virginia Department of Education within three business days of
89 the decision, and include the reason and explanation for the denial and information on appealing
90 the denial of the application. If a nonresident student fails to fill out or submit an open enrollment

91 application correctly, a county board shall provide an explanation of ways in which the application
92 may be corrected and submitted for necessary approval.

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

99 (e) *Net enrollment.* — For purposes of net enrollment as defined in §18-9A-2 of this code,
100 whenever a student is transferred on a full-time basis from one school district to another district
101 pursuant to the provisions of this section, the county to which the student is transferred shall
102 include the student in its net enrollment, subject to the following:

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

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

114 (3) If a student in prekindergarten transfers after the child count of exceptional students is
115 certified for any school year, the county to which the student transferred may issue, in the following
116 fiscal year, an invoice to the county from which the student transferred for the amount the county

117 now responsible for educating the student otherwise would have received under aid to exceptional
118 students had such student been included in the county's prior year's child count enrollment; and

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

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

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

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

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

133 (i) Each county board shall report annually to the State Department of Education the
134 number of resident and nonresident student transfers approved by the county board for the
135 preceding school calendar year, as well as the number of resident and nonresident student
136 transfer applications denied and the reasons for those denials. On or before June 30 of each year,
137 the State Department of Education shall compile the information from the county boards and
138 report the information to the Legislative Oversight Commission on Education Accountability.
139 Information regarding the annual number of resident and nonresident student transfer approvals
140 and denials shall also be made available on each county board's website.

NOTE: The purpose of this bill is to deny transfers to other schools by students who are suspended or expelled from a school for certain conduct, amend the county board of education's policies, and modify the appeals process for transferring students.

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