WEST virginia legislature

2023 regular session

ENROLLED

Committee Substitute

for

House Bill 3035

By Delegates Hanshaw (Mr. Speaker) and Skaff

(By Request of the Executive)

[Passed March 11, 2023; in effect ninety days from passage.]

AN ACT to amend and reenact §18-2E-10 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-5-18a of said code; to amend and reenact §18-9A-5 of said code; and to amend and reenact §18-20-10 of said code, all relating to enhancing academic achievement of students including those with learning disabilities; establishing the Third Grade Success Act; replacing transformative system of support for early literacy with multi-tiered system of support for early literacy and numeracy in kindergarten through grade three; revising findings; defining “science of reading”; revising inclusions in West Virginia Board of Education rules required to effectuate Third Grade Success Act section; requiring each county board to adopt high-quality instructional materials; specifying data to be used to inform the classroom teacher’s recommendation on grade level retention; requiring county boards of education to provide in-service training for early childhood classroom assistant teachers, aides, paraprofessionals, classroom teachers, and in certain instances, interventionists in grades kindergarten through three; updating deadlines for West Virginia Board of Education multi-tiered system of support for early literacy and numeracy reports; modifying provisions pertaining to funding for Third Grade Success Act section; requiring retention in the third grade in certain circumstances; specifying exceptions to third grade retention requirement; adding maximum early childhood classroom assistant teacher or aide-pupil ratio for kindergarten; adding maximum early childhood classroom assistant teacher, paraprofessional, or aide-pupil ratio for grades one through three; requiring ratios to be by grade level with flexibility once grade level requirement is met for full implementation by 2026; allowing county boards to employ an interventionist instead of an early childhood assistant teacher, paraprofessional or aide; removing requirement for survey of districts on class overcrowding and report to the Legislative Oversight Commission on Education Accountability a tailored plan for reducing class overcrowding; phasing in increased ratios of service personnel per 1,000 students for the purpose of determining the basic foundation allowance for service personnel; revising findings pertaining to standards to guide the preparation, certification, and professional development for teachers of reading and related literacy skills and appropriate measures for recognizing characteristics of dyslexia and dyscalculia; replacing responsibilities of the West Virginia Board of Education pertaining to specific learning disabilities, including dyslexia and dyscalculia, with duties of the state board and the local education agencies; requiring state board rule to implement section pertaining to dyslexia and dyscalculia; stating minimum inclusions for rule; requiring report of certain information to the Legislative Oversight Commission on Education Accountability.

Be it enacted by the Legislature of West Virginia:

**§18-2E-10. Third Grade Success Act; multi-tiered system of support for early literacy and numeracy in kindergarten through grade three; 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.**

(a) This section shall be known and may be cited as the Third Grade Success Act.

(b) The Legislature finds that:

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

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

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

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

(c) “Science of reading” means evidence-based reading instruction practices that address the acquisition of language, phonological and phonemic awareness, phonics and spelling, fluency, vocabulary, oral language, comprehension, and writing that can be differentiated to meet the needs of individual students.

(d) The state board shall, in accordance with §29A-3B-1 *et seq.* of this code, promulgate legislative rules as necessary to effectuate the provisions of this section. The rules shall provide for at least the following:

(1) Development of a statewide comprehensive, systemic approach to close the reading and mathematics achievement gaps by third grade, which targets school readiness, the attendance gap, science of reading instruction (phonics, phonemic awareness, vocabulary, fluency, comprehension, and writing), summer learning loss, the use of screeners and/or benchmark assessments in English language arts and mathematics for students in grades kindergarten through three, and a multi-tiered system of support for students exhibiting a substantial reading or mathematics deficiency;

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

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

(4) Providing assistance to county boards with the training and implementation of the science of reading training for all kindergarten through grade three educators, early childhood classroom assistant teachers, aides, paraprofessionals and any interventionists that a county board may choose to employ instead of an early childhood classroom assistant teacher, aides, or paraprofessionals pursuant to §18-5-18a(b) of this code;

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

(6) Establishing an approved list of screeners and/or benchmark assessments in English language arts and mathematics for students in grades kindergarten through three for the purpose of identifying students with a significant reading and/or mathematics deficiency. The screener and/or benchmark assessments shall be given in the first 30 days of the school year and repeated at mid-year and at the end of the school year to determine student progression in reading and mathematics in kindergarten through third grade;

(7) Establishing an approved list of dyslexia screeners to be administered to students no less than twice per year in kindergarten through third grade and any time students with identified deficiencies are not responding to interventions;

(8) Any student in kindergarten or grades one through three who exhibits a deficiency in reading at any time, based upon the screeners and/or benchmark assessments, and/or the comprehensive statewide student assessment, and any fourth-grade student promoted for good cause shall receive an individual reading improvement plan no later than 30 days after the identification of the reading deficiency. The reading improvement plan shall be created by the teacher, principal, other pertinent school personnel, and the parent(s) or guardians, and shall describe the research-based reading intervention services the student will receive to remedy the reading deficit. Each student shall receive intensive reading intervention until the student no longer has a deficiency in reading. Reading interventions may include evidence-based strategies frequently used to remediate reading deficiencies and includes, but is not limited to, individual instruction, small-group instruction, tutoring, mentoring, or the use of technology that targets specific reading skills and abilities;

 (9) Maximizing family engagement to result in the development of a culture of literacy and numeracy, which shall at least include:

(A) Providing parents or guardians with regular updates to inform them of their child’s progress toward proficiency in reading and mathematics;

(B) Ensuring parents or guardians are informed of and have access to resources which they may utilize to improve their child’s literacy and numeracy skills;

(C) Ensuring the parent or guardian is informed of the importance of their child being able to demonstrate grade level reading and mathematics skills by the end of the third grade and the measures that will be employed pursuant to this section to improve the reading and mathematics skills of children who are not meeting the standards; and

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

(i) That the student has been identified as having a deficiency in reading and/or mathematics;

(ii) A description of the proposed research-based reading and/or mathematics interventions and/or supplemental instructional services and supports that will be provided to the child to address the identified area(s) of deficiency;

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

(iv) That if the child’s reading or mathematics deficiency is not corrected by the end of grade three, the child may not be promoted to grade four unless an exemption is met;

(10) Supporting high-quality schools and a workforce prepared to address early literacy and numeracy by the provision of professional development for administrators, kindergarten, first, second, and third grade teachers including, but not limited to, the following:

(A) The approved benchmark assessment and/or screener tools to ensure teachers have the knowledge and skill to administer the assessment and/or screener, analyze the data to inform instruction, and identify students exhibiting substantial deficiencies in reading or mathematics;

(B) Comprehensive training on the science of reading and numeracy instruction to ensure all kindergarten through grade three teachers, early childhood classroom assistant teachers, aides and paraprofessionals, have the knowledge and skill to teach and/or support all students to read and perform mathematics at grade level. The rules also shall provide that any interventionist a county chooses to employ instead of an early childhood classroom assistant teacher, aides or paraprofessionals pursuant to §18-5-18a(b) receives this comprehensive training;

(C) Training and materials to inform classroom teachers of the characteristics of dyslexia and dyscalculia in students, components of benchmarks and screeners that may indicate dyslexia or dyscalculia, and strategies for instruction; and

(D) Job-embedded, on-site teacher training on evidence-based reading and mathematics instruction and data-driven decision-making that provides kindergarten through grade three teachers with immediate feedback for improving instruction;

(11) Ensuring the employment of qualified teachers and service personnel in accordance with §18-5-39 and §18A-4-7c of this code to provide instruction to students enrolled in early literacy and numeracy support programs including, but not limited to, ensuring that educator preparation programs prepare candidates seeking licensure for elementary education with training and instruction to:

(A) Include instruction in state-adopted grade-level content standards, foundational reading and mathematics skills, and how to implement reading instruction using high-quality instructional materials;

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

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

(12) Creating a formula or grant-based program for the distribution of funds appropriated specifically for the purposes of this section or otherwise available for the support of a targeted, multi-tiered system of support intervention for early literacy and numeracy;

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

(14) Receiving from county boards any applications and annual reports required by rule of the state board.

(e) A student in grades kindergarten through grade three shall be required to attend an extended year early literacy and numeracy instructional support program as a condition for promotion if:

(1) The student has been provided additional academic assistance through interventions offered during the school day or after-school in early literacy and numeracy and, prior to the end of the school year, the student assistance team or the student’s classroom teacher recommends that further additional academic help is needed for the student to be successful at the next grade level; and

(2) The county board has established a literacy and numeracy instructional support program during the extended year for the student’s grade level.

(f) County boards shall provide high-quality educational facilities, equipment, and services to support literacy and numeracy instructional support programs established pursuant to this section. Extended year programs may be provided at a central location for kindergarten through third graders who qualify for the program.

(g) Each county board shall adopt high-quality instructional materials grounded in scientifically-based reading research and aligned to state standards to be used as the core curriculum. The instructional materials shall not include practices that are aligned with the Three-Cueing Systems Model of teaching reading.

(h) This section may not be construed to prohibit a classroom teacher from recommending the grade level retention of a student in any of the grades kindergarten through grade three based upon the student’s lack of mastery of the subject matter and preparation for the subject matter at the next grade level. Benchmark and/or screener data shall be used to inform the classroom teacher’s recommendation.

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

(j) This section may not be construed to limit the authority of the county board to establish an extended year program in accordance with §18-5-39 of this code. County boards may not charge tuition for enrollment in early literacy and numeracy instructional support programs established pursuant to this section.

(k) Each county board shall implement the provisions of this section and the provisions of the state board rule required by subsection (b) of this section. The county board shall establish a process for ensuring the developmental and academic progress of all students through the auspices of student assistance teams as currently required by state board policy and perform a needs assessment to determine the potential capacity requirements for the multi-tiered system of support for early learners. Each county board also shall provide in-service training:

(1) For kindergarten through grade three early childhood classroom assistant teachers, aides and paraprofessionals, specifically related to literacy, numeracy, and their responsibilities and appropriate measures for exercising authority and control over students. The county board shall also provide this training to any interventionists it chooses to employ instead of an early childhood classroom assistant teacher, aide or professional pursuant to §18-5-18a(b) of this code; and

(2) For classroom teachers in grades kindergarten through three to help the classroom teachers gain a strong understanding of how to best utilize the early childhood classroom assistant teachers, aides, paraprofessionals or interventionists during classroom instruction and during other periods of the day.

(l) The state board shall provide a report describing the proposed implementation of the multi-tiered system of support for early literacy and numeracy to the Legislative Oversight Commission on Education Accountability on or before July 1, 2023.

(m) The state board shall provide a comprehensive report regarding the status of the multi-tiered system of support for literacy and numeracy to the Legislative Oversight Commission on Education Accountability, the Joint Committee on Government and Finance, and the Governor on or before November 1, 2023, and annually on or before November 1 of each year thereafter. The report shall address, at a minimum, the progress of the program throughout the state, its effect on student achievement, and the sources of the funding both available to and used by the program.

(n) Legislative appropriations to the State Board of Education – State Department of Education Elementary Literacy and Numeracy Program shall be used for the implementation of the provisions of this section along with other funds available for providing a high-quality education.

(o) Effective for the school year beginning July 1, 2026, and thereafter, a public school student who generally demonstrates a minimal understanding of, and ability to apply, grade level English language arts or mathematics knowledge, skills, and abilities, or both, as indicated on the West Virginia General Summative Assessment relative to the West Virginia College and Career Readiness Standards at the end of third grade, shall upon the recommendation of the teacher and the student assistance team, be retained in the third grade for the ensuing school year subject to the following exceptions:

(1) A student with disabilities whose Individual Education Plan indicates participation in the statewide alternate summative assessment;

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

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

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

(5) A student who has received intensive intervention for two or more years, still demonstrates a deficiency, and who was previously retained in any of the grades kindergarten through grade three for a total of two years: *Provided,* That the student shall continue to receive intensive intervention in grade four;

(6) A student who demonstrates an acceptable level of performance on an alternative standardized assessment approved by the state board;

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

(8) A student whose parent or guardian has requested a good cause exemption within the time period established by the county board and the superintendent, or his or her designee, determines that the good cause exemption is in the best interests of the child: *Provided,* That a good cause exemption may not prohibit the grade level retention of a student by a classroom teacher based upon the student’s lack of mastery of the subject matter and preparation for the subject matter at the next grade level.

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-18a. Maximum teacher-pupil ratio.**

(a) County boards of education shall provide sufficient personnel, equipment, and facilities as will ensure that each classroom, or classrooms having two or more grades that include one or more of the kindergarten through sixth grades shall not have more pupils for each teacher as follows, unless the state superintendent has excepted a specific classroom upon application therefor by a county board as provided in this section:

(1) For kindergarten, not more than 20 pupils for each teacher and one early childhood classroom assistant teacher or aide in classrooms with more than 10 pupils;

(2) For first, second, and third grades, not more than 25 pupils for each teacher and one early childhood classroom assistant teacher, aide or paraprofessional in classrooms with more than 12 pupils: *Provided,* That the early childhood classroom assistant teacher/aide/paraprofessional requirement for classrooms with more than 12 pupils shall be effective beginning the 2023-2024 school year, for first grade classrooms; shall be effective beginning the 2024-2025 school year, for second grade classrooms; and shall be effective beginning the 2025-2026 school year, for third grade classrooms: *Provided however,* That if all grade level classrooms are already being served by an early childhood classroom assistant teacher/aide/paraprofessional by the school year required, the county board has the discretion to add the assistant teachers/ aides/paraprofessionals in first, second and third grade classrooms of the greatest need beginning July 1, 2023 and completing full implementation by July 1, 2026; and

(3) For grades four, five, and six, not more than 25 pupils for each teacher.

(b) County boards may satisfy the requirements of subsection (a) of this section by employing a full-time interventionist instead of an early childhood assistant teacher, aide or paraprofessional, subject to the following:

(1) If no full-time interventionist is available, a county board may satisfy the requirements of subsection (a) of this section by employing a part-time interventionist; and

(2) County boards are not required to employ an interventionist even if there are an insufficient number of early childhood assistant teachers, aides and paraprofessionals available to fill all the positions required by subsection (a) of this section.

(c) County school boards may not maintain a greater number of classrooms having two or more grades that include one or more of the grade levels referred to in this section than were in existence in said county as of January 1, 1983.

(d) The state superintendent is authorized, consistent with sound educational policy, to:

(1) Permit on a statewide basis, in grades four through six, more than 25 pupils per teacher in a classroom for the purposes of instruction in physical education; and

(2) Permit more than 20 pupils per teacher in a specific kindergarten classroom and 25 pupils per teacher in a specific classroom in grades four through six during a school year in the event of extraordinary circumstances as determined by the state superintendent after application by a county board of education.

(e) The state board shall establish guidelines for the exceptions authorized in this section, but in no event shall the superintendent except classrooms having more than three pupils above the pupil-teacher ratio as set forth in this section.

(f) The requirement for approval of an exception to exceed the 20 pupils per kindergarten teacher per session limit or the 25 pupils per teacher limit in grades four through six is waived in schools where the schoolwide pupil-teacher ratio is 25 or less in grades four through six: *Provided,* That a teacher shall not have more than three pupils above the teacher/pupil ratio as set forth in this section. Any kindergarten teacher who has more than 20 pupils per session and any classroom teacher of grades four through six who has more than 25 pupils, shall be paid additional compensation based on the affected classroom teacher’s average daily salary divided by 20 for kindergarten teachers, or 25 for teachers of grades four through six, for every day times the number of additional pupils enrolled up to the maximum pupils permitted in the teacher’s classroom. All such additional compensation shall be paid from county funds exclusively.

Notwithstanding any other provision of this section to the contrary, commencing with the school year beginning on July 1, 1996, a teacher in grades one, two, or three, or classrooms having two or more such grade levels, shall not have any pupils above the teacher/pupil ratio as set forth in this section.

(g) No provision of this section is intended to limit the number of pupils per teacher in a classroom for the purpose of instruction in choral, band, or orchestra music.

(h) Each school principal shall assign students equitably among the classroom teachers, taking into consideration reasonable differences due to subject areas and/or grade levels.

(i) The state board shall collect from each county board of education information on class size and the number of pupils per teacher for all classes in grades seven through 12. The state board shall report such information to the Legislative Oversight Commission on Education Accountability before January 1, of each year.

**ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

**§18-9A-5. Foundation allowance for service personnel.**

(a) The basic foundation allowance to the county for service personnel shall be the amount of money required to pay the annual state minimum salaries in accordance with the provisions of §18A-4-1 *et seq.* of this code to such service personnel employed, subject to the following:

(1) A county shall receive an allowance for state aid eligible service personnel positions per 1,000 students in net enrollment, as follows:

(A) For each high-density county, 43.97 service personnel per 1,000 students in net enrollment: *Provided*, That this ratio of service personnel per 1,000 students in net enrollment shall increase to 47.39 beginning July 1, 2023; 50.65 beginning July 1, 2024; and 53.79 beginning July 1, 2025;

(B) For each medium-density county, 44.53 service personnel per 1,000 students in net enrollment: *Provided*, That this ratio of service personnel per 1,000 students in net enrollment shall increase to 47.95 beginning July 1, 2023; 51.21 beginning July 1, 2024; and 54.35 beginning July 1, 2025;

(C) For each low-density county, 45.10 service personnel per 1,000 students in net enrollment: *Provided*, That this ratio of service personnel per 1,000 students in net enrollment shall increase to 48.52 beginning July 1, 2023; 51.78 beginning July 1, 2024; and 54.92 beginning July 1, 2025;

(D) For each sparse-density county, 45.68 service personnel per 1,000 students in net enrollment: *Provided*, That this ratio of service personnel per 1,000 students in net enrollment shall increase to 49.10 beginning July 1, 2023; 52.36 beginning July 1, 2024; and 55.50 beginning July 1, 2025; and

(E) For any service personnel positions, or fraction thereof, determined for a county pursuant to subdivision (1) of this subsection that exceed the number employed, the county’s allowance for these positions shall be determined using the average state funded minimum salary of service personnel for the county;

(2) The number of and the allowance for personnel paid in part by state and county funds shall be prorated; and

(3) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the service personnel for the school or program may be prorated among the participating counties on the basis of each one’s enrollment therein and that the personnel shall be considered within the above-stated limit.

**Article 20. Education of Exceptional Children.**

**§18-20-10. Dyslexia and dyscalculia defined.**

(a) The Legislature finds as follows:

(1) Reading difficulties are the most common cause of academic failure and underachievement;

(2) There are many students who demonstrate significant weaknesses with reading, writing and mathematics that are influenced by specific learning disabilities, including dyslexia, dyscalculia, and related learning difficulties. Of those who are referred to special education services in public schools, the majority are referred because of problems with language, reading, writing, or a combination of each;

(3) Teaching reading effectively, especially to students experiencing difficulty, requires considerable knowledge and skill. Informed and effective classroom instruction, especially in the early grades, can prevent and relieve the severity of language difficulties, and significantly improve literacy development;

(4) For those students with specific learning disabilities, including dyslexia and dyscalculia, who need specialized instruction, competent intervention can lessen the impact of the disorder and help the student overcome the most debilitating symptoms;

(5) While programs for specific learning disabilities, including dyslexia and dyscalculia, that certify or support teachers, clinicians or specialists differ in their preparation methodologies, teaching approaches and organizational purposes, they should ascribe to a common set of professional standards for the benefit of the students they serve. Compliance with such standards can assure the public that individuals who serve students with specific learning disabilities in public schools are prepared to implement scientifically based and clinically proven practices;

(6) The International Dyslexia Association (IDA) offers widely-adopted and consistent standards to guide the preparation, certification, and professional development for teachers of reading and related literacy skills in classroom, remedial and clinical settings; and

(7) The basis of ascribing to common standards to benefit students with specific learning disabilities, including dyslexia and dyscalculia, requires recognizing common characteristics of the disabilities. The Legislature finds that the definitions of dyslexia and dyscalculia prescribed by the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR) are the appropriate measures for recognizing characteristics of dyslexia and dyscalculia in students.

(b) The Legislature recognizes the following regarding dyslexia and dyscalculia:

(1) Dyslexia and dyscalculia are conditions that may be considered under the specific learning disability category, and their definitions are consistent with IDEA and state board policy. State board policy provides that "specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia;

(2) Dyslexia is an alternative term used to refer to a pattern of learning difficulties characterized by problems with accurate or fluent word recognition, poor decoding, and poor spelling abilities. If dyslexia is used to specify this particular pattern of difficulties, it is important also to specify any additional difficulties that are present, such as difficulties with reading comprehension or math reasoning; and

(3) Dyscalculia is an alternative term used to refer to a pattern of learning difficulties characterized by problems processing numerical information, learning arithmetic facts, and performing accurate or fluent calculations. If dyscalculia is used to specify this particular pattern of mathematic difficulties, it is important also to specify any additional difficulties that are present, such as difficulties with math reasoning or word reasoning accuracy.

(c) The state board shall:

(1) Develop a list of appropriate screeners, early assessments, and professional development that address and ensure that all students receive the necessary and appropriate screenings, evaluations, and early assessments for specific learning disabilities, including dyslexia and dyscalculia which contain information related to the following:

(A) Appropriate literacy and numeracy screening tools for identifying students who are at risk for academic difficulty in reading and/or math, including dyslexia and dyscalculia, and who require tiered intervention;

(B) Appropriate diagnostic assessment components that can be used to help identify and diagnose;

(C) Appropriate evidence-based instruction and intervention strategies for students who are at risk for academic difficulty in reading and/or mathematics, including students who exhibit possible indicators of risk for dyslexia and/or dyscalculia;

(D) Appropriate accommodations for students who exhibit possible indicators of risk for, or who have been diagnosed with, dyslexia, dyscalculia, and/or other specific learning disabilities;

(E) Connecting a multi-tiered system of support framework to specific learning disability identification; and

(F) The use of the terms “dyslexia” and “dyscalculia” in Individualized Education Programs, and in evaluation reports by professionals qualified to render these diagnoses; and

(2) Explore options to assist any LEA with acquiring approved literacy and/or numeracy screening tools: *Provided,* That the local educational agency is unable to acquire its own literacy and/or numeracy screening tools that are consistent with state educational agency recommendations;

(3) Adopt and make publicly available guidelines for including dyslexia diagnostic evaluation components in comprehensive assessments for special education and related services. These guidelines shall:

(A) Recommend at least one person on each multidisciplinary evaluation team be knowledgeable about dyslexia and be able to recognize when a dyslexia diagnostic component should be requested in the evaluation process;

(B) Recommend that a diagnosis of dyslexia be given when the data from the comprehensive evaluation components indicate such a diagnosis is appropriate;

(C) Include recommendations for how to document a dyslexia diagnosis in an IEP; and

(D) Include that a Section 504 Plan be considered if a student has a dyslexia diagnosis but does not qualify for special education services;

(4) Adopt and make publicly available a list of approved diagnostic assessment components that can be used to help identify and diagnose dyslexia during comprehensive multidisciplinary evaluations;

(5) Adopt and make publicly available guidelines and a list of resources for dyslexia intervention practices that are evidence-based, including practices consistent with the Science of Reading and Structured Literacy, that are explicit, direct, sequential, systematic, and multisensory;

(6) Adopt and make publicly available a list of recommended accommodations and instructional practices to be used with students who exhibit signs of dyslexia or have been diagnosed with dyslexia. These shall reflect contemporary research and guidelines of the Science of Reading related to dyslexia. These recommendations shall include, but are not limited to, structured literacy approaches that are explicit, direct, sequential, systematic, and multisensory;

(7) Adopt and make publicly available a list of available professional development resources that support evidence-based intervention for struggling readers, including the Science of Reading and Structured Literacy. This list shall be made publicly available and include resources endorsed or espoused by technical assistance centers, research organizations, and professional associations that support the Science of Reading and Structured Literacy regarding dyslexia, including the International Dyslexia Association; and

(8) Develop and make publicly available informational materials related to dyslexia for parents and guardians that include information about the multidisciplinary evaluation process, updated regularly.

(d) The local education agency shall:

(1) Develop a system for parents and guardians to annually receive digital and print informational materials related to dyslexia;

(2) Ensure at least one educator at each school is trained to administer, score, and interpret the data from the literacy screening instrument or instruments, and to recognize signs of dyslexia;

(3) Notify parents of the results of these literacy screeners while emphasizing that not all students who perform poorly on these screening instruments have dyslexia. Also, not all students with dyslexia will perform poorly on the screeners;

(4) Provide evidence-based reading intervention to students who exhibit academic risk in future reading performance, including indicators of dyslexia;

(5) Conduct comprehensive assessments to determine eligibility for special education services when a child does not respond or only minimally responds to intervention strategies and/or when there is a suspected disability of dyslexia. If a determination is made through the evaluation process that a student needs assessed for dyslexia, provide assessment and diagnosis as necessary per West Virginia Department of Education guidelines;

(6) Employ appropriate accommodations and instructional practices recommended by the West Virginia Department of Education based upon the students’ needs. When those needs are related to dyslexia, these accommodations and instructional techniques or strategies shall also meet the West Virginia Department of Education-approved guidelines for dyslexia accommodations and instructional practices;

(7) Require all elementary educators, special educators, reading interventionists or specialists, and other personnel determined appropriate by the local education agency to receive professional development on the possible signs of dyslexia and the related classroom accommodations and instructional practices approved by the West Virginia Department of Education;

(8) Administer a literacy screening instrument or instruments to students in grades 3-5 who transfer from a local education agency where literacy screening instruments were not administered. If the literacy screening instrument indicates a deficit in reading, the school will provide intervention according to current policy. If a student does not respond or only minimally responds to intervention, a referral for multidisciplinary evaluation shall be made; and

(9) Require all appropriate personnel, as determined by the local education agency, to annually receive professional development relating to the possible indicators for dyslexia and dyscalculia, accommodations and modifications in the classroom environment, proper instructional practices for educating students who exhibit possible indicators of risk for, or who have been, diagnosed with dyslexia, dyscalculia, and/or other specific learning disabilities. Local education agencies may create more than one module to satisfy the requirements of this subdivision.

(e) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq.* of this code to implement this section. In addition to other provisions to implement this section, the rule shall at least include the following:

(1) If a student is reading substantially below grade level according to formal and/or informal assessments, including benchmark assessments, and has never been evaluated for special education, a request may be made by a school, parent, or teacher for the administration of an age- or grade-appropriate West Virginia Department of Education-approved literacy screening instrument or instruments. These points of data may be used to either start intervention and progress monitoring per West Virginia Department of Education guidance, or make a referral for a special education evaluation;

(2) Acknowledgement that each local education agency may have one certified Literacy and Numeracy Specialist in each local education agency, or another appropriate professional designated by relevant local education agency leadership, to be appropriately trained, or be seeking appropriate training, in intervention, accommodations, and instructional strategies for students with dyslexia or a related disorder. The trained individual(s) shall serve as an advisor and trainer for dyslexia and related disorders for the local education agency. The reading specialist(s) or other designated professional(s) shall have an understanding of the definition of dyslexia and a working knowledge of:

(A) Techniques to help a student on the continuum of skills with dyslexia;

(B) Dyslexia characteristics that may manifest at different ages and levels;

(C) The basic foundation of the keys to reading, including multisensory, explicit, systematic, and structured literacy instruction; and

(D) Appropriate interventions, accommodations, and assistive technology supports for students with dyslexia.

(f)  *Legislative Oversight Commission on Education Accountability (LOCEA):*

(1) The final draft of the state board’s literacy and numeracy rule shall be submitted to the Legislative Oversight Commission on Education Accountability (LOCEA) by August 1, 2023.

(2) The following shall be submitted to the Legislative Oversight Commission on Education

Accountability (LOCEA) annually:

 (A) Disaggregated data concerning literacy and numeracy patterns statewide;

(B) Statewide interventions implemented; and

(C) The statewide professional development plan.

(3) Progress monitoring regarding K-2 screening and 3-8 formative assessments shall be presented to the Legislative Oversight Commission on Education Accountability (LOCEA) after data is collected for the beginning, middle, and end of the school year.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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 *Clerk of the House of Delegates*

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 *Clerk of the Senate*

Originated in the House of Delegates.

In effect ninety days from passage.

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 *Speaker of the House of Delegates*

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 *President of the Senate*

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Day of ..........................................................................................................., 2023.

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 *Governor*