

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3048

By Delegates Dillon, Chiarelli, and Crouse

[Introduced January 25, 2023; Referred to the
Committee on Education]

1 A BILL to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating to
2 removing the reporting of assessments and portfolio reviews to county boards of home
3 schooled children.

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 the
13 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 of
20 this code. If the request for home instruction is denied by the county board, good and reasonable

21 justification for the denial shall be furnished in writing to the applicant by the county board. The
22 instruction shall be conducted by a person or persons who, in the judgment of the county
23 superintendent and county board, are qualified to give instruction in subjects required to be taught
24 in public elementary schools in the state. ~~The person or persons providing the instruction, upon
25 request of the county superintendent, shall furnish to the county board information and records as
26 may be required periodically with respect to attendance, instruction, and progress of students
27 receiving the instruction. The state board shall develop guidelines for the home schooling of
28 special education students including alternative assessment measures to assure that satisfactory
29 academic progress is achieved~~ Because the Legislature recognizes the rights of parents to direct
30 the education and instruction of their own children, the Legislature finds that the reporting of
31 assessments and portfolio reviews to the county boards is currently an immaterial formality which
32 costs parents in time and resources to fulfill.

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

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

47 of the new county of residence: *Provided*, That if a child is enrolled in a public school, notice of
48 intent to provide home instruction shall be given on or before the date home instruction is to begin.

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

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

56 ~~(i) The child receiving home instruction takes a nationally normed standardized~~
57 ~~achievement test published or normed not more than 10 years from the date of administration and~~
58 ~~administered under the conditions as set forth by the published instructions of the selected test~~
59 ~~and by a person qualified in accordance with the test's published guidelines in the subjects of~~
60 ~~reading, language, mathematics, science, and social studies. The child is considered to have~~
61 ~~made acceptable progress when the mean of the child's test results in the required subject areas~~
62 ~~for any single year is within or above the fourth stanine or, if below the fourth stanine, shows~~
63 ~~improvement from the previous year's results;~~

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

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

73 ~~narrative indicates that the child's academic progress for the year is in accordance with the child's~~
74 ~~abilities, the child is considered to have made acceptable progress; or~~

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

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

86 ~~(E) The parent or legal guardian shall submit to the county superintendent the results of the~~
87 ~~academic assessment of the child at grade levels three, five, eight, and 11, as applicable, by June~~
88 ~~30 of the year in which the assessment was administered~~

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

96 (d) A child is exempt from the compulsory school attendance requirement set forth in §18-
97 8-1a of this code if the requirements of this subsection, relating to physical or mental incapacity,
98 are met. Physical or mental incapacity consists of incapacity for school attendance and the

99 performance of school work. In all cases of prolonged absence from school due to incapacity of
100 the child to attend, the written statement of a licensed physician or authorized school nurse is
101 required. Incapacity shall be narrowly defined and in any case the provisions of this article may not
102 allow for the exclusion of the mentally, physically, emotionally, or behaviorally handicapped child
103 otherwise entitled to a free appropriate education.

104 (e) A child is exempt from the compulsory school attendance requirement set forth in §18-
105 8-1a of this code if conditions rendering school attendance impossible or hazardous to the life,
106 health, or safety of the child exist.

107 (f) A child is exempt from the compulsory school attendance requirement set forth in §18-8-
108 1a of this code upon regular graduation from a standard senior high school or alternate secondary
109 program completion as determined by the state board.

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

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

120 (i) A child is exempt from the compulsory school attendance requirement set forth in §18-8-
121 1a of this code if the requirements of this subsection, relating to destitution in the home, are met.
122 Exemption based on a condition of extreme destitution in the home may be granted only upon the
123 written recommendation of the county attendance director to the county superintendent following
124 careful investigation of the case. A copy of the report confirming the condition and school

125 exemption shall be placed with the county director of public assistance. This enactment
126 contemplates every reasonable effort that may properly be taken on the part of both school and
127 public assistance authorities for the relief of home conditions officially recognized as being so
128 destitute as to deprive children of the privilege of school attendance. Exemption for this cause is
129 not allowed when the destitution is relieved through public or private means.

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

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

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

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

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

150 (2) In the case of a Hope Scholarship recipient who chooses an individualized instructional

151 program, annually, the child's test results or determination that a student is making academic
152 progress commensurate with his or her age and ability, as applicable, pursuant to §18-31-8(a)(4)
153 of this code; and

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

156 (n) A child is exempt from the compulsory school attendance requirement set forth in §18-
157 8-1a of this code if the child participates in a learning pod or microschool pursuant to this
158 subsection.

159 (1) For the purposes of this subsection:

160 (A) "Learning pod" means a voluntary association of parents choosing to group their
161 children together to participate in their elementary or secondary academic studies as an
162 alternative to enrolling in a public school, private school, homeschool, or microschool, including
163 participation in an activity or service provided to the children in exchange for payment; and

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

167 (2) Upon beginning participation in a learning pod or microschool pursuant to this
168 subsection, the parent or legal guardian of the child participating shall present to the county
169 superintendent or county board a notice of intent to participate in a learning pod or microschool
170 that includes the name, address, and age of any child of compulsory school age participating and
171 assurance that the child shall receive instruction in reading, language, mathematics, science, and
172 social studies, and that the child shall be assessed annually in accordance with this subsection.

173 The person providing instruction shall notify the county superintendent upon termination of
174 participation in a learning pod or microschool for a child who is of compulsory attendance age.

175 Upon establishing residence in a new county, the person providing instruction shall notify the
176 previous county superintendent and submit a new notice of intent to the superintendent of the new

177 county of residence: *Provided*, That if a child is enrolled in a public school, notice of intent to
178 participate in a learning pod or microschool shall be given on or before the date participation is to
179 begin.

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

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

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

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

199 (C) A portfolio of samples of the child's work is reviewed by a certified teacher who
200 determines whether the child's academic progress for the year is in accordance with the child's
201 abilities. The teacher shall provide a written narrative about the child's progress in the areas of
202 reading, language, mathematics, science, and social studies and shall note any areas which, in

203 the professional opinion of the reviewer, show need for improvement or remediation. If the
204 narrative indicates that the child's academic progress for the year is in accordance with the child's
205 abilities, the child is considered to have made acceptable progress; or

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

208 (5) A parent or legal guardian shall maintain copies of each student's Academic
209 Assessment for three years. When the annual assessment fails to show acceptable progress, the
210 person or persons providing instruction shall initiate a remedial program to foster acceptable
211 progress. The county board upon request shall notify the parents or legal guardian of the child, in
212 writing, of the services available to assist in the assessment of the child's eligibility for special
213 education services. Identification of a disability does not preclude the continuation of participation
214 in a learning pod or microschoo. In the event that the child does not achieve acceptable progress
215 for a second consecutive year, the person or persons providing instruction shall submit to the
216 county superintendent additional evidence that appropriate instruction is being provided.

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

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

228 (8) No learning pod or microschoo which meets the requirements of this subsection is

229 subject to any other provision of law relating to education: *Provided*, That any learning pod or
230 microschool which has a student requiring special education instruction must comply with the
231 provisions of §18-20-11 of this code, including, but not limited to, placement of video cameras for
232 the protection of that exceptional student.

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

NOTE: The purpose of this bill is to remove the reporting of assessments and portfolio reviews to county boards of home schooled children.

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