

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3117

By Delegates Crouse, Worrell, Dillon, Lucas, Butler,
Maynor, Longanacre, Mazzocchi, Petitto, and
Honaker

[Introduced January 27, 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 requirement for persons providing home instruction to obtain academic
 3 assessments for the children receiving home instruction.

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.

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

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

46 (B) The person or persons providing home instruction shall submit satisfactory evidence of

47 a high school diploma or equivalent, or a post-secondary degree or certificate from a regionally
48 accredited institution, or from an institution of higher education that has been authorized to confer
49 a post-secondary degree or certificate in West Virginia by the West Virginia Council for Community
50 and Technical College Education or by the West Virginia Higher Education Policy Commission.

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

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

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

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

72 ~~(iv) The child completes an alternative academic assessment of proficiency that is mutually~~

73 ~~agreed upon by the parent or legal guardian and the county superintendent.~~

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

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

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

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

99 allow for the exclusion of the mentally, physically, emotionally, or behaviorally handicapped child
100 otherwise entitled to a free appropriate education.

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

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

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

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

117 (i) A child is exempt from the compulsory school attendance requirement set forth in §18-8-
118 1a of this code if the requirements of this subsection, relating to destitution in the home, are met.
119 Exemption based on a condition of extreme destitution in the home may be granted only upon the
120 written recommendation of the county attendance director to the county superintendent following
121 careful investigation of the case. A copy of the report confirming the condition and school
122 exemption shall be placed with the county director of public assistance. This enactment
123 contemplates every reasonable effort that may properly be taken on the part of both school and
124 public assistance authorities for the relief of home conditions officially recognized as being so

125 destitute as to deprive children of the privilege of school attendance. Exemption for this cause is
126 not allowed when the destitution is relieved through public or private means.

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

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

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

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

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

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

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

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

156 (1) For the purposes of this subsection:

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

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

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

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

172 Upon establishing residence in a new county, the person providing instruction shall notify the
173 previous county superintendent and submit a new notice of intent to the superintendent of the new
174 county of residence: *Provided*, That if a child is enrolled in a public school, notice of intent to
175 participate in a learning pod or microschool shall be given on or before the date participation is to
176 begin.

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

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

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

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

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

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

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

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

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

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

229 the protection of that exceptional student.

230 (9) Making learning pods and microschoools subject to the home instruction provisions and

231 requirements does not make learning pods and microschoools the same as homeschooling.

NOTE: The purpose of this bill is to remove the requirements for assessments for homeschoolers.

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