

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENGROSSED

House Bill 3408

By Delegates Ellington, Hornby, Clark and Crouse

[Introduced February 13, 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; to amend
2 and reenact §18-9A-25 of said code; to amend and reenact §18-31-2, §18-31-3, §18-31-4,
3 §18-31-5, §18-31-6, §18-31-7, §18-31-8, §18-31-9, §18-31-10, and §18-31-11 of said
4 code; and to amend said code by adding thereto a new section, designated §18-31-2a, all
5 relating generally to nonpublic kindergarten, elementary, and secondary school education;
6 clarifying that a child exempt from compulsory school attendance is not subject to the
7 requirements of the Hope Scholarship Program unless that child is an eligible recipient;
8 removing requirement that academic assessments of home school students be submitted
9 to county superintendent; clarifying use of "home school student" in code; removing
10 participation in the Hope Scholarship Program as a standalone exemption to compulsory
11 school attendance and replacing it with an exemption from compulsory school attendance
12 for those who choose to participate in an Assembled Instructional Module; setting forth
13 parameters of participation in an Assembled Instructional Module; providing that students
14 participating in an Assembled Instructional Module, learning pod students and microschool
15 students have the same educational rights and privileges as home school students;
16 removing requirement that academic assessments of learning pod students and
17 microschool students be submitted to county superintendent; establishing the method of
18 calculating the annual Hope Scholarship Program appropriation; providing that certain
19 students exempt from compulsory school attendance and participating in nonpublic
20 educational programs may participate in the Hope Scholarship Program if other eligibility
21 requirements are met; defining terms; establishing eligibility requirements for the Hope
22 Scholarship Program; setting forth procedure for notice of Hope Scholarship Program
23 participation; requiring county superintendents to enter certain information into the state's
24 educational information system; permitting the State Treasurer to appear by designee at
25 Hope Scholarship Board meetings; providing the State Treasurer's Office with rulemaking
26 authority; clarifying that all records containing personally identifying information of a Hope

27 Scholarship student, applicant, or parent are confidential and not subject to disclosure
28 pursuant to the West Virginia Freedom of Information Act; clarifying qualifying expenses
29 under the Hope Scholarship Act; requiring Hope Scholarship students to meet all
30 standardized testing and portfolio requirements for his or her exemption from compulsory
31 school attendance as a condition of scholarship renewal; requiring the board to maintain
32 and publish a list of all education service providers; authorizing the board to contract with
33 independent auditors to complete Hope Scholarship Program audits; clarifying the board's
34 rulemaking authority with regard to certain functions, requiring education service providers
35 to submit required criminal background screening results to the board; and clarifying that
36 education service providers may not assess students additional tuition or fees based on
37 participation in the Hope Scholarship Program.

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. A child who is exempt from compulsory
7 school attendance under this section is not subject to the requirements of §18-31-1, et seq. of this
8 code unless that child is an eligible recipient as defined by §18-31-2a of this code.

9 (b) A child is exempt from the compulsory school attendance requirement set forth in §18-
10 8-1a of this code if the requirements of this subsection, relating to instruction in a private,
11 parochial, or other approved school, are met. The instruction shall be in a school approved by the
12 county board and for a time equal to the instructional term set forth in §18-5-45 of this code. In all

13 private, parochial, or other schools approved pursuant to this subsection, it is the duty of the
14 principal or other person in control, upon the request of the county superintendent, to furnish to the
15 county board such information and records as may be required with respect to attendance,
16 instruction, and progress of students enrolled.

17 (c) A child is exempt from the compulsory school attendance requirement set forth in
18 §18-8-1a of this code if the requirements of either subdivision (1); or subdivision (2) of this
19 subsection, both relating to home instruction, are met:

20 (1) The instruction shall be in the home of the child or children or at some other place
21 approved by the county board and for a time equal to the instructional term set forth in §18-5-45 of
22 this code. If the request for home instruction is denied by the county board, good and reasonable
23 justification for the denial shall be furnished in writing to the applicant by the county board. The
24 instruction shall be conducted by a person or persons who, in the judgment of the county
25 superintendent and county board, are qualified to give instruction in subjects required to be taught
26 in public elementary schools in the state. The person or persons providing the instruction, upon
27 request of the county superintendent, shall furnish to the county board information and records as
28 may be required periodically with respect to attendance, instruction, and progress of students
29 receiving the instruction. The state board shall develop guidelines for the home schooling of
30 special education students including alternative assessment measures to assure that satisfactory
31 academic progress is achieved.

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

37 (A) Upon commencing home instruction under this section the parent of a child receiving
38 home instruction shall present to the county superintendent or county board a notice of intent to

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

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

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

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

63 (ii) The child participates in the testing program currently in use in the state's public
64 schools. The test shall be administered to the child at a public school in the county of residence.

65 Determination of acceptable progress shall be based on current guidelines of the state testing
66 program;

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

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

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

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

88 (3) This subdivision applies to both home instruction exemptions set forth in subdivisions
89 (1) and (2) of this subsection.

90 (A) The county superintendent or a designee shall offer such assistance, including
91 textbooks, other teaching materials and available resources, all subject to availability, as may
92 assist the person or persons providing home instruction. Any child receiving home instruction may
93 upon approval of the county board exercise the option to attend any class offered by the county
94 board as the person or persons providing home instruction may consider appropriate subject to
95 normal registration and attendance requirements.

96 (B) A child receiving home instruction pursuant to this section may also be referred to
97 throughout this code as a "home school student" or similar reference.

98 (d) A child is exempt from the compulsory school attendance requirement set forth in §18-
99 8-1a of this code if the requirements of this subsection, relating to physical or mental incapacity,
100 are met. Physical or mental incapacity consists of incapacity for school attendance and the
101 performance of school work. In all cases of prolonged absence from school due to incapacity of
102 the child to attend, the written statement of a licensed physician or authorized school nurse is
103 required. Incapacity shall be narrowly defined and in any case the provisions of this article may not
104 allow for the exclusion of the mentally, physically, emotionally, or behaviorally handicapped child
105 otherwise entitled to a free appropriate education.

106 (e) A child is exempt from the compulsory school attendance requirement set forth in §18-
107 8-1a of this code if conditions rendering school attendance impossible or hazardous to the life,
108 health, or safety of the child exist.

109 (f) A child is exempt from the compulsory school attendance requirement set forth in §18-8-
110 1a of this code upon regular graduation from a standard senior high school or alternate secondary
111 program completion as determined by the state board.

112 (g) A child is exempt from the compulsory school attendance requirement set forth in §18-
113 8-1a of this code if the child is granted a work permit pursuant to the subsection. After due
114 investigation the county superintendent may grant work permits to youths under the termination
115 age designated in §18-8-1a of this code, subject to state and federal labor laws and regulations. A

116 work permit may not be granted on behalf of any youth who has not completed the eighth grade of
117 school.

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

122 (i) A child is exempt from the compulsory school attendance requirement set forth in §18-8-
123 1a of this code if the requirements of this subsection, relating to destitution in the home, are met.
124 Exemption based on a condition of extreme destitution in the home may be granted only upon the
125 written recommendation of the county attendance director to the county superintendent following
126 careful investigation of the case. A copy of the report confirming the condition and school
127 exemption shall be placed with the county director of public assistance. This enactment
128 contemplates every reasonable effort that may properly be taken on the part of both school and
129 public assistance authorities for the relief of home conditions officially recognized as being so
130 destitute as to deprive children of the privilege of school attendance. Exemption for this cause is
131 not allowed when the destitution is relieved through public or private means.

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

138 (k) A child is exempt from the compulsory school attendance requirement set forth in §18-
139 8-1a of this code if the requirements of this subsection, relating to alternative private, parochial,
140 church, or religious school instruction, are met. Exemption shall be made for any child attending

141 any private school, parochial school, church school, school operated by a religious order, or other
142 nonpublic school which elects to comply with the provisions of §18-28-1 *et seq.* of this code.

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

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

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

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

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

158 (m) A child is exempt from the compulsory school attendance requirement set forth in §18-
159 8-1a of this code if the child participates in an Assembled Instructional Module pursuant to this
160 subsection: *Provided*, That the county superintendent may, after a showing of probable cause,
161 seek from the circuit court of the county an order denying home instruction of the child. The order
162 may be granted upon a showing of clear and convincing evidence that the child will suffer neglect
163 in his or her education or that there are other compelling reasons to deny home instruction.

164 (1) For the purposes of this subsection an Assembled Instructional Module means a
165 program of study organized and facilitated by either the child's parent or legal guardian or
166 educational service provider or providers chosen by the child's parent or legal guardian.

167 Participation may take place in the child's home or in a location chosen by the parent or legal
168 guardian.

169 (2) Upon beginning participation in an Assembled Instructional Module pursuant to this
170 subsection, the parent or legal guardian of the child participating shall present to the county
171 superintendent or county board a notice of intent to participate in an Assembled Instructional
172 Module that includes the name, address, and age of any child of compulsory school age
173 participating and assurance that the child shall receive instruction in reading, language,
174 mathematics, science, and social studies, and that the child shall be assessed annually in
175 accordance with this subsection. The person providing instruction shall notify the county
176 superintendent upon termination of participation in an Assembled Instructional Module for a child
177 who is of compulsory attendance age. Upon establishing residence in a new county, the person
178 providing instruction shall notify the previous county superintendent and submit a new notice of
179 intent to the superintendent of the new county of residence: *Provided*, That if a child is enrolled in a
180 public school, notice of intent to participate in an Assembled Instructional Module shall be given on
181 or before the date participation is to begin.

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

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

189 (A) The child participating in an Assembled Instructional Module takes a nationally normed
190 standardized achievement test published or normed not more than 10 years from the date of
191 administration and administered under the conditions as set forth by the published instructions of
192 the selected test and by a person qualified in accordance with the test's published guidelines in the

193 subjects of reading, language, mathematics, science, and social studies. The child is considered
194 to have made acceptable progress when the mean of the child's test results in the required subject
195 areas for any single year is within or above the fourth stanine or, if below the fourth stanine, shows
196 improvement from the previous year's results;

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

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

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

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

219 (6) The parent or legal guardian shall submit to the county superintendent the results of the
220 academic assessment of the child no later than June 8th every year.

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

227 (8) Notwithstanding any provision of this code to the contrary, Assembled Instructional
228 Module students shall have all of the educational rights and privileges this code makes available to
229 home school students who receive instruction pursuant to subsection (c) of this section and may
230 participate in any state or county program available to home school students: *Provided, That*
231 nothing in this section may be construed as making Assembled Instructional Module students the
232 same as homeschool students or as subjecting home school students to the requirements of this
233 section.

234 (n) A child is exempt from the compulsory school attendance requirement set forth in §18-
235 8-1a of this code if the child participates in a learning pod or microschool pursuant to this
236 subsection.

237 (1) For the purposes of this subsection:

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

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

245 (2) Upon beginning participation in a learning pod or microschool pursuant to this
246 subsection, the parent or legal guardian of the child participating shall present to the county
247 superintendent or county board a notice of intent to participate in a learning pod or microschool
248 that includes the name, address, and age of any child of compulsory school age participating and
249 assurance that the child shall receive instruction in reading, language, mathematics, science, and
250 social studies, and that the child shall be assessed annually in accordance with this subsection.
251 The person providing instruction shall notify the county superintendent upon termination of
252 participation in a learning pod or microschool for a child who is of compulsory attendance age.
253 Upon establishing residence in a new county, the person providing instruction shall notify the
254 previous county superintendent and submit a new notice of intent to the superintendent of the new
255 county of residence: *Provided*, That if a child is enrolled in a public school, notice of intent to
256 participate in a learning pod or microschool shall be given on or before the date participation is to
257 begin.

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

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

265 (A) The child participating in a learning pod or microschool takes a nationally normed
266 standardized achievement test published or normed not more than 10 years from the date of
267 administration and administered under the conditions as set forth by the published instructions of
268 the selected test and by a person qualified in accordance with the test's published guidelines in the
269 subjects of reading, language, mathematics, science, and social studies. The child is considered
270 to have made acceptable progress when the mean of the child's test results in the required subject

271 areas for any single year is within or above the fourth stanine or, if below the fourth stanine, shows
272 improvement from the previous year's results;

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

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

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

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

295 ~~(6) The parent, legal guardian, learning pod, or microschool shall submit to the county~~
296 ~~superintendent the results of the academic assessment of the child with the same frequency~~

297 prescribed in ~~§18-8-1(c)(2)(E)~~ of this code: *Provided*, That instead of the academic assessment
298 results being submitted individually, the learning pod or microschool may submit the school
299 composite results.

300 (7) (6) The county superintendent or a designee shall offer such assistance, including
301 textbooks, other teaching materials and available resources, all subject to availability, as may
302 assist the person or persons providing instruction. Any child participating in a learning pod or
303 microschool may upon approval of the county board exercise the option to attend any class offered
304 by the county board as the person or persons providing instruction may consider appropriate
305 subject to normal registration and attendance requirements.

306 (8) (7) No learning pod or microschool which meets the requirements of this subsection is
307 subject to any other provision of law relating to education: *Provided*, That any learning pod or
308 microschool which has a student requiring special education instruction must comply with the
309 provisions of §18-20-11 of this code, including, but not limited to, placement of video cameras for
310 the protection of that exceptional student.

311 (9) ~~Making learning pods and microschools subject to the home instruction provisions and~~
312 ~~requirements does not make learning pods and microschools the same as homeschooling.~~ (8)
313 Notwithstanding any provision of this code to the contrary, learning pod and microschool students
314 shall have all of the educational rights and privileges this code makes available to home school
315 students who receive instruction pursuant to subsection (c) of this section and may participate in
316 any state or county program available to home school students: *Provided*, That nothing in this
317 section may be construed as making learning pod or microschool students the same as
318 homeschool students or as subjecting home school students to the requirements of this section.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-25. Funding for Hope Scholarship Program.

1 (a) Notwithstanding any other provision of this article to the contrary, for fiscal year 2023
2 and each fiscal year thereafter, in addition to all other amounts required by this article, the

3 Department of Education shall include in its budget request, and the Governor shall include in
4 each budget bill submitted to the Legislature, an appropriation to the Department of Education for
5 the greater of an amount not less than two percent of net public school enrollment adjusted for
6 state aid purposes or the total number of eligible Hope Scholarship applications received by the
7 ~~Hope Scholarship Board, if available~~ estimated Hope Scholarship applications for the fiscal year,
8 multiplied by the prior year's statewide average net state aid allotted per pupil. The Hope
9 Scholarship Board shall certify the estimated number of Hope Scholarship applications for the
10 fiscal year to the Department of Education by December 10 of each year. The amount
11 appropriated shall be transferred by the Department of Education to the Hope Scholarship Board
12 to be used solely to meet the Hope Scholarship Program obligations set forth in §18-31-1 *et seq.* of
13 this code except as otherwise provided in this section. The Governor shall also provide in each
14 budget for the reappropriation for expenditure during the ensuing fiscal year the unused
15 accumulated balance ~~to the Department of Education that was not transferred to the Hope~~
16 ~~Scholarship Board due to an accumulated balance from prior years as provided under subsection~~
17 ~~(b) of this section~~ in the Hope Scholarship Fund.

18 (b) Each fiscal year, the amount required to be requested and included in the budget bill for
19 appropriation under subsection (a) of this section shall be reduced by the sum of:

20 (1) ~~Any~~ any unused accumulated amounts transferred to the Hope Scholarship Board for
21 these purposes from previous years; and

22 (2) ~~Any unused appropriations made to the Department of Education for these purposes~~
23 ~~that were not transferred to the Hope Scholarship Board due to an accumulated balance from prior~~
24 ~~years.~~

ARTICLE 31. HOPE SCHOLARSHIP PROGRAM.

§18-31-2.

Definitions.

1 The following words have the meanings ascribed to them unless the context clearly
2 indicates a different meaning:

3 (1) "Account" or "scholarship" means a Hope Scholarship account, awarded pursuant to
4 this article, to which funds are allocated by the board to the parent or parents of an eligible Hope
5 Scholarship student in order to pay qualifying education expenses to educate the student pursuant
6 to the requirements and conditions of this article;

7 (2) "Board" means the Hope Scholarship Board created pursuant to §18-31-3 of this code;

8 (3) "Curriculum" means a complete course of study for a particular content area or grade
9 level, including any supplemental materials required by the curriculum;

10 (4) "Education service provider" means a person or organization that receives payments
11 from Hope Scholarship accounts to provide educational goods and services to Hope Scholarship
12 students;

13 (5) "Eligible recipient" means a child who is eligible to participate in the Hope Scholarship
14 Program according to §18-31-2a of this code.

15 (A) ~~Is a resident of this state; and~~

16 (B) ~~Is enrolled full-time and attending a public elementary or secondary school program in~~
17 ~~this state for at least 45 calendar days during an instructional term at the time of application and~~
18 ~~until an award letter is issued by the board under §18-31-5(c) of this code, or enrolled full-time in a~~
19 ~~public elementary or secondary school program in this state for the entire instructional term the~~
20 ~~previous year, or is eligible at the time of application to enroll in a kindergarten program in this state~~
21 ~~pursuant to §18-8-1a of this code, except that if on July 1, 2024, the participation rate of the~~
22 ~~combined number of students in the Hope Scholarship Program and students eligible who have~~
23 ~~applied to participate in the Hope Scholarship program during the previous school year is less than~~
24 ~~five percent of net public school enrollment adjusted for state aid purposes for the previous school~~
25 ~~year, then, effective July 1, 2026, a child is considered to meet the requirements of this paragraph~~
26 ~~if he or she is enrolled, eligible to be enrolled, or required to be enrolled in a kindergarten program~~
27 ~~or public elementary or secondary school program in this state at the time of application~~

28 ~~(6)~~ "Hope scholarship funds" means the moneys deposited in a Hope Scholarship
29 student's account in accordance with the requirements of this article.

30 ~~(7)~~ "Hope scholarship student" means a student who receives a scholarship pursuant to
31 this article;

32 ~~(8)~~ "Parent" means a biological parent, legal guardian, custodian, or other person with
33 legal authority to act on behalf of an eligible recipient or Hope Scholarship student;

34 ~~(9)~~ "Participating school" means any private school that provides education to elementary
35 and/or secondary students and has notified the board of its intention to participate in the program
36 and comply with the program's requirements;

37 "Public school" means a kindergarten, elementary, or secondary county school, a public
38 charter school, a virtual public charter school, or any other publicly supported elementary or
39 secondary school in this state.

40 ~~(10)~~ "Resident school district" means the county school district in which the student
41 resides; and

42 ~~(11)~~ "Treasurer" means the West Virginia State Treasurer.

§18-31-2a. Eligibility for the Hope Scholarship Program.

1 (a) To participate in the Hope Scholarship Program, a student must:

2 (1) Be a resident of the State of West Virginia;

3 (2) Have filed a notice of intent or notice of enrollment pursuant to §18-8-1(b), (k), (m), or
4 (n) of this code to pursue a kindergarten, elementary, or secondary educational option authorized
5 by that section in lieu of compulsory public school attendance for the applicable year:

6 (3) Have indicated in the notice of intent or notice of enrollment that the student will
7 participate in the Hope Scholarship Program;

8 (4) Meet all requirements of this code and the Department of Education related to the
9 exemption in §18-8-1(b), (k), (m), or (n) of this code that applies to the student; and

10 (5) Meet one of the following criteria:

11 (A) Is eligible at the time of application to enroll in a kindergarten program in this state
12 pursuant to §18-8-1a of this code;

13 (B) Is enrolled full-time and attending a public elementary or secondary school program in
14 this state for at least 45 calendar days during an instructional term at the time of application and
15 until an award letter is issued by the board pursuant to §18-31-5(c) of this code;

16 (C) Is enrolled full-time in a public elementary or secondary school program in this state for
17 the entire instructional term the previous year, or

18 (D) Is eligible to renew his or her Hope Scholarship according to §18-31-8 of this code.

19 (b) Notwithstanding subsection (a) of this section, if on July 1, 2024, the participation rate
20 of the combined number of students in the Hope Scholarship Program and students eligible who
21 have applied to participate in the Hope Scholarship program during the previous school year is
22 less than five percent of net public school enrollment, adjusted for state aid purposes for the
23 previous school year, a student is eligible to participate in the Hope Scholarship Program
24 beginning on July 1, 2026, if he or she meets the following eligibility criteria:

25 (1) The student is a resident of West Virginia; and

26 (2) On or after July 1, 2026, the student is enrolled, eligible to be enrolled, or required to be
27 enrolled in a public school program in this state at the time of application.

28 (c) Notwithstanding subsection (a) of this section, a child is not eligible to participate or
29 continue to participate in the Hope Scholarship Program if:

30 (1) The student has successfully completed a secondary education program;

31 (2) The student is no longer a resident of the State of West Virginia; or

32 (3) The student is enrolled full-time in a public school.

33 (d) For each student participating in the Hope Scholarship Program, the county
34 superintendent shall enter the information provided in the student's notice of intent or notice of
35 enrollment into West Virginia Education Information System (WVEIS). The WVEIS entry must

36 clearly indicate that the student will participate in the Hope Scholarship Program, along with any
37 information required by the Hope Scholarship Board to determine program eligibility.

§18-31-3. West Virginia Hope Scholarship board; members; terms; compensation; proceedings generally.

1 (a) The West Virginia Hope Scholarship Program shall be administered by the West
2 Virginia Hope Scholarship Board.

3 (b) The board shall consist of nine members and include the following:

4 (1) The State Treasurer or his or her designee;

5 (2) The State Auditor, or his or her designee;

6 (3) The State Attorney General, or his or her designee;

7 (4) The State Superintendent of Schools, or his or her designee;

8 (5) The Chancellor of Higher Education, or his or her designee;

9 (6) The Director of the Herbert Henderson Office of Minority Affairs, or his or her designee;

10 and

11 (7) Three members appointed by the Governor with the advice and consent of the Senate
12 who are parents of Hope Scholarship students, or for the initial appointments of board members
13 following the effective date of this article, parents who intend to apply for the Hope Scholarship on
14 behalf of eligible recipients, to be appointed as follows:

15 (A) Only state residents are eligible for appointment to the board;

16 (B) The members shall reside in geographically diverse areas of the state;

17 (C) Members shall be initially appointed to staggered terms as follows:

18 (i) One member appointed by the Governor to a one-year term;

19 (ii) One member appointed by the Governor to a two-year term; and

20 (iii) One member each appointed by the Governor to a three-year term.

21 After the initial staggering of terms, appointed board members shall serve for three-year
22 terms and are eligible for reappointment at the expiration of their terms; and

23 (D) If there is a vacancy among appointed members, the vacancy shall be filled by
24 appointment to the unexpired term of a person meeting the requirements of this section by the
25 Governor with the advice and consent of the Senate. Members of the board shall serve until the
26 later of the expiration of the term for which the member was appointed or the appointment of his or
27 her successor.

28 (c) Members of the board shall serve without compensation. The board may reimburse
29 members for all reasonable and necessary expenses, including travel expenses, actually incurred
30 by board members in the conduct of their official duties. Any expense reimbursements shall be
31 made from the West Virginia Hope Scholarship Program Expense Fund at the same rate paid to
32 state employees.

33 (d) The Treasurer is the chairman and presiding officer of the board. The Treasurer may
34 provide office space and staff to the board upon request of the board.

35 (e) The State Superintendent of Schools may provide staff to the board, upon request of
36 the board.

37 (f) A majority of the members of the board constitutes a quorum for the transaction of the
38 business of the board.

39 (g) Members of the board are subject to the ethical standards and financial disclosure
40 requirements of the West Virginia Governmental Ethics Act in Chapter 6B of this code.

§18-31-4. Powers of the board.

1 The board is authorized to take any action necessary to effectuate the provisions of this
2 article and to successfully administer the Hope Scholarship Program, subject to applicable state
3 and federal law, including, but not limited to the following:

4 (1) Adopt and amend bylaws;

5 (2) Execute contracts and other instruments for necessary goods and services, employ
6 necessary personnel and engage the services of private consultants, actuaries, auditors, counsel,
7 managers, trustees, and any other contractor or professional needed for rendering professional

8 and technical assistance and advice: *Provided*, That election of these services is not subject to the
9 provisions of §5A-3-1 *et seq.* of this code;

10 (3) Implement the program through the use of financial organizations as account
11 depositories and managers;

12 (4) Develop and impose requirements, policies, procedures, and guidelines to implement
13 and manage the program, including the authority to propose legislative rules for legislative
14 approval pursuant to §29A-3-1 *et seq.* of this code, including emergency rules, if necessary;

15 (5) Determine whether an expenditure of Hope Scholarship funds is or was a qualifying
16 expense to educate a Hope Scholarship student pursuant to §18-31-7 of this code. The board may
17 approve or deny expenditures by a majority vote;

18 (6) Review any appeals made pursuant to §18-31-10(b) and §18-31-10(d) of this code;

19 (7) Establish the method by which moneys in the Hope Scholarship Expense Fund shall be
20 allocated to pay for administrative costs and assess, collect and expend administrative fees,
21 charges, and penalties;

22 (8) Authorize the assessment, collection and retention of fees and charges against the
23 amounts paid into and the earnings on the Hope Scholarship funds by a financial institution,
24 investment manager, fund manager, West Virginia Investment Management Board, West Virginia
25 Board of Treasury Investments, or other professional managing or investing the Hope Scholarship
26 funds and accounts;

27 (9) Invest and reinvest any of the funds and accounts under the board's control with a
28 financial institution, an investment manager, a fund manager, the West Virginia Investment
29 Management Board, West Virginia Board of Treasury Investments, or other professionals
30 investing the funds and accounts: *Provided*, That investments made under this article shall be
31 made in accordance with the provisions of §44-6C-1 *et seq.* of this code; and

32 (10) Solicit and accept gifts, including bequests and other testamentary gifts made by will,
33 trust, or other disposition; grants; loans; aid; and property, real or personal of any nature and from

34 any source, or to participate in any other way in any federal, state, or local governmental programs
35 in carrying out the purposes of this article: *Provided*, That the board shall use the property received
36 to effectuate the desires of the donor, and shall convert the property received into cash within 180
37 days of receipt.

§18-31-5. Award of Hope Scholarships.

1 (a) The Hope Scholarship Program is established to provide the option for a parent to
2 better meet the individual education needs of his or her eligible child. The program shall be
3 operational no later than July 1, 2022.

4 (b) The board shall create a standard application form that a parent can submit to establish
5 his or her student's eligibility for the award of Hope Scholarship funds, to be placed in a personal
6 education savings account to be used for qualifying education expenses on behalf of the eligible
7 recipient as provided for in §18-31-7 of this code. Information about scholarship funds and the
8 application process shall be made available on the board's website.

9 (c) The board shall make such applications available no later than March 1, 2022 and shall
10 begin accepting applications immediately thereafter. The board may update the application as
11 needed. The board shall issue an award letter to eligible recipients within 45 days of receipt of a
12 completed application and all required documentation.

13 (d) The board shall approve an application for a Hope Scholarship if all of the following
14 circumstances are met:

15 (1) A parent submits an application for a Hope Scholarship in accordance with the
16 legislative rules promulgated by the board;

17 (2) A student on whose behalf the parent is applying is an eligible recipient, as provided for
18 in ~~§18-31-2(5)~~ §18-31-2a of this code;

19 (3) The parent signs an agreement with the board, promising to do all of the following:

20 (A) To provide an education for the eligible recipient in at least the subjects of reading,
21 language, mathematics, science, and social studies;

22 (B) To use the Hope Scholarship funds exclusively for qualifying expenses as provided for
23 in §18-31-7 of this code;

24 (C) To comply with the rules and requirements of the Hope Scholarship program; and

25 (D) To afford the Hope Scholarship student opportunities for educational enrichment such
26 as organized athletics, art, music, or literature; and

27 (4) The board confirms with the West Virginia Department of Education that the student
28 satisfies ~~§18-31-2(5)(B)~~ §18-31-2a of this code: *Provided*, That if the department does not reply
29 within 30 days, this criteria is considered satisfied.

30 (e) ~~An application for a Hope Scholarship is~~ All records accepted or maintained by the
31 Board containing personally identifying information of a Hope Scholarship student, applicant, or
32 parent are confidential and not a public record subject to release pursuant to the West Virginia
33 Freedom of Information Act, as codified in §29B-1-1 *et seq.* of this code.

§18-31-6. Funding of Hope Scholarships; program and expense funds.

1 (a) There is hereby created in the State Treasury a special revenue fund designated and
2 known as the West Virginia Hope Scholarship Program Fund. The fund shall be administered by
3 the Treasurer and shall consist of funds transferred by the Department of Education in accordance
4 with §18-9A-25 of this code. All interest and other returns derived from the deposit and investment
5 of moneys in the Hope Scholarship Fund shall be credited to the fund. Any balance, including
6 accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not
7 revert to the General Revenue Fund but shall remain in the fund and be expended as provided by
8 this section.

9 (b) The amount of Hope Scholarship funds made available to an eligible recipient on a
10 yearly basis shall be equal to 100 percent of the prior year's statewide average net state aid share
11 allotted per pupil based on net enrollment adjusted for state aid purposes, subject to the provisions
12 of subsection (c) of this section: *Provided*, That the amount of the funding to an eligible recipient
13 who is awarded a Hope Scholarship account for less than a full fiscal year shall be prorated based

14 on the portion of the fiscal year the eligible recipient is awarded the Hope Scholarship account. On
15 or prior to the submission of the Department of Education's budget request each year, the board
16 shall notify the Department of Education of the total number of eligible Hope Scholarship
17 applications received by the board, for purposes of facilitating the necessary transfer of moneys
18 pursuant to §18-9A-25 of this code.

19 (c) Expenditures from the Hope Scholarship Fund shall be limited to the purposes set forth
20 in this article: *Provided*, That an amount not to exceed five percent of the fund shall be transferred
21 annually to the West Virginia Hope Scholarship Program Expense Fund established in subsection
22 (h) of this section to cover the annual administrative costs of the Hope Scholarship Program. If the
23 number of Hope Scholarship accounts increases significantly after any fiscal year, the Treasurer
24 may request an appropriation by the Legislature to the West Virginia Hope Scholarship Program
25 Expense Fund in an amount equal to the administrative costs associated with the increase in Hope
26 Scholarship accounts.

27 (d) The first deposit of Hope Scholarship funds into an eligible recipient account shall be
28 subject to the execution of the parental agreement required by §18-31-5 of this code. Upon
29 execution of the required parental agreement, and subject to the provisions of §18-31-9(e) of this
30 code, one half of the total annually required deposit shall be made no later than August 15 of every
31 year into an eligible recipient's Hope Scholarship account, and one half of the total annually
32 required deposit shall be made no later than January 15 of every year. Any funds remaining in a
33 Hope Scholarship account at the end of the fiscal year may be carried over to the next fiscal year
34 upon successful renewal of the account.

35 (e) Funds deposited in a student's Hope Scholarship account, other than those funds
36 expended on transportation services pursuant to §18-31-7(~~11~~) (12) of this code, do not constitute
37 taxable income to the parent or the Hope Scholarship student.

38 (f) The board shall continue to make deposits into an eligible recipient's Hope Scholarship
39 account in accordance with the provisions of this section unless any of the following conditions
40 have occurred:

41 (1) A parent of an eligible recipient fails to renew a Hope Scholarship account or withdraws
42 from the Hope Scholarship Program;

43 (2) The board determines that a student is no longer eligible for a Hope Scholarship;

44 (3) The board suspends or revokes participation in the Hope Scholarship Program for
45 failure to comply with the requirements of this article;

46 (4) The Hope Scholarship student successfully completes a secondary education
47 program; or

48 (5) The Hope Scholarship student reaches 21 years of age.

49 (g) If any of the conditions in subsection (f) of this section occur, the board shall notify the
50 parent that the eligible recipient's account will be closed in 45 calendar days. If a parent fails to
51 adequately address the condition or conditions upon which closure is based or does not respond
52 within 30 calendar days of receipt of notice, the board shall close the account and any remaining
53 moneys shall be returned to the state.

54 (h)(1) There is hereby created in the State Treasury a special revenue fund designated and
55 known as the West Virginia Hope Scholarship Program Expense Fund. The account shall consist
56 of moneys received pursuant to this section; moneys, if any, transferred from special revenue
57 funds administered by the Treasurer; or any governmental or private grants and any state general
58 fund appropriations, if any, for the Hope Scholarship Program. All interest and other returns
59 derived from the deposit and investment of moneys in the Hope Scholarship Program Expense
60 Fund shall be credited to the fund. Any balance, including accrued interest and other returns,
61 remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund
62 but shall remain in the fund and be expended as provided by this section.

63 (2) All expenses incurred by the Treasurer or the board in developing and administering
64 the Hope Scholarship Program shall be payable from the West Virginia Hope Scholarship
65 Expense Fund.

§18-31-7. Qualifying expenses for Hope Scholarship accounts.

1 (a) Parents of a Hope Scholarship student shall agree to use the funds deposited in their
2 student's Hope Scholarship account only for the following qualifying expenses to educate the
3 student pursuant to an exemption from compulsory school attendance under §18-8-1(b), (k), (m),
4 or (n) of this code:

5 (1) Ongoing services provided by a public school district pursuant to §18-31-8(f) of this
6 code, including without limitation, individual classes and extracurricular activities and programs;

7 (2) Tuition and fees at a participating school;

8 (3) Tuition and fees at a microschool established pursuant to §18-8-1(n) of this code;

9 ~~(3)~~ (4) Tutoring services provided by an individual or a tutoring facility: *Provided*, That such
10 tutoring services are not provided by a member of the Hope Scholarship student's immediate
11 family;

12 ~~(4)~~ (5) Fees for nationally standardized assessments, advanced placement examinations,
13 any examinations related to college or university admission, and tuition and/or fees for preparatory
14 courses for the aforementioned exams;

15 ~~(5)~~ (6) Tuition and fees for programs of study or the curriculum of courses that lead to an
16 industry-recognized credential that satisfies a workforce need;

17 ~~(6)~~ (7) Tuition and fees for nonpublic online learning programs;

18 ~~(7)~~ (8) Tuition and fees for alternative education programs;

19 ~~(8)~~ (9) Fees for after-school or summer education programs;

20 ~~(9)~~ (10) Educational services and therapies, including, but not limited to, occupational,
21 behavioral, physical, speech-language, and audiology therapies;

22 ~~(10)~~ (11) Curriculum as defined in §18-31-2 of this code;

23 ~~(11)~~ (12) Fees for transportation paid to a fee-for-service transportation provider for the
24 student to travel to and from an education service provider; and

25 ~~(12)~~ (13) Any other qualified expenses as approved by the board established pursuant to
26 §18-31-3 of this code.

27 (b) Hope Scholarship funds may only be used for educational purposes in accordance with
28 subsection (a) of this section. Nothing in this section requires that a Hope Scholarship student be
29 enrolled, full- or part-time, in either a private school or nonpublic online school. Hope Scholarship
30 funds may only be used for qualifying expenses incurred to provide the student with a
31 kindergarten, elementary, or secondary education pursuant to an exemption from compulsory
32 school attendance under §18-8-1(b), (k), (m), or (n) of this code.

33 (c) Hope Scholarship funds may not be refunded, rebated, or shared with a parent or
34 student in any manner. Any refund or rebate for goods or services purchased with Hope
35 Scholarship funds shall be credited directly to a student's Hope Scholarship account.

36 (d) Nothing in this section prohibits the parents of a Hope Scholarship student from making
37 payments for the costs of educational goods and services not covered by the funds in their
38 student's Hope Scholarship account. However, personal deposits into a Hope Scholarship
39 account are not permitted.

§18-31-8. Renewal of Hope Scholarship accounts; participation in public school system.

1 (a) A parent must renew an eligible recipient's Hope Scholarship on an annual basis.
2 Notwithstanding any changes in eligibility, a Hope Scholarship student who has previously
3 qualified for a Hope Scholarship account remains eligible to apply for renewal until one of the
4 conditions set forth in §18-31-6(f) occurs: *Provided*, That the board shall verify with the
5 Department of Education the following information by July 1 of every year:

- 6 (1) A list of all active Hope Scholarship Accounts;
7 (2) The resident school district of each Hope Scholarship student; and

8 ~~(3) For a Hope Scholarship student who chooses to attend a participating school, annual~~
9 ~~confirmation of his or her continued attendance at a nonpublic school that complies with all~~
10 ~~requirements that other nonpublic school students must comply with; and~~

11 ~~(4) For a Hope Scholarship student who chooses an individualized instructional program:~~

12 ~~(A) (i) He or she has annually taken a nationally normed standardized achievement test of~~
13 ~~academic achievement;~~

14 ~~(ii) The mean of the child's test results in the subject areas of reading, language,~~
15 ~~mathematics, science and social studies for any single year is within or above the fourth stanine or,~~
16 ~~if below the fourth stanine, show improvement from the previous year's results; and~~

17 ~~(iii) The child's test results are reported to the county superintendent; or~~

18 ~~(B) (i) A certified teacher conducts a review of the student's academic work annually;~~

19 ~~(ii) The certified teacher determines that the student is making academic progress~~
20 ~~commensurate with his or her age and ability; and~~

21 ~~(iii) The certified teacher's determination is reported to the county superintendent~~

22 ~~(3) That the student has met all requirements for the student's exemption from compulsory~~
23 ~~school attendance under §18-8-1(b), (k), (m), or (n) of this code.~~

24 ~~(b) If a student is required to submit documentation of academic progress or nonpublic~~
25 ~~school attendance to the county superintendent or the Board of Education pursuant to the~~
26 ~~student's exemption from compulsory school attendance under §18-8-1(b), (k), (m), or (n) of this~~
27 ~~code, the student must submit the information at least annually to participate in the Hope~~
28 ~~Scholarship Program: *Provided*, That nothing in this Act may be construed to impose additional~~
29 ~~requirements on students who are exempt from compulsory school attendance and who do not~~
30 ~~participate in the Hope Scholarship Program.~~

31 ~~(b) (c)~~ Each county superintendent shall submit the test results and determinations
32 reported to him or her pursuant to subsection (a) of this section to the Department of Education
33 each year on or before June 15.

34 ~~(e)~~ (d) If a parent fails to renew an eligible recipient's Hope Scholarship, the board shall
35 notify the parent that the eligible recipient's account will be closed in 45 calendar days. If a parent
36 chooses not to renew or does not respond within 30 calendar days of receipt of notice, the board
37 shall close the account and any remaining moneys shall be returned to the state.

38 ~~(d)~~ (e) If an eligible recipient decides to return to the Hope Scholarship Program after failing
39 to renew, they must reapply.

40 ~~(e)~~ (f) The board, in consultation with the Department of Education, may adopt rules and
41 policies to provide the least disruptive process for Hope Scholarship students who desire to stop
42 receiving Hope Scholarship payments and return full-time to a public school.

43 ~~(f)~~ (g) The board, in consultation with the Department of Education, may adopt rules and
44 policies for Hope Scholarship students who want to continue to receive services provided by a
45 public school or district, including individual classes and extracurricular programs, in combination
46 with an individualized instructional program Assembled Instructional Module as defined by §18-8-
47 1(m)(1) of this code. The board, in consultation with the Department of Education, shall ensure
48 that any public school or school district providing such services receives the appropriate pro rata
49 share of a student's Hope Scholarship funds based on the percentage of total instruction provided
50 to the student by the public school or school district. County boards shall charge tuition to Hope
51 Scholarship students who enroll for services in a public school within the county. Hope Scholarship
52 students who enroll for services part-time in public school shall not be included in net enrollment
53 for state aid funding purposes under §18-9A-2 of this code. Nothing in this subsection prohibits a
54 Hope Scholarship student from using the funds deposited in his or her account on both services
55 provided by a public school or district and other qualifying expenses as provided for in §18-31-7 of
56 this code.

§18-31-9. Administration of Hope Scholarship accounts.

1 (a) In addition to the duties, obligations, and authority stated in this section and in other
2 parts of this article, the board has the following duties, obligations, and authority with respect to the
3 administration of Hope Scholarship accounts:

4 (1) To maintain an updated list of participating schools and other education service
5 providers and shall ensure that the list is publicly available through various sources, including the
6 internet;

7 (2) To provide parents with a written explanation of the allowable uses of Hope Scholarship
8 funds, the responsibilities of parents, the duties of the board and the role of any private financial
9 management firms or other private organizations that the board may contract with to administer
10 the Hope Scholarship Program or any aspect of the program; and

11 (3) To ensure that parents of students with a disability receive notice that participation in
12 the Hope Scholarship Program is a parental placement under 20 U.S.C. § 1412 of the Individuals
13 with Disabilities Education Act (IDEA) along with an explanation of the rights that parentally placed
14 students possess under (IDEA) and any applicable state laws and regulations.

15 (b) The board may contract with private organizations to administer the Hope Scholarship
16 Program. This includes, but is not limited to, private financial management firms to manage Hope
17 Scholarship accounts.

18 (c) The board may contract with independent auditors to complete the audits authorized in
19 §18-31-9 of this code.

20 ~~(c)~~ (d) The board shall implement, or contract with a private organization to implement, a
21 commercially viable, cost effective, and parent-friendly system for payment for services from Hope
22 Scholarship accounts to participating schools or education service providers, including, but not
23 limited to, the use of debit cards or other electronic or online fund transfers: *Provided*, That a Hope
24 Scholarship account may not be reduced for debit card or electronic payment fees.

25 ~~(d)~~ (e) The board shall also seek to implement a commercially viable, cost-effective, and
26 parent-friendly system for publicly rating, reviewing, and sharing information about participating

27 schools and education service providers, ideally as part of the same system that facilitates the
28 electronic or online funds transfers so as to create a one-stop-shop for parents and Hope
29 Scholarship students.

30 (e) (f) If an education service provider requires partial payment of tuition or fees prior to the
31 start of the academic year to reserve space for a Hope Scholarship student admitted to the
32 education service provider, such partial payment may be paid prior to the start of the school year in
33 which the Hope Scholarship is awarded, and deducted in an equitable manner from subsequent
34 Hope Scholarship deposits to ensure adequate funds remain available throughout the school
35 year; but if a Hope Scholarship student decides not to use the education service provider, the
36 partial reservation payment must be returned to the board by such education service provider and
37 credited to the student's Hope Scholarship account.

38 (f) (g) The board may accept gifts and grants from any source to cover administrative
39 costs, to inform the public about the Hope Scholarship Program, or to provide additional funding
40 for Hope Scholarship Accounts.

41 (g) (h) The board may propose legislative rules for legislative approval pursuant to §29A-3-
42 1 *et seq.* and §18-31-4(4) of this code, ~~including emergency rules, if necessary, to meet timelines~~
43 ~~set forth in this article, that are not inconsistent with this article and that are necessary for the~~
44 administration of this article, including but not limited to:

45 (1) Establishing or contracting for the establishment of a fraud reporting system;

46 (2) Policies that require a surety bond for education service providers receiving more than
47 \$100,000 in Hope Scholarship funds;

48 (3) Procedures for refunding payments from education service providers back to Hope
49 Scholarship accounts; and

50 (4) Procedures for entering into reciprocal agreements with other state education savings
51 account agencies or entities, whether public or private, to recognize and allow education service

52 providers approved in other states to receive payments from Hope Scholarship accounts under
53 this article.

54 (h) (i) The rules or policies adopted by the board should avoid excessive bureaucracy and
55 overly prescriptive mandates and instead shall focus on encouraging participation in the program
56 and encouraging education service providers to provide parents and Hope Scholarship students
57 with a broad array of educational options.

§18-31-10. Auditing of Hope Scholarship Program; suspension of accounts and providers.

1 (a) The board may propose legislative rules for legislative approval pursuant to §29A-3-1 *et*
2 *seq.* of this code for the auditing of individual Hope Scholarship accounts and shall conduct or
3 contract for the random auditing of individual Hope Scholarship accounts as needed to ensure
4 compliance with the requirements of this article and rules promulgated pursuant to this article.

5 (b) As part of the auditing process, the board may remove a parent or eligible recipient from
6 the Hope Scholarship program and close a Hope Scholarship account for failure to comply with the
7 terms of the parental agreement required by §18-31-5 of this code, failure to comply with the
8 applicable laws, failure of the student to remain eligible, or intentional and fraudulent misuse of
9 Hope Scholarship funds: *Provided*, That the board shall create procedures to ensure that a fair
10 process exists to determine the removal of a parent or eligible recipient from the Hope Scholarship
11 program and a parent or Hope Scholarship student may appeal the decision to make the student
12 ineligible for funds to the board.

13 ~~(c) The board may conduct or contract for the audit of education service providers~~
14 ~~accepting payments from Hope Scholarship accounts. if it determines that the education service~~
15 ~~provider has:~~

16 ~~(1) Intentionally and substantially misrepresented information or failed to refund any~~
17 ~~overpayments in a timely manner; or~~

18 ~~(2) Routinely failed to provide students with promised educational goods or services.~~

19 (c) The board may propose legislative rules for legislative approval pursuant to §29A-3-1 et
20 seq. and §18-31-4(4) of this code for the auditing of education service providers and shall conduct
21 or contract for the random auditing of individual providers as needed to ensure compliance with
22 the requirements of this article and rules promulgated pursuant to this article.

23 (d) If the board determines that an education service provider has intentionally and
24 substantially misused Hope Scholarship funds, the board may bar the education service provider
25 from continuing to receive payments. The board shall create procedures to ensure that a fair
26 process exists to determine whether an education service provider may be barred from receiving
27 payment from Hope Scholarship accounts and an education service provider may appeal a
28 decision to bar it from receiving payments to the board. If the board bars an education service
29 provider from receiving payments from Hope Scholarship accounts, it shall notify parents and
30 students of its decision as quickly as possible.

31 (e) If the board obtains evidence of potential fraudulent use of Hope Scholarship funds, it
32 may refer suspected cases to the State Auditor for purposes of investigation, collection and
33 potential criminal investigation.

§18-31-11. Requirements for and rights of education service providers.

1 (a) To be eligible to accept payments from a Hope Scholarship account, an education
2 service provider shall:

3 (1) Submit notice to the board that they wish to participate in the Hope Scholarship
4 Program;

5 (2) Provide participating parents with a receipt for all qualifying educational expenses for
6 the Hope Scholarship student;

7 (3) Agree not to refund, rebate, or share Hope Scholarship funds with parents or students
8 in any manner, except that funds may be remitted or refunded to a Hope Scholarship account in
9 accordance with §18-31-7(c) of this code;

10 (4) Certify that it will not discriminate on any basis prohibited by 42 U.S.C. § 1981;

11 (5) ~~Agree to submit~~ Submit any employee or other person who will have contact with Hope
12 Scholarship students receiving benefits from the provider to a criminal background check and
13 certify the results of said background check to the Board: *Provided*, That the Board may propose
14 rules pursuant §29A-3-1 *et seq.* and §18-31-4(4) of this code to suspend or disqualify a person
15 from serving as an education service provider, based on charges, indictment, or conviction of
16 sexual offenses or felonies involving violence against another person; and

17 (6) In the case of a participating school, provide notice of enrollment annually to the county
18 superintendent of any student for which a student's tuition is being paid through the Hope
19 Scholarship Program.

20 (b) This article does not limit the independence or autonomy of an education service
21 provider or make the actions of an education service provider the actions of the state government.

22 (c) Education service providers shall be given maximum freedom to provide for the
23 educational needs of Hope Scholarship students without governmental control.

24 (d) A participating school or education service provider is not required to alter its creed,
25 practices, admission policy, hiring policy or curriculum in order to accept eligible recipients whose
26 parents pay tuition or fees from a Hope Scholarship account pursuant to this article: *Provided*, That
27 an education service provider is prohibited from requiring a student or family to pay tuition or fees
28 above the provider's regular tuition or fee schedule based in whole or in part upon a student or
29 family member's participation in the Hope Scholarship program.

30 (e) This article does not expand the regulatory authority of the state, its officers, or any
31 school district to impose any additional regulation of education service providers beyond those
32 necessary to enforce the requirements of the program.

NOTE: The purpose of this bill is to clean up statutory provisions regarding the Hope Scholarship program to better reflect the intent and operation of the program. The bill also corrects unintended consequences of the microschool and learning pod legislation that passed last session.

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