

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5180**

By Delegates Crouse, Lucas, Petitto, Smith, Hornby,

Adkins, and Burkhammer

[Introduced January 25, 2024; 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 requirements to submit certain evidence on behalf of home-schooled children.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE**

**§18-8-1. Compulsory school attendance; exemptions.**

1 (a) Exemption from the requirements of compulsory public-school attendance established  
2 in §18-8-1a of this code shall be made on behalf of any child for the causes or conditions set forth  
3 in this section. Each cause or condition set forth in this section is subject to confirmation by the  
4 attendance authority of the county. A child who is exempt from compulsory school attendance  
5 under this section is not subject to prosecution under §18-8-2 of this code, nor is such a child a  
6 status offender as defined by §49-1-202 of this code.

7 (b) A child is exempt from the compulsory school attendance requirement set forth in §18-  
8 8-1a of this code if the requirements of this subsection, relating to instruction in a private,  
9 parochial, or other approved school, are met. The instruction shall be in a school approved by the  
10 county board and for a time equal to the instructional term set forth in §18-5-45 of this code. In all  
11 private, parochial, or other schools approved pursuant to this subsection, it is the duty of the  
12 principal or other person in control, upon the request of the county superintendent, to furnish to the  
13 county board such information and records as may be required with respect to attendance,  
14 instruction, and progress of students enrolled.

15 (c) A child is exempt from the compulsory school attendance requirement set forth in §18-  
16 8-1a of this code if the requirements of either subdivision (1) or subdivision (2) of this subsection,  
17 both relating to home instruction, are met.

18 (1) The instruction shall be in the home of the child or children or at some other place  
19 approved by the county board and for a time equal to the instructional term set forth in §18-5-45 of  
20 this code. If the request for home instruction is denied by the county board, good and reasonable  
21 justification for the denial shall be furnished in writing to the applicant by the county board. The

22 instruction shall be conducted by a person or persons who, in the judgment of the county  
23 superintendent and county board, are qualified to give instruction in subjects required to be taught  
24 in public elementary schools in the state. The person or persons providing the instruction, upon  
25 request of the county superintendent, shall furnish to the county board information and records as  
26 may be required periodically with respect to attendance, instruction, and progress of students  
27 receiving the instruction. The state board shall develop guidelines for the home schooling of  
28 special education students including alternative assessment measures to assure that satisfactory  
29 academic progress is achieved.

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

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

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

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

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

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

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

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

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

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

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

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

95 (d) A child is exempt from the compulsory school attendance requirement set forth in §18-  
96 8-1a of this code if the requirements of this subsection, relating to physical or mental incapacity,  
97 are met. Physical or mental incapacity consists of incapacity for school attendance and the  
98 performance of school work. In all cases of prolonged absence from school due to incapacity of  
99 the child to attend, the written statement of a licensed physician or authorized school nurse is

100 required. Incapacity shall be narrowly defined and in any case the provisions of this article may not  
101 allow for the exclusion of the mentally, physically, emotionally, or behaviorally handicapped child  
102 otherwise entitled to a free appropriate education.

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

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

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

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

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

126 public assistance authorities for the relief of home conditions officially recognized as being so  
127 destitute as to deprive children of the privilege of school attendance. Exemption for this cause is  
128 not allowed when the destitution is relieved through public or private means.

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

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

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

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

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

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

152 of this code; and

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

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

158 (1) For the purposes of this subsection:

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

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

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



178 the date participation is to begin.

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

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

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

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

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

204 abilities, the child is considered to have made acceptable progress; or

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

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

217 (6) The parent, legal guardian, learning pod, or microschool shall submit to the county  
218 superintendent the results of the academic assessment of the child at grade levels 3, 5, 8, and 11,  
219 as applicable, by June 30 of the year in which the assessment was administered ~~with the same~~  
220 ~~frequency prescribed in §18-8-1(c)(2)(E) of this code.~~ *Provided*, That instead of the academic  
221 assessment results being submitted individually, the learning pod or microschool may submit the  
222 school composite results.

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

229 (8) No learning pod or microschool which meets the requirements of this subsection is

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

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

NOTE: The purpose of this bill is to remove requirements to submit certain evidence on behalf of home-schooled children.

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