

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 5180

By Delegates Crouse, Lucas, Petitto, Smith, Hornby,
Adkins, and Burkhammer

[Originating in the Committee on Education; Reported
on February 19, 2024]

1 A BILL to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating to
2 home-schooled children; removing requirements to submit certain evidence on behalf of
3 home-schooled children; and allowing a delay of transfer to home school from public
4 schools in certain circumstances.

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: Provided, That the county board may not authorize a currently enrolled public school
21 student to be instructed in the home if there is a pending child abuse or neglect investigation
22 pursuant to §49-2-801 et seq. of this code, against a custodial parent or guardian with whom the
23 child resides, or a person instructing the child, that is initiated by a schoolteacher or other school
24 personnel within the child's school district pursuant to the mandatory reporting requirements of
25 §49-2-803 of this code. The county superintendent shall develop and institute a policy, to ensure
26 the county superintendent is contacted when a report of suspect abuse and neglect is made by a
27 school teacher or other school personnel pursuant to the provisions of §49-2-803. Upon
28 determination by the county superintendent that an investigation has been initiated, the
29 superintendent shall request confirmation of case status from the Department of Human Services,
30 which shall provide confirmation within 48 hours of receipt of the request. Unless another eligibility
31 requirement prevents approval, if the complaint is not substantiated within 14 days of initiation, the
32 superintendent shall authorize home instruction. If the request for home instruction is denied by
33 the county board, good and reasonable justification for the denial shall be furnished in writing to
34 the applicant by the county board. The instruction shall be conducted by a person or persons who,
35 in the judgment of the county superintendent and county board, are qualified to give instruction in
36 subjects required to be taught in public elementary schools in the state. The person or persons
37 providing the instruction, upon request of the county superintendent, shall furnish to the county
38 board information and records as may be required periodically with respect to attendance,
39 instruction, and progress of students receiving the instruction. The state board shall develop
40 guidelines for the home schooling of special education students including alternative assessment
41 measures to assure that satisfactory academic progress is achieved.

42 (2) The child meets the requirements set forth in this subdivision: *Provided*, That the county
43 superintendent may, after a showing of probable cause, seek from the circuit court of the county an
44 order denying home instruction of the child. The order may be granted upon a showing of clear and

45 convincing evidence that the child will suffer neglect in his or her education or that there are other
46 compelling reasons to deny home instruction.

47 (A) Upon commencing home instruction under this section the parent of a child receiving
48 home instruction shall present to the county superintendent or county board a notice of intent to
49 provide home instruction that includes the name, address, and age of any child of compulsory
50 school age to be instructed and assurance that the child shall receive instruction in reading,
51 language arts, mathematics, science, and social studies, and that the child shall be assessed
52 annually in accordance with this subdivision. The person providing home instruction shall notify
53 the county superintendent upon termination of home instruction for a child who is of compulsory
54 attendance age. Upon establishing residence in a new county, the person providing home
55 instruction shall notify the previous county superintendent and submit a new notice of intent to the
56 superintendent of the new county of residence: *Provided*, That if a child is enrolled in a public
57 school, notice of intent to provide home instruction shall be given on or before the date home
58 instruction is to begin.

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

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

66 (i) The child receiving home instruction takes a nationally normed standardized
67 achievement test ~~published or normed not more than 10 years from the date of administration and~~
68 ~~administered~~ under the conditions as set forth by the published instructions of the selected test
69 and by a person qualified in accordance with the test's published guidelines ~~in the subjects of~~
70 ~~reading, language, mathematics, science, and social studies~~. The child is considered to have

71 made acceptable progress when the mean of the child's test results in the required subject areas
72 for any single year is within or above the fourth stanine or, if below the fourth stanine, shows
73 improvement from the previous year's results;

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

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

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

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

96 ~~(E) The parent or legal guardian shall submit to the county superintendent the results of the~~
97 ~~academic assessment of the child at grade levels three, five, eight, and 11, as applicable, by June~~
98 ~~30 of the year in which the assessment was administered.~~

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

106 (d) A child is exempt from the compulsory school attendance requirement set forth in §18-
107 8-1a of this code if the requirements of this subsection, relating to physical or mental incapacity,
108 are met. Physical or mental incapacity consists of incapacity for school attendance and the
109 performance of school work. In all cases of prolonged absence from school due to incapacity of
110 the child to attend, the written statement of a licensed physician or authorized school nurse is
111 required. Incapacity shall be narrowly defined and in any case the provisions of this article may not
112 allow for the exclusion of the mentally, physically, emotionally, or behaviorally handicapped child
113 otherwise entitled to a free appropriate education.

114 (e) A child is exempt from the compulsory school attendance requirement set forth in §18-
115 8-1a of this code if conditions rendering school attendance impossible or hazardous to the life,
116 health, or safety of the child exist.

117 (f) A child is exempt from the compulsory school attendance requirement set forth in §18-8-
118 1a of this code upon regular graduation from a standard senior high school or alternate secondary
119 program completion as determined by the state board.

120 ~~(g) A child is exempt from the compulsory school attendance requirement set forth in §18-~~
121 ~~8-1a of this code if the child is granted a work permit pursuant to the subsection. After due~~

122 ~~investigation the county superintendent may grant work permits to youths under the termination~~
123 ~~age designated in §18-8-1a of this code, subject to state and federal labor laws and regulations. A~~
124 ~~work permit may not be granted on behalf of any youth who has not completed the eighth grade of~~
125 ~~school.~~

126 (g) Exemption removed during the 2024 Regular Session of the West Virginia Legislature.

127 (h) A child is exempt from the compulsory school attendance requirement set forth in §18-
128 8-1a of this code if a serious illness or death in the immediate family of the child has occurred. It is
129 expected that the county attendance director will ascertain the facts in all cases of such absences
130 about which information is inadequate and report the facts to the county superintendent.

131 (i) A child is exempt from the compulsory school attendance requirement set forth in §18-8-
132 1a of this code if the requirements of this subsection, relating to destitution in the home, are met.
133 Exemption based on a condition of extreme destitution in the home may be granted only upon the
134 written recommendation of the county attendance director to the county superintendent following
135 careful investigation of the case. A copy of the report confirming the condition and school
136 exemption shall be placed with the county director of public assistance. This enactment
137 contemplates every reasonable effort that may properly be taken on the part of both school and
138 public assistance authorities for the relief of home conditions officially recognized as being so
139 destitute as to deprive children of the privilege of school attendance. Exemption for this cause is
140 not allowed when the destitution is relieved through public or private means.

141 (j) A child is exempt from the compulsory school attendance requirement set forth in §18-8-
142 1a of this code if the requirements of this subsection, relating to church ordinances and
143 observances of regular church ordinances, are met. The county board may approve exemption for
144 religious instruction upon written request of the person having legal or actual charge of a child or
145 children. This exemption is subject to the rules prescribed by the county superintendent and
146 approved by the county board.

147 (k) A child is exempt from the compulsory school attendance requirement set forth in §18-
148 8-1a of this code if the requirements of this subsection, relating to alternative private, parochial,
149 church, or religious school instruction, are met. Exemption shall be made for any child attending
150 any private school, parochial school, church school, school operated by a religious order, or other
151 nonpublic school which elects to comply with the provisions of §18-28-1 *et seq.* of this code.

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

154 (m) A child is exempt from the compulsory school attendance requirements set forth in
155 §18-8-1a of this code if the child is an eligible recipient participating in the Hope Scholarship
156 Program, as provided for in §18-31-1 *et seq.* of this code and provides a notice of intent to
157 participate in the Hope Scholarship Program to the county superintendent. The county
158 superintendent shall enter the following into the West Virginia Education Information System
159 (WVEIS):

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

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

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

167 (n) A child is exempt from the compulsory school attendance requirement set forth in §18-
168 8-1a of this code if the child participates in a learning pod or microschool pursuant to this
169 subsection.

170 (1) For the purposes of this subsection:

171 (A) "Learning pod" means a voluntary association of parents choosing to group their
172 children together to participate in their elementary or secondary academic studies as an

173 alternative to enrolling in a public school, private school, homeschool, or microschool, including
174 participation in an activity or service provided to the children in exchange for payment; and

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

178 (2) Upon beginning participation in a learning pod or microschool pursuant to this
179 subsection, the parent or legal guardian of the child participating shall present to the county
180 superintendent or county board a notice of intent to participate in a learning pod or microschool
181 that includes the name, address, and age of any child of compulsory school age participating and
182 assurance that the child shall receive instruction in reading, language arts, mathematics, science,
183 and social studies, and that the child shall be assessed annually in accordance with this
184 subsection. The person providing instruction shall notify the county superintendent upon
185 termination of participation in a learning pod or microschool for a child who is of compulsory
186 attendance age. Upon establishing residence in a new county, the person providing instruction
187 shall notify the previous county superintendent and submit a new notice of intent to the
188 superintendent of the new county of residence: *Provided*, That if a child is enrolled in a public
189 school, notice of intent to participate in a learning pod or microschool shall be given on or before
190 the date participation is to begin.

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

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

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

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

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

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

219 (5) A parent, ~~or~~ legal guardian, learning pod, or microschool shall maintain copies of each
220 student's Academic Assessment for three years. When the annual assessment fails to show
221 acceptable progress, the person or persons providing instruction shall initiate a remedial program
222 to foster acceptable progress. The county board upon request shall notify the parents, ~~or~~ legal
223 guardian, learning pod, or microschool of the child, in writing, of the services available to assist in

224 the assessment of the child's eligibility for special education services. Identification of a disability
225 does not preclude the continuation of participation in a learning pod or microschool. In the event
226 that the child does not achieve acceptable progress for a second consecutive year, the person or
227 persons providing instruction shall submit to the county superintendent additional evidence that
228 appropriate instruction is being provided.

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

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

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

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