

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5563

By Delegates Tully, W. Clark, Crouse, Cannon, Willis,

Maynor, Bridges, and Holstein

[Introduced February 12, 2024; Referred to the

Committee on Education]

1 A BILL to amend and reenact §18-5-16 of the Code of West Virginia, 1931, as amended, all
 2 relating to open attendance zones; requiring that a county board that establishes an open
 3 attendance zone and transportation arrangements may not terminate that zone for current
 4 and future students.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-16. Student transfers; definitions; appeals; calculating net enrollment; fees for transfer.

1 (a) Establishment of attendance zones within counties. — The county board may establish
 2 attendance zones within the county to designate the schools within its district that resident
 3 students typically attend: *Provided*, That a county board may permit any eligible elementary,
 4 middle or high school resident student to apply for enrollment in any school with grade level
 5 capacity and existing programs and services currently outside any established attendance zone in
 6 which the student resides. Upon the written request of any parent or guardian, or person legally
 7 responsible for any resident student, the superintendent may grant a resident student's transfer
 8 request from one school or program to another within the county so long as grade level capacity
 9 and the program and services exist at the time of the request: *Provided, however, That a county*
 10 *board that has created an open attendance zone and transportation arrangement may not*
 11 *terminate the open attendance zone or established transportation route for current and future*
 12 *students.* Counties with a critical need shortage policy may further review the request to
 13 determine if appropriate staffing is available in the requested grade, program, service, or content
 14 area. A superintendent may not transfer a resident student from one school to another within the
 15 county for reasons affecting the best interests of the schools without the consent of the student's
 16 parent or legal guardian. Any aggrieved person may appeal a transfer or denial of transfer by the
 17 county superintendent to the county board. When making enrollment decisions, a county
 18 superintendent or county board may not distinguish between students on the basis of residential or

19 potential disability status. A county superintendent or county board may determine if appropriate
20 staff, resources, services and programs are in place to meet the disability needs of the student at
21 the requested school. A decision of the county board may be appealed to the state superintendent
22 of schools, whose decision shall be final.

23 (b) Definitions. — For the purposes of this section, unless a different meaning clearly
24 appears from the context:

25 (1) "Nonresident student" means a student who resides in this state and who is enrolled in
26 or is seeking enrollment in a county school district other than the county school district in which the
27 student resides.

28 (2) "Open enrollment" means a policy adopted and implemented by a county board to allow
29 nonresident students to enroll in any school within the district. Open enrollment is distinct from a
30 mutual agreement of two county boards regarding mass transfer of students, as contemplated in
31 §18-5-13(f)(1)(C) of this code.

32 (c) Enrollment policies for nonresident students. — County boards shall establish and
33 implement an open enrollment policy for nonresident students without charging tuition and without
34 obtaining approval from the board of the county in which a student resides and transfers. This
35 policy shall clearly establish an open enrollment process and enrollment application period for
36 nonresident students to enroll in any school within the district. The process for enrollment
37 application shall be clearly publicized to parents and the general public, including dates and
38 timelines, and shall be made available on the board's website. As part of the open enrollment
39 policy, county boards shall also establish a process for nonresident students to enroll in any school
40 within the district on a case-by-case basis at any time during the academic year so long as all other
41 requirements are met including that the student has not previously transferred within the same
42 school year. The open enrollment policy shall not discriminate against nonresident students on the
43 basis of their residential address or any potential disability status. Enrollment policies are subject
44 to the following:

45 (1) A county board may give enrollment preference to:

46 (A) Siblings of students already enrolled through the open enrollment policy;

47 (B) Secondary students who have completed 10th grade and, due to family relocation,
48 become nonresident students, but express the desire to remain in a specific school to complete
49 their education;

50 (C) Students who are children, grandchildren, or legal wards of employees;

51 (D) Students whose legal residences, though geographically within another county, are
52 more proximate to a school within the receiving county, whether calculated by miles or
53 transportation time;

54 (E) Students who reside in a portion of a county where topography, impassable roads, long
55 bus rides, or other conditions prevent the practicable transportation of the student to a school
56 within the county, and a school within a contiguous county is more easily accessible; and

57 (F) The county board to which the student wishes to be transferred may not refuse a
58 transfer by virtue of the student transferring from a private, parochial, church, or religious school
59 holding an exemption approved pursuant to §18-8-1(k) of this code: *Provided*, That nothing in this
60 paragraph shall be construed to allow a county board to give an enrollment preference to a student
61 transferring from a private, parochial, church, or religious school holding an exemption approved
62 pursuant to §18-8-1(k) of this code.

63 (2) A county shall comply with all enrollment requirements for children who are in foster
64 care or who meet the definition of unaccompanied youth prescribed in the McKinney-Vento
65 Homeless Assistance Act (42 U.S.C. § 11434a(6)).

66 (3) The county board for the county educating the nonresident student may provide an
67 adequate means of transportation to nonresident students when students have complied with the
68 procedure for obtaining authorization to attend school outside their county of residence, subject to
69 the following:

70 (A) County boards of education are not required to uniformly provide nonresident student

71 transportation, and may consider whether a nonresident student meets the eligibility criteria for
72 free or reduced price lunch and milk established within the Richard B. Russell National School
73 Lunch Act (42 U.S.C. § 1758); and

74 (B) The county board for the county educating the nonresident student shall provide
75 transportation to and from the school of attendance, or to and from an agreed pickup point on a
76 regular transportation route, or for the total miles traveled each day for the nonresident student to
77 reach the school of enrollment if the nonresident student is a student with disabilities and has an
78 individualized education program that specifies that transportation is necessary for fulfillment of
79 the program.

80 (4) An application may only be denied by a county board of education due to lack of grade
81 level capacity, lack of programs or services due to areas identified in the county board critical need
82 policy, or the commission of Level 3 or Level 4 inappropriate behavior as defined by West Virginia
83 Board of Education Policy 4373 in the last year. The denial shall be in writing, sent to the parent or
84 guardian of the nonresident student and the West Virginia Department of Education within three
85 business days of the decision, and include the reason and explanation for the denial and
86 information on appealing the denial of the application. If a nonresident student fails to fill out or
87 submit an open enrollment application correctly, a county board shall provide an explanation of
88 ways in which the application may be corrected and submitted for necessary approval.

89 (d) Appeal. — The State Board of Education shall establish a process whereby a parent or
90 guardian of a student may appeal to the State Superintendent the refusal of a county board to
91 accept the transfer of the student. If during the appeal process, the State Superintendent
92 discovers that the education and the welfare of the student could be enhanced, the State
93 Superintendent may direct that the student may be permitted to attend a school in the receiving
94 county.

95 (e) Net enrollment. — For purposes of net enrollment as defined in §18-9A-2 of this code,
96 whenever a student is transferred on a full-time basis from one school district to another district

97 pursuant to the provisions of this section, the county to which the student is transferred shall
98 include the student in its net enrollment, subject to the following:

99 (1) If a student transfers after the second month of any school year, the county to which the
100 student transferred may issue, in the following fiscal year, an invoice to the county from which the
101 student transferred for the amount, determined on a pro rata basis, that the county now
102 responsible for educating the student otherwise would have received under the state basic
103 foundation program established in §18-9A-1 *et seq.* of this code had such student been included in
104 the county's prior year's net enrollment;

105 (2) If a student in grades kindergarten through 12 transfers after the second month of any
106 school year, the county to which the student transferred may issue, in the following fiscal year, an
107 invoice to the county from which the student transferred for the amount the county now
108 responsible for educating the student otherwise would have received under aid to exceptional
109 students had such student been included in the county's prior year's child count enrollment;

110 (3) If a student in prekindergarten transfers after the child count of exceptional students is
111 certified for any school year, the county to which the student transferred may issue, in the following
112 fiscal year, an invoice to the county from which the student transferred for the amount the county
113 now responsible for educating the student otherwise would have received under aid to exceptional
114 students had such student been included in the county's prior year's child count enrollment; and

115 (4) The county from which the student transferred shall reimburse the county to which the
116 student transferred for the amount of the invoice.

117 (f) Transfers between states. — Transfer of students from this state to another state shall
118 be upon such terms, including payment of tuition, as shall be mutually agreed upon by the board of
119 the receiving county and the authorities of the school or district from which the transfer is made.

120 (g) No parent, guardian, or person acting as parent or guardian is required to pay for the
121 transfer of a student or for the tuition of the student after the transfer when the transfer is carried
122 out under the terms of this section.

123 (h) Nothing in this section supersedes the eligibility requirements for participation in extra-
124 curricular activities established by the Secondary School Activities Commission.

125 (i) Each county board shall report annually to the State Department of Education the
126 number of resident and nonresident student transfers approved by the county board for the
127 preceding school calendar year, as well as the number of resident and nonresident student
128 transfer applications denied and the reasons for those denials. On or before June 30 of each year,
129 the State Department of Education shall compile the information from the county boards and
130 report the information to the Legislative Oversight Commission on Education Accountability.
131 Information regarding the annual number of resident and nonresident student transfer approvals
132 and denials shall also be made available on each county board's website.

NOTE: The purpose of this bill is to require that a county board that establishes a county attendance zone and transportation arrangements may not terminate that zone for current and future students.

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