



1 enrollment; providing for school staff and funding;  
2 transportation of students; tort liability of community  
3 schools; requiring annual reports and assessments; and  
4 providing causes for nonrenewal or termination.

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

6 That the Code of West Virginia, 1931, as amended, be amended  
7 by adding thereto a new article, designated §18-5D-1, §18-5D-2,  
8 §18-5D-3, §18-5D-4, §18-5D-5, §18-5D-6, §18-5D-7, §18-5D-8,  
9 §18-5D-9, §18-5D-10, §18-5D-11, §18-5D-12, §18-5D-13, §18-5D-14,  
10 §18-5D-15, §18-5D-16, §18-5D-17, §18-5D-18 and §18-5D-19, all to  
11 read as follows:

12 **ARTICLE 5D. HIGHER EDUCATION COMMUNITY SCHOOLS.**

13 **§18-5D-1. Short title.**

14 This article shall be known and may be cited as the "Higher  
15 Education Community School Law."

16 **§18-5D-2. Legislative intent.**

17 It is the intent of the Legislature, in enacting this article,  
18 to provide opportunities for state universities and colleges to  
19 establish and maintain schools that operate in cooperation with the  
20 existing county school structure, as a method to accomplish all of  
21 the following:

22 (1) Improve pupil learning;

23 (2) Increase learning opportunities for all pupils;

1           (3) Encourage the use of different and innovative teaching  
2 methods;

3           (4) Encourage curriculum and assessment development;

4           (5) Create new professional opportunities for teachers,  
5 including the opportunity to be responsible for the learning  
6 program at the school site;

7           (6) Provide parents and pupils with expanded choices in the  
8 types of educational opportunities that are available within the  
9 public school system; and

10          (7) Hold the schools established under this article  
11 accountable for meeting measurable academic standards and provide  
12 the school with a method to establish accountability systems.

13 **§18-5D-3. Definitions.**

14          As used in this article:

15          (1) "Agreement" means an agreement between a county board of  
16 education and a university or college establishing a community  
17 school under the provisions of this article.

18          (2) "County board of education" means the county board of  
19 education in the county in which a proposed or an approved  
20 community school is located.

21          (3) "Higher education community school" means a public school  
22 established and operated under the provisions of this article.

23          (4) "State board" means the State Board of Education.

1           (5) "State university and college" means a public four-year  
2 college or university with its primary campus in the school  
3 district, with an approved teacher education program that meets  
4 regional or national standards of accreditation.

5           (6) "Superintendent" means the State Superintendent of  
6 Schools.

7 **§18-5D-4. Authority to create community schools.**

8           (a) Notwithstanding any other provision of this code to the  
9 contrary, a state university or college may, pursuant to the  
10 provisions of this article, and with the cooperation of the county  
11 board of education in the county, establish a community school in  
12 the county where its principal campuses are maintained. State  
13 universities and colleges, with the cooperation of the county  
14 boards of education have the authority to effectuate the provisions  
15 of this article, notwithstanding any other provision of this  
16 chapter or chapters eighteen-a and eighteen-b of this code.

17           (b) A community school may provide instruction for  
18 kindergarten through twelfth grade. A community school is not  
19 required to provide instruction for all grades.

20 **§18-5D-5. Powers of community schools.**

21           (a) A community school established under this article has all  
22 powers necessary or desirable to carry out its agreement,  
23 including, but not limited to, the power to:

1 (1) Adopt a name and seal, as long as any name selected  
2 includes the words "community school";

3 (2) Sue and be sued, but only to the same extent and upon the  
4 same condition that political subdivisions can be sued;

5 (3) Acquire real property from public or private sources by  
6 purchase, lease, lease with an option to purchase or gift for use  
7 as a community school facility;

8 (4) Receive and disburse funds for community school purposes  
9 only;

10 (5) Make contracts and leases for the procurement of services,  
11 equipment and supplies;

12 (6) Incur temporary debts in anticipation of the receipt of  
13 funds; and

14 (7) Solicit and accept any gifts or grants for community  
15 school purposes.

16 (b) A community school has all other powers that are necessary  
17 to fulfill its agreement and which are not inconsistent with this  
18 article.

19 **§18-5D-6. Community school requirements.**

20 Community schools are required to comply with the following  
21 provisions:

22 (1) Except as otherwise provided in this article, a community  
23 school is exempt from statutory requirements established in this

1 chapter and chapters eighteen-a and eighteen-b of this code, from  
2 rules of the state board and supervision by the superintendent not  
3 specifically applicable to community schools. Community schools  
4 are not exempt from other statutes applicable to public schools;

5 (2) A community school is accountable to the parents, the  
6 public and the state, with the delineation of that accountability  
7 reflected in the school's agreement. Strategies for meaningful  
8 parent and community involvement shall be developed and implemented  
9 by each school;

10 (3) A community school may not unlawfully discriminate in  
11 admissions, hiring or operation;

12 (4) A community school shall be nonsectarian in all  
13 operations;

14 (5) A community school may not advocate unlawful behavior;

15 (6) A community school is only subject to the laws and rules  
16 as provided in this article;

17 (7) A community school shall participate in any state  
18 assessment and accountability program conducted under article two-e  
19 of this chapter and shall cooperate with the office of education  
20 performance audits which shall annually conduct an on-site review  
21 of the school;

22 (8) A community school shall provide a minimum of one hundred  
23 eighty days of instruction or nine hundred hours per year of

1 instruction. This subdivision does not preclude the use of computer  
2 and satellite linkages for delivering instruction to students; and

3 (9) Trustees of a community school are public officials.

4 **§18-5D-7. Board of trustees.**

5 (a) (1) Each school shall be operated by a board of trustees.

6 The board consists of the president of the county board of  
7 education and one other board member elected by the board of  
8 education, and the dean of the school of education of the  
9 university or college and two other members appointed by the  
10 president of the university or college. Within thirty days after  
11 all the members representing the board of education and the  
12 university or college are appointed they shall jointly appoint two  
13 additional members. One of the additional members shall be a  
14 parent of a child enrolled in a public school in the county where  
15 the community school is proposed to be located. The other  
16 additional member shall be either, a teacher employed by the county  
17 board of education who is teaching in a public school in the county  
18 where the community school is proposed to be located or, a retired  
19 teacher residing in that county.

20 (2) After the students who will be attending the community  
21 school are selected and the teachers who will be teaching in the  
22 community school are selected, the board of trustees shall jointly  
23 appoint two additional members. One of the additional members

1 shall be a parent of a child who will attend the community school.  
2 The other additional member shall be a teacher who will be employed  
3 to teach in the community school.

4 (b) The president of the county board of education and the  
5 dean of the school of education serve as cochairs for as long as  
6 they remain in their positions. The members elected from the board  
7 of education serve for terms of four years or until they are no  
8 longer on the board of education, whichever occurs first. They may  
9 be reappointed. The members appointed by the president shall serve  
10 for four year terms. If the president appoints a person to serve  
11 on the board of trustees because the person holds a particular  
12 position with the university or college, the person serves only as  
13 long as he or she holds the position. All additional board members  
14 serve terms of four years or until they fail to qualify, as  
15 provided in subsection (a) of this section, whichever occurs first.  
16 Members may receive no compensation for their service on the board,  
17 but may be reimbursed for necessary expenses incurred as a member  
18 of the board.

19 **§18-5D-8. Powers of board of trustees.**

20 (a) The board of trustees of a community school has the  
21 responsibility for the operation of the school and the authority to  
22 decide matters related to its operation, including, but not limited  
23 to, budgeting, curriculum and operating procedures, subject to the



1 school's agreement. The board may employ, discharge and contract  
2 with necessary professional and nonprofessional employees subject  
3 to the school's agreement and the provisions of this article.

4 (b) The board of trustees is a public body as that term is  
5 used in article one, chapter twenty-nine-b of this code, and a  
6 governing body as that term is used in article nine-a, chapter six  
7 of this code.

8 **§18-5D-9. Establishment of community school, pilot project.**

9 (a) A community school, beginning in a school year prior to  
10 the school year starting in 2014, may only be established by West  
11 Virginia University or Marshall University, or both.

12 (b) A community school may only be established by creating a  
13 new school.

14 (c) An application to establish a community school shall be  
15 submitted to the county board of education where the community  
16 school will be located by November 15 of the school year preceding  
17 the school year in which the community school will be established,  
18 except that for a community school beginning in the school year  
19 starting in 2012, an application must be received by July 1, 2012.

20 (d) Within forty-five days of receipt of an application, the  
21 county board of education in which the proposed community school is  
22 to be located shall hold at least one public meeting on the  
23 provisions of the community school application. The meeting is

1 subject to article nine-a, chapter six of this code. At least  
2 forty-five days shall transpire between the first public meeting  
3 and the final decision of the board on the community school  
4 application, except that for a community school beginning in the  
5 school year starting in 2013, only thirty days are required to  
6 transpire between the first public hearing and the final decision  
7 of the board.

8 (e) (1) Not later than seventy-five days after the first  
9 public meeting on the application, the county board of education  
10 shall grant or deny the application. For a community school  
11 beginning in the school year starting in 2012, the county board of  
12 education shall grant or deny the application no later than thirty  
13 days after the first public hearing.

14 (2) A community school application submitted under this  
15 article shall be evaluated by the county board of education based  
16 on criteria, including, but not limited to, the following:

17 (A) The demonstrated, sustainable support for the community  
18 school plan by teachers, parents, other community members and  
19 students, including comments received at the public hearing held  
20 under subsection (d) of this section;

21 (B) The capability of the community school, in terms of  
22 support and planning, to provide comprehensive learning experiences  
23 to students pursuant to the adopted agreement;

1           (C) The extent to which the application considers the  
2 information requested in section ten of this article and conforms  
3 to the legislative intent outlined in section two of this article;  
4 and

5           (D) The extent to which the community school may serve as a  
6 model for other public schools.

7           (3) A community school application is approved by the county  
8 board of education of a county upon affirmative vote by a majority  
9 of all the members. Formal action approving or denying the  
10 application shall be taken by the county board of education at a  
11 public meeting, with notice or consideration of the application  
12 given by the board, under article nine-a, chapter six of this code.

13           (4) Written notice of the board's action shall be sent to the  
14 university or college. If the application is denied, the reasons  
15 for the denial including a description of deficiencies in the  
16 application shall be clearly stated in the notice sent by the  
17 county board of education to the university or college.

18           (f) At the option of the university or college a denied  
19 application may be revised and resubmitted to the county board of  
20 education. When an application is revised and resubmitted to the  
21 county board of education, the board may schedule additional public  
22 hearings on the revised application. The board shall consider the  
23 revised and resubmitted application at the first board meeting

1 occurring at least forty-five days after receipt of the revised  
2 application by the board. For a revised application resubmitted  
3 for a community school desiring to begin in the school year  
4 starting in 2012, the board shall consider the application at the  
5 first board meeting occurring at least thirty days after its  
6 receipt. The board shall provide notice of consideration of the  
7 revised application under the provisions of article nine-a, chapter  
8 six of this code.

9 **§18-5D-10. Contents of application.**

10 An application to establish a community school shall include  
11 all of the following information:

12 (1) The identification of the community school applicant;

13 (2) The name of the proposed community school;

14 (3) The grade or age levels served by the school;

15 (4) A description of how parental participation will be  
16 encouraged in the planning and the operation of the community  
17 school;

18 (5) The agreement and education goals of the community school,  
19 the curriculum to be offered and the methods of assessing whether  
20 students are meeting educational goals;

21 (6) The admission policy and criteria for evaluating the  
22 admission of students which shall comply with the requirements of  
23 section thirteen of this article;

1           (7) Procedures which will be used regarding the suspension or  
2 expulsion of pupils. The procedures shall comply, as applicable,  
3 with section eight, article eight of this chapter and section  
4 one-a, article five, chapter eighteen-a of this code;

5           (8) Information on the manner in which community groups will  
6 be involved in the community school planning process;

7           (9) The financial plan for the community school and the  
8 provisions which will be made for auditing the school under article  
9 nine, chapter six of this code;

10          (10) Procedures which shall be established to review  
11 complaints of parents regarding the operation of the community  
12 school;

13          (11) A description of and address of the physical facility in  
14 which the community school will be located and the ownership of the  
15 facility and any lease arrangements;

16          (12) Information on the proposed school calendar for the  
17 community school, including the length of the school day and school  
18 year consistent with the provisions of section fifteen, article  
19 eight of this chapter;

20          (13) The proposed faculty and a professional development plan  
21 for the faculty of the community school; and

22          (14) Whether any agreements have been entered into or plans  
23 developed with the county board of education regarding

1 participation of the community school students in extracurricular  
2 activities within the county. Notwithstanding any provision to the  
3 contrary, a county of residence may not prohibit a student of a  
4 community school from participating in any extracurricular activity  
5 of that county of residence if the student is able to fulfill all  
6 of the requirements of participation in the activity and the  
7 community school does not provide the same extracurricular  
8 activity.

9 **§18-5D-11. Term and form of agreement.**

10       Upon approval of a community school application under section  
11 nine of this article, a written agreement shall be developed which  
12 shall contain the provisions of the community school application.  
13 This written agreement, when approved by the county board of  
14 education and the community school's board of trustees acts as  
15 legal authorization for the establishment of a community school.  
16 This written agreement is legally binding on both the county board  
17 of education and the community school's board of trustees. The  
18 agreement shall be for a period of not less than three, nor more  
19 than five years, and may be renewed for five-year periods upon  
20 reauthorization by the county board of education.

21 **§18-5D-12. Facilities.**

22       The community school facility is exempt from public school  
23 facility rules, except those pertaining to the health or safety of

1 the pupils.

2 **§18-5D-13. Enrollment.**

3 (a) All resident children in this state qualify for admission  
4 to a community school within the provisions of subsection (b) of  
5 this section. If more students apply to the community school than  
6 the number of attendance slots available in the school, then  
7 students shall be selected on a random basis by the board of  
8 trustees from a pool of qualified applicants meeting the  
9 established eligibility criteria and submitting an application by  
10 the deadline established by the community school. The community  
11 school may give preference in enrollment to a child of a parent who  
12 has actively participated in the development of the community  
13 school and to siblings of students who are presently, or were  
14 previously, enrolled in the community school.

15 (b) (1) A community school may not discriminate in its  
16 admission policies or practices, except as provided in subdivision  
17 (2) of this subsection, on the basis of intellectual ability,  
18 athletic ability, measures of achievement or aptitude, status as a  
19 person with a disability, proficiency in the English language or  
20 any other basis that would be illegal if used by a county board of  
21 education.

22 (2) A community school may limit admission to a particular  
23 grade level.

1 **§18-5D-14. School staff.**

2 (a) The board of trustees shall determine the level of  
3 compensation and all terms and conditions of employment of the  
4 staff, except as may otherwise be provided in this article.  
5 Professional staff members of a community school shall hold  
6 appropriate state certification, as determined by the board of  
7 trustees.

8 (b) Each community school application shall list the general  
9 qualifications needed to staff any noncertified positions.

10 (c) All employees of a community school shall participate in  
11 the teachers' defined contribution retirement system, provided in  
12 article seven-b of this chapter, to the same extent as if they were  
13 employees of the county board of education. Except, that employees  
14 transferring from a county board of education shall participate in  
15 the retirement system they participated in as an employee of the  
16 board of education. The community school shall make any required  
17 employer's contribution to the county board of education's  
18 retirement plan.

19 (d) Every employee of a community school shall be provided the  
20 same health care benefits as the employee would be provided if he  
21 or she were an employee of the county board of education. The  
22 community school shall make any required employer's contribution to  
23 the county board of education's health plan.



1           (e) Any public school employee offered employment at a  
2 community school, by its board of trustees, may request a leave of  
3 absence from the employing county board of education for up to five  
4 years in order to work in a community school. Approval for a leave  
5 may not be unreasonably withheld.

6           (f) Temporary professional employees on leave from a county  
7 board of education may accrue tenure in the noncommunity public  
8 school system the same as they would under article two, chapter  
9 eighteen-a of this code if they had continued to be employed by  
10 that county. Professional employees on leave from a county board  
11 of education retain their continuing contract status rights, as  
12 defined in article two, chapter eighteen-a of this code, in the  
13 school entity from which they came. A temporary professional  
14 employee or professional employee may not have tenure rights as  
15 against a community school. Both temporary professional employees  
16 and professional employees continue to accrue seniority in the  
17 school entity from which they came if they return to that school  
18 entity when the leave ends.

19           (g) Any temporary professional employee or professional  
20 employee who leaves employment at a community school has the right  
21 to return to a comparable position for which the person is  
22 properly certified in the school entity which granted the leave of  
23 absence.

1 (h) Subsection (d), section fifteen-c, article five of this  
2 chapter apply to community schools. The community school shall  
3 obtain the information required by that subsection on all  
4 individuals who will have direct contact with students prior to  
5 accepting them for a position with the community school.

6 **§18-5D-15. Funding for community schools.**

7 (a) Funding for a community school shall be provided in the  
8 following manner:

9 (1) There may be no tuition charge for a resident student  
10 attending a community school.

11 (2) The community school shall receive for each student  
12 enrolled no less than the budgeted total expenditure per average  
13 daily membership of the prior school year. This amount shall be  
14 paid by the county board of education in the county of residence of  
15 the community school.

16 (3) A community school may request the county board of  
17 education in which the community school is located to provide  
18 services to assist the community school to address the specific  
19 needs of special education and exceptional students.

20 (4) Payments shall be made to the community school in twelve  
21 equal monthly payments, by the fifth day of each month, within the  
22 operating school year. A student enrolled in a community school  
23 shall be included in the average daily membership of the student's

1 county of residence for the purpose of providing education funding  
2 payments pursuant to article nine-a of chapter eighteen of this  
3 code. If a county board of education fails to make a payment to a  
4 community school as prescribed in this clause the superintendent  
5 shall deduct the amount, as documented by the community school,  
6 from any and all state payments made to the county board of  
7 education after receipt of documentation from the community school.

8 (b) The state board shall provide temporary financial  
9 assistance to a county board of education due to the enrollment of  
10 students in a community school who attended a nonpublic school in  
11 the prior school year in order to offset the additional costs  
12 directly related to the enrollment of those students in a public  
13 community school. The state board shall pay the county board of  
14 education of the county of residence of a student enrolled in a  
15 nonpublic school in the prior school year who is attending a  
16 community school an amount equal to the county board of education  
17 of the county of residence's basic education subsidy for the  
18 current school year divided by the county's average daily  
19 membership for the prior school year. This payment may occur only  
20 for the first year of the attendance of the student in a community  
21 school starting with the school year beginning in 2012. Total  
22 payments of temporary financial assistance to county board of  
23 educations on behalf of a student enrolling in a community school

1 who attended a nonpublic school in the prior school year shall be  
2 limited to funds appropriated for this program in a fiscal year.  
3 If the total of the amount needed for all students enrolled in a  
4 nonpublic school in the prior school year who enroll in a community  
5 school exceeds the appropriation for the temporary financial  
6 assistance program, the amount paid to a county board of education  
7 for each qualifying student shall be pro rata reduced. Receipt of  
8 funds under this subsection do not preclude a county board of  
9 education or state university or college from applying for funding  
10 grants.

11 (c) The state board, with funds appropriated by the  
12 Legislature and other available funds, shall create a grant program  
13 to provide temporary transitional funding to a county board of  
14 education due to the budgetary impact relating to any student  
15 attending a community school. A county board of education that  
16 approves a community school may apply for a grant under this  
17 subsection. The state board shall develop criteria which shall  
18 include, but not be limited to, the overall fiscal impact on the  
19 budget of the county board of education resulting from students of  
20 a county attending a community school. The criteria shall be  
21 published in the State Register. Payments under this subsection  
22 shall be made for the first year of operation of the community  
23 school.

1 (d) A community school may receive, hold, manage and use,  
2 absolutely or in trust, any devise, bequest, grant, endowment, gift  
3 or donation of any property, real or personal and mixed or both  
4 real and personal, which is made to the community school for any of  
5 the purposes of this article.

6 (e) A trustee of a community school, or any board of trustees  
7 of a community school, or any other person affiliated in any way  
8 with a community school may not demand or request, directly or  
9 indirectly, any gift, donation or contribution of any kind from any  
10 parent, teacher, employee or any other person affiliated with the  
11 community school as a condition for employment or enrollment or  
12 continued attendance of any pupil. Any donation, gift or  
13 contribution received by a community school shall be given freely  
14 and voluntarily.

15 **§18-5D-16. Transportation.**

16 Students who reside in the county in which the community  
17 school is located shall be provided transportation to the community  
18 school on the same terms and conditions as transportation is  
19 provided to students attending the schools of the county.

20 **§18-5D-17. Tort liability.**

21 (a) For purposes of tort liability, employees of the community  
22 school are considered public employees and the board of trustees is  
23 considered the public employer in the same manner as political

1 subdivisions and local agencies.

2       (b) The Board of Risk and Insurance Management shall provide  
3 adequate liability and other appropriate insurance for a community  
4 school, its employees and the board of trustees of the community  
5 school. The community school is responsible for the cost of the  
6 insurance.

7 **§18-5D-18. Annual reports and assessments.**

8       (a) The county board of education shall annually assess  
9 whether each community school is meeting the goals of its agreement  
10 and shall conduct a comprehensive review prior to granting a five  
11 year renewal of the agreement. The county board of education shall  
12 have reasonable access to the records and facilities of the  
13 community school to ensure that the community school is in  
14 compliance with its agreement and this article and that  
15 requirements for testing, civil rights and student health and  
16 safety are being met.

17       (b) In order to facilitate the county board of education's  
18 review, each community school shall submit an annual report no  
19 later than August 1 of each year to the county board of education  
20 and the superintendent.

21       (c) Five years following the effective date of this article,  
22 the superintendent shall contract with an independent professional  
23 consultant with expertise in public and private education. The

1 consultant shall receive input from members of the educational  
2 community and the public on the community school program. The  
3 consultant shall submit a report to the superintendent, the  
4 Governor and the Joint Committee on Government and Finance and an  
5 evaluation of the community school program, which shall include a  
6 recommendation on the advisability of the continuation,  
7 modification, expansion or termination of the program and any  
8 recommendations for changes in the structure of the program.

9 **§18-5D-19. Causes for nonrenewal or termination.**

10 (a) During the term of the agreement or at the end of the term  
11 of the agreement, the county board of education may choose to  
12 revoke or not to renew the agreement based on any of the following:

13 (1) One or more material violations of any of the conditions,  
14 standards or procedures contained in the written agreement approved  
15 pursuant to section eleven of this article;

16 (2) Failure to meet any requirements for student performance  
17 set forth in, or promulgated under, article two-e, chapter eighteen  
18 of this code or failure to meet any performance standard set forth  
19 in the written agreement approved pursuant to section eleven of  
20 this article;

21 (3) Failure to meet generally accepted standards of fiscal  
22 management or audit requirements;

23 (4) Violation of provisions of this article; or

1           (5) Violation of any provision of law from which the community  
2 school has not been exempted, including federal laws and  
3 regulations governing children with disabilities.

4           (b) A member of the board of trustees who is convicted of a  
5 felony or any crime involving moral turpitude is immediately  
6 disqualified from serving on the board of trustees.

7           (c) Any notice of revocation or nonrenewal of an agreement  
8 given by the county board of education shall state the grounds for  
9 the action with reasonable specificity and give reasonable notice  
10 to the board of trustees of the community school of the date on  
11 which a public hearing concerning the revocation or nonrenewal will  
12 be held. The county board of education shall conduct the hearing,  
13 present evidence in support of the grounds for revocation or  
14 nonrenewal stated in its notice and give the community school  
15 reasonable opportunity to offer testimony before taking final  
16 action. Formal action revoking or not renewing a community school  
17 agreement requires an affirmative vote by a majority of all members  
18 of the county board of education at a public meeting after the  
19 public has had thirty days to provide comments to the board.

20           (d) When a community school agreement is revoked or is not  
21 renewed, the community school shall be dissolved.

22           (e) When a community school agreement is revoked or is not  
23 renewed, a student who attended the community school shall apply to



1 another public school in the student's county of residence. Normal  
2 application deadlines will be disregarded under these  
3 circumstances. All student records maintained by the community  
4 school shall be forwarded to the county board of education in which  
5 the student resides.

NOTE: The purpose of this bill is to authorize public universities and colleges with an accredited education program to operate public schools in cooperation with the local county board of education. It establishes a pilot project allowing only West Virginia University and Marshall University to operate public schools in cooperation with the Monongalia and Cabell County Boards of Education for school years beginning prior to 2014.

This article is new; therefore, strike-throughs and underscoring have been omitted.