

**Senate Bill No. 155**

(By Senator Barnes)

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[Introduced February 14, 2013; referred to the Committee on  
Education; and then to the Committee on Finance.]

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**FISCAL  
NOTE**

A BILL to amend and reenact §18-20-1 and §18-20-5 of the Code of  
West Virginia, 1931, as amended, all relating to requiring the  
State Board of Education be responsible for the funding of all  
special programs for exceptional children; and requiring the  
State Superintendent to be responsible for the payment for  
those programs.

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

That §18-20-1 and §18-20-5 of the Code of West Virginia, 1931,  
as amended, be amended and reenacted, all to read as follows:

**ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

**§18-20-1. Establishment of special programs and teaching services  
for exceptional children.**

(a) In accordance with the following provisions, county boards  
of education throughout the state shall establish and maintain for

1 all exceptional children between five and twenty-one years of age  
2 special educational programs, including, but not limited to,  
3 special schools or classes, regular classroom programs,  
4 home-teaching or visiting-teacher services for any type or  
5 classification as the state board shall approve. Special  
6 educational programs shall continue to be provided to those  
7 children who are at least twenty-one years of age and enrolled in  
8 the above mentioned "special education program" prior to September  
9 1, 1991, until they reach twenty-three years of age. Provisions  
10 shall be made for educating exceptional children (including the  
11 handicapped and the gifted) who differ from the average or normal  
12 in physical, mental or emotional characteristics, or in  
13 communicative or intellectual deviation characteristics, or in both  
14 communicative and intellectual deviation characteristics, to the  
15 extent that they cannot be educated safely or profitably in the  
16 regular classes of the public schools or to the extent that they  
17 need special educational provisions within the regular classroom in  
18 order to educate them in accordance with their capacities,  
19 limitations and needs: *Provided,* That for the school year  
20 beginning on July 1, 1990, provisions shall be made for educating  
21 exceptional children, including the handicapped, the gifted in  
22 grades one through eight, the pupils enrolled on July 1, 1989, in  
23 the gifted program in grades nine through twelve and the  
24 exceptional gifted in grades nine through twelve. The term

1 "exceptional gifted" means those students in grades nine through  
2 twelve identified as gifted and at least one of the following:  
3 Behavior disorder, specific learning disabilities, psychological  
4 adjustment disorder, underachieving, or economically disadvantaged.  
5 Exceptional gifted children shall be referred for identification  
6 pursuant to recommendation by a school psychologist, school  
7 counselor, principal, teacher, parent or by self-referral, at which  
8 time the placement process, including development of an  
9 individualized education program, and attendant due process rights,  
10 shall commence. Exceptional gifted children, for purposes of  
11 calculating adjusted enrollment pursuant to section two, article  
12 nine-a of this chapter, shall not exceed one percent of net  
13 enrollment in grades nine through twelve. Nothing herein shall be  
14 construed to limit the number of students identified as exceptional  
15 gifted and who receive appropriate services. Each county board of  
16 education is mandated to provide gifted education to its students  
17 according to guidelines promulgated by the state board and  
18 consistent with the provisions of this chapter. Upon the  
19 recommendation of a principal, counselor, teacher and parent, a  
20 student who does not meet the gifted eligibility criteria may  
21 participate in any school program deemed appropriate for the  
22 student provided that classroom space is available. In addition,  
23 county boards of education may establish and maintain other  
24 educational services for exceptional children as the State

1 Superintendent of Schools may approve.

y boards2of education shall establish and maintain these special  
3 educational programs, including, but not limited to, special  
4 schools classes, regular class programs, home-teaching and  
5 visiting-teacher services. The special education programs shall  
6 include home-teaching or visiting-teacher services for children who  
7 are homebound due to injury or who for any other reason as  
8 certified by a licensed physician are homebound for a period that  
9 has lasted or will last more than three weeks: *Provided*, That  
10 pupils receiving such homebound or visiting-teacher services shall  
11 not be included when computing adjusted enrollment as defined in  
12 section two, article nine-a, chapter eighteen of this code. The  
13 state board shall adopt rules to advance and accomplish this  
14 program and to assure that all exceptional children in the state,  
15 including children in mental health facilities, residential  
16 institutions and private schools, will receive an education in  
17 accordance with the mandates of state and federal laws: *Provided*,  
18 *however*, That commencing with the school year beginning on July 1,  
19 1991, all exceptional children in the state in foster care and  
20 correctional facilities will receive an education in accordance  
21 with the mandates of state and federal laws.

22 (c) All special educational programs, including, but not  
23 limited to, special schools or classes, regular classroom programs,  
24 home-teaching or visiting-teacher services for any type or

1 classification that the state board approves pursuant to this  
2 section shall be funded by the state board.

3 **§18-20-5. Powers and duties of state superintendent.**

4 (a) The State Superintendent of Schools shall organize,  
5 promote, administer and be responsible for:

6 (1) Stimulating and assisting county boards of education in  
7 establishing, organizing and maintaining special schools, classes,  
8 regular class programs, home-teaching and visiting-teacher  
9 services.

10 (2) Cooperating with all other public and private agencies  
11 engaged in relieving, caring for, curing, educating and  
12 rehabilitating exceptional children, and in helping coordinate the  
13 services of such agencies.

14 (3) (A) Preparing the necessary rules, policies, formula for  
15 distribution of available appropriated funds, reporting forms and  
16 procedures necessary to define minimum standards in providing  
17 suitable facilities for education of exceptional children and  
18 ensuring the employment, certification and approval of qualified  
19 teachers and therapists subject to approval by the state Board of  
20 Education: *Provided*, That no state rule, policy or standard under  
21 this article or any county board rule, policy or standard governing  
22 special education may exceed the requirements of federal law or  
23 regulation.

24 (B) The state superintendent shall annually review the rules,

1 policies and standards of the state and federal law for serving the  
2 needs of exceptional children enrolled in the public schools and  
3 shall report to the Legislative Oversight Commission on Education  
4 Accountability by December 1, or as soon thereafter as requested by  
5 the commission, 2008, and in each year thereafter, the findings of  
6 the review along with an accounting of the services provided and  
7 the costs thereof for exceptional children enrolled in the public  
8 schools of this state during the latest available school year. An  
9 appropriation shall be made to the Department of Education to be  
10 distributed to county boards to support children with high acuity  
11 needs that exceed the capacity of county to provide with funds  
12 available. Each county board shall apply to the state  
13 superintendent for receipt of this funding in a manner set forth by  
14 the state superintendent that assesses and takes into account  
15 varying acuity levels of the exceptional students. Any remaining  
16 funds at the end of a fiscal year from the appropriation shall be  
17 carried over to the next fiscal year. When possible, federal funds  
18 shall be distributed to county boards for this purpose before any  
19 of the state appropriation is distributed. The state board shall  
20 promulgate a rule in accordance with the provisions of article  
21 three-b, chapter twenty-nine-a of this code that implements the  
22 provisions of this subdivision relating to distributing the funds  
23 to the county boards. The rule at least shall include a definition  
24 for "children with high acuity needs".

1           (4) Receiving from county boards of education their  
2 applications, annual reports and claims for reimbursement from such  
3 moneys as are appropriated by the Legislature, auditing such claims  
4 and preparing vouchers to reimburse said counties the amounts  
5 reimbursable to them.

6           (5) Assuring that all exceptional children in the state,  
7 including children in mental health facilities, residential  
8 institutions, private schools and correctional facilities as  
9 provided in section thirteen-f, article two of this chapter receive  
10 an education in accordance with state and federal laws: *Provided,*  
11 That the state superintendent shall also assure that adults in  
12 correctional facilities and regional jails receive an education to  
13 the extent funds are provided therefor.

14           (6) Payment of all special educational programs, including,  
15 but not limited to, special schools or classes, regular classroom  
16 programs, home-teaching or visiting-teacher services for any type  
17 or classification that the state board has approved pursuant to  
18 section one of this article.

19           ~~(6)~~ (7) Performing other duties and assuming other  
20 responsibilities in connection with this program as needed.

21           ~~(7)~~ (8) Receive the county plan for integrated classroom  
22 submitted by the county boards of education and submit a state  
23 plan, approved by the state Board of Education, to the Legislative  
24 Oversight Commission on Education Accountability no later than

1 December 1, 1995.

2       (b) Nothing contained in this section shall be construed to  
3 prevent any county board of education from establishing and  
4 maintaining special schools, classes, regular class programs,  
5 home-teaching or visiting-teacher services out of funds available  
6 from local revenue.

NOTE: The purpose of this bill is to require the state Board of Education be responsible for the funding of all special programs for exceptional children. The bill also requires the state superintendent to be responsible for the payment for those programs.

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