

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 146**

BY SENATORS PLYMALE AND UNGER, *original sponsors*

[Passed February 23, 2016; to take effect July 1, 2016]



1 AN ACT to amend and reenact §18-5-44 of the Code of West Virginia, 1931, as amended, relating  
2 to early childhood education programs; replacing days per week requirement for early  
3 childhood education programs with instructional minutes per week and instructional  
4 minutes per year requirements; modifying authority of parent to withdraw child from early  
5 childhood education program; and removing certain early childhood education program-  
6 related reporting requirements.

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

1 That §18-5-44 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-44. Early childhood education programs.**

1 (a) For the purposes of this section, an “early childhood education program” means a  
2 program created under this section for children who have attained the age of four prior to  
3 September 1 of the school year in which the children enter the program.

4 (b) *Findings.* –

5 (1) Among other positive outcomes, early childhood education programs have been  
6 determined to:

7 (A) Improve overall readiness when children enter school;

8 (B) Decrease behavioral problems;

9 (C) Improve student attendance;

10 (D) Increase scores on achievement tests;

11 (E) Decrease the percentage of students repeating a grade; and

12 (F) Decrease the number of students placed in special education programs;

13 (2) Quality early childhood education programs improve school performance and low-  
14 quality early childhood education programs may have negative effects, especially for at-risk  
15 children;

16 (3) West Virginia has the lowest percentage of its adult population twenty-five years of age  
17 or older with a bachelor's degree and the education level of parents is a strong indicator of how  
18 their children will perform in school;

19 (4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty  
20 states in the percentage of school children eligible for free and reduced lunches and this  
21 percentage is a strong indicator of how the children will perform in school;

22 (5) For the school year 2008-2009, 13,135 students were enrolled in prekindergarten, a  
23 number equal to approximately sixty-three percent of the number of students enrolled in  
24 kindergarten;

25 (6) Excluding projected increases due to increases in enrollment in the early childhood  
26 education program, projections indicate that total student enrollment in West Virginia will decline  
27 by one percent, or by approximately 2,704 students, by the school year 2012-2013;

28 (7) In part, because of the dynamics of the state aid formula, county boards will continue  
29 to enroll four-year-old students to offset the declining enrollments;

30 (8) West Virginia has a comprehensive kindergarten program for five-year-olds, but the  
31 program was established in a manner that resulted in unequal implementation among the  
32 counties, which helped create deficit financial situations for several county boards;

33 (9) Expansion of current efforts to implement a comprehensive early childhood education  
34 program should avoid the problems encountered in kindergarten implementation;

35 (10) Because of the dynamics of the state aid formula, counties experiencing growth are  
36 at a disadvantage in implementing comprehensive early childhood education programs; and

37 (11) West Virginia citizens will benefit from the establishment of quality comprehensive  
38 early childhood education programs.

39 (c) Beginning no later than the school year 2012-2013 and continuing thereafter, county  
40 boards shall provide early childhood education programs for all children who have attained the  
41 age of four prior to September 1 of the school year in which the children enter the early childhood

42 education program. Beginning no later than the school year 2016-2017 and continuing thereafter,  
43 these early childhood education programs shall provide at least forty-eight thousand minutes  
44 annually and no less than fifteen hundred minutes of instruction per week.

45 (d) The program shall meet the following criteria:

46 (1) It shall be voluntary, except that, upon enrollment, the provisions of section one-a,  
47 article eight of this chapter apply to an enrolled student, subject to subdivision (4) of this  
48 subsection;

49 (2) It shall be open to all children meeting the age requirement set forth in this section;

50 (3) It shall provide no less than fifteen hundred minutes of instruction per week, in a full  
51 day program with at least forty-eight thousand minutes of instruction annually; and

52 (4) It shall permit a parent of an enrolled child to withdraw the child from that program by  
53 notifying the district in writing. A child withdrawn under this section is not subject to the attendance  
54 provisions of this chapter until that child again enrolls in a public school in this state.

55 (e) Enrollment of students in Head Start, or in any other program approved by the state  
56 superintendent as provided in this section, may be counted toward satisfying the requirement of  
57 subsection (c) of this section.

58 (f) For the purposes of implementation financing, all counties are encouraged to make use  
59 of funds from existing sources, including:

60 (1) Federal funds provided under the Elementary and Secondary Education Act pursuant  
61 to 20 U. S. C. §6301, *et seq.*;

62 (2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, *et seq.*;

63 (3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601,  
64 *et seq.*;

65 (4) Funds provided by the School Building Authority pursuant to article nine-d of this  
66 chapter;

67 (5) In the case of counties with declining enrollments, funds from the state aid formula  
68 above the amount indicated for the number of students actually enrolled in any school year; and

69 (6) Any other public or private funds.

70 (g) Each county board shall develop a plan for implementing the program required by this  
71 section. The plan shall include the following elements:

72 (1) An analysis of the demographics of the county related to early childhood education  
73 program implementation;

74 (2) An analysis of facility and personnel needs;

75 (3) Financial requirements for implementation and potential sources of funding to assist  
76 implementation;

77 (4) Details of how the county board will cooperate and collaborate with other early  
78 childhood education programs including, but not limited to, Head Start, to maximize federal and  
79 other sources of revenue;

80 (5) Specific time lines for implementation; and

81 (6) Any other items the state board may require by policy.

82 (h) A county board shall submit its plan to the Secretary of the Department of Health and  
83 Human Resources. The secretary shall approve the plan if the following conditions are met:

84 (1) The county board has maximized the use of federal and other available funds for early  
85 childhood programs; and

86 (2) The county board has provided for the maximum implementation of Head Start  
87 programs and other public and private programs approved by the state superintendent pursuant  
88 to the terms of this section; or

89 (3) The secretary finds that, if the county board has not met one or more of the  
90 requirements of this subsection, the county board has acted in good faith and the failure to comply  
91 was not the primary fault of the county board. Any denial by the secretary may be appealed to  
92 the circuit court of the county in which the county board is located.

93 (i) The county board shall submit its plan for approval to the state board. The state board  
94 shall approve the plan if the county board has complied substantially with the requirements of  
95 subsection (g) of this section and has obtained the approval required in subsection (h) of this  
96 section.

97 (j) Every county board shall submit its plan for reapproval by the Secretary of the  
98 Department of Health and Human Resources and by the state board at least every two years after  
99 the initial approval of the plan and until full implementation of the early childhood education  
100 program in the county. As part of the submission, the county board shall provide a detailed  
101 statement of the progress made in implementing its plan. The standards and procedures provided  
102 for the original approval of the plan apply to any reapproval.

103 (k) A county board may not increase the total number of students enrolled in the county in  
104 an early childhood program until its program is approved by the Secretary of the Department of  
105 Health and Human Resources and the state board.

106 (l) The state board annually may grant a county board a waiver for total or partial  
107 implementation if the state board finds that all of the following conditions exist:

108 (1) The county board is unable to comply either because:

109 (A) It does not have sufficient facilities available; or

110 (B) It does not and has not had available funds sufficient to implement the program;

111 (2) The county has not experienced a decline in enrollment at least equal to the total  
112 number of students to be enrolled; and

113 (3) Other agencies of government have not made sufficient funds or facilities available to  
114 assist in implementation.

115 Any county board seeking a waiver shall apply with the supporting data to meet the criteria  
116 for which they are eligible on or before March 25 for the following school year. The state  
117 superintendent shall grant or deny the requested waiver on or before April 15 of that same year.

118 (m) The provisions of subsections (b), (c) and (d), section eighteen of this article relating  
119 to kindergarten apply to early childhood education programs in the same manner in which they  
120 apply to kindergarten programs.

121 (n) Except as required by federal law or regulation, no county board may enroll students  
122 who will be less than four years of age prior to September 1 for the year they enter school.

123 (o) Neither the state board nor the state department may provide any funds to any county  
124 board for the purpose of implementing this section unless the county board has a plan approved  
125 pursuant to subsections (h), (i) and (j) of this section.

126 (p) The state board shall promulgate a rule in accordance with the provisions of article  
127 three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this  
128 section. The state board shall consult with the Secretary of the Department of Health and Human  
129 Resources in the preparation of the rule. The rule shall contain the following:

130 (1) Standards for curriculum;

131 (2) Standards for preparing students;

132 (3) Attendance requirements;

133 (4) Standards for personnel; and

134 (5) Any other terms necessary to implement the provisions of this section.

135 (q) The rule shall include the following elements relating to curriculum standards:

136 (1) A requirement that the curriculum be designed to address the developmental needs of  
137 four-year-old children consistent with prevailing research on how children learn;

138 (2) A requirement that the curriculum be designed to achieve long-range goals for the  
139 social, emotional, physical and academic development of young children;

140 (3) A method for including a broad range of content that is relevant, engaging and  
141 meaningful to young children;

142 (4) A requirement that the curriculum incorporate a wide variety of learning experiences,  
143 materials and equipment, and instructional strategies to respond to differences in prior  
144 experience, maturation rates and learning styles that young children bring to the classroom;

145 (5) A requirement that the curriculum be designed to build on what children already know  
146 in order to consolidate their learning and foster their acquisition of new concepts and skills;

147 (6) A requirement that the curriculum meet the recognized standards of the relevant  
148 subject matter disciplines;

149 (7) A requirement that the curriculum engage children actively in the learning process and  
150 provide them with opportunities to make meaningful choices;

151 (8) A requirement that the curriculum emphasize the development of thinking, reasoning,  
152 decision-making and problem-solving skills;

153 (9) A set of clear guidelines for communicating with parents and involving them in  
154 decisions about the instructional needs of their children; and

155 (10) A systematic plan for evaluating program success in meeting the needs of young  
156 children and for helping them to be ready to succeed in school.

157 (r) After the school year 2012-2013, on or before July 1 of each year, each county board  
158 shall report the following information to the Secretary of the Department of Health and Human  
159 Resources and the state superintendent:

160 (1) Documentation indicating the extent to which county boards are maximizing resources  
161 by using the existing capacity of community-based programs, including, but not limited to, Head  
162 Start and child care; and

163 (2) For those county boards that are including eligible children attending approved,  
164 contracted community-based programs in their net enrollment for the purposes of calculating state  
165 aid pursuant to article nine-a of this chapter, documentation that the county board is equitably  
166 distributing funding for all children regardless of setting.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

To take effect July 1, 2016.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2016.

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*Governor*