

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**Committee Substitute**

**for**

**Senate Bill 186**

SENATORS JEFFRIES, OJEDA, FACEMIRE

AND WOELFEL, *original sponsors*

[Passed April 5, 2017; in effect 90 days from passage]



1 AN ACT to amend and reenact §18-5-18 and §18-5-44 of the Code of West Virginia, 1931, as  
2 amended; and to amend and reenact §18-8-1a of said code, all relating to adjusting the  
3 date upon which children become eligible for certain school programs and school  
4 attendance requirements; changing the kindergarten age attainment requirement from  
5 age five prior to September 1 to age five prior to July 1, with the July 1 date to become  
6 enforceable with the 2019-2020 school year; changing the early childhood education  
7 program age attainment date requirement from age four prior to September 1 to age four  
8 prior to July 1, with the July 1 date becoming enforceable with the 2018-2019 school year;  
9 and changing the age for which compulsory attendance begins to those who attain age  
10 six by July 1 of each year, with the July 1 date becoming enforceable with the 2019-2020  
11 school year.

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

1 That §18-5-18 and §18-5-44 of the Code of West Virginia, 1931, as amended, be amended  
2 and reenacted; and that §18-8-1a of said code be amended and reenacted, all to read as follows:

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

**§18-5-18. Kindergarten programs.**

1 (a) County boards shall provide kindergarten programs for all children who have attained  
2 the age of five prior to September 1 of the school year in which the pupil enters the kindergarten  
3 program and may, pursuant to the provisions of section forty-four of this article, establish  
4 kindergarten programs designed for children below the age of five. The programs for children who  
5 shall have attained the age of five shall be full-day everyday programs.

6 (b) Beginning in the school year 2019-2020, county boards shall provide kindergarten  
7 programs for all children who have attained the age of five prior to July 1 of the school year in  
8 which the pupil enters the kindergarten program and may, pursuant to the provisions of section  
9 forty-four of this article, establish kindergarten programs designed for children below the age of

10 five. The programs for children who shall have attained the age of five shall be full-day everyday  
11 programs.

12 (c) Persons employed as kindergarten teachers, as distinguished from paraprofessional  
13 personnel, shall be required to hold a certificate valid for teaching at the assigned level as  
14 prescribed by rules established by the state board. The state board shall establish the minimum  
15 requirements for all paraprofessional personnel employed in kindergarten programs established  
16 pursuant to the provisions of this section and no such paraprofessional personnel may be  
17 employed in any kindergarten program unless he or she meets the minimum requirements.  
18 Beginning July 1, 2014, any person previously employed as an aide in a kindergarten program  
19 and who is employed in the same capacity on and after that date and any new person employed  
20 in that capacity in a kindergarten program on and after that date shall hold the position of aide  
21 and either Early Childhood Classroom Assistant Teacher I, Early Childhood Classroom Assistant  
22 Teacher II or Early Childhood Classroom Assistant Teacher III. Any person employed as an aide  
23 in a kindergarten program that is eligible for full retirement benefits before July 1, 2020, may  
24 remain employed as an aide in that position and shall be granted an Early Childhood Classroom  
25 Assistant Teacher permanent authorization by the state superintendent pursuant to section two-  
26 a, article three, chapter eighteen-a of this code.

27 (d) The state board, with the advice of the state superintendent, shall establish and  
28 prescribe guidelines and criteria relating to the establishment, operation and successful  
29 completion of kindergarten programs in accordance with the other provisions of this section.  
30 Guidelines and criteria so established and prescribed also are intended to serve for the  
31 establishment and operation of nonpublic kindergarten programs and shall be used for the  
32 evaluation and approval of those programs by the state superintendent, provided application for  
33 the evaluation and approval is made in writing by proper authorities in control of the programs.  
34 The state superintendent, annually, shall publish a list of nonpublic kindergarten programs,  
35 including Montessori kindergartens that have been approved in accordance with the provisions of

36 this section. Montessori kindergartens established and operated in accordance with usual and  
37 customary practices for the use of the Montessori method which have teachers who have training  
38 or experience, regardless of additional certification, in the use of the Montessori method of  
39 instruction for kindergartens shall be considered to be approved.

40 (e) Pursuant to the guidelines and criteria, and only pursuant to the guidelines and criteria,  
41 the county boards may establish programs taking kindergarten to the homes of the children  
42 involved, using educational television, paraprofessional personnel in addition to and to  
43 supplement regularly certified teachers, mobile or permanent classrooms and other means  
44 developed to best carry kindergarten to the child in its home and enlist the aid and involvement  
45 of its parent or parents in presenting the program to the child; or may develop programs of a more  
46 formal kindergarten type, in existing school buildings, or both, as the county board may determine,  
47 taking into consideration the cost, the terrain, the existing available facilities, the distances each  
48 child may be required to travel, the time each child may be required to be away from home, the  
49 child's health, the involvement of parents and other factors as each county board may find  
50 pertinent. The determinations by any county board are final and conclusive.

**§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) For the purposes of this section beginning in the school year 2018-2019, an "early  
5 childhood education program" means a program created under this section for children who have  
6 attained the age of four prior to July 1 of the school year in which the children enter the program.

7 (c) *Findings.* –

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

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

11 (B) Decrease behavioral problems;

12 (C) Improve student attendance;

13 (D) Increase scores on achievement tests;

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

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

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

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

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

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

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

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

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

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

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

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

42 (d) County boards shall provide early childhood education programs for all children who  
43 have attained the age of four prior to September 1 of the school year in which the children enter  
44 the early childhood education program. These early childhood education programs shall provide  
45 at least forty-eight thousand minutes annually and no less than fifteen hundred minutes of  
46 instruction per week.

47 (e) Beginning in the school year 2018-2019, county boards shall provide early childhood  
48 education programs for all children who have attained the age of four prior to July 1 of the school  
49 year in which the children enter the early childhood education program.

50 (f) The program shall meet the following criteria:

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

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

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

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

60 (g) Enrollment of students in Head Start, or in any other program approved by the state  
61 superintendent as provided in this section, may be counted toward satisfying the requirement of  
62 subsection (c) of this section.

63 (h) For the purposes of implementation financing, all counties are encouraged to make  
64 use of funds from existing sources, including:

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

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

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

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

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

74 (6) Any other public or private funds.

75 (i) Each county board shall develop a plan for implementing the program required by this  
76 section. The plan shall include the following elements:

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

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

80 (3) Financial requirements for implementation and potential sources of funding to assist  
81 implementation;

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

85 (5) Specific time lines for implementation; and



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

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

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

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

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

98 (k) The county board shall submit its plan for approval to the state board. The state board  
99 shall approve the plan if the county board has complied substantially with the requirements of  
100 subsection (g) of this section and has obtained the approval required in subsection (h) of this  
101 section.

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

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

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

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

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

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

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

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

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

123 (o) The provisions of subsections (b), (c) and (d), section eighteen of this article relating  
124 to kindergarten apply to early childhood education programs in the same manner in which they  
125 apply to kindergarten programs.

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

128 (q) Except as required by federal law or regulation, beginning in the school year 2018-  
129 2019, no county board may enroll students who will be less than four years of age prior to July 1  
130 for the year they enter school.

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

134 (s) The state board shall promulgate a rule in accordance with the provisions of article  
135 three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this

136 section. The state board shall consult with the Secretary of the Department of Health and Human  
137 Resources in the preparation of the rule. The rule shall contain the following:

138 (1) Standards for curriculum;

139 (2) Standards for preparing students;

140 (3) Attendance requirements;

141 (4) Standards for personnel; and

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

143 (t) The rule shall include the following elements relating to curriculum standards:

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

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

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

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

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

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

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

159 (8) A requirement that the curriculum emphasize the development of thinking, reasoning,  
160 decisionmaking and problem-solving skills;

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

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

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

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

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

**ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

**§18-8-1a. Commencement and termination of compulsory school attendance; public  
school entrance requirements; exceptions.**

1 (a) Notwithstanding the provisions of section one of this article, compulsory school  
2 attendance begins with the school year in which the sixth birthday is reached prior to September  
3 1 of such year or upon enrolling in a publicly supported kindergarten program and, subject to  
4 subdivision (3) of this subsection, continues to the sixteenth birthday or for as long as the student  
5 continues to be enrolled in a school system after the sixteenth birthday.

6 (1) A child may be removed from such kindergarten program when the principal, teacher  
7 and parent or guardian concur that the best interest of the child would not be served by requiring  
8 further attendance: *Provided*, That the principal shall make the final determination with regard to  
9 compulsory school attendance in a publicly supported kindergarten program.

10           (2) The compulsory school attendance provision of this article shall be enforced against a  
11 person eighteen years of age or older for as long as the person continues to be enrolled in a  
12 school system and may not be enforced against the parent, guardian or custodian of the person.

13           (3) Notwithstanding the provisions of section one of this article, compulsory school  
14 attendance begins with the school year in which the sixth birthday is reached prior to September  
15 1 of such year or upon enrolling in a publicly supported kindergarten program and continues to  
16 the seventeenth birthday or for as long as the student continues to be enrolled in a school system  
17 after the seventeenth birthday: *Provided*, That beginning in the school year 2019-2020,  
18 compulsory school attendance begins with the school year in which the sixth birthday is reached  
19 prior to July 1 of such year or upon enrolling in a publicly supported kindergarten program.

20           (b) Attendance at a state-approved or Montessori kindergarten, as provided in section  
21 eighteen, article five of this chapter, is deemed school attendance for purposes of this section.  
22 Prior to entrance into the first grade in accordance with section five, article two of this chapter,  
23 each child must have either:

24           (1) Successfully completed such publicly or privately supported, state-approved  
25 kindergarten program or Montessori kindergarten program; or

26           (2) Successfully completed an entrance test of basic readiness skills approved by the  
27 county in which the school is located. The test may be administered in lieu of kindergarten  
28 attendance only under extraordinary circumstances to be determined by the county board.

29           (c) Notwithstanding the provisions of this section, section five, article two of this chapter  
30 and section eighteen, article five of this chapter, a county board may provide for advanced  
31 entrance or placement under policies adopted by said board for any child who has demonstrated  
32 sufficient mental and physical competency for such entrance or placement.

33           (d) This section does not prevent a student from another state from enrolling in the same  
34 grade in a public school in West Virginia as the student was enrolled at the school from which the  
35 student transferred.



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

.....  
*Chairman, Senate Committee*

.....  
*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

.....  
*Clerk of the Senate*

.....  
*Clerk of the House of Delegates*

.....  
*President of the Senate*

.....  
*Speaker of the House of Delegates*

\_\_\_\_\_

The within ..... this the.....  
Day of ....., 2017.

.....  
*Governor*