

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Committee Substitute

for

Senate Bill 186

BY SENATORS JEFFRIES, OJEDA, FACEMIRE AND

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[Originating in the Committee on Finance; reported on

March 13, 2017]

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

27 ~~(e)~~ (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 ~~(d)~~ (e) Pursuant to the guidelines and criteria, and only pursuant to the guidelines and
41 criteria, the county boards may establish programs taking kindergarten to the homes of the
42 children 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 ~~(b)~~ (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 ~~(e)~~ (d) Beginning no later than the school year 2012-2013 and continuing thereafter,
43 county boards shall provide early childhood education programs for all children who have attained
44 the age of four prior to September 1 of the school year in which the children enter the early
45 childhood education program. Beginning no later than the school year 2016-2017 and continuing
46 thereafter, these early childhood education programs shall provide at least forty-eight thousand
47 minutes annually and no less than fifteen hundred minutes of instruction per week.

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

51 ~~(d)~~ (f) The program shall meet the following criteria:

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

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

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

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

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

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

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

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

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

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

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

75 (6) Any other public or private funds.

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

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

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

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

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

86 (5) Specific time lines for implementation; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

139 (1) Standards for curriculum;

140 (2) Standards for preparing students;

141 (3) Attendance requirements;

142 (4) Standards for personnel; and

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

144 ~~(a)~~ (t) The rule shall include the following elements relating to curriculum standards:

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

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

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

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

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

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

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

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

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

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

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

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

172 (2) For those county boards that are including eligible children attending approved,
173 contracted community-based programs in their net enrollment for the purposes of calculating state
174 aid pursuant to article nine-a of this chapter, documentation that the county board is equitably
175 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) Beginning with the 2011-2012 high school freshman cohort class of students, and
14 notwithstanding the provisions of section one of this article, compulsory school attendance begins
15 with the school year in which the sixth birthday is reached prior to September 1 of such year or
16 upon enrolling in a publicly supported kindergarten program and continues to the seventeenth
17 birthday or for as long as the student continues to be enrolled in a school system after the
18 seventeenth birthday: Provided, That beginning in the school year 2019-2020, compulsory school
19 attendance begins with the school year in which the sixth birthday is reached prior to July 1 of
20 such year or upon enrolling in a publicly supported kindergarten program.

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

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

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

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

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

NOTE: The purpose of this bill is to adjust the date upon which children become eligible for certain school programs and school attendance requirements. The bill changes the kindergarten age attainment requirement from age five prior to September 1, to age five prior to July 1. The bill changes the early childhood education program age attainment date requirement from age four prior to September 1, to age four prior to July 1. The bill changes the age for which compulsory attendance begins to those who attain age six by July 1, of each year.

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