

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4510

BY DELEGATES JENNINGS, ELLINGTON, SYPOLT, AND

STATLER

[Committee on Education; February 21, 2022]

1 A BILL to amend and reenact §18-2E-10 of the Code of West Virginia, 1931, as amended, relating
2 to providing for a multi-tiered system of support intervention for grade level literacy and
3 numeracy by end of third grade; making findings; replacing transformative intervention
4 framework with multi-tiered system of support; addressing both reading and mathematics;
5 requiring early learning reporting system and specifying uses; specifying minimum
6 information and notice to parent or guardian; providing for professional learning for certain
7 teachers and specifying subjects; ensuring certain training and instruction be provided by
8 education preparation programs that prepare candidates seeking licensure for elementary
9 education; removing redundant language; providing for data from the early learning
10 reporting system to be used to inform classroom teacher's recommendation regarding
11 grade level retention; requiring county board implementation; requiring reports by state
12 board; requiring certain legislative appropriation and other funds be used for
13 implementation; requiring retention in third grade of public school and public charter school
14 student who demonstrate minimal grade level understanding and ability upon
15 recommendation of teacher and student assistance team; providing exceptions; requiring
16 students starting in the fourth grade who score below proficient in English language arts
17 or mathematics on general summative assessment to continue to be provided intervention
18 until grade level proficient.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-10. ~~Transformative system of support for early literacy~~ Multi-tiered system of support intervention for grade level literacy and numeracy by the end of the third grade; pre-service and in-service teacher training; notice to parent or guardian; third grade retention policy with exceptions; interventions continuing in fourth grade for students below proficient.

1 (a) The Legislature finds that:

2 (1) In the early learning years, ensuring that each student masters the content and skills
3 needed for mastery at the next grade level is critically important for student success;

4 (2) Best practices for a comprehensive approach to Early and Elementary learning
5 instruction indicate appropriate and sufficient emphasis in all content areas are provided.
6 Developmentally appropriate integration of literacy, numeracy and other content is utilized to
7 provide rigor based on student's prior experiences, knowledge and developmental levels.

8 ~~(2)~~ (3) Students who do not demonstrate grade-level proficiency in reading and
9 mathematics by the end of third grade become increasingly less likely to succeed at each
10 successive grade level and often drop out of school prior to graduation;

11 ~~(3)~~ (4) State board policy requires every school to establish a process for ensuring the
12 developmental and academic progress of all students. This process is to be coordinated by a
13 school student assistance team that reviews student developmental and academic needs that
14 have persisted despite being addressed through instruction, intervention, and as applicable,
15 supports for personalized learning. Ensuring the developmental and academic success of all
16 students requires every school to implement, in an equitable manner, programs during and after
17 the instructional day at the appropriate instructional levels that contribute to the success of
18 students; and

19 ~~(4)~~ (5) To ensure that all students read and perform mathematics proficiently by the end
20 of third grade, a statewide comprehensive approach to early literacy and numeracy is required.
21 This approach shall focus on intensive supports during the early learning years which include
22 schools and engaged communities mobilized to remove barriers, expand opportunities, and assist
23 parents in fulfilling their roles and responsibilities to serve as full partners in the success of their
24 children.

25 (b) The state board shall, in accordance with ~~the provisions of article three b, chapter~~
26 ~~twenty nine a~~ §29A-3B-1 et seq. of this code, promulgate legislative rules as necessary to
27 effectuate the provisions of this section. The rules shall provide for at least the following:

28 (1) Development of a comprehensive, systemic approach to close the reading and
29 mathematics achievement ~~gap~~ gaps by third grade, which targets school readiness, the
30 attendance gap, summer learning loss and ~~a transformative intervention framework for student~~
31 ~~and learning supports~~ implements a multi-tiered system of support intervention framework;

32 (2) Ensuring all West Virginia children have access to high quality early learning
33 experiences that focus on healthy learners as part of the school readiness model, resulting in
34 increased populations of children on target for healthy development prior to entering first grade;

35 (3) Closing the attendance gap to certify West Virginia children attend school regularly
36 and limit chronic absenteeism in the early grades;

37 (4) Assisting county boards in establishing and operating targeted, sustained extended
38 day and extended year reading and mathematics programs to ensure grade level proficiency and
39 battle summer learning loss;

40 (5) Establishing and maintaining an early learning reporting system to gauge the extent to
41 which students in grades pre-K through three are progressing toward proficiency in English
42 language arts and mathematics standards. Teachers in grades pre-K through three must identify
43 students with deficiencies in English language arts and/or mathematics and implement targeted
44 and/or intensive intervention for those students through a multi-tiered system of support
45 throughout the school year.

46 ~~(5)~~ (6) Maximizing family engagement to result in the development of a culture of literacy
47 and numeracy from birth through third grade which shall at least include:

48 (A) Providing the parent or guardian with regular updates to inform them of their child's
49 progress toward proficiency in English language arts and mathematics;

50 (B) Ensuring the parent or guardian is informed of and have access to resources which
51 they may utilize to improve their child's literacy and numeracy skills;

52 (C) Ensuring the parent or guardian is informed of the importance of grade level literacy
53 and numeracy by the end of the third grade and the measures that will be employed pursuant to

54 this section to improve the literacy and numeracy skills of children who are not meeting the
55 standards, as well as the grade three retention policy and the exceptions; and

56 (D) The parent or guardian of any student in pre-K through grade three who exhibits a
57 deficiency in reading or mathematics at any time during the school year must be notified in writing
58 no later than 15 days after the identification of the deficiency, and the written notification must
59 include the following:

60 (i) That his or her child has been identified as having a deficiency in reading and/or
61 mathematics and an improvement plan will be developed by the teacher, principal, other pertinent
62 school personnel, and the parent(s);

63 (ii) A description of the current services that are provided to the child;

64 (iii) A description of the proposed research-based reading and/or mathematics
65 interventions and supplemental instructional services and supports that will be provided to the
66 child that are designed to remedy the identified area(s) of deficiency;

67 (iv) Strategies for the parent or guardian to use at home to help their child succeed in
68 reading and/or mathematics; and

69 (v) That if the child's reading and/or mathematics deficiency is not corrected by the end of
70 grade three, the child may not be promoted to grade four unless an exemption is met.

71 ~~(6) (7) Supporting high quality schools and a workforce prepared to address early literacy~~
72 ~~and numeracy identification of interventions, and implementation of a system of intervention for~~
73 ~~children not reaching grade level proficiency through a multi-tiered system of support including,~~
74 ~~but not limited to, professional learning for kindergarten, first, second, third, and fourth grade~~
75 ~~teachers on the following:~~

76 (A) The Department approved early learning reporting system and multi-tiered system of
77 support to ensure teachers have the knowledge and skill to administer the systems and use the
78 data to inform instruction based on student needs;

79 (B) Comprehensive training on the science of reading and numeracy instruction to ensure
80 all teachers have the knowledge and skill to teach all students to read and perform mathematics
81 at grade level, including students with dyslexia or dyscalculia; and

82 (C) Job-embedded, on-site teacher training on evidence-based reading and mathematics
83 instruction and data-based decision making that provides immediate feedback for improving
84 instruction.

85 ~~(7)~~ (8) Ensuring the employment of qualified teachers and service personnel in
86 accordance with the provisions of section thirty-nine, article five of this chapter and section seven-
87 e, article four, chapter eighteen-a §18-5-39 and §18A-4-7c of this code to provide instruction to
88 students enrolled in early literacy and numeracy support programs including, but not limited to,
89 ensuring that educator preparation programs prepare candidates seeking licensure for
90 elementary education with training and instruction to:

91 (A) Effectively teach foundational reading and mathematics skills and implement reading
92 instruction using high-quality instructional materials;

93 (B) Provide effective instruction and interventions for students with reading and math
94 deficiencies, including students with characteristics of dyslexia or dyscalculia; and

95 (C) Understand and use student data to make instructional decisions.

96 ~~(8)~~ (9) Creating a formula or grant-based program for the distribution of funds appropriated
97 specifically for the purposes of this section or otherwise available for the support of a targeted,
98 multi-tiered system of support intervention comprehensive system of support for early literacy and
99 numeracy;

100 ~~(9)~~ (10) Providing support for transportation and healthy foods for students required to
101 attend after-school and extended year early literacy and numeracy instructional support programs
102 and supervision at the school that accommodates the typical work schedules of parents; and

103 ~~(40)~~ (11) Receiving from county boards any applications and annual reports required by
104 rule of the state board.

105 (c) A student in grades kindergarten through three ~~who is recommended by the student~~
106 ~~assistance team or the student's classroom teacher for additional assistance in one or more of~~
107 ~~the key standards of English Language Arts including reading, speaking and listening, writing or~~
108 ~~language~~ may be required to attend an extended year early literacy and numeracy instructional
109 support program as a condition for promotion if:

110 (1) The student has been provided additional academic help through the multi-tiered
111 system of support intervention which may include an in-school or after-school early literacy and
112 numeracy instructional support program and, prior to the end of the school year, the student
113 assistance team or the student's classroom teacher recommends that further additional academic
114 help is needed for the student to be successful at the next grade level; and

115 (2) The county board has established ~~an~~ a multi-tiered system of support intervention for
116 early literacy and numeracy instructional support program during the extended year for the
117 student's grade level.

118 (d) County boards shall provide high-quality educational facilities, equipment and services
119 to support a multi-tiered system of support intervention for early literacy and numeracy
120 instructional support programs established pursuant to this section. Extended year programs may
121 be provided at a central location for kindergarten through third graders who qualify for the
122 program.

123 (e) This section may not be construed to prohibit a classroom teacher from recommending
124 the grade level retention of a student in any of the grades pre-kindergarten through grade three
125 based upon the student's lack of mastery of the subject matter and preparation for the subject
126 matter at the next grade level. Data from the early learning reporting system will be used to inform
127 the classroom teacher's recommendation.

128 (f) This section may not be construed to affect the individualized education plans of
129 exceptional students.

130 (g) This section may not be construed to limit the authority of the county board to establish
131 an extended year program in accordance with ~~section thirty nine, article five of this chapter~~ §18-
132 5-39 of this code. County boards may not charge tuition for enrollment in early literacy and
133 numeracy instructional support programs established pursuant to this section.

134 (h) Each county board shall ~~prepare to~~ implement the provisions of this section and the
135 provisions of the state board rule required by subsection (b) of this section. ~~The preparations shall~~
136 ~~at least include planning, ensuring~~ The county board shall establish a process for ensuring the
137 developmental and academic progress of all students through the auspices of student assistance
138 teams as currently required by state board policy and ~~performing~~ perform a needs assessment to
139 determine the potential capacity requirements for the system of support for early learners.

140 (i) The state board shall provide a report describing the ~~proposed~~ implementation of the
141 ~~transformative system of support~~ multi-tiered system of support intervention for early literacy and
142 numeracy to the Legislative Oversight Commission on Education Accountability on or before July
143 ~~1, 2014~~ July 1, 2022.

144 (j) The state board shall provide a comprehensive report regarding the status of the
145 ~~transformative system of support~~ multi-tiered system of support intervention for early literacy and
146 numeracy to the Legislative Oversight Commission on Education Accountability, the Joint
147 Committee on Government and Finance, and the Governor on ~~November 1, 2014~~ November 1,
148 2022, and annually on November 1 on each year thereafter. The report shall address, at a
149 minimum, the progress of the program throughout the state, its effect on student achievement
150 and the sources of the funding both available to and used by the program.

151 (k) Legislative appropriations to the State Board of Education – State Department of
152 Education Early Literacy Program shall be used for the implementation of the provisions of this
153 section along with other funds available for providing a high-quality education. ~~The provisions of~~
154 ~~this section are subject to the availability of funds from legislative appropriation or other sources~~
155 ~~specifically designated for the purposes of this section. If a county board determines that~~

156 ~~adequate funds are not available for full implementation of a transformative system of support for~~
157 ~~early literacy in the county, the county board may implement its program in phases by first~~
158 ~~establishing early literacy instructional support programs in the early readiness grades~~
159 ~~(Kindergarten), then the primary grades (Grades 1-2), and then establishing an early literacy~~
160 ~~instructional support program for the third grade once the county board determines that adequate~~
161 ~~funds are available.~~

162 (l) Effective for the school year beginning July 1, 2025, and thereafter, a public school
163 student or public charter school student who generally demonstrates a minimal understanding of,
164 and ability to apply, grade level English language arts or mathematics knowledge, skills and
165 abilities, or both, relative to the West Virginia College and Career Readiness Standards at the
166 end of the third grade shall upon the recommendation of the teacher and the student assistance
167 team be retained in the third grade for the ensuing school year subject to the following exceptions:

168 (1) A student with disabilities whose Individual Education Plan indicates that participation
169 in the statewide summative assessment is not appropriate, consistent with state law;

170 (2) A student identified as an English language learner who has had less than three years
171 instruction in English as a second language;

172 (3) A student with disabilities who participates in the statewide summative assessment,
173 has an Individual Education Plan or section 504 plan that reflects that the student has received
174 intensive intervention for more than two years and still demonstrates a deficiency and who was
175 previously retained in any of the grades pre-K through three;

176 (4) A student who is in the process of a special education referral or evaluation for
177 placement in special education, has been diagnosed as having a significant impairment, including
178 dyslexia, or is a child with a disability if the student's individualized education program team and
179 student's parent or guardian agree that promotion is appropriate based on the student's
180 Individualized Education Plan;

181 (5) A student who has received intensive intervention for two or more years, still
182 demonstrates a deficiency and who was previously retained in any of the grades pre-K through
183 three for a total of two years: *Provided*, That the student shall continue to receive intensive
184 intervention in grade four;

185 (6) A student who demonstrates an acceptable level of performance on an alternative
186 standardized assessment approved by the State Board;

187 (7) A student who attends an extended year learning program following the third grade
188 and has attained proficiency; and

189 (8) The parent or guardian of a student requests promotion of their child to the fourth grade
190 notwithstanding the recommendation of the teacher and the student assistance team: *Provided*,
191 That the child is required to attend an extended year program prior to promotion to the fourth
192 grade.

193 (m) Starting in fourth grade, students who score below proficient in English language arts
194 or mathematics on the West Virginia General Summative Assessment shall continue to be
195 provided targeted and/or intensive intervention through a multi-tiered system of support until the
196 student demonstrates grade level proficiency in English language arts and/or mathematics on the
197 West Virginia General Summative Assessment.

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