

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2596**

BY DELEGATES TONEY, STATLER, VANCE, ELLINGTON,

COOPER, SHAMBLIN, FOGGIN AND HECKERT

[Passed February 22, 2023; in effect ninety days from passage.]



1 AN ACT to amend and reenact §18-5-16 of the Code of West Virginia, 1931, as amended, relating  
2 to open enrollment; clarifying the circumstances in which a county board of education shall  
3 permit the transfer of resident students; allowing appeal to State Superintendent of  
4 Schools; amending provisions pertaining to the contents of county board of education  
5 policies for open enrollment; requiring process for enrollment application to be clearly  
6 publicized and made available on the county board's website; modifying reasons for which  
7 an application can be denied; and requiring county boards and the State Department of  
8 Education to report annually on the number of transfer approvals and denials made  
9 pursuant to open enrollment policies.

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

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

**§18-5-16. Student transfers; definitions; appeals; calculating net enrollment; fees for transfer.**

1 (a) *Establishment of attendance zones within counties.* — The county board may establish  
2 attendance zones within the county to designate the schools within its district that resident  
3 students typically attend: *Provided,* That a county board may permit any eligible elementary,  
4 middle or high school resident student to apply for enrollment in any school with grade level  
5 capacity and existing programs and services currently outside any established attendance zone  
6 in which the student resides. Upon the written request of any parent or guardian, or person legally  
7 responsible for any resident student, the superintendent may grant a resident student's transfer  
8 request from one school or program to another within the county so long as grade level capacity  
9 and the program and services exist at the time of the request. Counties with a critical need  
10 shortage policy may further review the request to determine if appropriate staffing is available in  
11 the requested grade, program, service, or content area. A superintendent may not transfer a  
12 resident student from one school to another within the county for reasons affecting the best  
13 interests of the schools without the consent of the student's parent or legal guardian. Any

14 aggrieved person may appeal a transfer or denial of transfer by the county superintendent to the  
15 county board. When making enrollment decisions, a county superintendent or county board may  
16 not distinguish between students on the basis of residential or potential disability status. A county  
17 superintendent or county board may determine if appropriate staff, resources, services and  
18 programs are in place to meet the disability needs of the student at the requested school. A  
19 decision of the county board may be appealed to the state superintendent of schools, whose  
20 decision shall be final.

21 (b) *Definitions.* — For the purposes of this section, unless a different meaning clearly  
22 appears from the context:

23 (1) "Nonresident student" means a student who resides in this state and who is enrolled  
24 in or is seeking enrollment in a county school district other than the county school district in which  
25 the student resides.

26 (2) "Open enrollment" means a policy adopted and implemented by a county board to  
27 allow nonresident students to enroll in any school within the district. Open enrollment is distinct  
28 from a mutual agreement of two county boards regarding mass transfer of students, as  
29 contemplated in §18-5-13(f)(1)(C) of this code.

30 (c) *Enrollment policies for nonresident students.* — County boards shall establish and  
31 implement an open enrollment policy for nonresident students without charging tuition and without  
32 obtaining approval from the board of the county in which a student resides and transfers. This  
33 policy shall clearly establish an open enrollment process and enrollment application period for  
34 nonresident students to enroll in any school within the district. The process for enrollment  
35 application shall be clearly publicized to parents and the general public, including dates and  
36 timelines, and shall be made available on the board's website. As part of the open enrollment  
37 policy, county boards shall also establish a process for nonresident students to enroll in any  
38 school within the district on a case-by-case basis at any time during the academic year so long  
39 as all other requirements are met including that the student has not previously transferred within

40 the same school year. The open enrollment policy shall not discriminate against nonresident  
41 students on the basis of their residential address or any potential disability status. Enrollment  
42 policies are subject to the following:

43 (1) A county board may give enrollment preference to:

44 (A) Siblings of students already enrolled through the open enrollment policy;

45 (B) Secondary students who have completed 10th grade and, due to family relocation,  
46 become nonresident students, but express the desire to remain in a specific school to complete  
47 their education;

48 (C) Students who are children, grandchildren, or legal wards of employees;

49 (D) Students whose legal residences, though geographically within another county, are  
50 more proximate to a school within the receiving county, whether calculated by miles or  
51 transportation time;

52 (E) Students who reside in a portion of a county where topography, impassable roads,  
53 long bus rides, or other conditions prevent the practicable transportation of the student to a school  
54 within the county, and a school within a contiguous county is more easily accessible; and

55 (F) The county board to which the student wishes to be transferred may not refuse a  
56 transfer by virtue of the student transferring from a private, parochial, church, or religious school  
57 holding an exemption approved pursuant to §18-8-1(k) of this code: *Provided*, That nothing in this  
58 paragraph shall be construed to allow a county board to give an enrollment preference to a student  
59 transferring from a private, parochial, church, or religious school holding an exemption approved  
60 pursuant to §18-8-1(k) of this code.

61 (2) A county shall comply with all enrollment requirements for children who are in foster  
62 care or who meet the definition of unaccompanied youth prescribed in the McKinney-Vento  
63 Homeless Assistance Act (42 U.S.C. § 11434a(6)).

64 (3) The county board for the county educating the nonresident student may provide an  
65 adequate means of transportation to nonresident students when students have complied with the

66 procedure for obtaining authorization to attend school outside their county of residence, subject  
67 to the following:

68 (A) County boards of education are not required to uniformly provide nonresident student  
69 transportation, and may consider whether a nonresident student meets the eligibility criteria for  
70 free or reduced price lunch and milk established within the Richard B. Russell National School  
71 Lunch Act (42 U.S.C. § 1758); and

72 (B) The county board for the county educating the nonresident student shall provide  
73 transportation to and from the school of attendance, or to and from an agreed pickup point on a  
74 regular transportation route, or for the total miles traveled each day for the nonresident student to  
75 reach the school of enrollment if the nonresident student is a student with disabilities and has an  
76 individualized education program that specifies that transportation is necessary for fulfillment of  
77 the program.

78 (4) An application may only be denied by a county board of education due to lack of grade  
79 level capacity, lack of programs or services due to areas identified in the county board critical  
80 need policy, or the commission of Level 3 or Level 4 inappropriate behavior as defined by West  
81 Virginia Board of Education Policy 4373 in the last year. The denial shall be in writing, sent to the  
82 parent or guardian of the nonresident student and the West Virginia Department of Education  
83 within three business days of the decision, and include the reason and explanation for the denial  
84 and information on appealing the denial of the application. If a nonresident student fails to fill out  
85 or submit an open enrollment application correctly, a county board shall provide an explanation  
86 of ways in which the application may be corrected and submitted for necessary approval.

87 (d) *Appeal.* — The State Board of Education shall establish a process whereby a parent  
88 or guardian of a student may appeal to the State Superintendent the refusal of a county board to  
89 accept the transfer of the student. If during the appeal process, the State Superintendent  
90 discovers that the education and the welfare of the student could be enhanced, the State

91 Superintendent may direct that the student may be permitted to attend a school in the receiving  
92 county.

93 (e) *Net enrollment.* — For purposes of net enrollment as defined in §18-9A-2 of this code,  
94 whenever a student is transferred on a full-time basis from one school district to another district  
95 pursuant to the provisions of this section, the county to which the student is transferred shall  
96 include the student in its net enrollment, subject to the following:

97 (1) If a student transfers after the second month of any school year, the county to which  
98 the student transferred may issue, in the following fiscal year, an invoice to the county from which  
99 the student transferred for the amount, determined on a pro rata basis, that the county now  
100 responsible for educating the student otherwise would have received under the state basic  
101 foundation program established in §18-9A-1 *et seq.* of this code had such student been included  
102 in the county's prior year's net enrollment;

103 (2) If a student in grades kindergarten through 12 transfers after the second month of any  
104 school year, the county to which the student transferred may issue, in the following fiscal year, an  
105 invoice to the county from which the student transferred for the amount the county now  
106 responsible for educating the student otherwise would have received under aid to exceptional  
107 students had such student been included in the county's prior year's child count enrollment;

108 (3) If a student in prekindergarten transfers after the child count of exceptional students is  
109 certified for any school year, the county to which the student transferred may issue, in the following  
110 fiscal year, an invoice to the county from which the student transferred for the amount the county  
111 now responsible for educating the student otherwise would have received under aid to exceptional  
112 students had such student been included in the county's prior year's child count enrollment; and

113 (4) The county from which the student transferred shall reimburse the county to which the  
114 student transferred for the amount of the invoice.

115 (f) *Transfers between states.* — Transfer of students from this state to another state shall  
116 be upon such terms, including payment of tuition, as shall be mutually agreed upon by the board  
117 of the receiving county and the authorities of the school or district from which the transfer is made.

118 (g) No parent, guardian, or person acting as parent or guardian is required to pay for the  
119 transfer of a student or for the tuition of the student after the transfer when the transfer is carried  
120 out under the terms of this section.

121 (h) Nothing in this section supersedes the eligibility requirements for participation in extra-  
122 curricular activities established by the Secondary School Activities Commission.

123 (i) Each county board shall report annually to the State Department of Education the  
124 number of resident and nonresident student transfers approved by the county board for the  
125 preceding school calendar year, as well as the number of resident and nonresident student  
126 transfer applications denied and the reasons for those denials. On or before June 30 of each year,  
127 the State Department of Education shall compile the information from the county boards and  
128 report the information to the Legislative Oversight Commission on Education Accountability.  
129 Information regarding the annual number of resident and nonresident student transfer approvals  
130 and denials shall also be made available on each county board's website.



The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

Originated in the House of Delegates.

In effect ninety days from passage.

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within is ..... this the.....  
Day of ....., 2023.

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*Governor*