

H. B. 2861

(By Delegates Pasdon, M. Poling, Barill, Marshall,
Frich and Fleischauer)

[Introduced March 7, 2013; referred to the
Committee on Education then Finance.]

A BILL to amend and reenact §18-2-6 of the Code of West Virginia, 1931, as amended, relating to continued enrollment of at-risk student in public school while enrolled in an alternative program that meets certain conditions; making legislative findings on at-risk students, discouraged and defeated learners and purpose for authorizing continued enrollment; authorizing county superintendent to approve continued enrollment; providing conditions under which continued enrollment may be approved; and eliminating required annual report on cooperation with challenge academy.

Be it enacted by the Legislature of West Virginia:

That §18-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Classification and standardization of schools; standards

1 **for degrees and diplomas; certificates of proficiency;**
2 **establishment of alternative education programs.**

3 (a) (1) The state board shall promulgate rules for the
4 accreditation, classification and standardization of all schools in
5 the state, except institutions of higher education, and shall
6 determine the minimum standards for the granting of diplomas and
7 certificates of proficiency by those schools. The certificates of
8 proficiency shall include specific information regarding the
9 graduate's skills, competence and readiness for employment or
10 honors and advanced education and shall be granted, along with the
11 diploma, to every eligible high school graduate. The certificate
12 of proficiency shall include the program of study major completed
13 by the student only for those students who have completed the
14 required major courses, or higher level courses, advanced placement
15 courses, college courses or other more rigorous substitutes related
16 to the major, and the recommended electives.

17 (2) An institution of less than collegiate or university
18 status may not grant any diploma or certificate of proficiency on
19 any basis of work or merit below the minimum standards prescribed
20 by the state board.

21 (3) A charter or other instrument containing the right to
22 issue diplomas or certificates of proficiency may not be granted by
23 the State of West Virginia to any institution or other associations
24 or organizations of less than collegiate or university status

1 within the state until the condition of granting or issuing the
2 diplomas or other certificates of proficiency has first been
3 approved in writing by the state board.

4 (b) The state board shall promulgate a rule for the approval
5 of alternative education programs for disruptive students who are
6 at risk of not succeeding in the traditional school structure.
7 This rule may provide for the waiver of other policies of the state
8 board, the establishment and delivery of a nontraditional
9 curriculum, the establishment of licensure requirements for
10 alternative education program teachers, and the establishment of
11 performance measures for school accreditation. This rule shall
12 provide uniform definitions of disruptive student behavior and
13 uniform standards for the placement of students in alternative
14 settings or providing other interventions including referrals to
15 local juvenile courts to correct student behavior so that they can
16 return to a regular classroom without engaging in further
17 disruptive behavior.

18 (c) The state board shall establish up to five pilot projects
19 at the elementary or middle school levels, or both, that employ
20 alternative schools or other placements for disruptive students to
21 learn appropriate behaviors so they can return to the regular
22 classroom without further disrupting the learning environment. The
23 state board shall report to the Legislative Oversight Commission on
24 Education Accountability by December 1, 2010, on its progress in

1 establishing the pilot projects and by December 1 in each year
2 after that for the duration of the pilot projects on the effect of
3 the projects on maintaining student discipline.

4 (d) If a student attends an approved alternative education
5 program or the Mountaineer Challenge Academy, which is designated
6 as a special alternative education program pursuant to section
7 twenty-four, article one-b, chapter fifteen of this code, and the
8 student graduates or passes the General Equivalency Development
9 (GED) Tests within five years of beginning ninth grade, that
10 student shall be considered graduated for the purposes of
11 calculating the high school graduation rate used for school
12 accreditation and school system approval, subject to the following:

13 (1) The student shall only be considered graduated to the
14 extent that this is not in conflict with any provision of federal
15 law relating to graduation rates;

16 (2) If the state board determines that this is in conflict
17 with a provision of federal law relating to graduation rates, the
18 state board shall request a waiver from the United States
19 Department of Education; and

20 (3) If the waiver is granted, notwithstanding the provisions
21 of subdivision (1) of this subsection, the student graduating or
22 passing the General Educational Development (GED) Tests within five
23 years shall be considered graduated.

24 (e) The state board shall promulgate a rule to support the

1 operation of the National Guard Youth Challenge Program operated by
2 the Adjutant General and known as the "Mountaineer Challenge
3 Academy" which is designated as a special alternative education
4 program pursuant to section twenty-four, article one-b, chapter
5 fifteen of this code, for students who are at risk of not
6 succeeding in the traditional school structure. The rule shall set
7 forth policies and procedures applicable only to the Mountaineer
8 Challenge Academy that provide for, but are not limited to, the
9 following:

10 (1) Implementation of provisions set forth in section
11 twenty-four, article one-b, chapter fifteen of this code;

12 (2) Precedence of the policies and procedures designated by
13 the National Guard Bureau for the operation of the Mountaineer
14 Challenge Academy special alternative education program;

15 (3) Consideration of a student participating in the
16 Mountaineer Challenge Academy special alternative education program
17 at full enrollment status in the referring county for the purposes
18 of funding and calculating attendance and graduation rates, subject
19 to the following:

20 (A) The student shall only be considered at full enrollment
21 status for the purposes of calculating attendance and graduation
22 rates to the extent that this is not in conflict with any provision
23 of federal law relating to attendance or graduation rates;

24 (B) If the state board determines that this is in conflict

1 with a provision of federal law relating to attendance or
2 graduation rates, the state board shall request a waiver from the
3 United States Department of Education;

4 (C) If the waiver is granted, notwithstanding the provisions
5 of paragraph (A) of this subdivision, the student shall be
6 considered at full enrollment status in the referring county for
7 the purposes of calculating attendance and graduation rates; and

8 (D) Consideration of the student at full enrollment status in
9 the referring county is for the purposes of funding and calculating
10 attendance and graduation rates only. For any other purpose, a
11 student participating in the academy is considered withdrawn from
12 the public school system;

13 (4) Articulation of the knowledge, skills and competencies
14 gained through alternative education so that students who return to
15 regular education may proceed toward attainment or attain the
16 standards for graduation without duplication; and

17 (5) Consideration of eligibility to take the General
18 Educational Development (GED) Tests by qualifying within the
19 extraordinary circumstances provisions established by state board
20 rule of a student participating in the Mountaineer Challenge
21 Academy special alternative education program who does not meet any
22 other criteria for eligibility.

23 (f) Nothing in this section or the rules promulgated under
24 this section compels the Mountaineer Challenge Academy to be

1 operated as a special alternative education program or to be
2 subject to any other laws governing the public schools except by
3 its consent.

4 ~~(g) The state board shall report to the Legislative Oversight
5 Commission on Education Accountability on or before January 1 of
6 each year on its efforts to cooperate with and support the
7 Mountaineer Challenge Academy pursuant to this section and section
8 twenty-four, article one-b, chapter fifteen of this code.~~

9 (g) The Legislature finds that any child who is unlikely to
10 graduate on schedule with both the skills and self esteem necessary
11 to exercise meaningful options in the areas of work, leisure,
12 culture, civic affairs and personal relationships may be defined as
13 being an at-risk student. At-riskness often starts in the early
14 grades for a student that gradually falls further behind in the
15 essential skills of reading, writing and math, and may be
16 accompanied by patterns of behavior such as poor attendance,
17 inattentiveness, negative attitudes and classroom misbehavior that
18 both are symptoms of and added catalysts for increasingly defeated
19 and discouraged learners. At least by the middle grades, students
20 with growing skill deficits usually know they are behind other
21 students and have good reason to feel discouraged. A growing lack
22 of self confidence and self worth, limited optimism for the future,
23 avoidance of school and adults and a dimming view of the
24 relationship between effort and achievement are among the

1 characteristics of defeated and discouraged learners. While the
2 public schools can and are expected to address the needs of all
3 students, minimizing the likelihood that they will become at-risk
4 and giving additional attention to those that do, the circumstances
5 involved with a child becoming at-risk are often complex and may
6 include influences both within and outside of the school
7 environment. In fragile homes, a child who is at-risk and is
8 becoming a discouraged and defeated learner often lacks adequate
9 support and may develop peer relationships that further exacerbate
10 the difficulty of reengaging them in learning, school and
11 responsible social behavior.

12 The Legislature further finds that when a student in the
13 public schools is at-risk and is becoming a discouraged and
14 defeated learner, the public schools should not be deterred from
15 seeking and assisting with enrollment of the student in an
16 alternative program that helps remedy the student's discouragement,
17 lessen their skill deficits and facilitate their return to public
18 school successfully. For this purpose, subject to approval of the
19 county superintendent, a student enrolled in the public schools of
20 the county may continue to be enrolled while also enrolled in an
21 alternative program subject to the following conditions:

22 (1) The student meets the general description of an at-risk
23 student and exhibits behaviors and characteristics associated with
24 a discouraged and defeated learner such as those described in this

1 subsection;

2 (2) The alternative program is a school subject to article
3 twenty-eight of this chapter, and complies with all requests of the
4 county superintendent for information on the educational program
5 and progress of the student;

6 (3) The alternative program includes a family involvement
7 component in its program, including participation in activities
8 that help address the challenging issues that have hindered the
9 student's engagement and progress in learning, and the
10 participation of the student and the student's parents or legal
11 guardian is required;

12 (4) The alternative program includes an on site boarding
13 option for students;

14 (5) The alternative program provides an individualized
15 education program for students designed to prepare them for a
16 successful transition back into the public schools; and

17 (6) The parents or legal guardian of the student make
18 application to the alternative program for enrollment of the
19 student, agree to the terms and conditions for enrollment, and the
20 student is enrolled.

NOTE: The purpose of this bill is to remove a deterrent to public schools to seeking and assisting the enrollment of a student, who is at-risk and is becoming a discouraged and defeated learner, in an alternative program designed to prepare them for a

successful transition back into the public schools. The bill sets forth characteristics of a discouraged and defeated learner, and allows the county superintendent to approve the continued enrollment of these students in the public schools while they are enrolled in the alternative program. The alternative program must meet certain conditions outlined in the bill.

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