

1 **ENROLLED**

2 **Senate Bill No. 209**

3 (BY SENATORS BEACH, MILLER, COOKMAN, WALTERS AND FITZSIMMONS)

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5 [Passed March 6, 2014; in effect from passage.]
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10 AN ACT to amend and reenact §18-20-1 of the Code of West Virginia,
11 1931, as amended, relating to special programs and services
12 for exceptional children; requiring county boards to allow
13 student with disabilities whose individualized education plan
14 provides for a modified diploma to participate in graduation
15 ceremony with same grade classmates; permitting continued
16 special education services; and prohibiting county boards from
17 denying continuing special education services to the student
18 due to participation in graduation ceremony.

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

20 That §18-20-1 of the Code of West Virginia, 1931, as amended,
21 be amended and reenacted to read as follows:

22 **ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

23 **§18-20-1. Establishment of special programs and teaching services**

1 **for exceptional children; modified diploma graduation.**

2 (a) In accordance with the following provisions, county boards
3 of education throughout the state shall establish and maintain for
4 all exceptional children between five and twenty-one years of age
5 special educational programs, including, but not limited to,
6 special schools or classes, regular classroom programs,
7 home-teaching or visiting-teacher services for any type or
8 classification as the state board shall approve. Special
9 educational programs shall continue to be provided to those
10 children who are at least twenty-one years of age and enrolled in
11 the above-mentioned special education program prior to September 1,
12 1991, until they reach twenty-three years of age. Provisions shall
13 be made for educating exceptional children (including the
14 handicapped and the gifted) who differ from the average or normal
15 in physical, mental or emotional characteristics, or in
16 communicative or intellectual deviation characteristics, or in both
17 communicative and intellectual deviation characteristics, to the
18 extent that they cannot be educated safely or profitably in the
19 regular classes of the public schools or to the extent that they
20 need special educational provisions within the regular classroom in
21 order to educate them in accordance with their capacities,
22 limitations and needs: *Provided*, That for the school year beginning
23 on July 1, 1990, provisions shall be made for educating exceptional
24 children, including the handicapped, the gifted in grades one

1 through eight, the pupils enrolled on July 1, 1989, in the gifted
2 program in grades nine through twelve and the exceptional gifted in
3 grades nine through twelve. The term "exceptional gifted" means
4 those students in grades nine through twelve identified as gifted
5 and at least one of the following: Behavior disorder, specific
6 learning disabilities, psychological adjustment disorder,
7 underachieving or economically disadvantaged. Exceptional gifted
8 children shall be referred for identification pursuant to
9 recommendation by a school psychologist, school counselor,
10 principal, teacher, parent or by self-referral, at which time the
11 placement process, including development of an individualized
12 education program, and attendant due-process rights, shall
13 commence. Exceptional gifted children, for purposes of calculating
14 adjusted enrollment pursuant to section two, article nine-a of this
15 chapter, shall not exceed one percent of net enrollment in grades
16 nine through twelve. Nothing herein shall be construed to limit
17 the number of students identified as exceptional gifted and who
18 receive appropriate services. Each county board of education is
19 mandated to provide gifted education to its students according to
20 guidelines promulgated by the state board and consistent with the
21 provisions of this chapter. Upon the recommendation of a
22 principal, counselor, teacher and parent, a student who does not
23 meet the gifted eligibility criteria may participate in any school
24 program deemed appropriate for the student provided that classroom

1 space is available. In addition, county boards of education may
2 establish and maintain other educational services for exceptional
3 children as the State Superintendent of Schools may approve.

4 (b) County boards of education shall establish and maintain
5 these special educational programs, including, but not limited to,
6 special schools classes, regular class programs, home-teaching and
7 visiting-teacher services. The special education programs shall
8 include home-teaching or visiting-teacher services for children who
9 are homebound due to injury or who for any other reason as
10 certified by a licensed physician are homebound for a period that
11 has lasted or will last more than three weeks. The state board
12 shall adopt rules to advance and accomplish this program and to
13 assure that all exceptional children in the state, including
14 children in mental health facilities, residential institutions and
15 private schools, will receive an education in accordance with the
16 mandates of state and federal laws: *Provided*, That commencing with
17 the school year beginning on July 1, 1991, all exceptional children
18 in the state in foster care and correctional facilities will
19 receive an education in accordance with the mandates of state and
20 federal laws.

21 (c) Each county board of education shall adopt a policy that
22 allows a student with disabilities whose individualized education
23 program provides for a modified diploma to participate in the
24 graduation ceremony of his or her same grade classmates if

1 requested in writing by his or her parent or legal guardian. The
2 county board shall also permit the student to continue receiving
3 his or her special education services after the graduation
4 ceremony. The county board may not terminate, deny or declare the
5 student ineligible for post-graduation ceremony special education
6 services due to his or her participation in the graduation
7 ceremony.