

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 2554

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[Introduced January 21, 2019; Referred to the
Committee on Education.]

1 A BILL to repeal §18-5-16a of the Code of West Virginia, 1931, as amended; and to amend and
2 reenact §18-5-16 of said code, relating to transfers and enrollment policies for students in
3 public schools.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

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

1 ~~(a) County districts and school attendance.~~ — Establishment of attendance zones within
2 counties. — The county board ~~may divide~~ shall establish attendance zones within the county into
3 ~~such districts as are necessary to determine~~ to designate the schools ~~the~~ that its resident students
4 of its county shall attend. Upon the written request of any parent or guardian, or person legally
5 responsible for any student, or for reasons affecting the best interests of the schools, the
6 superintendent may transfer students from one school to another within the county. Any
7 aggrieved person may appeal the decision of the county superintendent to the county board, and
8 the decision of the county board ~~shall be~~ is final.

9 ~~(b) Transfers between counties; legislative findings~~ —

10 ~~(1) Transfers of students from one county to another may be made by the county board of~~
11 ~~the county in which the student desiring to be transferred resides. The transfer shall be subject to~~
12 ~~the approval of both the board of the county in which the student resides and the board to which~~
13 ~~the student wishes to be transferred.~~

14 ~~(2) Legislative findings.~~ — ~~Over the past several years, counties have been forced to close~~
15 ~~a number of schools because of declining student enrollment. School officials predict that an~~
16 ~~additional eighteen percent loss in enrollment may occur between 2002 and 2012. This continued~~
17 ~~decrease in the number of students enrolled in the public schools of the state may result in more~~
18 ~~instances of consolidation which will increase the problem of long bus rides for students if they~~
19 ~~remain in a school in their county of residence.~~

20 Therefore the Legislature makes the following findings:

21 ~~(A) County lines may impede the effective and efficient delivery of education services;~~

22 ~~(B) Students often must endure long bus rides to a school within their county of residence~~
23 ~~when a school in an adjacent county is a fraction of the distance away;~~

24 ~~(C) The wishes of parents or guardians to have their children transferred to a county other~~
25 ~~than their county of residence should be considered by the county boards; and~~

26 ~~(D) Where counties cannot agree, it is necessary to establish a process to determine when~~
27 ~~transfers are appropriate.~~

28 ~~(3) The state board shall establish a process whereby a parent or guardian of a student~~
29 ~~may appeal the refusal of a county board to enter into an agreement to transfer or accept the~~
30 ~~transfer of the student.~~

31 ~~(A) The process shall designate the state superintendent to hear the appeal. In~~
32 ~~determining whether to overturn a decision of a county board, the state superintendent shall~~
33 ~~consider such factors as the following:~~

34 ~~(i) Travel time for the student;~~

35 ~~(ii) Impact on levies or bonds;~~

36 ~~(iii) Other financial impact on the county of residence; and~~

37 ~~(iv) Such other factors as the state superintendent may determine.~~

38 ~~(B) If, during the appeal process, the state superintendent discovers that the education~~
39 ~~and the welfare of students in the transferring county could be enhanced, the state superintendent~~
40 ~~may direct that students may be permitted to attend a school in another county.~~

41 ~~(C) If multiple appeals are received from the same geographical area of a county, the state~~
42 ~~superintendent may impose on the receiving county restrictions including, but not limited to,~~
43 ~~requiring the receiving county to accept all students in that geographical area of the sending~~
44 ~~county who wish to transfer to the receiving county.~~

45 ~~(D) If a student is transferred on either a full-time or a part-time basis without the~~
46 ~~agreement of both boards by official action as reflected in the minutes of their respective meetings~~
47 ~~and if the student's parent or guardian fails to appeal or loses the appeal under the process~~
48 ~~established in subdivision (3) of this subsection, the student shall be counted only in the net~~
49 ~~enrollment of the county in which the student resides.~~

50 ~~(4) If, after two county boards have agreed to a transfer arrangement for a student, that~~
51 ~~student chooses to return to a school in his or her county of residence after the second month of~~
52 ~~any school year, the following shall apply:~~

53 ~~(A) The county of residence may issue an invoice to the county from which the student~~
54 ~~transferred for the amount, determined on a pro rata basis, that the county of residence otherwise~~
55 ~~would have received under the state basic foundation program established in article nine-a [SS~~
56 ~~18-9A-1 et seq.] of this chapter; and~~

57 ~~(B) The county from which the student transferred shall reimburse the county of residence~~
58 ~~for the amount of the invoice.~~

59 ~~(c) *Transfers between high schools.* — In any county where a high school is maintained,~~
60 ~~but topography, impassable roads, long bus rides, or other conditions prevent the practicable~~
61 ~~transportation of any students to such high school, the board may transfer them to a high school~~
62 ~~in an adjoining county. In any such case, the county boards may enter into an agreement providing~~
63 ~~for the payment of the cost of transportation, if any, of the students.~~

64 (1) *Definitions.* — For the purposes of this section, unless a different meaning clearly
65 appears from the context:

66 “Nonresident student” means a student who resides in this state and who is enrolled in or
67 is seeking enrollment in a county school district other than the county school district in which the
68 student resides.

69 “Open enrollment” means a policy adopted and implemented by a county board to allow
70 nonresident students to enroll in any school within the district pursuant to subsection (a) of this

71 section. Open enrollment is distinct from a mutual agreement of two county boards regarding
72 mass transfer of students, as contemplated in §18-5-13(f)(1)(C) of this code.

73 (2) Enrollment policies. – County boards may establish and implement an open enrollment
74 policy without charging tuition and without obtaining approval from the board of the county in
75 which a student resides and transfers. These policies shall clearly articulate any admission
76 criteria, application procedures, transportation provisions, timelines for open enrollment periods,
77 and restrictions on transfers due to building capacity constraints.

78 (A) A county board may give enrollment preference to:

79 (i) Siblings of students already enrolled through the open enrollment policy;

80 (ii) Secondary students who have completed tenth grade and, due to family relocation,
81 become nonresident students, but express the desire to remain in a specific school to complete
82 their education;

83 (iii) Students who are children, grandchildren, or legal wards of employees;

84 (iv) Students whose legal residences, though geographically within another county, are
85 more proximate to a school within the receiving county, whether calculated by miles or
86 transportation time; and

87 (v) Students who reside in a portion of a county where topography, impassable roads, long
88 bus rides, or other conditions prevent the practicable transportation of the student to a school
89 within the county, and a school within a contiguous county is more easily accessible.

90 (B) A county must comply with all enrollment requirements for children who are in foster
91 care or who meet the definition of unaccompanied youth prescribed in the McKinney-Vento
92 Homeless Assistance Act (42 U.S.C. §11434a(6)).

93 (C) The county board for the county educating the nonresident student may provide an
94 adequate means of transportation to nonresident students when students have complied with the
95 procedure for obtaining authorization to attend school outside their county of residence.

96 (i) County boards of education are not required to uniformly provide nonresident student
97 transportation, and may consider whether a nonresident student meets the eligibility criteria for
98 free or reduced price lunches and milk established within the Richard B. Russell National School
99 Lunch Act (42 U.S.C. §1758).

100 (ii) The county board for the county educating the nonresident student shall provide
101 transportation to and from the school of attendance, or to and from an agreed pickup point on a
102 regular transportation route, or for the total miles traveled each day for the nonresident student to
103 reach the school of enrollment if the nonresident student with disabilities has an individualized
104 education program that specifies that transportation is necessary for fulfillment of the program.

105 (3) Appeal. – The state board of education shall establish a process whereby a parent or
106 guardian of a student may appeal the refusal of a county board to accept the transfer of the
107 student. If during the appeal process, the State Superintendent discovers that the education and
108 the welfare of the student could be enhanced, the State Superintendent may direct that the
109 student may be permitted to attend a school in the receiving county.

110 (4) Net enrollment. – For purposes of net enrollment as defined in §18-9A-2 of this code,
111 whenever a student is transferred on a full-time basis from one school district to another district
112 pursuant to the provisions of this section, the county to which the student is transferred shall
113 include the student in its net enrollment.

114 (A) If, after transferring to another county, a student chooses to return to a school in his or
115 her county of residence after the second month of any school year, the following applies:

116 (i) The county of residence may issue an invoice to the county from which the student
117 transferred for the amount, determined on a pro rata basis, that the county of residence otherwise
118 would have received under the state basic foundation program established in §18-9A-1 et seq. of
119 this code; and

120 (ii) The county from which the student transferred shall reimburse the county of residence
121 for the amount of the invoice.

122 ~~(c) *Transfers between high schools.* — In any county where a high school is maintained,~~
123 ~~but topography, impassable roads, long bus rides, or other conditions prevent the practicable~~
124 ~~transportation of any students to such high school, the board may transfer them to a high school~~
125 ~~in an adjoining county. In any such case, the county boards may enter into an agreement providing~~
126 ~~for the payment of the cost of transportation, if any, of the students.~~

127 ~~(d) (b) *Transfers between states.* — Transfer of students from this state to another state~~
128 ~~shall be upon such terms, including payment of tuition, as shall be mutually agreed upon by the~~
129 ~~board of the ~~transferring~~ receiving county and the authorities of the school ~~to~~ or district from which~~
130 ~~the transfer is made.~~

131 ~~(e) (c) No parent, guardian, or person acting as parent or guardian shall be is required to~~
132 ~~pay for the transfer of a student or for the tuition of the student after the transfer when ~~such~~ the~~
133 ~~transfer is carried out under the terms of this section.~~

134 ~~(d) The amendments to this section during the 2019 regular session of the Legislature~~
135 ~~shall be effective for school years beginning on or after July 1, 2019, and the provisions of this~~
136 ~~section existing immediately prior to the 2019 regular session of the Legislature remain in effect~~
137 ~~for school years beginning prior to July 1, 2019.~~

138 ~~(e) Nothing in this section supersedes the eligibility requirements for participation in extra-~~
139 ~~curricular activities established by the Secondary Schools Activities Commission.~~

§18-5-16a. Authorization to transfer pupils from one district to another; mandatory transfer; payment of tuition; net enrollment.

1 ~~(a) The provisions of this section expire effective July 1, 2019, *Provided,* That any~~
2 ~~agreements made pursuant to this section prior to July 1, 2019, shall remain in effect.~~

3 ~~(b) Whenever, in the opinion of the board of education of any county, the education and~~
4 ~~welfare of a pupil will be enhanced, the board of education of such county shall have the authority~~
5 ~~to transfer any such pupil or pupils on a part-time or full-time basis from one school district to~~
6 ~~another school district within the state: *Provided,* That the boards of education of both the~~

7 transferor and the transferee districts agree to the same by official action of both boards as
8 reflected in the minutes of their respective meetings.

9 (c) Any pupil attending a school in a district of this state adjacent to the district of residence
10 during the school year one thousand nine hundred eighty-four—eighty-five, is authorized to
11 continue such attendance in the adjacent district, and, upon written request therefor by the parent
12 or guardian, any person who is entitled to attend the public schools of this state and who resides
13 in the same household and is a member of the immediate family of such pupil is authorized to
14 enroll in such adjacent district. The transferor and transferee school districts shall effectuate any
15 transfer herein authorized in accordance with the provisions of this section.

16 (d) Whenever a pupil is transferred from one school district to another district on a full-
17 time or part-time basis, the board of Education of the school district in which the pupil is a bona
18 fide resident shall pay to the board of Education of the school district to which the pupil is
19 transferred a tuition that is agreed upon by both such boards. Tuition for each full-time pupil shall
20 not exceed the difference between the state aid per pupil received by the county to which the
21 pupil is transferred and the county cost per pupil in the county to which said pupil is transferred.

22 (e) For purposes of net enrollment as defined in section two, article nine-a of this chapter:
23 (1) Whenever a pupil is transferred on a full-time basis from one school district to another district
24 pursuant to the provisions of this section, the county to which the pupil is transferred shall include
25 such pupil in its net enrollment; and (2) whenever a pupil is transferred on a part-time basis from
26 one school district to another school district pursuant to the provisions of this section, the county
27 in which the student is a bona fide resident shall count the pupil in its net enrollment.