

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2949

BY DELEGATES HIGGINBOTHAM AND ELLINGTON

[Introduced March 05, 2021; Referred to the
Committee on Education]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §18-5H-1, §18-5H-2, §18-5H-3, §18-5H-4, §18-5H-5 and §18-5H-6, all relating
 3 to the Supplemental Educational Opportunities Act to allow student instruction via learning
 4 pods; defining terms; providing for exemptions; clarifying burden of proof and limitation on
 5 action; and providing for severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5H. SUPPLEMENTAL LEARNING OPPORTUNITIES ACT.

§18-5H-1. Legislative Purpose.

1 The purpose of this article is to allow parents to associate voluntarily and group their
 2 children in Learning Pods to supplement or replace their education programming. Learning Pods
 3 may provide children with education instruction provided by parents or other individuals retained
 4 by the parents but at no time shall Learning Pods be regulated by state or local governments
 5 apart from public safety standards that are applied equally to all citizens.

§18-5H-2. Definitions.

1 For the purposes of this section:

2 “Learning Pod” means a voluntary association of parents choosing to group their children
 3 together at various times or places to participate in or enhance their primary education
 4 programming.

5 “Operation of a learning pod” means all the parents of the children participating in the
 6 Learning Pod and any other individuals assisting those parents while engaged in any actions
 7 taken to organize, facilitate or operate the Learning Pod, and any facility, home or other structure
 8 utilized by the Learning Pod.

9 “Parent” means the parent or guardian of any child under 18.

10 “Primary education” means any learning mode or system recognized by the state for a
 11 primary student to participate in education, including in a Learning Pod, in grades kindergarten
 12 through grade 12.

§18-5H-3. Learning Pod regulatory exemptions and other protections.

1 (a) A Learning Pod shall be considered a voluntary arrangement regardless of whether
2 any payment arrangement exists for instruction, and shall be exempt, notwithstanding any other
3 statute to the contrary, from the following state, local or school district statutes, rules, regulations,
4 guidelines, or any other regulatory provisions:

5 (1) All education provisions of §18-1-1 et seq. and §18A-1-1 et seq. of this code including,
6 but not limited to, staff ratios, certifications, background checks, and physical accommodations;

7 (2) All regulatory provisions of §16A-1-1 et seq. of this code related to the operation of a
8 day-care, child-care center, or at home daycare including, but not limited to, staff certifications,
9 background checks, and physical accommodations;

10 (3) Any state building or fire codes applicable to educational or child-care facilities;

11 (4) Any local building or fire codes applicable to educational or child-care facilities;

12 (5) Any other state or local statute, rule, or code which would not be applicable to any
13 group, building or facility but for the operation or presence of a Learning Pod;

14 (b) No state, local, or school district employee shall initiate or conduct any site inspection
15 or other investigation or visit, that would not have been initiated or made but for the operation or
16 presence of a Learning Pod.

17 (c) No state, local, or school district employee shall initiate or conduct any site inspection
18 or other investigation or visit, that would not have been initiated or made but for the operation or
19 presence of a Learning Pod, on the basis of any provision of federal code, rule, guideline, or any
20 other federal authority.

21 (d) No school district shall not take any action or in any manner discriminate against or
22 otherwise distinguish any student or parent on the basis of participation in a Learning Pod.

23 (e) No state agency, local government or school district shall require that any Learning
24 Pod be in any manner required to register or otherwise report their existence or anything related
25 to the operation of a Learning Pod.

26 (f) If a parent chooses to replace a child's primary education with Learning Pod
27 participation while the student remains enrolled in another primary education option, the parent
28 shall notify their school board of that arrangement and it shall satisfy all compulsory attendance
29 requirements in §18-8-1, et seq. of this code. Any student participating in a Learning Pod who is
30 not also enrolled in another primary education option shall be deemed a home school student and
31 comply with the provisions of §18-1-1 et seq. and §18A-1-1 et seq. of this code.

32 (g) This section does not alter the regulation of any day-care center, child-care center,
33 home-day care center related to any operations or other matters not directly related to the
34 operation of a Learning Pod.

§18-5H-4. Burden of proof; limitation of action.

1 (a) The following burdens of proof shall apply to any administrative or judicial hearing or
2 other legal action regarding the Supplemental Learning Opportunities Act:

3 (1) Whether any state, local government or school district law, regulation, guideline, or any
4 other action complies with the Supplemental Learning Opportunities Act shall be a judicial
5 question and determined without regard to any assertion of compliance with the Supplemental
6 Learning Opportunities Act.

7 (2) The state, local government or school district adopted the law, regulation, guideline, or
8 took any other action shall be required to establish by clear and convincing evidence that law,
9 regulation, guideline, or action:

10 (B) Does not unduly impede on the freedom of parents and guardians to provide care and
11 supervision of their children;

12 (C) Does not single out educational activities while similar gatherings of children for
13 recreational or social activities remain unregulated; and

14 (D) Is narrowly tailored to protect the public health and safety.

15 (b) Any legal action regarding the Supplemental Learning Opportunities Act shall be
16 brought within two years next after the right to bring the same shall have accrued.

§18-5H-5. Severability.

1 The provisions of this article are severable from one another, so that if any provision of
2 this article is held void or declared unconstitutional, the remaining provisions of this article shall
3 remain valid.

§18-5H-6. Effective Date.

1 This article shall take effect immediately upon passage.

NOTE: The purpose of this bill is to create the Supplemental Learning Opportunities Act to allow parents and guardians to form Learning Pods to group their children voluntarily for additional education instruction. The bill defines terms, exempts Learning Pods from regulations governing educational institutions and businesses, clarifies the burden of proof and limitation of action, and provides for severability.

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