

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 28**

BY SENATORS TRUMP, RUCKER, PLYMALE, ROBERTS,

GRADY, WOELFEL, SWOPE, TAKUBO, MARONEY, AND

AZINGER

[Originating in the Committee on Education; reported

on March 12, 2021]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §18-2-25d, relating to creating the Open and Equal Opportunities in Student  
3 Activities Act; setting forth purpose; defining terms; permitting homeschooled students,  
4 Hope Scholarship students, or students enrolled in a nonpublic school, who do not attend  
5 a school that is a member of the West Virginia Secondary School Activities Commission  
6 or attends a school that does not sponsor, or engage in, an extracurricular activity a  
7 student seeks to participate in, to participate in extracurricular activities sponsored by, or  
8 engaged in by, certain schools that are members of the West Virginia Secondary School  
9 Activities Commission; making students who are participating in extracurricular activities  
10 pursuant to this act and who leave a member school during the school year subject to the  
11 same transfer protocols that apply to any other member-to-member transfer; setting forth  
12 conditions for participation; allowing participation in curricular activities if a requirement of  
13 the extracurricular activity; setting forth provisions pertaining to fair treatment for students  
14 participating in activities pursuant to this act; requiring that any insurance provided by a  
15 district school board for participants in extracurricular activities cover a student  
16 participating in extracurricular activities pursuant to this act; and clarifying that act does  
17 not guarantee that a student trying out for an interscholastic sport or other extracurricular  
18 activity that is under the authority of the West Virginia Secondary School Activities  
19 Commission will make the team or become part of another extracurricular activity.

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

**ARTICLE 2. STATE BOARD OF EDUCATION.**

**§18-2-25d. Open and Equal Opportunities in Student Activities Act; permitting students who are homeschooled or taught by a private tutor, or enrolled in a private, parochial, or church school, or school operated by a religious order to participate in extracurricular activities at schools that are members of the West Virginia Secondary School Activities Commission.**

1           (a) This section shall be known as the Open and Equal Opportunities in Student Activities  
2 Act.

3           (b) The purpose of this section is to allow homeschooled students, Hope Scholarship  
4 students, or students enrolled in a nonpublic school, who do not attend a school that is a member  
5 of the West Virginia Secondary School Activities Commission or attends a school that does not  
6 sponsor, or engage in, an extracurricular activity a student seeks to participate in, to participate  
7 in extracurricular activities that are under the authority of the commission, including athletic teams,  
8 at schools that are members of the commission.

9           (c) For the purposes of this section:

10           (1) "Homeschooled students" means students who are exempt from compulsory school  
11 attendance pursuant to §18-8-1(c) of this code;

12           (2) "Hope Scholarship students" means students who are exempt from compulsory school  
13 attendance pursuant to §18-8-1(m) of this code;

14           (3) "Nonpublic school" means a school for which the enrolled students are exempt from  
15 compulsory school attendance pursuant to §18-8-1(b) or §18-8-1(k) of this code;

16           (4) "Member school" means any public school or nonpublic school that is a member of the  
17 West Virginia Secondary School Activities Commission; and

18           (5) "Extracurricular activities" means all programs of the school that are under the authority  
19 of the commission.

20           (d) Homeschooled students, Hope Scholarship students, or students enrolled in a  
21 nonpublic school, who do not attend a school that is a member of the West Virginia Secondary  
22 School Activities Commission or attend a school that does not sponsor, or engage in, an  
23 extracurricular activity a student seeks to participate in, may participate in extracurricular activities  
24 sponsored by, or engaged in by, a member school that the student would be authorized to attend  
25 pursuant to §18-5-16 of this code in the case of a member public school, or a member nonpublic  
26 school that has agreed to open its extracurricular activities to those students. A student who

27 participates in extracurricular activities who leaves a member school during the school year shall  
28 be subject to the same transfer protocols that apply to any other member-to-member transfer.

29 Participation is conditioned on all of the following:

30 (1) The student registers with the county school board in the district where the student  
31 resides an intention to participate in the extracurricular activities as a representative of one of the  
32 schools in the district;

33 (2) The student pays the same fee as any other students related to participation in the  
34 interscholastic athletic events and other extracurricular activities;

35 (3) The student agrees to comply with all disciplinary rules of the West Virginia Secondary  
36 School Activities Commission and the county board in which he or she lives;

37 (4) The student adheres to the same academic standards as other participants of the team  
38 or activity, with those standards confirmed by appropriate documentation provided to the member  
39 school providing the activity in which the student is to participate. The student shall be permitted  
40 to participate in curricular activities if that is a requirement of the extracurricular activity, including,  
41 but not limited to, weight training. Appropriate documentation consists of one of the following:

42 (A) The student's transcript for the previous semester;

43 (B) The results of a nationally normed standardized achievement test published or normed  
44 not more than 10 years from the date of administration and administered in accordance with the  
45 test publisher's guidelines in the subjects of reading, language, mathematics, science, and social  
46 studies which demonstrate that the student is on grade level or, if grade equivalency is not  
47 available, that the student scores at or above the fourth stanine; or

48 (C) A portfolio of the previous semester's schoolwork demonstrating the student's  
49 proficiency appropriate for his or her grade level as determined by the school principal or guidance  
50 counselor.

51 If the student was enrolled in a member school during the immediately preceding school  
52 year, the student's eligibility is based on his or her academic performance at that school;

53 (5) The student complies with the same physical examination and immunization  
54 requirements as other participants of the team or activity; and

55 (6) The student satisfies the same residency requirements as other students in the school  
56 at which the student participates.

57 (e) A student of a member school who has been unable to maintain academic eligibility  
58 for participation in extracurricular activities is ineligible to participate in the activities pursuant to  
59 this section until the student has successfully satisfied standards to regain eligibility that are  
60 equivalent to those imposed on other students at the same grade level.

61 (f) A student participating in extracurricular activities pursuant to this section who transfers  
62 to a member school before or during the first grading period of the school year is academically  
63 eligible to participate in extracurricular activities during the first grading period provided the  
64 student has a successful evaluation from the previous semester.

65 (g) Student standards for participation in interscholastic extracurricular activities shall be  
66 applied beginning with the first semester of the sixth-grade year of the student. A county board  
67 may not establish requirements for participation in interscholastic extracurricular activities which  
68 make participation in the activities less accessible to students participating pursuant to this section  
69 than to other students. Except as otherwise provided in this section, evaluation processes or  
70 requirements that are placed on students participating pursuant to this section may not exceed  
71 those that apply to other students generally.

72 (h) Any insurance provided by a district school board for participants in extracurricular  
73 activities shall cover a student permitted to participate by provisions of this section. If there is an  
74 additional premium for the coverage, the student shall pay the additional premium.

75 (i)(1) No member school athletic team or group may be impeded from competing against  
76 any other member school team or group because the team or group includes students  
77 participating pursuant to this section.

78           (2) A member school is prohibited from membership in any organization or entity which  
79 regulates or governs interscholastic extracurricular activities and discriminates against students  
80 eligible to participate pursuant to the provisions of this section.

81           (i) This section does not guarantee that a student trying out for an interscholastic sport or  
82 other extracurricular activity that is under the authority of the West Virginia Secondary School  
83 Activities Commission will make the team or become part of another extracurricular activity, but  
84 only that the student is not prohibited from trying out for the team or activity if the student is  
85 otherwise eligible, as provided herein and under the rules of an organization or association that  
86 regulates interscholastic sports.