

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4011

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[Introduced February 1, 2022; referred
to the Committee on Education then the Judiciary]

1 A BILL to amend and reenact §18-5G-3 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new article, designated §18-2L-1, §18-2L-2, §18-
3 2L-3, and §18-2L-4, all relating to prohibiting anti-stereotyping in state public schools and
4 public charter schools; establishing The Anti-Stereotyping Act; providing that training,
5 instructional or curricula materials be displayed on the public school, county board or
6 public charter school website provided that reproduction does not infringe copyrights;
7 providing that county boards, public schools, public charter schools, and employees
8 thereof, shall not, in the course or scope of employment, promote, embrace, or endorse
9 stereotypes; ensuring that the county board, public school or charter school does not
10 require or compel a student, teacher, administrator, or other employee to affirm, adopt, or
11 adhere to any certain beliefs or concepts and preserving free speech protections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5G. CHARTER SCHOOLS.

§18-5G-3. Public charter school criteria, governance structure and statutory compliance requirements; applicable federal and state laws.

12 (a) Public charter schools authorized pursuant to this article shall meet the following
13 general criteria:

14 (1) Are part of the state's system of public schools and are subject to general supervision
15 by the West Virginia Board of Education for meeting the student performance standards required
16 of other public school students under §18-2E-5(d) and (e) of this code;

17 (2) Are subject to the oversight of the school's authorizer for operating in accordance with
18 its approved charter contract and for meeting the terms and performance standards established
19 in the charter contract;

20 (3) Are not home school-based;

21 (4) Are not affiliated with or espouse any specific religious denomination, organization,
22 sect, or belief and do not promote or engage in any religious practices in their educational

23 program, admissions, employment policies, or operations;

24 (5) Are not affiliated with any organized group whose espoused beliefs attack or malign
25 an entire class of people, typically for immutable characteristics, as identified through listings of
26 such groups as may be made by the U.S. Department of Justice, the Federal Bureau of
27 Investigation, or officials having similar jurisdiction in this state;

28 (6) Are public schools to which parents or legal guardians choose to send their child or
29 children;

30 (7) Do not charge tuition and may only charge such fees as may be imposed by non-
31 charter public schools in this state; and

32 (8) Have no requirements that would exclude any child from enrollment who would not be
33 excluded at a non-charter public school.

34 (b) A public charter school authorized pursuant to this article shall be governed by a board
35 that meets the requirements established in §18-5G-7 of this code and:

36 (1) Has autonomy over key decisions, including, but not limited to, decisions concerning
37 finance, personnel, scheduling, curriculum, and instruction except as provided in this article;

38 (2) Has no power to levy taxes;

39 (3) Operates in pursuit of a specific set of educational objectives as defined in its charter
40 contract;

41 (4) Provides a program of public education that:

42 (A) Includes one or more of the following: Prekindergarten and any grade or grades from
43 kindergarten to grade 12 including any associated post-secondary embedded credit, dual credit,
44 advanced placement, internship, and industry or workforce credential programs that the public
45 charter school chooses to incorporate into its programs;

46 (B) May include in its mission a specific focus on students with special needs, including,
47 but not limited to, at-risk students, English language learners, students with severe disciplinary
48 problems at a non-charter public school, or students involved with the juvenile justice system; and

49 (C) May include a specific academic approach or theme including, but not limited to,
50 approaches or themes such as STEM education, mastery-based education, early college, or fine
51 and performing arts;

52 (5) Provides programs and services to a student with a disability in accordance with the
53 student's individualized education program and all federal and state laws, regulations, rules and
54 policies. A charter school shall deliver the services directly or contract with a county board or
55 another provider to deliver the services as set forth in its charter contract;

56 (6) Is eligible to participate in state-sponsored or district-sponsored athletic and academic
57 interscholastic leagues, competitions, awards, scholarships, and recognition programs for
58 students, educators, administrators, and schools to the same extent as non-charter public
59 schools;

60 (7) Employs its own personnel as employees of the public charter school and is ultimately
61 responsible for processing employee paychecks, managing its employees' participation in the
62 applicable retirement system, and managing its employees' participation in insurance plans:
63 *Provided*, That nothing in this subdivision prohibits the public charter school from contracting with
64 another person or entity to perform services relating to managing its employees' participation in
65 the retirement system or insurance plan. A county board may not require any employee of its
66 school system to be employed in a public charter school. A county board may not harass,
67 threaten, discipline, discharge, retaliate, or in any manner discriminate against any school system
68 employee involved directly or indirectly with an application to establish a public charter school as
69 authorized under this section. All personnel in a public charter school who were previously
70 employed by the county board shall continue to accrue seniority with the county board in the same
71 manner that they would accrue seniority if employed in a non-charter public school in the county
72 for purposes of employment in non-charter public schools; and

73 (8) Is responsible for establishing a staffing plan that includes the requisite qualifications
74 and any associated certification and/or licensure necessary for teachers and other instructional

75 staff to be employed at the public charter school and for verifying that these requirements are
76 met.

77 (c) A public charter school authorized pursuant to this article is exempt from all statutes
78 and rules applicable to a non-charter public school or board of education except the following:

79 (1) All federal laws and authorities applicable to non-charter public schools in this state
80 including, but not limited to, the same federal nutrition standards, the same civil rights, disability
81 rights and health, life and safety requirements applicable to non-charter public schools in this
82 state;

83 (2) The provisions of §29B-1-1 *et seq.* of this code relating to freedom of information and
84 the provisions of §6-9A-1 *et seq.* of this code relating to open governmental proceedings;

85 (3) The same immunization requirements applicable to non-charter public schools;

86 (4) The same compulsory school attendance requirements applicable to non-charter
87 public schools;

88 (5) The same minimum number of days or an equivalent amount of instructional time per
89 year as required of non-charter public school students under §18-5-45 of this code;

90 (6) The same student assessment requirements applicable to non-charter public schools
91 in this state, but only to the extent that will allow the state board to measure the performance of
92 public charter school students pursuant to §18-2E-5(d) and (e) of this code. Nothing precludes a
93 public charter school from establishing additional student assessment measures that go beyond
94 state requirements;

95 (7) The Student Data Accessibility, Transparency and Accountability Act pursuant to §18-
96 2-5h of this code;

97 (8) Use of the electronic education information system established by the West Virginia
98 Department of Education for the purpose of reporting required information;

99 (9) Reporting information on student and school performance to parents, policy-makers,
100 and the general public in the same manner as non-charter public schools utilizing the electronic

101 format established by the West Virginia Department of Education. Nothing precludes a public
102 charter school from utilizing additional measures for reporting information on student and school
103 performance that go beyond state requirements;

104 (10) All applicable accounting and financial reporting requirements as prescribed for public
105 schools, including adherence to generally accepted accounting principles. A public charter school
106 shall annually engage an external auditor to perform an independent audit of the school's
107 finances. The public charter school shall submit the audit to its authorizer and to the state
108 superintendent of schools within nine months of the end of the fiscal year for which the audit is
109 performed;

110 (11) A criminal history check pursuant to §18A-3-10 of this code for any staff person that
111 would be required if the person was employed in a non-charter public school, unless a criminal
112 history check has already been completed for that staff person pursuant to that section.
113 Governing board members and other public charter school personnel are subject to criminal
114 history record checks and fingerprinting requirements applicable to non-charter public schools in
115 this state. Contractors and service providers or their employees are prohibited from making direct,
116 unaccompanied contact with students and from access to school grounds unaccompanied when
117 students are present if it cannot be verified that the contractors, service providers or employees
118 have not previously been convicted of a qualifying offense pursuant to §18-5-15c of this code;

119 (12) The same zoning rules for its facilities that apply to non-charter public schools in this
120 state;

121 (13) The same building codes, regulations and fees for its facilities that apply to non-
122 charter public schools in this state, including any inspections required for non-charter public
123 schools under this chapter and the West Virginia State Fire Marshal for inspection and issuance
124 of a certificate of occupancy for any facility used by the public charter school; and

125 (14) The same student transportation safety laws applicable to public schools when
126 transportation is provided.

127 (15) The Anti-Stereotyping Act, pursuant to §18-2L-1 et seq. of this code.

ARTICLE 2L. THE ANTI-STEREOTYPING ACT.

§18-2L-1. Title.

1 This article shall be known and may be cited as The Anti-Stereotyping Act.

§18-2L-2. Training and Curricula Transparency.

1 (a) Each public school and public charter school shall ensure that the following information
2 is displayed on the school website, in a publicly accessible location: *Provided*, That if the public
3 school has no website, the information shall be posted on the county board’s website:

4 (1) All training materials, including materials for teachers, concerning or used for school
5 personnel training on all matters of nondiscrimination, diversity, equity, inclusion, race, ethnicity,
6 sex, or bias, or any combination of these concepts with other concepts.

7 (2) All instructional or curricular materials concerning nondiscrimination, diversity, equity,
8 inclusion, race, ethnicity, sex, or bias, or any combination of these concepts with other concepts.
9 Such instructional materials shall identify, at a minimum:

10 (A) The title, author, organization, and any website associated with each instructional
11 material;

12 (B) A brief description of the instructional material;

13 (C) A link to the instructional material, if publicly available on the internet, or information
14 on how to request review of a copy of the instructional material; and

15 (D) The identity of the teacher, if the instructional material was created by the teacher.

16 (3) Any procedures for the documentation, review, or approval of the training, instructional,
17 or curricular materials used for school personnel training or student instruction at the school,
18 including by the principal, administrators, or other teachers.

19 (4) Nothing in this subsection shall be construed to require the digital reproduction or
20 posting of copies of the instructional materials themselves if such reproduction would infringe
21 upon copyrighted material; but in such cases, original materials should still be linked, if possible,

22 or provided upon request, as required under subsection (2)(C) of this section.

23 (b) Each county board of education shall post on its website in a publicly accessible
24 location, all training materials, including materials for teachers and other school personnel, on all
25 matters of nondiscrimination, diversity, equity, inclusion, race, ethnicity, sex, or bias, or any
26 combination of these concepts with other concepts, except any materials that the board is
27 required to keep confidential: *Provided*, That nothing in this subsection shall be construed to
28 require the digital reproduction or posting of copies of the instructional materials themselves if
29 such reproduction would infringe upon copyrighted material; but in such cases, original materials
30 should still be linked, if possible, or provided upon request.

§18-2L-3 Stereotyping.

1 (a) A county board, public school, public charter school, or any employee thereof, may
2 not, in the course or scope of employment, promote, embrace, or endorse stereotypes based on
3 race, sex, ethnicity, religion, or national origin.

4 (b) Stereotypes means character traits ascribed to a particular race, sex, ethnicity, religion,
5 or national origin, or to an individual because of his or her race, sex, ethnicity, religion, or national
6 origin.

7 (c) Nothing in this section shall prohibit discussing:

8 (1) How such stereotypes have been or are wrongfully embraced or utilized to discriminate
9 on the basis of race, sex, ethnicity, religion, or national origin; or

10 (2) Data or scientific studies that categorize people based on race, sex, ethnicity, religion,
11 or national origin, or that reveal disparities between different groups within any of those
12 categories.

§18-2L-4. Preservation of Freedom of Speech.

1 (a) A county board, public school or public charter school may not:

2 (1) Require or otherwise compel a student, teacher, administrator, or other employee to
3 affirm, adopt, or adhere to any belief or concept that:

4 (A) One race, sex, ethnicity, religion, or national origin is inherently superior or inferior to
5 another race, sex, ethnicity, religion, or national origin;

6 (B) An individual, by virtue of his or her race, sex, ethnicity, religion, or national origin
7 should be blamed for actions committed in the past by other members of the same race, sex,
8 ethnicity, religion, or national origin; or

9 (C) An individual's moral character is necessarily determined, in whole or in part, by his
10 or her race, sex, ethnicity, religion, or national origin.

11 (2) Use public funds to contract with, hire, or otherwise engage consultants, trainers, or
12 other persons to:

13 (A) Direct or otherwise compel a student, teacher, administrator, or other employee to
14 affirm, adopt, or adhere to any belief or concept described in subsection (a)(1) of this section; or

15 (B) Advocate concepts described in subsection (a)(1) of this section, unless:

16 (i) The county board, public school or public charter school, expressly makes clear
17 that it does not sponsor, approve, or endorse such concepts or materials; and

18 (ii) The county board, public school or public charter school, affords students, teachers,
19 administrators, and other employees the opportunity to opt out of any speeches by or sessions
20 with such outside contractors.

21 (3) Require a student, teacher, administrator, or other employee to attend or participate in
22 a training, seminar, continuing education, orientation, or therapy that promotes any concept
23 described in subsection (a)(1) of this section.

24 (b) Nothing in this section shall be construed as prohibiting:

25 (1) Speech protected by the First Amendment of the U.S. Constitution or Article III, Section
26 7 the West Virginia Constitution;

27 (2) Voluntary attendance at a training session, seminar, continuing education, orientation,
28 or therapy, provided that no inducement or coercion for such attendance exists;

29 (3) Access to sources on an individual basis that advocate concepts described in

30 subsection (a)(1) of this section for the purpose of research or independent study; or
31 (4) Discussion of concepts described in subsection (a)(1) of this section or the assignment
32 of materials that incorporate such concepts for educational purposes: *Provided*, That the county
33 board, public school or public charter school expressly makes clear that it does not sponsor,
34 approve, or endorse such concepts or materials.

NOTE: The purpose of this bill is to prohibit anti-stereotyping in public school training and curriculum.

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