

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2940

By Delegates Thorne, Chiarelli, Willis, Longanacre,
Ridenour, A. Hall, Lucas, Mazzocchi, Hornby and
Hillenbrand

[Introduced January 24, 2023; Referred to the
Committee on Education then the Judiciary]

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

Be it enacted by the Legislature of West Virginia:

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. Stereotyping.

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

§18-2L-3. 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 or
10 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 a
22 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.

ARTICLE 5G. CHARTER SCHOOLS.

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

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

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

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

9 (3) Are not home school-based;

10 (4) Are not affiliated with or espouse any specific religious denomination, organization,
 11 sect, or belief and do not promote or engage in any religious practices in their educational
 12 program, admissions, employment policies, or operations;

13 (5) Are not affiliated with any organized group whose espoused beliefs attack or malign an
 14 entire class of people, typically for immutable characteristics, as identified through listings of such
 15 groups as may be made by the U.S. Department of Justice, the Federal Bureau of Investigation, or

16 officials having similar jurisdiction in this state;

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

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

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

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

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

27 (2) Has no power to levy taxes;

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

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

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

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

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

41 (5) Provides programs and services to a student with a disability in accordance with the

42 student's individualized education program and all federal and state laws, regulations, rules and
43 policies. A charter school shall deliver the services directly or contract with a county board or
44 another provider to deliver the services as set forth in its charter contract;

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

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

62 (8) Is responsible for establishing a staffing plan that includes the requisite qualifications
63 and any associated certification and/or licensure necessary for teachers and other instructional
64 staff to be employed at the public charter school and for verifying that these requirements are met.

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

67 (1) All federal laws and authorities applicable to non-charter public schools in this state

68 including, but not limited to, the same federal nutrition standards, the same civil rights, disability
69 rights and health, life and safety requirements applicable to non-charter public schools in this
70 state;

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

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

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

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

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

83 (7) The Student Data Accessibility, Transparency and Accountability Act pursuant to §18-
84 2-5h of this code;

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

87 (9) Reporting information on student and school performance to parents, policy-makers,
88 and the general public in the same manner as non-charter public schools utilizing the electronic
89 format established by the West Virginia Department of Education. Nothing precludes a public
90 charter school from utilizing additional measures for reporting information on student and school
91 performance that go beyond state requirements;

92 (10) All applicable accounting and financial reporting requirements as prescribed for public
93 schools, including adherence to generally accepted accounting principles. A public charter school

94 shall annually engage an external auditor to perform an independent audit of the school's
95 finances. The public charter school shall submit the audit to its authorizer and to the state
96 superintendent of schools within nine months of the end of the fiscal year for which the audit is
97 performed;

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

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

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

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

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

NOTE: The purpose of this bill is to create the Anti-Stereotyping Act. The bill addresses anti-stereotyping in state public schools and public charter schools. The bill provides that county boards, public schools, public charter schools, and employees thereof, shall not, in the course or scope of employment, promote, embrace, or endorse stereotypes. The bill ensures that the county board, public school or charter school does not require or compel a

student, teacher, administrator, or other employee to affirm, adopt, or adhere to any certain beliefs or concepts. Finally, the bill preserves free speech protections.

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