

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 274**

By Senators Grady, Woelfel, Queen, Roberts,  
Plymale, Nelson, Taylor, Deeds, Oliverio, and Barrett

[Originating in the Committee on Education; reported  
on January 19, 2023]

1 A BILL to amend and reenact §18-2E-10 of the Code of West Virginia, 1931, as amended; to  
2 amend and reenact §18-5-18a of said code; and to amend and reenact §18-9A-5 of said  
3 code, all relating to early childhood education in grades pre-kindergarten through three;  
4 establishing the Third Grade Success Act; replacing transformative system of support for  
5 early literacy with multi-tiered system of support for early literacy and numeracy in  
6 kindergarten through grade three; revising findings; revising inclusions in West Virginia  
7 Board of Education rules required to effectuate Third Grade Success Act section;  
8 specifying data to be used to inform the classroom teacher's recommendation on grade  
9 level retention; requiring county boards of education to provide in-service training for early  
10 childhood classroom assistant teachers, aides, and classroom teachers in grades  
11 kindergarten through three; updating deadlines for West Virginia Board of Education  
12 reports to the Legislative Oversight Commission on Education Accountability; modifying  
13 provisions pertaining to funding for Third Grade Success Act section; requiring retention in  
14 the third grade in certain circumstances; specifying exceptions to third grade retention  
15 requirement; adding maximum teacher-pupil ratio for pre-kindergarten; adding maximum  
16 early childhood classroom assistant teacher or aide-pupil ratio for kindergarten through  
17 grade three; phasing in early childhood classroom assistant teacher/aide requirement for  
18 grades one through three; removing requirement for survey of districts on class  
19 overcrowding and report to the Legislative Oversight Commission on Education  
20 Accountability a tailored plan for reducing class overcrowding; and phasing in increased  
21 ratios of service personnel per 1,000 students for the purpose of determining the basic  
22 foundation allowance for service personnel.

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

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

**§18-2E-10. Third Grade Success Act; transformative multi-tiered system of support for early literacy and numeracy in kindergarten through grade three; pre-service and in-service teacher training; notice to parent or guardian; third grade retention policy with exceptions; interventions continuing in fourth grade for students below proficient.**

1 (a) The Legislature finds that:

2 (1) In the early learning years, ensuring that each student masters the content and skills  
3 needed for mastery at the next grade level is critically important for student success;

4 (2) Students who do not demonstrate grade-level proficiency in reading by the end of third  
5 grade become increasingly less likely to succeed at each successive grade level and often drop  
6 out of school prior to graduation;

7 (3) State board policy requires every school to establish a process for ensuring the  
8 developmental and academic progress of all students. This process is to be coordinated by a  
9 school student assistance team that reviews student developmental and academic needs that  
10 have persisted despite being addressed through instruction, multi-tiered system of support for  
11 intervention, and as applicable, supports for personalized learning. Ensuring the developmental  
12 and academic success of all students requires every school to implement, in an equitable manner,  
13 programs during and after the instructional day at the appropriate instructional levels that  
14 contribute to the success of students; and

15 (4) To ensure that all students read and perform mathematics proficiently by the end of  
16 third grade, a statewide comprehensive approach to early literacy and numeracy is required. This  
17 approach shall focus on intensive supports during the early learning years which include schools  
18 and engaged communities mobilized to remove barriers, expand opportunities, and assist parents  
19 in fulfilling their roles and responsibilities to serve as full partners in the success of their children.

20 (b) The state board shall, in accordance with ~~the provisions of article three b, chapter~~  
21 ~~twenty nine a~~ §29A-3B-1 et seq. of this code, promulgate legislative rules as necessary to

22 effectuate the provisions of this section. The rules shall provide for at least the following:

23 (1) Development of a statewide comprehensive, systemic approach to close the reading  
24 and mathematics achievement ~~gap~~ gaps by third grade, which targets school readiness, the  
25 attendance gap, science of reading instruction (phonics, phonemic awareness, vocabulary,  
26 fluency, and comprehension), summer learning loss, the use of screeners and/or benchmark  
27 assessments in English language arts and mathematics for students in grades kindergarten  
28 through three, and a system of support for students exhibiting a substantial reading or  
29 mathematics deficiency; transformative intervention framework for student and learning supports;

30 (2) Ensuring all West Virginia children have access to high-quality early learning  
31 experiences that focus on healthy learners as part of the school readiness model, resulting in  
32 increased populations of children on target for healthy development prior to entering first grade;

33 (3) Closing the attendance gap to certify West Virginia children attend school regularly and  
34 limit chronic absenteeism in the early grades;

35 (4) Provide assistance to county boards with the training and implementation of the  
36 science of reading training for all kindergarten through grade three educators, early childhood  
37 classroom assistant teachers, and aides;

38 (5) (4) Assisting county boards in establishing and operating targeted, sustained extended  
39 day and extended year reading and mathematics programs to ensure grade level proficiency and  
40 battle summer learning loss;

41 (6) Establishing an approved list of screeners and/or benchmark assessments in English  
42 language arts and mathematics for students in grades kindergarten through three for the purpose  
43 of identifying students with a significant reading and/or mathematics deficiency. The screener  
44 and/or benchmark assessments shall be given in the first 30 days of the school year and repeated  
45 at mid-year and at the end of the school year to determine student progression in reading and  
46 mathematics in kindergarten through third grade.

47 (7) A kindergarten or first, second, or third-grade student identified with a deficiency in

48 reading and/or mathematics must be provided interventions in reading and/or mathematics  
49 through a multi-tiered system of support until the student demonstrates grade level proficiency in  
50 reading and/or mathematics as identified by an approved screener, benchmark assessment, or  
51 the third grade summative assessment.

52 ~~(5)~~ (8) Maximizing family engagement to result in the development of a culture of literacy and  
53 numeracy, from birth through third grade which shall at least include:

54 (A) Providing parents or guardians with regular updates to inform them of their child's  
55 progress toward proficiency in reading and mathematics;

56 (B) Ensuring parents or guardians are informed of and have access to resources which  
57 they may utilize to improve their child's literacy and numeracy skills;

58 (C) Ensuring the parent or guardian is informed of the importance of their child being able  
59 to demonstrate grade level reading and mathematics skills by the end of the third grade and the  
60 measures that will be employed pursuant to this section to improve the reading and mathematics  
61 skills of children who are not meeting the standards; and

62 (D) The parent or guardian or any student in kindergarten through grade three who exhibits  
63 a deficiency in reading or mathematics at any time during the school year must be notified in  
64 writing no later than 15 days after the identification of the deficiency, and the written notification  
65 must include the following:

66 (i) That their student has been identified as having a deficiency in reading and/or  
67 mathematics;

68 (ii) A description of the proposed research-based reading and/or mathematics  
69 interventions and/or supplemental instructional services and supports that will be provided to the  
70 child to address the identified area(s) of deficiency;

71 (iii) Strategies for the parent or guardian to use at home to help their child succeed in  
72 reading and/or mathematics; and

73 (iv) That if the child's reading deficiency is not corrected by the end of grade three, the child

74 may not be promoted to grade four unless an exemption is met.

75 ~~(6)~~ (9) Supporting high-quality schools and a workforce prepared to address early literacy  
76 and numeracy by the provision of professional development for administrators, kindergarten, first,  
77 second, and third grade teachers including but not limited to the following: identification of  
78 interventions, and implementation of a system of intervention for children not reaching grade level  
79 proficiency

80 (A) The approved benchmark assessment and/or screener tools to ensure teachers have  
81 the knowledge and skill to administer the assessment and/or screener, analyze the data to inform  
82 instruction and identify students exhibiting substantial deficiencies in reading or mathematics;

83 (B) Comprehensive training on the science of reading and numeracy instruction to ensure  
84 all teachers, early childhood classroom assistant teachers, and aides have the knowledge and  
85 skill to teach and/or support all students to read and perform mathematics at grade level;

86 (C) Training and materials to inform classroom teachers of the characteristics of dyslexia  
87 and dyscalculia in students, components of benchmarks and screeners that may indicate dyslexia  
88 or dyscalculia, and strategies for instruction; and

89 (D) Job-embedded, on-site teacher training on evidence-based reading and mathematics  
90 instruction and data-driven decision making that provides immediate feedback for improving  
91 instruction.

92 ~~(7)~~ (10) Ensuring the employment of qualified teachers and service personnel in  
93 accordance with the provisions of section thirty-nine, article five of this chapter and section seven-  
94 e, article four, chapter eighteen-a §18-5-39 and §18A-4-7c of this code to provide instruction to  
95 students enrolled in early literacy and numeracy support programs including but not limited to,  
96 ensuring that educator preparation programs prepare candidates seeking licensure for elementary  
97 education with training and instruction to:

98 (A) Include instruction in state adopted grade-level content standards, foundational  
99 reading and mathematics skills, and how to implement reading instruction using high-quality

100 instructional materials;

101 (B) Provide effective instruction and intervention for students with reading and math  
102 deficiencies, including students with characteristics of dyslexia or dyscalculia; and

103 (C) Understand and use student data to make instructional decisions.

104 ~~(8)~~ (11) Creating a formula or grant-based program for the distribution of funds  
105 appropriated specifically for the purposes of this section or otherwise available for the support of a  
106 targeted, multi-tiered system of support intervention ~~comprehensive system of support~~ for early  
107 literacy and numeracy;

108 ~~(9)~~ (12) Providing support for transportation and healthy foods for students required to  
109 attend after-school and extended year early literacy and numeracy instructional support programs  
110 and supervision at the school that accommodates the typical work schedules of parents; and

111 ~~(10)~~ (13) Receiving from county boards any applications and annual reports required by  
112 rule of the state board.

113 (c) A student in grades kindergarten through grade three ~~who is recommended by the~~  
114 ~~student assistance team or the student's classroom teacher for additional assistance in one or~~  
115 ~~more of the key standards of English Language Arts including reading, speaking and listening,~~  
116 ~~writing or language may~~ shall be required to attend an extended year early literacy and numeracy  
117 instructional support program as a condition for promotion if:

118 (1) The student has been provided additional academic assistance ~~help~~ through  
119 interventions offered during the school day in-school or after-school in early literacy and numeracy  
120 ~~instructional support program~~ and, prior to the end of the school year, the student assistance team  
121 or the student's classroom teacher recommends that further additional academic help is needed  
122 for the student to be successful at the next grade level; and

123 (2) The county board has established an ~~early-literacy~~ and numeracy instructional support  
124 program during the extended year for the student's grade level.

125 (d) County boards shall provide high-quality educational facilities, equipment, and services

126 to support ~~early~~ literacy and numeracy instructional support programs established pursuant to this  
127 section. Extended year programs may be provided at a central location for kindergarten through  
128 third graders who qualify for the program.

129 (e) This section may not be construed to prohibit a classroom teacher from recommending  
130 the grade level retention of a student in any of the grades kindergarten through grade three based  
131 upon the student's lack of mastery of the subject matter and preparation for the subject matter at  
132 the next grade level. Benchmark and/or screener data shall be used to inform the classroom  
133 teacher's recommendation.

134 (f) This section may not be construed to affect the individualized education plans of  
135 exceptional students.

136 (g) This section may not be construed to limit the authority of the county board to establish  
137 an extended year program in accordance with ~~section thirty-nine, article five of this chapter §18-5-~~  
138 39 of this code. County boards may not charge tuition for enrollment in early literacy and numeracy  
139 instructional support programs established pursuant to this section.

140 (h) Each county board shall ~~prepare to~~ implement the provisions of this section and the  
141 provisions of the state board rule required by subsection (b) of this section. ~~The preparations shall~~  
142 ~~at least include planning, ensuring~~ The county board shall establish a process for ensuring the  
143 developmental and academic progress of all students through the auspices of student assistance  
144 teams as currently required by state board policy and ~~performing~~ perform a needs assessment to  
145 determine the potential capacity requirements for the system of support for early learners. Each  
146 county board also shall provide in-service training:

147 (1) For early childhood classroom assistant teachers and aides specifically related to  
148 literacy, numeracy, and their responsibilities and appropriate measures for exercising authority  
149 and control over students; and

150 (2) For classroom teachers in grades kindergarten through three to help the classroom  
151 teachers gain a strong understanding of how to best utilize the early childhood classroom assistant



152 teachers or aides during classroom instruction and during other periods of the day.

153 (i) The state board shall provide a report describing the proposed implementation of the  
154 ~~transformative~~ multi-tiered system of support for early literacy and numeracy to the Legislative  
155 Oversight Commission on Education Accountability on or before ~~July 1, 2014~~ July 1, 2023.

156 (j) The state board shall provide a comprehensive report regarding the status of the  
157 ~~transformative~~ multi-tiered system of support for literacy and numeracy to the Legislative  
158 Oversight Commission on Education Accountability, the Joint Committee on Government and  
159 Finance, and the Governor on or before ~~November 1, 2014~~ November 1, 2023, and annually on or  
160 before November 1 on each year thereafter. The report shall address, at a minimum, the progress  
161 of the program throughout the state, its effect on student achievement and the sources of the  
162 funding both available to and used by the program.

163 ~~(k) The provisions of this section are subject to the availability of funds from legislative~~  
164 ~~appropriation or other sources specifically designated for the purposes of this section. If a county~~  
165 ~~board determines that adequate funds are not available for full implementation of a transformative~~  
166 ~~system of support for early literacy in the county, the county board may implement its program in~~  
167 ~~phases by first establishing early literacy instructional support programs in the early readiness~~  
168 ~~grades (Kindergarten), then the primary grades (Grades 1-2), and then establishing an early~~  
169 ~~literacy instructional support program for the third grade once~~ Legislative appropriations to the  
170 State Board of Education – State Department of Education Elementary Literacy and Numeracy  
171 Program shall be used for the implementation of the provisions of this section along with other  
172 funds available for providing a high-quality education.

173 (l) Effective for the school year beginning July 1, 2026, and thereafter, a public school  
174 student who generally demonstrates a minimal understanding of, and ability to apply, grade level  
175 English language arts knowledge, skills, and abilities, or both, as indicated on the West Virginia  
176 General Summative Assessment relative to the West Virginia College and Career Readiness  
177 Standards at the end of third grade, shall upon the recommendation of the teacher and the student

178 assistance team, be retained in the third grade for the ensuing school year subject to the following  
179 exceptions:

180 (1) A student with disabilities whose Individual Education Plan indicates participation in the  
181 statewide alternate summative assessment;

182 (2) A student identified as an English language learner who has had less than three years  
183 instruction in English as a second language;

184 (3) A student with disabilities who participates in the statewide summative assessment,  
185 has an Individual Education Plan or section 504 plan that reflects that the student has received  
186 intensive intervention for more than two years and still demonstrates a deficiency or who was  
187 previously retained in any of the grades kindergarten through grade three;

188 (4) A student who is in the process of a special education referral or evaluation for  
189 placement in special education, has been diagnosed as having a significant impairment, including  
190 dyslexia or dyscalculia or is a child with a disability if the student's individualized education  
191 program team and the student's parent or guardian agree that promotion is appropriate based on  
192 the student's Individualized Education Plan;

193 (5) A student who has received intensive intervention for two or more years, still  
194 demonstrates a deficiency and who was previously retained in any of the grades kindergarten  
195 through grade three for a total of two years: *Provided*, That the student shall continue to receive  
196 intensive intervention in grade four;

197 (6) A student who demonstrates an acceptable level of performance on an alternative  
198 standardized assessment approved by the State Board;

199 (7) A student who attends an extended year learning program following the third grade and  
200 has attained proficiency; and

201 (8) A student whose parent or guardian has requested a good cause exemption within the  
202 time period established by the county board and the superintendent, or his or her designee,  
203 determines that the good cause exemption is in the best interests of the child: *Provided*, That a

204 good cause exemption may not prohibit the grade level retention of a student by a classroom  
205 teacher based upon the student's lack of mastery of the subject matter and preparation for the  
206 subject matter at the next grade level.

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-18a. Maximum teacher-pupil ratio.**

1 (a) County boards of education shall provide sufficient personnel, equipment, and facilities  
2 as will ensure that each ~~first through sixth grade~~ classroom, or classrooms having two or more  
3 grades that include one or more of the ~~first~~ kindergarten through sixth grades shall not have more  
4 ~~than 25 pupils for each teacher of the grade or grades and shall not have more than 20 pupils for~~  
5 ~~each kindergarten teacher per session~~ as follows, unless the state superintendent has excepted a  
6 specific classroom upon application therefor by a county board as provided in this section:

7 (1) For kindergarten, not more than 20 pupils for each teacher and one early childhood  
8 classroom assistant teacher or aide in classrooms with more than 10 pupils;

9 (2) For first, second, and third grades, not more than 25 pupils for each teacher and one  
10 early childhood classroom assistant teacher or aide in classrooms with more than 12 pupils:  
11 Provided, That the early childhood classroom assistant teacher/aide requirement for classrooms  
12 with more than 12 pupils shall not be effective until July 1, 2023, for first grade classrooms, July 1,  
13 2024, for second grade classrooms, and July 1, 2025, for third grade classrooms; and

14 (3) For grades four, five and six, not more than 25 pupils for each teacher.

15 (b) County school boards may not maintain a greater number of classrooms having two or  
16 more grades that include one or more of the grade levels referred to in this section than were in  
17 existence in said county as of January 1, 1983.

18 (c) The state superintendent is authorized, consistent with sound educational policy, to:

19 (1) Permit on a statewide basis, in grades four through six, more than 25 pupils per teacher  
20 in a classroom for the purposes of instruction in physical education; and

21 (2) Permit more than 20 pupils per teacher in a specific kindergarten classroom and 25

22 pupils per teacher in a specific classroom in grades four through six during a school year in the  
23 event of extraordinary circumstances as determined by the state superintendent after application  
24 by a county board of education.

25 (d) The state board shall establish guidelines for the exceptions authorized in this section,  
26 but in no event shall the superintendent except classrooms having more than three pupils above  
27 the pupil-teacher ratio as set forth in this section.

28 (e) The requirement for approval of an exception to exceed the 20 pupils per kindergarten  
29 teacher per session limit or the 25 pupils per teacher limit in grades ~~one~~ four through six is waived  
30 in schools where the schoolwide pupil-teacher ratio is 25 or less in grades ~~one~~ four through six:  
31 *Provided*, That a teacher shall not have more than three pupils above the teacher/pupil ratio as set  
32 forth in this section. Any kindergarten teacher who has more than 20 pupils per session and any  
33 classroom teacher of grades ~~one~~ four through six who has more than 25 pupils, shall be paid  
34 additional compensation based on the affected classroom teacher's average daily salary divided  
35 by 20 for kindergarten teachers, or 25 for teachers of grades ~~one~~ four through six, for every day  
36 times the number of additional pupils enrolled up to the maximum pupils permitted in the teacher's  
37 classroom. All such additional compensation shall be paid from county funds exclusively.

38 Notwithstanding any other provision of this section to the contrary, commencing with the  
39 school year beginning on ~~July 1, 1994~~ July 1, 1996, a teacher in grades one, two, or three or  
40 classrooms having two or more such grade levels, ~~shall not have more than two pupils above the~~  
41 ~~teacher/pupil ratio as set forth in this section:~~ *Provided*, That commencing with the school year  
42 ~~beginning on July 1, 1995, such teacher shall not have more than one pupil above the~~  
43 ~~teacher/pupil ratio as set forth in this section:~~ *Provided, however*, That commencing with the  
44 school year beginning on ~~July 1, 1996~~, such teacher shall not have any pupils above the  
45 teacher/pupil ratio as set forth in this section.

46 (f) No provision of this section is intended to limit the number of pupils per teacher in a  
47 classroom for the purpose of instruction in choral, band, or orchestra music.

48 (g) Each school principal shall assign students equitably among the classroom teachers,  
49 taking into consideration reasonable differences due to subject areas and/or grade levels.

50 (h) The state board shall collect from each county board of education information on class  
51 size and the number of pupils per teacher for all classes in grades seven through 12. The state  
52 board shall report such information to the Legislative Oversight Commission on Education  
53 Accountability before January 1, of each year.

54 ~~(i) The West Virginia Department of Education shall survey districts to determine those~~  
55 ~~grade levels, content areas, and geographic locations where class overcrowding is impeding~~  
56 ~~student achievement and report to the Legislature by July 1, 2020 a tailored plan for reducing class~~  
57 ~~overcrowding in such areas.~~

58 The study shall include, but is not limited to, an examination of the following issues:

59 ~~(1) The effect on student learning of limits on the number of pupils per teacher in a~~  
60 ~~classroom in elementary classes and in a middle and high school format in which students have~~  
61 ~~different teachers for different subject matter instruction;~~

62 ~~(2) The effect on the equity among teachers in a middle school in which the number of~~  
63 ~~pupils per teacher in a classroom is limited for some teachers and not for others, including the~~  
64 ~~additional pay for certain teachers in whose classrooms the limits are exceeded; and~~

65 ~~(3) The effect limits on the number of pupils per teacher in a classroom have on the ability~~  
66 ~~of school systems to offer elective courses in secondary school~~

## **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

### **§18-9A-5. Foundation allowance for service personnel.**

1 (a) The basic foundation allowance to the county for service personnel shall be the amount  
2 of money required to pay the annual state minimum salaries in accordance with the provisions of  
3 article four, chapter eighteen-a §18A-4-1 et seq. of this code, to such service personnel employed,  
4 subject to the following:

5 (1) A county shall receive an allowance for state aid eligible service personnel positions per

6 1,000 students in net enrollment, as follows:

7 (A) For each high-density county, ~~forty-three and ninety-seven one hundredths~~ 43.97  
8 service personnel per 1,000 students in net enrollment: Provided, That this ratio of service  
9 personnel per 1,000 students in net enrollment shall increase to 47.39 beginning July 1, 2023,  
10 50.65 beginning July 1, 2024, and 53.79 beginning July 1, 2025;

11 (B) For each medium-density county, ~~forty-four and fifty-three one hundredths~~ 44.53  
12 service personnel per 1,000 students in net enrollment: Provided, That this ratio of service  
13 personnel per 1,000 students in net enrollment shall increase to 47.95 beginning July 1, 2023,  
14 51.21 beginning July 1, 2024, and 54.35 beginning July 1, 2025;

15 (C) For each low-density county, ~~forty-five and one tenth~~ 45.10 service personnel per 1,000  
16 students in net enrollment: Provided, That this ratio of service personnel per 1,000 students in net  
17 enrollment shall increase to 48.52 beginning July 1, 2023, 51.78 beginning July 1, 2024, and 54.92  
18 beginning July 1, 2025;

19 (D) For each sparse-density county, ~~forty-five and sixty-eight one hundredths~~ 45.68  
20 service personnel per 1,000 students in net enrollment: Provided, That this ratio of service  
21 personnel per 1,000 students in net enrollment shall increase to 49.10 beginning July 1, 2023,  
22 52.36 beginning July 1, 2024, and 55.50 beginning July 1, 2025; and

23 (E) For any service personnel positions, or fraction thereof, determined for a county  
24 pursuant to subdivision (1) of this subsection that exceed the number employed, the county's  
25 allowance for these positions shall be determined using the average state funded minimum salary  
26 of service personnel for the county;

27 (2) The number of and the allowance for personnel paid in part by state and county funds  
28 shall be prorated; and

29 (3) Where two or more counties join together in support of a vocational or comprehensive  
30 high school or any other program or service, the service personnel for the school or program may  
31 be prorated among the participating counties on the basis of each one's enrollment therein and

32 that the personnel shall be considered within the above-stated limit.