

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5158**

By Delegates Toney, Ellington, Statler, and Vance

[Introduced January 25, 2024; Referred to the  
Committee on Education]

1 A BILL to amend and reenact §18-1-1 of the Code of West Virginia, 1931, as amended; to amend  
 2 and reenact §18-10N-2 of said code; to amend and reenact §18-20-1 and §18-20-1a of  
 3 said code; to repeal §18-20-1b of said code; to amend and reenact §18-20-1c, §18-20-1d,  
 4 §18-20-2, §18-20-3, §18-20-4, §18-20-5, §18-20-6, §18-20-7, §18-20-8, §18-20-9, §18-20-  
 5 10, and §18-20-11; and to amend and reenact §18A-5-1 of said code; all relating to  
 6 cleaning up statutory provisions regarding the special education code.

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

**CHAPTER 18. EDUCATION.**

**ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.**

**§18-1-1. Definitions.**

1 The following words used in this chapter and in any proceedings pursuant thereto have the  
 2 meanings ascribed to them unless the context clearly indicates a different meaning:

3 (a) "School" means the students and teachers assembled in one or more buildings,  
 4 organized as a unit;

5 (b) "Local educational agency" means a public board of education or other public authority  
 6 legally constituted within the State of West Virginia for either administrative control or direction of,  
 7 or to perform a service function for, public elementary or secondary schools in a city, county,  
 8 township, school district, or other political subdivision of the State, as authorized by West Virginia  
 9 Code, including county school districts, schools and facilities under the supervision of the West  
 10 Virginia Board of Education (WVBE), and public charter schools;

11 ~~(b)~~ "District" means county school district and is subsumed under the category of local  
 12 educational agency;

13 ~~(e)~~ (d) "State board" means the West Virginia Board of Education;

14 ~~(d)~~ (e) "County board" or "board" means a county board of education and is subsumed  
 15 under the category of local educational agency;

- 16           ~~(e)~~ (f) "State superintendent" means the state superintendent of free Schools;
- 17           ~~(f)~~ (g) "County superintendent" or "superintendent" means a ~~county~~ local educational
- 18 agency superintendent of schools;
- 19           ~~(g)~~ (h) "Teacher" means a teacher, supervisor, principal, superintendent, public school
- 20 librarian or any other person regularly employed for instructional purposes in a public school in this
- 21 state;
- 22           ~~(h)~~ (i) "Service person" or "service personnel," whether singular or plural, means any
- 23 nonteaching school employee who is not included in the meaning of "teacher" as defined in this
- 24 section, and who serves the school or schools as a whole, in a nonprofessional capacity, including
- 25 such areas as secretarial, custodial, maintenance, transportation, school lunch and aides. Any
- 26 reference to "service employee" or "service employees" in this chapter or chapter eighteen-a of
- 27 this code means service person or service personnel as defined in this section;
- 28           ~~(i)~~ (j) "Social worker" means a nonteaching school employee who, at a minimum,
- 29 possesses an undergraduate degree in social work from an accredited institution of higher
- 30 learning and who provides various professional social work services, activities or methods as
- 31 defined by the state board for the benefit of students;
- 32           ~~(j)~~ (k) "Regular full-time employee" means any person employed by a local educational
- 33 agency ~~county board~~ who has a regular position or job throughout his or her employment term,
- 34 without regard to hours or method of pay;
- 35           ~~(k)~~ (l) "Career clusters" means broad groupings of related occupations;
- 36           ~~(l)~~ (m) "Work-based learning" means a structured activity that correlates with and is
- 37 mutually supportive of the school-based learning of the student and includes specific objectives to
- 38 be learned by the student as a result of the activity;
- 39           ~~(m)~~ (n) "School-age juvenile" means any individual who is entitled to attend or who, if not
- 40 placed in a residential facility, would be entitled to attend public schools in accordance with: (1)
- 41 Section five, article two of this chapter; (2) sections fifteen and eighteen, article five of this chapter;

42 or (3) section one, article twenty of this chapter;

43 ~~(n)~~ (o) "Student with a disability" means an exceptional child, other than gifted and  
44 exceptional gifted, pursuant to section one, article twenty of this chapter;

45 ~~(e)~~ (p) "Casual deficit" means a deficit of not more than three percent of the approved levy  
46 estimate or a deficit that is nonrecurring from year to year; and

47 ~~(p)~~ (q) "Athletic director" means a person employed by a local educational agency ~~county~~  
48 ~~board~~ to work in a school's athletic program pursuant to section one-a, article two, chapter  
49 eighteen-a of this code.

**ARTICLE 10N. INFORMATION TECHNOLOGY ACCESS FOR THE BLIND AND VISUALLY IMPAIRED.**

**§18-10N-2.**

**Definitions.**

1 The following words have the meanings indicated:

2 (a) "Access" means the ability to receive, use and manipulate data and operate controls  
3 included in information technology.

4 (b) "Blind or visually impaired individual" means an individual who:

5 ~~(1) Has a visual acuity of 20/200 or less in the better eye with corrective lenses or has a~~  
6 ~~limited field of vision so that the widest diameter of the visual field subtends an angle no greater~~  
7 ~~than twenty degrees;~~

8 ~~(2) Has a medically indicated expectation of visual deterioration; or~~

9 ~~(3) Has a medically diagnosed limitation in visual functioning that restricts the individual's~~  
10 ~~ability to read and write standard print at levels expected of individuals of comparable ability.~~

11 Has a visual impairment that, even with correction, adversely affects a child's educational  
12 performance. The term includes both partial sight and blindness.

13 (c) "Information technology" means all electronic information processing hardware and  
14 software, including telecommunications.

15 (d) "Nonvisual" means synthesized speech, Braille and other output methods not requiring  
16 sight.

17 (e) "State agency" means the state or any of its departments, agencies or boards or  
18 commissions.

19 (f) "Telecommunications" means the transmission of information, voice, or data by radio,  
20 video or other electronic or impulse means.

## **ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

### **§18-20-1. Establishment of special programs and teaching services for exceptional children students with exceptionalities. ~~modified diploma graduation~~**

1 (a) ~~In accordance with the following provisions, county boards of education throughout the~~  
2 ~~state shall establish and maintain for all exceptional children between five and twenty-one years of~~  
3 ~~age special educational programs, including, but not limited to, special schools or classes, regular~~  
4 ~~classroom programs, home teaching or visiting teacher services for any type or classification as~~  
5 ~~the state board shall approve. Special educational programs shall continue to be provided to those~~  
6 ~~children who are at least twenty one years of age and enrolled in the above mentioned special~~  
7 ~~education program prior to September 1, 1991, until they reach twenty three years of age.~~  
8 ~~Provisions shall be made for educating exceptional children (including the handicapped and the~~  
9 ~~gifted) who differ from the average or normal in physical, mental or emotional characteristics, or in~~  
10 ~~communicative or intellectual deviation characteristics, or in both communicative and intellectual~~  
11 ~~deviation characteristics, to the extent that they cannot be educated safely or profitably in the~~  
12 ~~regular classes of the public schools or to the extent that they need special educational provisions~~  
13 ~~within the regular classroom in order to educate them in accordance with their capacities,~~  
14 ~~limitations and needs: *Provided*, That for the school year beginning on July 1, 1990, provisions~~  
15 ~~shall be made for educating exceptional children, including the handicapped, the gifted in grades~~  
16 ~~one through eight, the pupils enrolled on July 1, 1989, in the gifted program in grades nine through~~  
17 ~~twelve and the exceptional gifted in grades nine through twelve. The term "exceptional gifted"~~

18 ~~means those students in grades nine through twelve identified as gifted and at least one of the~~  
19 ~~following: Behavior disorder, specific learning disabilities, psychological adjustment disorder,~~  
20 ~~underachieving or economically disadvantaged. Exceptional gifted children shall be referred for~~  
21 ~~identification pursuant to recommendation by a school psychologist, school counselor, principal,~~  
22 ~~teacher, parent or by self-referral, at which time the placement process, including development of~~  
23 ~~an individualized education program, and attendant due process rights, shall commence.~~  
24 ~~Exceptional gifted children, for purposes of calculating adjusted enrollment pursuant to section~~  
25 ~~two, article nine-a of this chapter, shall not exceed one percent of net enrollment in grades nine~~  
26 ~~through twelve. Nothing herein shall be construed to limit the number of students identified as~~  
27 ~~exceptional gifted and who receive appropriate services. Each county board of education is~~  
28 ~~mandated to provide gifted education to its students according to guidelines promulgated by the~~  
29 ~~state board and consistent with the provisions of this chapter. Upon the recommendation of a~~  
30 ~~principal, counselor, teacher and parent, a student who does not meet the gifted eligibility criteria~~  
31 ~~may participate in any school program deemed appropriate for the student provided that~~  
32 ~~classroom space is available. In addition, county boards of education may establish and maintain~~  
33 ~~other educational services for exceptional children as the State Superintendent of Schools may~~  
34 ~~approve.~~

35 ~~(b) County boards of education shall establish and maintain these special educational~~  
36 ~~programs, including, but not limited to, special schools classes, regular class programs, home-~~  
37 ~~teaching and visiting teacher services. The special education programs shall include home-~~  
38 ~~teaching or visiting teacher services for children who are homebound due to injury or who for any~~  
39 ~~other reason as certified by a licensed physician are homebound for a period that has lasted or will~~  
40 ~~last more than three weeks. The state board shall adopt rules to advance and accomplish this~~  
41 ~~program and to assure that all exceptional children in the state, including children in mental health~~  
42 ~~facilities, residential institutions and private schools, will receive an education in accordance with~~  
43 ~~the mandates of state and federal laws: *Provided*, That commencing with the school year~~

44 ~~beginning on July 1, 1991, all exceptional children in the state in foster care and correctional~~  
45 ~~facilities will receive an education in accordance with the mandates of state and federal laws.~~

46 ~~(c) Each county board of education shall adopt a policy that allows a student with~~  
47 ~~disabilities whose individualized education program provides for a modified diploma to participate~~  
48 ~~in the graduation ceremony of his or her same grade classmates if requested in writing by his or~~  
49 ~~her parent or legal guardian. The county board shall also permit the student to continue receiving~~  
50 ~~his or her special education services after the graduation ceremony. The county board may not~~  
51 ~~terminate, deny or declare the student ineligible for post-graduation ceremony special education~~  
52 ~~services due to his or her participation in the graduation ceremony.~~

53 (a) In accordance with the following provisions, local educational agencies (LEAs),  
54 including all county boards of education, schools and facilities under the supervision of the State  
55 board, and public charter schools acting as their own LEA throughout the state shall establish and  
56 maintain special education services for all exceptional school-age students between five and  
57 twenty-one years of age, including, but not limited to, services provided in general education  
58 classrooms, co-teaching classrooms, special education resource classes, self-contained classes,  
59 homebound services, and other placements determined appropriate to meet the unique needs of  
60 students with disabilities as determined by Individualized Education Program (IEP) teams. Special  
61 education programs must be provided to students until the end of the school year in which they  
62 reach the age of 21 years or until the student earns a regular high school diploma, whichever  
63 occurs first. Provisions shall be made for educating exceptional students (including students with  
64 disabilities and students identified as gifted or exceptionally gifted who differ from their non-  
65 disabled peers to the extent that they need specially designed instruction in order to access the  
66 curriculum and receive a free appropriate public education. The term "gifted" means exceptional  
67 intellectual abilities and potential for achievement that requires specially designed instruction  
68 and/or services beyond those normally provided in the general classroom instruction. The term  
69 "exceptional gifted" means those students in grades nine through twelve meeting the criteria for

70 gifted with at least one of the additional criteria as identified in State Board Policy 2419.  
 71 Exceptional gifted students shall be referred for identification pursuant to state board policy. Each  
 72 LEA is mandated to provide gifted education to its students according to guidelines promulgated  
 73 by the state board and consistent with the provisions of this chapter. In addition, county boards of  
 74 education may establish and maintain other educational services for exceptional students as the  
 75 State Superintendent of Schools may approve.

76 (b) Each LEA shall establish and maintain special education programs which include  
 77 services outside the school environment for children who are homebound due to injury or who for  
 78 any other reason as certified by a licensed physician are homebound for a period that has lasted or  
 79 will last more than three weeks. The state board shall adopt rules to advance and accomplish this  
 80 program and to assure that all exceptional children in the state, including children in mental health  
 81 facilities, residential institutions, foster care, correctional facilities, and private schools, will receive  
 82 an education in accordance with the mandates of state and federal laws.

83 (c) Each LEA shall adopt a policy that allows a student with disabilities, whose  
 84 individualized education program provides for an alternate diploma, to participate in the  
 85 graduation ceremony with their same-grade non-disabled classmates if requested in writing by  
 86 their parent or legal guardian, or the student who is subject to this request if the student is of the  
 87 age of majority. The LEA shall also permit the student to continue receiving special education  
 88 services after the graduation ceremony until the end of the school year in which the student  
 89 reaches the age of 21 years. The LEA may not terminate, deny, or declare the student ineligible for  
 90 post-graduation ceremony special education services due to their participation in the graduation  
 91 ceremony.

**§18-20-1a. ~~Preschool programs for severely disabled children~~ students with disabilities or  
developmental delays; rules and regulations**

1 ~~(a) During the school year beginning on July 1, 1985, each county board of education shall~~  
 2 ~~develop a coordinated service delivery plan in accordance with standards for preschool programs~~



3 ~~for severely disabled children to be developed by the State Board of Education and begin services~~  
4 ~~where plans are already developed.~~

5 ~~(b) Only in any year in which funds are made available by legislative appropriation, and~~  
6 ~~only to the extent of such funding, each county board of education shall establish and maintain a~~  
7 ~~special educational program, including, but not limited to, special classes and home teaching and~~  
8 ~~visiting teacher services for all severely disabled children between the ages of three and five~~  
9 ~~according to the following schedule:~~

10 ~~(1) By the school year beginning on July 1, 1986, and thereafter, for severely disabled~~  
11 ~~children who are age four before September 1, 1986;~~

12 ~~(2) By the school year beginning on July 1, 1987, and thereafter, for severely disabled~~  
13 ~~children who are age three before September 1, 1987.~~

14 ~~As used in this section, the term "severely disabled children" means those children who fall~~  
15 ~~in any one of the following categories as defined or to be defined in the State Board of Education~~  
16 ~~standards for the education of exceptional children: Severe behavioral disorders, severely speech~~  
17 ~~and language impaired, deaf blind, deafness or hearing difficulties, autistic, physically~~  
18 ~~handicapped, disabled profoundly intellectually disabled, trainable intellectually disabled or~~  
19 ~~visually impaired.~~

20 ~~Before August 1, 1985, the State Board of Education shall adopt rules and regulations to~~  
21 ~~advance and accomplish this program and to assure that an appropriate educational program is~~  
22 ~~available to all such children in the state, including children in mental health facilities, residential~~  
23 ~~institutions and private schools.~~

24 ~~This section does not prevent county boards of education from providing special education~~  
25 ~~programs, including, but not limited to, special schools, classes, regular class programs and~~  
26 ~~home teaching or visiting teacher services for severely disabled preschool children prior to such~~  
27 ~~times as are required by this section. In addition, county boards of education may provide these~~  
28 ~~services to preschool exceptional children in disability categories other than those listed above.~~

29 (a) Each LEA shall develop a coordinated service delivery plan in accordance with  
 30 standards for preschool programs for students with disabilities or developmental delays and begin  
 31 services where plans are already developed with IEPs in place by the student's 3rd birthday.

32 (b) Each LEA shall establish and maintain a special education program, including, but not  
 33 limited to, universal Pre-K classes which integrate students with disabilities, special classes and  
 34 services provided in out-of-school environments for all students with disabilities three and through  
 35 five.

36 (c) As used in this section, the term "students with disabilities" means those eligible  
 37 individuals who fall in any one of the disability categories as defined in federal or state special  
 38 education regulations. Special education and related services for eligible students with a  
 39 developmental delay will be provided as of the student's third birthday when eligibility is  
 40 determined prior to the third birthday.

41 (d) This programming is available to all such students in the state, including in mental  
 42 health facilities, residential institutions, and private entities who have entered into an agreement  
 43 for collaborative programming with an LEA.

**§18-20-1b. Preschool programs for handicapped children; rules and regulations.**

1 [Repealed].

**§18-20-1c. Integrated classrooms serving students with exceptional needs; and requirements as to the assistance, training and information to be provided to the affected classroom teacher integrated classroom teachers.**

1 (a) The ~~regular~~ general education classroom teacher is entitled to the following when  
 2 ~~placing a student~~ a student with exceptional needs into an integrated classroom ~~when~~ and the  
 3 student's individualized education program (IEP) requires an ~~adjustment in either the curriculum~~  
 4 modifications, including delivery of ~~, instruction or service~~ instruction or services and  
 5 accommodations to be provided by the regular classroom teacher:

6 (1) Training provided pursuant to the ~~integrated classroom program and additional~~

7 ~~individualized training~~, pursuant to the rules developed by the State Board of Education, if  
8 requested by the regular classroom teacher to prepare the teacher to meet the exceptional needs  
9 of individual students. Whenever possible, the training shall be provided prior to the placement.  
10 Where prior training is not possible, the training shall be commenced no later than ten days  
11 following the placement of the student into the ~~regular~~ integrated classroom. Unavoidable delays  
12 in the provision of training may not result in the exclusion of a ~~special-needs~~ student with  
13 exceptional needs from any class if the training cannot be provided in ten days;

14 (2) A signed copy of the individualized education program for the special education student  
15 prior to the placement of the student into the regular classroom. ~~The~~ When possible, the receiving  
16 and referring teachers shall participate in the development of that student's individualized  
17 education program and shall also sign the individualized education program as developed. In all  
18 cases the teacher shall receive a copy of the individualized education program for the ~~special~~  
19 ~~education-student~~ with exceptional needs prior to or at the time of the placement of the student into  
20 the regular classroom. Any teacher or other member of the IEP team disagreeing with the  
21 individualized education program ~~committee's~~ team's recommendation shall file a written  
22 explanation outlining his or her disagreement or recommendation;

23 (3) Participation by referring teachers in all eligibility committees and participation by  
24 referring and receiving teachers in all individualized education program committees which involve  
25 possible placement of ~~an exceptional~~ a student with exceptional needs in an integrated classroom;

26 (4) Opportunity to reconvene the committee responsible for the individualized education  
27 program of the student with ~~special-exceptional~~ exceptional needs assigned to the regular classroom teacher.  
28 The meeting shall include all persons involved in a student's individualized education program and  
29 shall be held within twenty-one days of the time the request is made; and

30 (5) Assistance from persons trained or certified to ~~deal with~~ address a student's  
31 exceptional needs whenever assistance is part of the student's individualized education program  
32 as necessary to promote accomplishment of the program's goals and objectives: *Provided, That*

33 aides in the area of special education cannot be reassigned to more than one school without the  
34 employee's consent.

35 (b) Except teachers already required to participate in the development of a student's  
36 individualized education program and sign it as provided in subdivision (2) of this section, all other  
37 teachers in whose class or program a student with exceptional needs is enrolled shall:

38 (1) Participate in the meeting to develop the student's individualized education program, or  
39 read and sign a copy of the student's individualized education program plan acknowledging that  
40 he or she has read and understands it; and

41 (2) Make appropriate accommodations and modifications for the student, if needed or  
42 identified, to help the student succeed in the class or program, and document, at minimum, the  
43 provision of these accommodations and modifications.

44 This requirement includes, but is not limited to, teachers of music, musical education, art,  
45 driver education and other instruction offered.

**§18-20-1d. Adoption of a state model for individualized education program.**

1 The state board shall adopt a basic model for individualized education programs to be  
2 used by all special education teachers throughout the public schools of the state when preparing  
3 individualized education programs for students with exceptional needs.

4 The model achieved through the online IEP platform shall comply with, but may not  
5 exceed, all state laws and federal laws, policies, rules, and regulations relating to providing  
6 education services to students with exceptional needs ~~and shall include instructions for adapting~~  
7 ~~the model to specific exceptionalities~~ and shall allow for the individualization of programming  
8 based on the unique needs of each student.

9 No professional educator may be required to prepare or implement an individualized  
10 education program which exceeds the requirements of federal and state laws, policies, rules or  
11 regulations.

**§18-20-2. Providing suitable educational facilities, equipment and services.**

1 (a) Each county board shall provide suitable educational facilities, special equipment and  
2 special services that are necessary to implement the IEP of each student with a disability. Special  
3 services include provisions and procedures for finding and enumerating exceptional children  
4 students of each type, diagnosis by appropriate specialists who will certify the child's student's  
5 need and eligibility for special education and make recommendations for treatment and prosthesis  
6 as ~~may alleviate~~ may accommodate the disability, ~~special teaching by qualified and specially~~  
7 ~~trained~~ such as specially designed instruction by qualified teachers, transportation, lunches and  
8 ~~remedial therapeutic~~ related services. Qualifications of teachers and therapists shall be in  
9 accordance with standards prescribed or approved by the state board.

10 (b) A county board may provide for educating resident exceptional children by contracting  
11 with other counties or other educational agencies which maintain special education facilities.  
12 Fiscal matters shall follow policies approved by the state board.

13 (c) The county board shall provide a four-clock-hour program of training for any teacher  
14 aide employed to assist teachers in providing services to exceptional children under this article  
15 prior to the assignment. The program shall consist of training in areas specifically related to the  
16 education of exceptional children, pursuant to rules of the state board. The training shall occur  
17 during normal working hours and an opportunity to be trained shall be provided to a service person  
18 prior to filling a vacancy in accordance with the provisions of section eight-b, article four, chapter  
19 eighteen-a of this code.

20 (d) The county board annually shall make available during normal working hours to all  
21 regularly employed teachers' aides twelve hours of training that satisfies the continuing education  
22 requirements for the aides regarding:

23 (1) Providing services to children students who have displayed ~~violent~~ challenging or  
24 aggressive behavior or have demonstrated the potential for ~~violent~~ challenging or aggressive  
25 behavior; and

26 (2) Providing services to children diagnosed as ~~autistic or~~ with autism spectrum disorder.

27 This training shall be structured to permit the employee to qualify as an autism mentor after a  
28 ~~minimum of four years of training~~ thirty hours of staff development related to providing instructional  
29 support to students with autism including prevention and de-escalation techniques with alternative  
30 to restraint. The county board shall:

31 (A) Notify in writing all teachers' aides of the location, date and time when training will be  
32 offered for qualification as an autism mentor; and

33 (B) ~~Reimburse~~ Consider partial or full reimbursement of tuition for any regularly employed  
34 or substitute teacher's aide who elects to attend this training ~~for one half of the cost of the tuition~~.

35 (e) For any student whose individualized education plan (IEP) or education plan  
36 established pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C.  
37 §794, requires the services of a sign support specialist or an educational sign language interpreter  
38 I or II:

39 (1) Any educational sign language interpreter I or II assigned to assist that student is a  
40 related service provider member of the education team who participates in IEP meetings and  
41 works with the team to implement the IEP;

42 (2) A sign support specialist may be assigned to a student with an exceptionality other than  
43 deaf or hard of hearing if it is determined that the student needs signs to support his or her  
44 expressive communication; and

45 (3) A sign support specialist may be assigned to a student who is deaf or hard of hearing in  
46 lieu of an interpreter only if an educational sign language interpreter I or II is unavailable, and the  
47 sign support specialist is executing a professional development plan while actively seeking  
48 certification as an educational sign language interpreter I or II. After two years the sign support  
49 specialist may remain in the assignment only if an educational sign language interpreter I or II  
50 remains unavailable, and with an approved waiver by the West Virginia Department of Education.

51 An employee in this situation is entitled to full payment of the costs of certification acquisition or  
52 renewal pursuant to the certification renewal provisions of section four, article two, chapter

53 eighteen-a of this code.

54 (f) Every teacher of a student for whom a school or county board of education LEA  
55 prepares a plan of accommodation pursuant to Section 504 of the Rehabilitation Act of 1973, as  
56 amended, 29 U.S.C. §794, shall receive specific instruction from the school regarding the contents  
57 and requirements of the plan and, if the plan is prepared in writing, the teacher shall receive a copy  
58 of the written plan and every update thereto and the teacher shall sign an acknowledgment of  
59 receipt of each plan and update.

**§18-20-3. County Local educational agency reports.**

1 Each county shall, after having received from the faculty Senates in its schools the  
2 strategic plans mandated by subsection (13), section five, article five-a of this chapter, develop a  
3 county strategic plan to manage the integration of special needs students into the regular  
4 classroom and submit said strategic plan to the State Superintendent of Schools prior to October  
5 1, 1995.

6 Counties maintaining special schools, classes, regular class programs, integrated  
7 classroom strategic plans and training related to integrated education, basic and specialized  
8 health care procedures including the administration of medications, home-teaching or visiting  
9 services and receiving or requesting reimbursement from state appropriated funds shall file with  
10 the State Superintendent of Schools on forms supplied by his or her office, applications, annual  
11 reports and such other reports as he or she may require.

12 (a) Each LEA shall develop a coordinated service delivery plan in accordance with  
13 standards for preschool programs for students with disabilities or developmental delays and begin  
14 services where plans are already developed with IEPs in place by the student's 3rd birthday.

15 (b) Each LEA shall establish and maintain a special education program, including, but not  
16 limited to, universal Pre-K classes which integrate students with disabilities, special classes and  
17 services provided in out-of-school environments for all students with disabilities three and through  
18 five.

19 (c) As used in this section, the term "students with disabilities" means those eligible  
20 individuals who fall in any one of the disability categories as defined in federal or state special  
21 education regulations. Special education and related services for eligible students with a  
22 developmental delay will be provided as of the student's third birthday when eligibility is  
23 determined prior to the third birthday.

24 (d) This programming is available to all such students in the state, including in mental  
25 health facilities, residential institutions, and private entities who have entered into an agreement  
26 for collaborative programming with an LEA.

**§18-20-4. Examination and report by medical or other specialists.**

1 ~~Each child prior to enrolling in a special education program shall be examined by an~~  
2 ~~appropriate medical specialist, psychologist or educational specialist (reading specialist, speech~~  
3 ~~and language clinician, or other specialists as required by the state Board of Education for specific~~  
4 ~~areas of exceptionality) who shall report to the county superintendent of schools. The specialists'~~  
5 ~~report shall carry recommendation for eligibility and placement in regular school or in the special~~  
6 ~~education facility, indicate the nature and extent of disability, and advise with reference to~~  
7 ~~treatment and prosthesis for alleviating the child's disability.~~

8 ~~No educationally exceptional child shall be excluded from attending public or other suitable~~  
9 ~~schools.~~

10 Each child prior to receiving a special education program shall be evaluated by qualified  
11 professional, including but not limited to, a psychologist, educational specialist (reading specialist,  
12 speech and language clinician, or other specialists as required by the state Board of Education for  
13 specific areas of exceptionality) who shall report to the LEA superintendent of schools. The  
14 specialists' report shall carry include relevant data and recommendations for individualized  
15 interventions.

16 No educationally exceptional student child eligible for a free appropriate public education  
17 shall be excluded from attending public schools.



**§18-20-5. Powers and duties of state superintendent.**

1 ~~(a) The State Superintendent of Schools shall organize, promote, administer and be~~  
2 ~~responsible for:~~

3 ~~(1) Stimulating and assisting county boards of education in establishing, organizing and~~  
4 ~~maintaining special schools, classes, regular class programs, home teaching and visiting teacher~~  
5 ~~services for exceptional children.~~

6 ~~(2) Cooperating with all other public and private agencies engaged in relieving, caring for,~~  
7 ~~curing, educating and rehabilitating exceptional children, and in helping coordinate the services of~~  
8 ~~such agencies.~~

9 ~~(3) (A) Preparing the necessary rules, policies, and formulas for distribution of available~~  
10 ~~appropriated funds, reporting forms and procedures necessary to define minimum standards in~~  
11 ~~providing suitable facilities for education of exceptional children and ensuring the employment,~~  
12 ~~certification and approval of qualified teachers and therapists subject to approval by the State~~  
13 ~~Board of Education: *Provided*, That no state rule, policy or standard under this article or any county~~  
14 ~~board rule, policy or standard governing special education may exceed the requirements of federal~~  
15 ~~law or regulation.~~

16 ~~(B) A separate appropriation shall be made to the Department of Education to be disbursed~~  
17 ~~to county boards and public charter schools authorized pursuant to §18-5G-1 *et seq.* of this code~~  
18 ~~to assist them with serving exceptional children with high cost/high acuity special needs that~~  
19 ~~exceed the capacity of county to provide with funds available. Each county board and public~~  
20 ~~charter school shall apply to the state superintendent to receive this funding in a manner set forth~~  
21 ~~by the state superintendent that assesses and takes into account varying acuity levels of the~~  
22 ~~exceptional students. Any remaining funds at the end of a fiscal year from the appropriation shall~~  
23 ~~be carried over to the next fiscal year. When possible, federal funds shall be disbursed to county~~  
24 ~~boards and public charter schools for this purpose before any of the state appropriation~~  
25 ~~is disbursed. The state board shall promulgate a rule in accordance with the provisions of~~

26 ~~§29A-3B-1 et seq. of this code that implements the provisions of this subdivision relating to~~  
27 ~~disbursing the funds to the county boards and public charter schools. The rule at least shall~~  
28 ~~include a definition for "children with high acuity needs".~~

29 ~~(4) Receiving from county boards and public charter schools, their applications, annual~~  
30 ~~reports and claims for reimbursement from such moneys as are appropriated by the Legislature,~~  
31 ~~auditing such claims, and preparing vouchers to reimburse said counties the amounts~~  
32 ~~reimbursable to them.~~

33 ~~(5) Assuring that all exceptional children in the state, including children in mental health~~  
34 ~~facilities, residential institutions, private schools and correctional facilities as provided in §18-2-13f~~  
35 ~~of this code receive an education in accordance with state and federal laws: *Provided*, That the~~  
36 ~~state superintendent shall also assure that adults in correctional facilities and regional jails receive~~  
37 ~~an education to the extent funds are provided therefor.~~

38 ~~(6) Performing other duties and assuming other responsibilities in connection with this~~  
39 ~~program as needed.~~

40 ~~(b) Nothing contained in this section shall be construed to prevent any county board of~~  
41 ~~education from establishing and maintaining special schools, classes, regular class programs,~~  
42 ~~home teaching or visiting teacher services for exceptional children out of funds available from~~  
43 ~~local revenue.~~

44 ~~(a) The State Superintendent of Schools shall organize, promote, administer and be~~  
45 ~~responsible for:~~

46 ~~(1) Providing leadership and support to LEAs in establishing, organizing and maintaining a~~  
47 ~~continuum of services for students with exceptionalities.~~

48 ~~(2) Cooperating with all other public and private agencies engaged in providing medical,~~  
49 ~~mental health, educational, or respite services for students with exceptionalities, and in helping~~  
50 ~~coordinate the services of such agencies.~~

51 ~~(3) (A) Preparing the necessary rules, policies, and formulas for distribution of available~~

52 appropriated funds, reporting forms and procedures necessary to define minimum standards in  
53 providing suitable facilities for education of students with exceptionalities and ensuring the  
54 employment, certification and approval of qualified teachers and therapists subject to approval by  
55 the State Board of Education: *Provided*, That no state rule, policy or standard under this article or  
56 any county board rule, policy or standard governing special education may exceed the  
57 requirements of federal law or regulation.

58 (B) A separate appropriation shall be made to the Department of Education to be disbursed  
59 to county boards and public charter schools authorized pursuant to §18-5G-1 *et seq.* of this code  
60 to assist them with serving exceptional students with high cost/high acuity exceptional needs that  
61 exceed the capacity of the LEA to provide with funds available. Each LEA shall apply to the state  
62 superintendent to receive this funding in a manner set forth by the state superintendent that  
63 assesses and takes into account varying acuity levels of the students with exceptionalities. Any  
64 remaining funds at the end of a fiscal year from the appropriation shall be carried over to the next  
65 fiscal year. When possible, federal funds shall be disbursed to LEAs for this purpose before any of  
66 the state appropriation is disbursed. The state board shall promulgate a rule in accordance  
67 with the provisions of §29A-3B-1 *et seq.* of this code that implements the provisions of  
68 this subdivision relating to disbursing the funds to the LEAs. The rule at least shall include a  
69 definition for "children with high acuity needs".

70 (4) Receiving from LEAs, their applications, annual reports and claims for reimbursement  
71 from such moneys as are appropriated by the Legislature, auditing such claims, and preparing  
72 vouchers to reimburse said LEAs the amounts reimbursable to them.

73 (5) Assuring that all students with exceptionalities in the state, including students in mental  
74 health facilities, residential institutions, private schools receiving public funds and correctional  
75 facilities as provided in §18-2-13f of this code receive an education in accordance with state and  
76 federal laws: *Provided*, That the state superintendent shall also assure that adults in correctional  
77 facilities and regional jails receive an education to the extent funds are provided therefor and to the

78 extent that those adult students are still eligible to receive a free appropriate public education  
 79 (FAPE).

80 (6) Performing other duties and assuming other responsibilities in connection with this  
 81 program as needed.

82 (b) Nothing contained in this section shall be construed to prevent any LEA from  
 83 establishing and maintaining a full continuum of services for students with exceptionalities out of  
 84 funds available from local revenue.

**§18-20-6. Advisory council for the education of exceptional children.**

1 ~~There shall be an advisory council for the education of exceptional children which shall~~  
 2 ~~advise and consult with the state Board of Education on matters pertinent thereto. The advisory~~  
 3 ~~council shall be composed of twelve members appointed by the state superintendent of free~~  
 4 ~~schools, four of which shall be parents of exceptional children utilizing or eligible for the services of~~  
 5 ~~the special educational programs established hereunder. Other members of the advisory council~~  
 6 ~~shall include at least one handicapped individual, teacher of exceptional children, state education~~  
 7 ~~official, local education official, and an administrator of programs for exceptional children. No more~~  
 8 ~~than two officers and employees of the state may be eligible for appointment to the advisory~~  
 9 ~~council. Members shall be appointed for terms of three years except for initial terms which may be~~  
 10 ~~for one, two or three years. Each year the terms of office of one third of the advisory council shall~~  
 11 ~~expire. The members of the advisory council shall be citizens and residents of this state, who by~~  
 12 ~~reason of their training, education or experience are qualified to carry out the functions of the~~  
 13 ~~advisory council under this article.~~

14 ~~The first term of office for the newly appointed members shall begin June 30, 1978.~~

15 ~~At its first meeting, to be held the second Wednesday in July, 1978, the advisory council~~  
 16 ~~shall elect a chairman from among its members, who shall preside over its meetings until the~~  
 17 ~~second Wednesday in July of the next year. Thereafter, the advisory council shall elect a chairman~~  
 18 ~~on the second Wednesday in May of each year.~~

19 ~~All members shall be eligible for reappointment. A member shall, unless sooner removed,~~  
20 ~~continue to serve until his or her term expires and his or her successor has been appointed and~~  
21 ~~has qualified. A vacancy caused by the death, resignation or removal of a member prior to the~~  
22 ~~expiration of his or her term shall be filled only for the remainder of such term.~~

23 ~~For the purpose of carrying out its functions under this article, six members of the advisory~~  
24 ~~council shall constitute a quorum. The advisory council shall meet at least four times each year at~~  
25 ~~least two of which shall be held at a building in the State Capitol complex and at a time designated~~  
26 ~~by the chairman. Additional meetings may be held when called by the chairman or when requested~~  
27 ~~by six members of the advisory council.~~

28 ~~The time and place of all meetings and agenda items must be publicly announced and~~  
29 ~~available to the public upon request at least ten days prior to the meeting, and meetings must be~~  
30 ~~open to the public. Official minutes must be kept of all council meetings and shall be made~~  
31 ~~available to the public upon request.~~

32 ~~Members of the council shall not receive any compensation for their services on the~~  
33 ~~council, but shall be reimbursed any actual expenses incurred by them in carrying out their duties~~  
34 ~~from funds appropriated to the Department of Education.~~

35 ~~The council shall:~~

36 ~~(a) Consult with the state Board of Education concerning and comment publicly upon any~~  
37 ~~rules and regulations formulated by such board regarding the education of handicapped children;~~

38 ~~(b) Consult with and advise the state board and superintendent and the Legislature~~  
39 ~~concerning any problems presented to the council including unmet needs within the state in the~~  
40 ~~education of handicapped children;~~

41 ~~(c) Hold public meetings at such times and places as the advisory council deems~~  
42 ~~appropriate;~~

43 ~~(d) Periodically review and comment publicly upon the state plan for special programs and~~  
44 ~~make any recommendations it may have concerning changes it may deem proper. By July 1, of~~

45 ~~each year, the advisory council shall submit an annual report of its activities and suggestions to the~~  
46 ~~state Board of Education and the superintendent, and shall make such report available to the~~  
47 ~~public.~~

48 In accordance with the Individuals with Disabilities Education Act, there shall be an  
49 advisory council for the education of students with exceptionalities which shall advise and consult  
50 with the state Board of Education on matters pertinent thereto. The advisory council shall be  
51 composed of twelve members appointed by the state superintendent of free schools, four of which  
52 shall be parents of students with exceptionalities utilizing or eligible for the services of the special  
53 educational programs established hereunder. Other members of the advisory council shall include  
54 at least one individual with a disability, teacher of students with exceptionalities, state education  
55 official, local education official, and an administrator of programs for students with exceptionalities.  
56 No more than two officers and employees of the state may be eligible for appointment to the  
57 advisory council. Members shall be appointed for terms of three years except for initial terms  
58 which may be for one, two or three years. Each year the terms of office of one third of the advisory  
59 council shall expire. The members of the advisory council shall be citizens and residents of this  
60 state, who by reason of their training, education or experience are qualified to carry out the  
61 functions of the advisory council under this article.

62 The advisory council shall elect a chairman annually.

63 All members shall be eligible for reappointment. A member shall, unless sooner removed,  
64 continue to serve until the member's term expires and the member's successor has been  
65 appointed and has qualified. A vacancy caused by the death, resignation or removal of a member  
66 prior to the expiration of the member's term shall be filled only for the remainder of such term.

67 For the purpose of carrying out its functions under this article, six members of the advisory  
68 council shall constitute a quorum. The advisory council shall meet at least four times each year  
69 and at a time designated by the chairperson. Additional meetings may be held when called by the  
70 chairperson or when requested by six members of the advisory council.

71 The time and place of all meetings and agenda items must be publicly announced and  
 72 available to the public upon request at least ten days prior to the meeting, and meetings must be  
 73 open to the public. Official minutes must be kept of all council meetings and shall be made  
 74 available to the public upon request.

75 Members of the council shall not receive any compensation for their services on the  
 76 council, but shall be reimbursed any actual expenses incurred by them in carrying out their duties  
 77 from funds appropriated to the Department of Education.

78 The council shall:

79 (a) Consult with the state Board of Education concerning and comment publicly upon any  
 80 rules and regulations formulated by such board regarding the education of students with  
 81 exceptionalities;

82 (b) Consult with and advise the state board and superintendent and the Legislature  
 83 concerning any problems presented to the council including unmet needs within the state in the  
 84 education of students with exceptionalities;

85 (c) Hold public meetings at such times and places as the advisory council deems  
 86 appropriate;

87 (d) Periodically review and comment publicly upon the state plan for special programs and  
 88 make any recommendations it may have concerning changes it may deem proper. Annually, the  
 89 advisory council shall submit an annual report of its activities and suggestions to the state Board of  
 90 Education and the superintendent, and shall make such report available to the public.

**§18-20-7. Exceptional children program compliance ~~review~~ monitoring and accountability  
review teams.**

1 ~~The state board shall establish exceptional children program compliance review teams to~~  
 2 ~~conduct random unannounced on-site reviews of such programs at least every four years in each~~  
 3 ~~county for the purpose of reviewing identification procedures, complying with any or all applicable~~  
 4 ~~laws and policies, delivering services, verifying enrollment and attendance reports, recommending~~

5 ~~changes, and fulfilling such other duties as may be established by the state board.~~

6 ~~Each review team unit shall consist of five members including one member of an~~  
 7 ~~exceptional children advocacy group who is not an employee of any county or state government~~  
 8 ~~agency, one teacher of exceptional children in the specific category or categories to be reviewed,~~  
 9 ~~one person certified to interpret psycho-educational assessments, one school finance official and~~  
 10 ~~one financial Auditor who shall not be an employee of any county board, all appointed by the state~~  
 11 ~~superintendent.~~

12 The state board shall establish exceptional children program compliance monitoring and  
 13 accountability review teams to conduct cyclical on-site reviews of such programs at least every  
 14 four years in each LEA for the purpose of reviewing identification procedures, complying with any  
 15 or all applicable laws and policies, delivering services, verifying enrollment and attendance  
 16 reports, recommending changes, providing support for continuous improvement, and fulfilling  
 17 such other duties as may be established by the state board.

18 Each monitoring and accountability review team unit shall consist of individuals with  
 19 expertise in state and federal laws applicable to the education of students with disabilities, as well  
 20 as the identification and delivery of special education services to students with disabilities.

**§18-20-8. Interagency plan for exceptional children; advisory council.**

1 (a) The state departments of health, human services and education shall enter into a  
 2 collaborative agreement for the purpose of developing a statewide plan of coordinating  
 3 comprehensive, multidisciplinary interagency programs providing appropriate early intervention  
 4 services to all developmentally delayed and at-risk children, ages birth through five years, and  
 5 their families ~~to be phased in by the school year 1990-99.~~

6 This comprehensive, coordinated statewide plan shall include, at a minimum:

- 7 (1) Specification of the population to be served;  
 8 (2) The development of regulations and procedural safeguards;  
 9 (3) The development of procedures for administration, supervision and monitoring;



- 10 (4) The identification and coordination of all available resources; and
- 11 (5) The development of formal interagency agreements that define the financial
- 12 responsibility of each agency and all additional components necessary to ensure meaningful
- 13 cooperation and coordination.

14 (b) To assist in the development of such a plan, an advisory council consisting of twelve

15 members shall be created. The departments of health, human services and education shall each

16 appoint four members, and each shall include in such appointments one parent of ~~an exceptional~~

17 ~~child~~ a child with a disability under the age of six; one public or private provider of early intervention

18 services for developmentally delayed and at-risk children; one individual involved in the education

19 training of personnel who work with preschool ~~handicapped~~ special needs; and one other person.

20 The functions of the council shall include the following:

- 21 (1) Meet at least quarterly;
- 22 (2) Solicit information and opinions from concerned agencies, groups and individuals; and
- 23 (3) Advise and assist the departments of health, human services and education in the
- 24 development of the statewide plan herein required.

25 Following the submission of the advisory council’s first annual report, the joint committee

26 on education is authorized and empowered to disband the council or alter its functions as it deems

27 advisable.

28 The members of the council may be reimbursed for actual and necessary expenses

29 incurred in the performance of their official duties in accordance with state law from appropriations

30 to the departments of health, human services and education or available federal funds.

**§18-20-9. Gifted education caseload review.**

1 Notwithstanding any other provision of this code to the contrary, the teacher-student ratio

2 for gifted, honors, and advanced placement education in grades nine through twelve shall be the

3 same as regular classroom education and not as required for special education of ~~exceptional~~

4 ~~children~~ students with exceptionalities: *Provided*, That this shall not apply to education of

5 exceptional gifted, as defined in section one, article twenty of this chapter. ~~The state board shall~~  
6 ~~review class sizes and enrollment percentages of students in gifted, exceptional gifted, honors,~~  
7 ~~and advanced placement programs in grades nine through twelve and report its findings to the~~  
8 ~~standing education committees of the Senate and House of Delegates by January 10, 1991.~~

**§18-20-10. Dyslexia and dyscalculia defined.**

1 (a) The Legislature finds as follows:

2 (1) Reading difficulties are the most common cause of academic failure and  
3 underachievement;

4 (2) There are many students who demonstrate significant weaknesses with reading,  
5 writing and mathematics that are influenced by specific learning disabilities, including dyslexia,  
6 dyscalculia, and related learning difficulties. Of those who are referred to special education  
7 services in public schools, the majority are referred because of problems with language, reading,  
8 writing, or a combination of each;

9 (3) Teaching reading effectively, especially to students experiencing difficulty, requires  
10 considerable knowledge and skill. Informed and effective classroom instruction, especially in the  
11 early grades, can prevent and relieve the severity of language difficulties, and significantly improve  
12 literacy development;

13 (4) For those students with specific learning disabilities, including dyslexia and dyscalculia,  
14 who need specialized instruction, competent intervention can lessen the impact of the disorder  
15 and help the student overcome the most debilitating symptoms;

16 (5) While programs for specific learning disabilities, including dyslexia and dyscalculia, that  
17 certify or support teachers, clinicians or specialists differ in their preparation methodologies,  
18 teaching approaches and organizational purposes, they should ascribe to a common set of  
19 professional standards for the benefit of the students they serve. Compliance with such standards  
20 can assure the public that individuals who serve students with specific learning disabilities in  
21 public schools are prepared to implement scientifically based and clinically proven practices;

22 (6) The International Dyslexia Association (IDA) offers widely-adopted and consistent  
23 standards to guide the preparation, certification, and professional development for teachers of  
24 reading and related literacy skills in classroom, remedial and clinical settings; and

25 (7) The basis of ascribing to common standards to benefit students with specific learning  
26 disabilities, including dyslexia and dyscalculia, requires recognizing common characteristics of the  
27 disabilities. The Legislature finds that the definitions of dyslexia and dyscalculia prescribed by the  
28 American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth  
29 Edition, Text Revision (DSM-5-TR) are the appropriate measures for recognizing characteristics of  
30 dyslexia and dyscalculia in students.

31 (b) The Legislature recognizes the following regarding dyslexia and dyscalculia:

32 (1) Dyslexia and dyscalculia are conditions that may be considered under the specific  
33 learning disability category, and their definitions are consistent with IDEA and state board policy.  
34 State board policy provides that "specific learning disability" means a disorder in one or more of  
35 the basic psychological processes involved in understanding or in using language, spoken or  
36 written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to  
37 do mathematical calculations, including conditions such as perceptual disabilities, brain injury,  
38 minimal brain dysfunction, dyslexia and developmental aphasia;

39 (2) Dyslexia is an alternative term used to refer to a pattern of learning difficulties  
40 characterized by problems with accurate or fluent word recognition, poor decoding, and poor  
41 spelling abilities. If dyslexia is used to specify this particular pattern of difficulties, it is important  
42 also to specify any additional difficulties that are present, such as difficulties with reading  
43 comprehension or math reasoning; and

44 (3) Dyscalculia is an alternative term used to refer to a pattern of learning difficulties  
45 characterized by problems processing numerical information, learning arithmetic facts, and  
46 performing accurate or fluent calculations. If dyscalculia is used to specify this particular pattern of  
47 mathematic difficulties, it is important also to specify any additional difficulties that are present,

48 such as difficulties with math reasoning or word reasoning accuracy.

49 (c) The state board shall:

50 (1) Develop a list of appropriate screeners, early assessments, and professional  
51 development that address and ensure that all students receive the necessary and appropriate  
52 screenings, evaluations, and early assessments for specific learning disabilities, including  
53 dyslexia and dyscalculia which contain information related to the following:

54 (A) Appropriate literacy and numeracy screening tools for identifying students who are at  
55 risk for academic difficulty in reading and/or math, including dyslexia and dyscalculia, and who  
56 require tiered intervention;

57 (B) Appropriate diagnostic assessment components that can be used to help identify and  
58 diagnose;

59 (C) Appropriate evidence-based instruction and intervention strategies for students who  
60 are at risk for academic difficulty in reading and/or mathematics, including students who exhibit  
61 possible indicators of risk for dyslexia and/or dyscalculia;

62 (D) Appropriate accommodations for students who exhibit possible indicators of risk for, or  
63 who have been diagnosed with, dyslexia, dyscalculia, and/or other specific learning disabilities;

64 (E) Connecting a multi-tiered system of support framework to specific learning disability  
65 identification; and

66 (F) The use of the terms "dyslexia" and "dyscalculia" in Individualized Education Programs,  
67 and in evaluation reports by professionals qualified to render these diagnoses; and

68 (2) Explore options to assist any LEA with acquiring approved literacy and/or numeracy  
69 screening tools: *Provided*, That the local educational agency is unable to acquire its own literacy  
70 and/or numeracy screening tools that are consistent with state educational agency  
71 recommendations;

72 (3) Adopt and make publicly available guidelines for including dyslexia diagnostic  
73 evaluation components in comprehensive assessments for special education and related

74 services. These guidelines shall:

75 (A) Recommend at least one person on each multidisciplinary evaluation team be  
76 knowledgeable about dyslexia and be able to recognize when a dyslexia diagnostic component  
77 should be requested in the evaluation process;

78 (B) Recommend that a diagnosis of dyslexia be given when the data from the  
79 comprehensive evaluation components indicate such a diagnosis is appropriate;

80 (C) Include recommendations for how to document a dyslexia diagnosis in an IEP; and

81 (D) Include that a Section 504 Plan be considered if a student has a dyslexia diagnosis but  
82 does not qualify for special education services;

83 (4) Adopt and make publicly available a list of approved diagnostic assessment  
84 components that can be used to help identify and diagnose dyslexia during comprehensive  
85 multidisciplinary evaluations;

86 (5) Adopt and make publicly available guidelines and a list of resources for dyslexia  
87 intervention practices that are evidence-based, including practices consistent with the Science of  
88 Reading and Structured Literacy, that are explicit, direct, sequential, systematic, and multisensory;

89 (6) Adopt and make publicly available a list of recommended accommodations and  
90 instructional practices to be used with students who exhibit signs of dyslexia or have been  
91 diagnosed with dyslexia. These shall reflect contemporary research and guidelines of the Science  
92 of Reading related to dyslexia. These recommendations shall include, but are not limited to,  
93 structured literacy approaches that are explicit, direct, sequential, systematic, and multisensory;

94 (7) Adopt and make publicly available a list of available professional development  
95 resources that support evidence-based intervention for struggling readers, including the Science  
96 of Reading and Structured Literacy. This list shall be made publicly available and include  
97 resources endorsed or espoused by technical assistance centers, research organizations, and  
98 professional associations that support the Science of Reading and Structured Literacy regarding  
99 dyslexia, including the International Dyslexia Association; and

100 (8) Develop and make publicly available informational materials related to dyslexia for  
101 parents and guardians that include information about the multidisciplinary evaluation process,  
102 updated regularly.

103 (d) The local education agency shall:

104 (1) Develop a system for parents and guardians to annually receive digital and print  
105 informational materials related to dyslexia;

106 (2) Ensure at least one educator at each school is trained to administer, score, and  
107 interpret the data from the literacy screening instrument or instruments, and to recognize signs of  
108 dyslexia;

109 (3) Notify parents of the results of these literacy screeners while emphasizing that not all  
110 students who perform poorly on these screening instruments have dyslexia. Also, not all students  
111 with dyslexia will perform poorly on the screeners;

112 (4) Provide evidence-based reading intervention to students who exhibit academic risk in  
113 future reading performance, including indicators of dyslexia;

114 (5) Conduct comprehensive assessments to determine eligibility for special education  
115 services when a ~~child~~ student does not respond or only minimally responds to intervention  
116 strategies and/or when there is a suspected disability of dyslexia. If a determination is made  
117 through the evaluation process that a student needs assessed for dyslexia, provide assessment  
118 and diagnosis as necessary per West Virginia Department of Education guidelines;

119 (6) Employ appropriate accommodations and instructional practices recommended by the  
120 West Virginia Department of Education based upon the students' needs. When those needs are  
121 related to dyslexia, these accommodations and instructional techniques or strategies shall also  
122 meet the West Virginia Department of Education-approved guidelines for dyslexia  
123 accommodations and instructional practices;

124 (7) Require all elementary educators, special educators, reading interventionists or  
125 specialists, and other personnel determined appropriate by the local education agency to receive

126 professional development on the possible signs of dyslexia and the related classroom  
127 accommodations and instructional practices approved by the West Virginia Department of  
128 Education;

129 (8) Administer a literacy screening instrument or instruments to students in grades 3-5 who  
130 transfer from a local education agency where literacy screening instruments were not  
131 administered. If the literacy screening instrument indicates a deficit in reading, the school will  
132 provide intervention according to current policy. If a student does not respond or only minimally  
133 responds to intervention, a referral for multidisciplinary evaluation shall be made; and

134 (9) Require all appropriate personnel, as determined by the local education agency, to  
135 annually receive professional development relating to the possible indicators for dyslexia and  
136 dyscalculia, accommodations and modifications in the classroom environment, proper  
137 instructional practices for educating students who exhibit possible indicators of risk for, or who  
138 have been, diagnosed with dyslexia, dyscalculia, and/or other specific learning disabilities. Local  
139 education agencies may create more than one module to satisfy the requirements of this  
140 subdivision.

141 (e) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq.* of this code to  
142 implement this section. In addition to other provisions to implement this section, the rule shall at  
143 least include the following:

144 (1) If a student is reading substantially below grade level according to formal and/or  
145 informal assessments, including benchmark assessments, and has never been evaluated for  
146 special education, a request may be made by a school, parent, or teacher for the administration of  
147 an age- or grade-appropriate West Virginia Department of Education-approved literacy screening  
148 instrument or instruments. These points of data may be used to either start intervention and  
149 progress monitoring per West Virginia Department of Education guidance, or make a referral for a  
150 special education evaluation;

151 (2) Acknowledgement that each local education agency may have one certified Literacy

152 and Numeracy Specialist in each local ~~education~~ educational agency, or another appropriate  
153 professional designated by relevant local ~~education~~ educational agency leadership, to be  
154 appropriately trained, or be seeking appropriate training, in intervention, accommodations, and  
155 instructional strategies for students with dyslexia or a related disorder. The trained individual(s)  
156 shall serve as an advisor and trainer for dyslexia and related disorders for the local ~~education~~  
157 educational agency. The reading specialist(s) or other designated professional(s) shall have an  
158 understanding of the definition of dyslexia and a working knowledge of:

- 159 (A) Techniques to help a student on the continuum of skills with dyslexia;
- 160 (B) Dyslexia characteristics that may manifest at different ages and levels;
- 161 (C) The basic foundation of the keys to reading, including multisensory, explicit,  
162 systematic, and structured literacy instruction; and
- 163 (D) Appropriate interventions, accommodations, and assistive technology supports for  
164 students with dyslexia.
- 165 (f) Legislative Oversight Commission on Education Accountability (LOCEA):
- 166 (1) The final draft of the state board's literacy and numeracy rule shall be submitted to the  
167 Legislative Oversight Commission on Education Accountability (LOCEA) by August 1, 2023.
- 168 (2) The following shall be submitted to the Legislative Oversight Commission on Education  
169 Accountability (LOCEA) annually:
- 170 (A) Disaggregated data concerning literacy and numeracy patterns statewide;
- 171 (B) Statewide interventions implemented; and
- 172 (C) The statewide professional development plan.
- 173 (3) Progress monitoring regarding K-2 screening and 3-8 formative assessments shall be  
174 presented to the Legislative Oversight Commission on Education Accountability (LOCEA) after  
175 data is collected for the beginning, middle, and end of the school year.

**§18-20-11. Video cameras required in certain special education classrooms; audio  
recording devices required in restroom of a self-contained classroom.**



1           ~~(a) A county board of education shall ensure placement of video cameras in self-contained~~  
2 ~~classrooms and audio recording devices in the restrooms of self-contained classrooms as defined~~  
3 ~~in state board policy.~~

4           ~~(b) As used in this section:~~

5           ~~(1) "Incident" means a raised suspicion by a teacher, aide, parent, or guardian of a child, of~~  
6 ~~bullying, abuse, or neglect of a child or of harm to an employee of a public school by:~~

7           ~~(A) An employee of a public school or school district; or~~

8           ~~(B) Another student;~~

9           ~~(2) "Self-contained classroom" means a classroom at a public school in which a majority of~~  
10 ~~the students in regular attendance are provided special education instruction and as further~~  
11 ~~defined in state board policy; and~~

12           ~~(3) "Special education" means the same as defined in §18-20-1 et seq. of this code.~~

13           ~~(c) (1) A county board of education shall provide a video camera to a public school for each~~  
14 ~~self-contained classroom that is a part of that school which shall be used in every self-contained~~  
15 ~~classroom.~~

16           ~~(2) Prior to August 1, 2023, a county board of education shall provide an audio recording~~  
17 ~~device to a public school to be used in the restroom of each self-contained classroom that is a part~~  
18 ~~of that school. If the public school is not able to receive the audio recording device by August 1,~~  
19 ~~2023, the public school may apply to the state Department of Education for a waiver to extend that~~  
20 ~~date to August 1, 2024.~~

21           ~~(3) The principal of the school or other school administrator whom the principal assigns as~~  
22 ~~a designee shall be the custodian of the video camera and audio recording device, all recordings~~  
23 ~~generated by the video camera and audio recording device, and access to those recordings~~  
24 ~~pursuant to this section.~~

25           ~~(d)(1) Every public school that receives a video camera under this section shall operate~~  
26 ~~and maintain the video camera in every self-contained classroom that is part of that school.~~

27 ~~(2) Every public school that receives an audio recording device under this section shall~~  
28 ~~operate and maintain the audio recording device in every restroom that is a part of a self-contained~~  
29 ~~classroom that is part of that school: *Provided*, That each restroom of a self-contained classroom~~  
30 ~~shall have posted on its door a notice that states: "Pursuant to state law, this restroom is equipped~~  
31 ~~with an audio recording device for the protection of the students."~~

32 ~~-(3) If there is an interruption in the operation of the video camera or audio recording~~  
33 ~~device for any reason, a written explanation should be submitted to the school principal and the~~  
34 ~~county board explaining the reason and length for which there was no recording. The explanation~~  
35 ~~shall be maintained at the county board office for at least one year.~~

36 ~~(e)(1) A video camera placed in a self-contained classroom shall be capable of:~~

37 ~~(A) Monitoring all areas of the self-contained classroom, including, without limitation, a~~  
38 ~~room attached to the self-contained classroom and used for other purposes; and~~

39 ~~(B) Recording audio from all areas of the self-contained classroom, including, without~~  
40 ~~limitation, a room attached to the self-contained classroom and used for other purposes.~~

41 ~~(2) A video camera placed in a self-contained classroom shall not monitor a restroom or~~  
42 ~~any other area in the self-contained classroom where a student changes his or her clothes except,~~  
43 ~~for incidental monitoring of a minor portion of a restroom or other area where a student changes~~  
44 ~~his or her clothes because of the layout of the self-contained classroom.~~

45 ~~(3) An audio recording device shall be placed in the restroom of the self-contained~~  
46 ~~classroom and notice provided pursuant to §18-20-11(d)(2) of this code.~~

47 ~~(4) A video camera or audio recording device required by this section is not required to be~~  
48 ~~in operation during the time in which students are not present in the self-contained classroom.~~

49 ~~(f) Before a public school initially places a video camera in a self-contained classroom or~~  
50 ~~an audio recording device in the restroom of a self-contained classroom pursuant to this section,~~  
51 ~~the county board of education shall provide written notice of the placement to:~~

52 ~~(1) The parent or legal guardian of a student who is assigned to the self-contained~~

53 classroom: *Provided*, That the parent or guardian be allowed the opportunity to opt out of the  
54 bathroom audio monitoring for their student. An Individual Education Plan or 504 plan shall outline  
55 the opt out and an alternative arrangement for the student or parent needs and requested  
56 accommodation; and

57 ~~(2) The school employee(s) who is assigned to work with one or more students in the self-~~  
58 ~~contained classroom.~~

59 ~~(g)(1) Except as provided in subdivision (2) of this subsection, a public school shall retain~~  
60 ~~video and audio recorded pursuant to this section for at least three months after the date of the~~  
61 ~~recording, subject to the following:~~

62 ~~(A) If the minimum three-month period overlaps the summer break occurring between the~~  
63 ~~last day of one instructional term and the first day of the next instructional term, the minimum~~  
64 ~~three-month period shall be extended by the number of days occurring between the two~~  
65 ~~instructional terms;~~

66 ~~(B) For any school-based camera system or audio device recording device that is installed~~  
67 ~~or replaced after April 1, 2022, the public school shall retain video recorded from a camera or~~  
68 ~~audio device recording for at least 365 days after the date the video or audio was recorded and no~~  
69 ~~extension of this time period during the summer break is required.~~

70 ~~(2) If a person requests to review a recording under subsection (k) or subsection (l) of this~~  
71 ~~section, the public school shall retain the recording from the date of the request until:~~

72 ~~(A) The earlier of the person reviewing the recording or 60 days after the person who~~  
73 ~~requested the video or audio recording was notified by the public school that the video or audio~~  
74 ~~recording is available; and~~

75 ~~(B) Any investigation and any administrative or legal proceedings that result from the~~  
76 ~~recording have been completed, including, without limitation, the exhaustion of all appeals.~~

77 ~~(3) In no event may the recording be deleted or otherwise made unretrievable before the~~  
78 ~~time period set forth in subdivision (1) of this subsection elapses.~~

79 ~~(h) This section does not:~~

80 ~~(1) Waive any immunity from liability of a public school district or employee of a public~~  
81 ~~school district;~~

82 ~~(2) Create any liability for a cause of action against a public school or school district or~~  
83 ~~employee of a public school or school district; or~~

84 ~~(3) Require the principal or other designated school administrator to review the recording~~  
85 ~~absent an authorized request pursuant to this code section or suspicion of an incident except as~~  
86 ~~otherwise provided in subsection (j) of this section.~~

87 ~~(i) A public school or school district shall not use video or audio recorded under this section~~  
88 ~~for:~~

89 ~~(1) Teacher evaluations; or~~

90 ~~(2) Any purpose other than the promotion and protection of the health, wellbeing, and~~  
91 ~~safety of students receiving special education and related services in a self-contained classroom~~  
92 ~~or restroom of a self-contained classroom.~~

93 ~~(j) Except as provided under subsections (k) and (l) of this section, a recording made under~~  
94 ~~this section is confidential and shall not be released or reviewed by anyone except the school~~  
95 ~~principal, other school administration designee, or county designee if the school principal or other~~  
96 ~~school administration designee is unable to review the video or audio recording pursuant to this~~  
97 ~~subsection. The school principal, other school administration designee, or county designee shall~~  
98 ~~review no less than 15 minutes of the video and no less than 15 minutes of audio of each self-~~  
99 ~~contained classroom and restroom at the school no less than every 90 days. The state board shall~~  
100 ~~include in its rule authorized by this section requirements for documentation of compliance with the~~  
101 ~~video and audio reviewing requirements of this subsection.~~

102 ~~(k) Within seven days of receiving a request, a public school or school district shall allow~~  
103 ~~review of a recording by:~~

104 ~~(1) A public school or school district employee who is involved in an alleged incident that is~~

105 ~~documented by the recording and has been reported to the public school or school district;~~

106 ~~(2) A parent or legal guardian of a student who is involved in an alleged incident that is~~  
107 ~~documented by the recording and has been reported to the public school or school district; or~~

108 ~~(3) An employee of a public school or school district as part of an investigation into an~~  
109 ~~alleged incident that is documented by the recording and has been reported to the public school or~~  
110 ~~school district.~~

111 ~~(l) Within seven days of receiving a request, a public school or school district shall allow~~  
112 ~~review of a recording by and comply with all subsequent requests for review or release of the~~  
113 ~~recording by:~~

114 ~~(1) A law enforcement officer or employee of the Department of Health and Human~~  
115 ~~Resources, as part of an investigation into an alleged incident that is documented by the recording~~  
116 ~~and has been reported to the agency: *Provided*, That if a release of the recording is requested~~  
117 ~~pursuant to this subdivision, the agency receiving a copy of the recording shall maintain strict~~  
118 ~~confidentiality of the recording and not further release the recording without authorization from the~~  
119 ~~public school district through its superintendent; or~~

120 ~~(2) A judge, counsel, or other legal entity that is charged with deciding or representing~~  
121 ~~either the school board, students, or employees in any matters related to legal issues arising from~~  
122 ~~an incident: *Provided*, That the recording may only be released pursuant to an appropriate~~  
123 ~~protective order or under seal.~~

124 ~~(m) If an incident is discovered while initially reviewing a recording that requires a report to~~  
125 ~~be made under §49-2-803 of this code, that report shall be made by the reviewer pursuant to that~~  
126 ~~section within 24 hours of viewing the incident.~~

127 ~~(n) When a recording is under review as part of the investigation of an alleged incident, and~~  
128 ~~the recording reveals a student violating a disciplinary code or rule of the school, which violation is~~  
129 ~~not related to the alleged incident for which the review is occurring, and which violation is not~~  
130 ~~already the subject of a disciplinary action against the student, the student is not subject to~~

131 ~~disciplinary action by the school for such unrelated violation unless it reveals a separate incident~~  
132 ~~as described in §18-20-11(b)(1) of this code.~~

133 ~~(e) It is not a violation of subsection (j) of this section if a contractor or other employee of a~~  
134 ~~public school or school district incidentally reviews a recording under this section if the contractor~~  
135 ~~or employee of a public school or school district is performing job duties related to the:~~

136 ~~(1) Installation, operation, or maintenance of video or audio equipment; or~~

137 ~~(2) Retention of video or audio recordings.~~

138 ~~(p) This section applies solely to cameras and audio recording devices installed pursuant~~  
139 ~~to this code section and does not limit the access of a student's parent or legal guardian to a~~  
140 ~~recording reviewable under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.~~  
141 ~~§1232g, or any other law.~~

142 ~~(q) A public school or school district shall:~~

143 ~~(1) Take necessary precautions to conceal the identity of a student who appears in a video~~  
144 ~~recording but is not involved in the alleged incident documented by the video recording for which~~  
145 ~~the public school allows viewing under subsection (j) of this section, including, without limitation,~~  
146 ~~blurring the face of the uninvolved student; and~~

147 ~~(2) Provide procedures to protect the confidentiality of student records contained in a~~  
148 ~~recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.~~  
149 ~~§1232g, or any other law.~~

150 ~~(r) (1) Any aggrieved person may appeal to the State Board of Education an action by a~~  
151 ~~public school or school district that the person believes to be in violation of this section.~~

152 ~~(2) The state board shall grant a hearing on an appeal under this subsection within 45 days~~  
153 ~~of receiving the appeal.~~

154 ~~(s) (1) A public school or school district may use funds distributed from the Safe Schools~~  
155 ~~Fund created in §18-5-48 of this code or any other available funds to meet the requirements of this~~  
156 ~~section.~~

157 ~~(2) A public school or school district may accept gifts, grants, or donations to meet the~~  
158 ~~requirements of this section.~~

159 ~~(t) The state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this~~  
160 ~~code to clarify the requirements of this section and address any unforeseen issues that might arise~~  
161 ~~relating to the implementation of the requirements of this section.~~

162 (a) A local educational agency (LEA) shall ensure placement of video cameras in self-  
163 contained classrooms and audio recording devices in the restrooms of self-contained classrooms  
164 as defined in state board policy.

165 (b) As used in this section:

166 (1) "Incident" means a raised suspicion by a teacher, aide, parent, or guardian of a student,  
167 of bullying, abuse, or neglect of a student or of harm to an employee of a public school by:

168 (A) An employee of a public school or LEA; or

169 (B) Another student;

170 (2) "Self-contained classroom" means a classroom at a public school in which a majority of  
171 the students in regular attendance are provided special education instruction and as further  
172 defined in state board policy; and

173 (3) "Special education" means the same as defined in §18-20-1 et seq. of this code.

174 (c) (1) An LEA shall provide a video camera to a public school for each self-contained  
175 classroom that is a part of that school which shall be used in every self-contained classroom.

176 (2) Prior to August 1, 20234 an LEA shall provide an audio recording device to a public  
177 school to be used in the restroom of each self-contained classroom that is a part of that school. If  
178 the public school is not able to receive the audio recording device by August 1, 2024, the public  
179 school may apply to the state Department of Education for a waiver to extend that date to August  
180 1, 2025.

181 (3) The principal of the school or other school administrator whom the principal assigns as  
182 a designee shall be the custodian of the video camera and audio recording device, all recordings

183 generated by the video camera and audio recording device, and access to those recordings  
184 pursuant to this section.

185 (d)(1) Every public school that receives a video camera under this section shall operate  
186 and maintain the video camera in every self-contained classroom that is part of that school.

187 (2) Every public school that receives an audio recording device under this section shall  
188 operate and maintain the audio recording device in every restroom that is a part of a self-contained  
189 classroom that is part of that school: *Provided*, That each restroom of a self-contained classroom  
190 shall have posted on its door a notice that states: "Pursuant to state law, this restroom is equipped  
191 with an audio recording device for the protection of the students."

192 (3) If there is an interruption in the operation of the video camera or audio recording  
193 device for any reason, a written explanation should be submitted to the school principal and the  
194 LEA board explaining the reason and length for which there was no recording. The explanation  
195 shall be maintained at the LEA board office for at least one year.

196 (e)(1) A video camera placed in a self-contained classroom shall be capable of:

197 (A) Monitoring all areas of the self-contained classroom, including, without limitation, a  
198 room attached to the self-contained classroom and used for other purposes; and

199 (B) Recording audio from all areas of the self-contained classroom, including, without  
200 limitation, a room attached to the self-contained classroom and used for other purposes.

201 (2) A video camera placed in a self-contained classroom shall not monitor a restroom or  
202 any other area in the self-contained classroom where a student changes his or her clothes except,  
203 for incidental monitoring of a minor portion of a restroom or other area where a student changes  
204 his or her clothes because of the layout of the self-contained classroom.

205 (3) An audio recording device shall be placed in the restroom of the self-contained  
206 classroom and notice provided pursuant to §18-20-11(d)(2) of this code.

207 (4) A video camera or audio recording device required by this section is not required to be  
208 in operation during the time in which students are not present in the self-contained classroom.



209 (f) Before a public school initially places a video camera in a self-contained classroom or  
210 an audio recording device in the restroom of a self-contained classroom pursuant to this section,  
211 the LEA board of education shall provide written notice of the placement to:

212 (1) The parent or legal guardian of a student who is assigned to the self-contained  
213 classroom: *Provided*, That the parent or guardian be allowed the opportunity to opt out of the  
214 bathroom audio monitoring for their student. An Individual Education Plan or 504 plan shall outline  
215 the opt out and an alternative arrangement for the student or parent needs and requested  
216 accommodation; and

217 (2) The school employee(s) who is assigned to work with one or more students in the self-  
218 contained classroom.

219 (g)(1) Except as provided in subdivision (2) of this subsection, a public school shall retain  
220 video and audio recorded pursuant to this section for at least three months after the date of the  
221 recording, subject to the following:

222 (A) If the minimum three-month period overlaps the summer break occurring between the  
223 last day of one instructional term and the first day of the next instructional term, the minimum  
224 three-month period shall be extended by the number of days occurring between the two  
225 instructional terms;

226 (B) For any school-based camera system or audio device recording device that is installed  
227 or replaced after April 1, 2024, the public school shall retain video recorded from a camera or  
228 audio device recording for at least 365 days after the date the video or audio was recorded and no  
229 extension of this time period during the summer break is required.

230 (2) If a person requests to review a recording under subsection (k) or subsection (l) of this  
231 section, the public school shall retain the recording from the date of the request until:

232 (A) The earlier of the person reviewing the recording or 60 days after the person who  
233 requested the video or audio recording was notified by the public school that the video or audio  
234 recording is available; and

235 (B) Any investigation and any administrative or legal proceedings that result from the  
236 recording have been completed, including, without limitation, the exhaustion of all appeals.

237 (3) In no event may the recording be deleted or otherwise made unretrievable before the  
238 time period set forth in subdivision (1) of this subsection elapses.

239 (h) This section does not:

240 (1) Waive any immunity from liability of a public LEA or employee of a public LEA;

241 (2) Create any liability for a cause of action against a public school or LEA or employee of a  
242 public school or LEA; or

243 (3) Require the principal or other designated school administrator to review the recording  
244 absent an authorized request pursuant to this code section or suspicion of an incident except as  
245 otherwise provided in subsection (j) of this section.

246 (i) A public school or LEA shall not use video or audio recorded under this section for:

247 (1) Teacher evaluations; or

248 (2) Any purpose other than the promotion and protection of the health, well-being, and  
249 safety of students receiving special education and related services in a self-contained classroom  
250 or restroom of a self-contained classroom.

251 (j) Except as provided under subsections (k) and (l) of this section, a recording made under  
252 this section is confidential and shall not be released or reviewed by anyone except the school  
253 principal, other school administration designee, or LEA designee if the school principal or other  
254 school administration designee is unable to review the video or audio recording pursuant to this  
255 subsection. The school principal, other school administration designee, or LEA designee shall  
256 review no less than 15 minutes of the video and no less than 15 minutes of audio of each self-  
257 contained classroom and restroom at the school no less than every 90 calendar days. The state  
258 board shall include in its rule authorized by this section requirements for documentation of  
259 compliance with the video and audio reviewing requirements of this subsection.

260 (k) Within seven days of receiving a request, a public school or LEA shall allow review of a

261 recording by:

262 (1) A public school or LEA employee who is involved in an alleged incident that is  
263 documented by the recording and has been reported to the public school or LEA;

264 (2) A parent or legal guardian of a student who is involved in an alleged incident that is  
265 documented by the recording and has been reported to the public school or LEA; or

266 (3) An employee of a public school or LEA as part of an investigation into an alleged  
267 incident that is documented by the recording and has been reported to the public school or LEA.

268 (l) Within seven days of receiving a request, a public school or LEA shall allow review of a  
269 recording by and comply with all subsequent requests for review or release of the recording by:

270 (1) A law-enforcement officer or employee of the Department of Health and Human  
271 Resources, as part of an investigation into an alleged incident that is documented by the recording  
272 and has been reported to the agency: *Provided*, That if a release of the recording is requested  
273 pursuant to this subdivision, the agency receiving a copy of the recording shall maintain strict  
274 confidentiality of the recording and not further release the recording without authorization from the  
275 public LEA through its superintendent; or

276 (2) A judge, counsel, or other legal entity that is charged with deciding or representing  
277 either the school board, students, or employees in any matters related to legal issues arising from  
278 an incident: *Provided*, That the recording may only be released pursuant to an appropriate  
279 protective order or under seal.

280 (m) If an incident is discovered while initially reviewing a recording that requires a report to  
281 be made under §49-2-803 of this code, that report shall be made by the reviewer pursuant to that  
282 section within 24 hours of viewing the incident.

283 (n) When a recording is under review as part of the investigation of an alleged incident, and  
284 the recording reveals a student violating a disciplinary code or rule of the school, which violation is  
285 not related to the alleged incident for which the review is occurring, and which violation is not  
286 already the subject of a disciplinary action against the student, the student is not subject to

287 disciplinary action by the school for such unrelated violation unless it reveals a separate incident  
288 as described in §18-20-11(b)(1) of this code.

289 (o) It is not a violation of subsection (j) of this section if a contractor or other employee of a  
290 public school or LEA incidentally reviews a recording under this section if the contractor or  
291 employee of a public school or LEA is performing job duties related to the:

292 (1) Installation, operation, or maintenance of video or audio equipment; or

293 (2) Retention of video or audio recordings.

294 (p) This section applies solely to cameras and audio recording devices installed pursuant  
295 to this code section and does not limit the access of a student's parent or legal guardian to a  
296 recording reviewable under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.  
297 §1232g, or any other law.

298 (q) A public school or LEA shall:

299 (1) Take necessary precautions to conceal the identity of a student who appears in a video  
300 recording but is not involved in the alleged incident documented by the video recording for which  
301 the public school allows viewing under subsection (j) of this section, including, without limitation,  
302 blurring the face of the uninvolved student; and

303 (2) Provide procedures to protect the confidentiality of student records contained in a  
304 recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.  
305 §1232g, or any other law.

306 (r) (1) Any aggrieved person may appeal to the State Board of Education an action by a  
307 public school or LEA that the person believes to be in violation of this section.

308 (2) The state board shall grant a hearing on an appeal under this subsection within 45 days  
309 of receiving the appeal.

310 (s) (1) A public school or LEA may use funds distributed from the Safe Schools Fund  
311 created in §18-5-48 of this code or any other available funds to meet the requirements of this  
312 section.

313 (2) A public school or LEA may accept gifts, grants, or donations to meet the requirements  
314 of this section.

315 (t) The state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this  
316 code to clarify the requirements of this section and address any unforeseen issues that might arise  
317 relating to the implementation of the requirements of this section.

**CHAPTER 18A. SCHOOL PERSONNEL.**

**ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

**§18A-5-1. Authority of teachers and other school personnel; exclusion of students having  
infectious diseases; suspension or expulsion of disorderly students; corporal  
punishment abolished.**

1 (a) The teacher shall stand in the place of the parent(s), guardian(s), or custodian(s) in  
2 exercising authority over the school and has control of all students enrolled in the school from the  
3 time they reach the school until they have returned to their respective homes, except where  
4 transportation of students is provided, the driver in charge of the school bus or other mode of  
5 transportation shall exercise such authority and control over the students while they are in transit  
6 to and from the school.

7 (b) Subject to the rules of the state Board of Education, the teacher shall exclude from the  
8 school any student known to have, or who is suspected of having, any infectious disease, or any  
9 student who has been exposed to any infectious disease and shall immediately notify the proper  
10 health officer or medical inspector of the exclusion. Any student so excluded may not be  
11 readmitted to the school until he or she has complied with all the requirements of the rules  
12 governing those cases or has presented a certificate of health signed by the medical inspector or  
13 other proper health officer.

14 (c) The teacher, may exclude from his or her classroom or school bus any student who is  
15 guilty of disorderly conduct; who in any manner interferes with an orderly educational process;

16 who behaves in a manner that obstructs the teaching or learning process of others in the  
17 classroom; who threatens, abuses or otherwise intimidates or attempts to intimidate a school  
18 employee or a student; who willfully disobeys a school employee; or who uses abusive or profane  
19 language directed at a school employee. Any student excluded shall be placed under the control of  
20 the principal of the school or a designee. The excluded student may be admitted to the classroom  
21 or school bus only when the principal, or a designee, provides written certification to the teacher  
22 that the student may be readmitted and specifies the specific type of disciplinary action, if any, that  
23 was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written  
24 and, if possible, telephonic notice of the action to the parent(s), guardian(s), or custodian(s). When  
25 a student is excluded from a classroom or a school bus two times in one semester, and after  
26 exhausting all reasonable methods of classroom discipline provided in the school discipline plan,  
27 the student may be readmitted to the classroom or the school bus only after the principal, teacher  
28 and, if possible, the parent(s), guardian(s), or custodian(s) of the student have held a conference  
29 to discuss the student's disruptive behavior patterns, and the teacher and the principal agree on a  
30 course of discipline for the student and inform the parent(s), guardian(s), or custodian(s) of the  
31 course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's  
32 request, the principal may, to the extent feasible, transfer the student to another setting. The  
33 Legislature finds that isolating students or placing them in alternative learning centers may be the  
34 best setting for chronically disruptive students. The county board shall create more alternative  
35 learning centers or expand its capacity for alternative placements, subject to funding, to correct  
36 these students' behaviors so they can return to a regular classroom without engaging in further  
37 disruptive behavior.

38 (d) When a grade six through 12 teacher, excluding an elementary school teacher,  
39 determines that the behavior of the student is disorderly conduct, is interfering with an orderly  
40 educational process, or obstructs the teaching or learning process of others in the classroom:

41 (1) The student may be excluded from that teacher's classroom and if excluded may not re-

42 enter that teacher's classroom for at least the remainder of the instructional day;

43 (2) If the student is excluded pursuant to subdivision (1) of this subsection;

44 (A) The principal shall communicate with the teacher within 24 hours of the student being  
45 excluded from the teacher's classroom about the exclusion;

46 (B) The teacher has 24 hours to create an electronic record and place the report of this  
47 action into the West Virginia Education Information System (WVEIS), without any repercussion to  
48 the teacher; and

49 (C) If the student is removed from a classroom a total of three times in one month for one or  
50 more of the behaviors set forth in this subsection, the student shall receive as determined by the  
51 principal an in-school suspension, an out-of-school suspension, or may be considered for  
52 placement in an alternative learning center if one is available within the school district.

53 (D) Nothing in this legislation shall deny a student with a disability from federal protections  
54 such as the Individuals with Disabilities Education Act (IDEA) and Section 504 of the  
55 Rehabilitation Act of 1973, as amended.

56 (e) The Legislature finds that suspension from school is not appropriate solely for a  
57 student's failure to attend class. Therefore, a student may not be suspended from school solely for  
58 not attending class. Other methods of discipline may be used for the student which may include,  
59 but are not limited to, detention, extra class time, or alternative class settings.

60 (f) Corporal punishment of any student by a school employee is prohibited.

61 (g) Each county board is solely responsible for the administration of proper discipline in the  
62 public schools of the county and shall adopt policies consistent with the provisions of this section  
63 to govern disciplinary actions. These policies shall encourage the use of alternatives to discipline  
64 practices, provide for the training of school personnel in alternatives to discipline practices, and  
65 provide for encouraging the involvement of parent(s), guardian(s) or custodian(s) in the  
66 maintenance of school discipline. To promote a teaching and learning environment free from  
67 substantial classroom disturbances, each county board shall ensure that each school implements

68 a tier system policy, with teacher input, to provide a framework for student behaviors and  
69 punishments. The policy shall be clear and concise with specific guidelines and examples. The  
70 principal shall support the teacher in the discipline of the students if proper cause and  
71 documentation is provided following the schoolwide discipline policy. The teacher may not be  
72 reprimanded if their actions are legal and within the structure of the county board's policy for  
73 student behavior and punishment. The county board policies shall also include an appeal  
74 procedure whereby a teacher may appeal to the county superintendent if a school principal  
75 refuses to allow the exclusion of a student from the classroom or if a teacher believes the school  
76 principal has prematurely ended the exclusion of a student from the classroom. The county boards  
77 shall provide for the immediate incorporation and implementation in schools of a preventive  
78 discipline program which may include the responsible student program and a student involvement  
79 program, which may include the peer mediation program, devised by the West Virginia Board of  
80 Education. Each county board may modify those programs to meet the particular needs of the  
81 county. The county boards shall provide in-service training for teachers and principals relating to  
82 assertive discipline procedures and conflict resolution. The county boards also may establish  
83 cooperatives with private entities to provide middle educational programs, which may include  
84 programs focusing on developing individual coping skills, conflict resolution, anger control, self-  
85 esteem issues, stress management and decision making for students, and any other program  
86 related to preventive discipline.

87 (h) For the purpose of this section:

88 (1) "Student" includes any child, youth or adult who is enrolled in any instructional program  
89 or activity conducted under board authorization and within the facilities of, or in connection with,  
90 any program under public school direction: *Provided*, That, in the case of adults, the student-  
91 teacher relationship shall terminate when the student leaves the school or other place of  
92 instruction or activity;

93 (2) "Teacher" means all professional educators as defined in §18A-1-1 of this code and



94 includes the driver of a school bus or other mode of transportation; and

95 (3) "Principal" means the principal, assistant principal, vice principal or the administrative  
96 head of the school, or a professional personnel designee of the principal or the administrative  
97 head of the school.

98 (i) Teachers shall exercise other authority and perform other duties prescribed for them by  
99 law or by the rules of the state board not inconsistent with the provisions of this chapter and  
100 chapter 18 of this code.

NOTE: The purpose of this bill is to clean up statutory provisions regarding the special education code.

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