

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5158

By Delegates Toney, Ellington, Statler, and Vance

[Originating in the Committee on Education; Reported
on February 2, 2024]

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 updating statutory provisions regarding the special education code; defining local
7 educational agency; clarifying that districts and county boards subsumed under the local
8 educational agency; updating definitions; updating terminology used in education of
9 exceptional children; clarifying local educational agencies special educational programs
10 include services outside the school environment; requiring state board's rules assuring
11 exceptional students receive an education in accordance with state and federal laws
12 include students in foster care and correctional facilities; clarifying services required by
13 local educational agency that must be provided until age of majority; requiring preschool
14 programs, special education and related services for students with disabilities or
15 developmental delays begin services by student's 3rd birthday; clarifying preschool
16 programs for students with disabilities or developmental delays are available to such
17 students in mental health facilities, residential institutions, and private entities who have
18 entered into an agreement with a local educational agency; repealing outdated code
19 section; clarifying provisions regarding assistance, training and information to be provided
20 to integrated classroom teachers; updating terminology for individualized education
21 programs; clarifying minimum training for autism mentor and allowing for partial or full
22 reimbursement of tuition for training as autism mentor; updating terminology regarding
23 reports; requiring local educational agencies to maintain a continuum of services, including
24 integrated classrooms and out of school environments; requiring training to integrated
25 education and submission of annual reports; updating terminology regarding examination
26 and reports by medical or other specialists; updating language regarding powers and

27 duties of superintendent; updating language regarding advisory council for the education
28 of exceptional children; updating requirements of exceptional children monitoring and
29 accountability review teams; updating terminology regarding interagency plan for
30 exceptional children and advisory council; updating terminology regarding gifted education
31 caseload review; updating language regarding video cameras in self-contained
32 classrooms; and adding language specifically prohibition against denying a student with
33 disability from protections of federal laws.

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

13 ~~(c)~~ (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 ~~(o)~~ (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 (a) In accordance with the following provisions, local educational agencies (LEAs),
36 including all county boards of education, schools and facilities under the supervision of the State
37 board, and public charter schools acting as their own local educational agency (LEA) throughout
38 the state shall establish and maintain special education services for all exceptional school-age
39 students between five and twenty-one years of age, including, but not limited to, services provided

40 in general education classrooms, co-teaching classrooms, special education resource classes,
41 self-contained classes, homebound services, and other placements determined appropriate to
42 meet the unique needs of students with disabilities as determined by Individualized Education
43 Program (IEP) teams. Special education programs must be provided to students until the end of
44 the school year in which they reach the age of 21 years or until the student earns a regular high
45 school diploma, whichever occurs first. Provisions shall be made for educating exceptional
46 students (including students with disabilities and students identified as gifted or exceptionally
47 gifted who differ from their non-disabled peers to the extent that they need specially designed
48 instruction in order to access the curriculum and receive a free appropriate public education. The
49 term "gifted" means exceptional intellectual abilities and potential for achievement that requires
50 specially designed instruction and/or services beyond those normally provided in the general
51 classroom instruction. The term "exceptional gifted" means those students in grades nine through
52 twelve meeting the criteria for gifted with at least one of the additional criteria as identified in State
53 Board Policy 2419. Exceptional gifted students shall be referred for identification pursuant to state
54 board policy. Each local education agency (LEA) is mandated to provide gifted education to its
55 students according to guidelines promulgated by the state board and consistent with the
56 provisions of this chapter. In addition, county boards of education may establish and maintain
57 other educational services for exceptional students as the State Superintendent of Schools may
58 approve.

59 ~~County boards of education~~ Each local educational agency (LEA) shall establish and
60 maintain these special educational programs including, but not limited to, special schools classes,
61 regular class programs, home teaching and visiting teacher services. The special education
62 programs shall include home teaching or visiting teacher services for children which include
63 services outside the school environment for students who are homebound due to injury or who for
64 any other reason as certified by a licensed physician are homebound for a period that has lasted or
65 will last more than three weeks. The state board shall adopt rules to advance and accomplish this

66 program and to assure that all exceptional ~~children~~ students in the state, including ~~children~~
67 students in mental health facilities, residential institutions, foster care, correctional facilities, and
68 private schools, will receive an education in accordance with the mandates of state and federal
69 laws. ~~Provided, That commencing with the school year beginning on July 1, 1991, all exceptional~~
70 ~~children in the state in foster care and correctional facilities will receive an education in accordance~~
71 ~~with the mandates of state and federal laws.~~

72 (c) Each ~~county board of education~~ local educational agency (LEA) shall adopt a policy that
73 allows a student with disabilities, whose individualized education program provides for a ~~modified~~
74 an alternate diploma to participate in the graduation ceremony ~~of his or her~~ with their same-grade
75 classmates if requested in writing by ~~his or her~~ their parent or legal guardian, or the student who is
76 subject to this request if the student is of the age of majority. The ~~county board~~ local educational
77 agency (LEA) shall also permit the student to continue receiving ~~his or her~~ special education
78 services after the graduation ceremony until the end of the school year in which the student
79 reaches the age of 21 years. The ~~county board~~ local educational agency (LEA) may not terminate,
80 deny, or declare the student ineligible for post-graduation ceremony special education services
81 due to ~~his or her~~ their participation in the graduation 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~~
2 Each local educational agency (LEA) shall develop a coordinated service delivery plan in
3 accordance with standards for preschool programs for ~~severely disabled children to be developed~~
4 ~~by the State Board of Education and begin services where plans are already developed~~ students
5 with disabilities or developmental delays and begin services where plans are already developed
6 with IEPs in place by the student's 3rd birthday.

7 (b) ~~Only in any year in which funds are made available by legislative appropriation, and~~
8 ~~only to the extent of such funding, each county board of education~~ Each local educational agency

9 (LEA) shall establish and maintain a special educational program, including, but not limited to,
10 ~~special classes and home teaching and visiting teacher services for all severely disabled children~~
11 ~~between the ages of three and five according to the following schedule~~ universal Pre-K classes
12 which integrate students with disabilities, special classes and services provided in out-of-school
13 environments for all students with disabilities three through five years of age.

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

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

18 ~~(c) As used in this section, the term "severely disabled children"~~ "students with disabilities"
19 ~~means those children~~ eligible individuals who fall in any one of the following disability categories
20 ~~as defined or to be defined in the State Board of Education standards for the education of~~
21 ~~exceptional children: Severe behavioral disorders, severely speech and language impaired, deaf-~~
22 ~~blind, deafness or hearing difficulties, autistic, physically handicapped, disabled profoundly~~
23 ~~intellectually disabled, trainable intellectually disabled or visually impaired~~ as defined in federal or
24 state special education regulations. Special education and related services for eligible students
25 with a developmental delay will be provided as of the student's third birthday when eligibility is
26 determined prior to the third birthday.

27 ~~(d) This programming is available to all such students in the state, including in mental~~
28 ~~health facilities, residential institutions, and private entities who have entered into an agreement~~
29 ~~for collaborative programming with a local educational agency (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 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.

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

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

1 (a) Each ~~county~~ local educational agency (LEA) shall, after having received from the
2 faculty Senates in its schools, the strategic plans mandated by subsection (13), section five, article
3 five-a of this chapter, develop a ~~county~~ local educational agency (LEA) strategic plan ~~to manage~~
4 which includes the integration of special-needs students with exceptional needs into the regular
5 classroom to the maximum extent appropriate and addresses steps to improve proficiency in all
6 subgroups, including the students with disabilities subgroup, and submit said strategic plan to the
7 State Superintendent of Schools ~~prior to October 1, 1995~~ annually.

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

14 (b) Each local educational agency (LEA) must maintain a continuum of services for
15 students with disabilities including, but not limited to, general education full-time, which
16 encompasses the integrated classroom and services in out of school environments. Relevant
17 training shall be provided related to integrated education, basic and specialized health care
18 procedures including the administration of medications, receiving or requesting reimbursement
19 from state appropriated funds, and submitting annual reports and such other reports as the State
20 Superintendent of Schools may require.

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

1 ~~Each child~~ student prior to ~~enrolling in~~ receiving a special education program shall be
2 ~~examined~~ evaluated by an ~~appropriate medical specialist~~ qualified professional, including but
3 not limited to, a psychologist, ~~or~~ educational specialist (reading specialist, speech and language
4 clinician, or other specialists as required by the state Board of Education for specific areas of
5 exceptionality) who shall report to the ~~county~~ local educational agency (LEA) superintendent of
6 schools. The specialists' report shall ~~carry recommendation for eligibility and placement in regular~~
7 ~~school or in the special education facility, indicate the nature and extent of disability, and advise~~
8 ~~with reference to treatment and prosthesis for alleviating the child's disability~~ include relevant data
9 and recommendations for individualized interventions.

10 ~~No educationally exceptional child shall be excluded from attending public or other suitable~~
11 ~~schools~~ student eligible for a free appropriate public education shall be excluded from attending
12 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~~ Providing leadership and support
4 to local educational agencies (LEA) in establishing, organizing and maintaining ~~special schools,~~
5 ~~classes, regular class programs, home teaching and visiting teacher services~~ a continuum of
6 services for exceptional children students with exceptionalities.

7 (2) Cooperating with all other public and private agencies engaged in ~~relieving, caring for,~~
8 ~~curing, educating and rehabilitating exceptional children~~ providing medical, mental health,
9 educational, or respite services for students with exceptionalities, and in helping coordinate the
10 services of such agencies.

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

18 (B) A separate appropriation shall be made to the Department of Education to be disbursed
19 to county boards and public charter schools authorized pursuant to §18-5G-1 *et seq.* of this code
20 to assist them with serving exceptional ~~children~~ students with high cost/high acuity ~~special~~
21 exceptional needs that exceed the capacity of ~~county~~ the local educational agency (LEA) to
22 provide with funds available. Each ~~county board and public charter school~~ local educational
23 agency (LEA) shall apply to the state superintendent to receive this funding in a manner set forth
24 by the state superintendent that assesses and takes into account varying acuity levels of the
25 ~~exceptional~~ students with exceptionalities. Any remaining funds at the end of a fiscal year from the

26 appropriation shall be carried over to the next fiscal year. When possible, federal funds shall be
27 disbursed to ~~county boards and public charter schools~~ local educational agencies (LEAs) for this
28 purpose before any of the state appropriation is disbursed. The state board shall promulgate a rule
29 in accordance with the provisions of §29A-3B-1 *et seq.* of this code that implements the provisions
30 of this subdivision relating to disbursing the funds to the ~~county boards and public charter schools~~
31 local educational agencies (LEAs). The rule at least shall include a definition for “children with high
32 acuity needs”.

33 (4) Receiving from ~~county boards and public charter schools~~ local educational agencies
34 (LEAs), their applications, annual reports and claims for reimbursement from such moneys as are
35 appropriated by the Legislature, auditing such claims, and preparing vouchers to reimburse said
36 ~~counties~~ local educational agencies the amounts reimbursable to them.

37 (5) Assuring that all ~~exceptional children~~ students with exceptionalities in the state,
38 including ~~children~~ students in mental health facilities, residential institutions, private schools
39 receiving public funds and correctional facilities as provided in §18-2-13f of this code receive an
40 education in accordance with state and federal laws: *Provided*, That the state superintendent shall
41 also assure that adults in correctional facilities and regional jails receive an education to the extent
42 funds are provided therefor and to the extent that those adult students are still eligible to receive a
43 free appropriate public education (FAPE).

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

46 (b) Nothing contained in this section shall be construed to prevent any ~~county board of~~
47 ~~education~~ local education agency (LEA) from establishing and maintaining ~~special schools,~~
48 ~~classes, regular class programs, home teaching or visiting teacher services for exceptional~~
49 ~~children~~ a full continuum of services for students with exceptionalities out of funds available from
50 local revenue.

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

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

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

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

21 The advisory council shall elect a chairperson annually.

22 All members shall be eligible for reappointment. A member shall, unless sooner removed,
23 continue to serve until ~~his or her~~ the member's term expires and ~~his~~ the member's successor has
24 been appointed and has qualified. A vacancy caused by the death, resignation or removal of a

25 member prior to the expiration of his the member's term shall be filled only for the remainder of
26 such term.

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

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

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

39 The council shall:

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

43 (b) Consult with and advise the state board and superintendent and the Legislature
44 concerning any problems presented to the council including unmet needs within the state in the
45 education of ~~handicapped children~~ students with exceptionalities;

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

48 (d) Periodically review and comment publicly upon the state plan for special programs and
49 make any recommendations it may have concerning changes it may deem proper. ~~By July 1, of~~
50 ~~each year~~ Annually, the advisory council shall submit an annual report of its activities and

51 suggestions to the state Board of Education and the superintendent, and shall make such report
52 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 monitoring and
2 accountability review teams to conduct ~~random unannounced~~ cyclical on-site reviews of such
3 programs at least every four years in each ~~county~~ local educational agency (LEA) for the purpose
4 of reviewing identification procedures, complying with any or all applicable laws and policies,
5 delivering services, verifying enrollment and attendance reports, recommending changes,
6 providing support for continuous improvement, and fulfilling such other duties as may be
7 established by the state board.

8 Each monitoring and accountability review team unit shall consist of ~~five members~~
9 ~~including one member of an exceptional children advocacy group who is not an employee of any~~
10 ~~county or state government agency, one teacher of exceptional children in the specific category or~~
11 ~~categories to be reviewed, one person certified to interpret psycho-educational assessments, one~~
12 ~~school finance official and one financial Auditor who shall not be an employee of any county board,~~
13 ~~all appointed by the state superintendent~~ individuals with expertise in state and federal laws
14 applicable to the education of students with disabilities, as well as the identification and delivery of
15 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~~ local educational agency (LEA) with acquiring
69 approved literacy and/or numeracy screening tools: *Provided*, That the local educational agency is
70 unable to acquire its own literacy and/or numeracy screening tools that are consistent with state
71 educational agency 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 to be assessed for dyslexia, provide
118 assessment 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~~ local educational agency (LEA) shall ensure placement of
2 video cameras in self-contained classrooms and audio recording devices in the restrooms of self-
3 contained classrooms as defined 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~~
6 student, of bullying, abuse, or neglect of a ~~child~~ student or of harm to an employee of a public
7 school by:

8 (A) An employee of a public school or ~~school district~~ local educational agency (LEA); or

9 (B) Another student;

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

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

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

17 (2) Prior to August 1, 2023, a ~~county board of education~~ a local educational agency (LEA)
18 shall provide an audio recording device to a public school to be used in the restroom of each self-

19 contained classroom that is a part of that school. If the public school is not able to receive the audio
20 recording device by August 1, 2023, the public school may apply to the state Department of
21 Education for a waiver to extend that date to August 1, 2024.

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

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

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

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

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

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

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

43 (2) A video camera placed in a self-contained classroom shall not monitor a restroom or
44 any other area in the self-contained classroom where a student changes his or her clothes except,

45 for incidental monitoring of a minor portion of a restroom or other area where a student changes
46 his or her clothes because of the layout of the self-contained classroom.

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

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

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

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

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

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

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

69 (B) For any school-based camera system or audio device recording device that is installed
70 or replaced after April 1, 2022, the public school shall retain video recorded from a camera or

71 audio device recording for at least 365 days after the date the video or audio was recorded and no
72 extension of this time period during the summer break is required.

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

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

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

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

82 (h) This section does not:

83 (1) Waive any immunity from liability of a public school ~~district~~ local educational agency
84 (LEA) or employee of a public school ~~district~~ local educational agency (LEA);

85 (2) Create any liability for a cause of action against a public school or ~~school district~~ local
86 educational agency (LEA) or employee of a public school or ~~school district~~ local educational
87 agency (LEA); or

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

91 (i) A public school or ~~school district~~ local educational agency (LEA) shall not use video or
92 audio recorded under this section for:

93 (1) Teacher evaluations; or

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

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

107 (k) Within seven days of receiving a request, a public school or ~~school-district~~ local
108 educational agency (LEA) shall allow review of a recording by:

109 (1) A public school or ~~school-district~~ local educational agency (LEA) employee who is
110 involved in an alleged incident that is documented by the recording and has been reported to the
111 public school or ~~school-district~~ local educational agency (LEA);

112 (2) A parent or legal guardian of a student who is involved in an alleged incident that is
113 documented by the recording and has been reported to the public school or ~~school-district~~ local
114 educational agency (LEA); or

115 (3) An employee of a public school or ~~school-district~~ local educational agency (LEA) as part
116 of an investigation into an alleged incident that is documented by the recording and has been
117 reported to the public school or ~~school-district~~ local educational agency (LEA).

118 (l) Within seven days of receiving a request, a public school or ~~school-district~~ local
119 educational agency (LEA) shall allow review of a recording by and comply with all subsequent
120 requests for review or release of the recording by:

121 (1) A law-enforcement officer or employee of the Department of Health and Human
122 Resources, as part of an investigation into an alleged incident that is documented by the recording

123 and has been reported to the agency: *Provided*, That if a release of the recording is requested
124 pursuant to this subdivision, the agency receiving a copy of the recording shall maintain strict
125 confidentiality of the recording and not further release the recording without authorization from the
126 public school-district local educational agency (LEA) through its superintendent; or

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

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

134 (n) When a recording is under review as part of the investigation of an alleged incident, and
135 the recording reveals a student violating a disciplinary code or rule of the school, which violation is
136 not related to the alleged incident for which the review is occurring, and which violation is not
137 already the subject of a disciplinary action against the student, the student is not subject to
138 disciplinary action by the school for such unrelated violation unless it reveals a separate incident
139 as described in §18-20-11(b)(1) of this code.

140 (o) It is not a violation of subsection (j) of this section if a contractor or other employee of a
141 public school or ~~school-district~~ local educational agency (LEA) incidentally reviews a recording
142 under this section if the contractor or employee of a public school or ~~school-district~~ local
143 educational agency (LEA) is performing job duties related to the:

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

145 (2) Retention of video or audio recordings.

146 (p) This section applies solely to cameras and audio recording devices installed pursuant
147 to this code section and does not limit the access of a student's parent or legal guardian to a

148 recording reviewable under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.
149 §1232g, or any other law.

150 (q) A public school or ~~school-district~~ local educational agency (LEA) shall:

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

155 (2) Provide procedures to protect the confidentiality of student records contained in a
156 recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.
157 §1232g, or any other law.

158 (r) (1) Any aggrieved person may appeal to the State Board of Education an action by a
159 public school or ~~school-district~~ local educational agency (LEA) that the person believes to be in
160 violation of this section.

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

163 (s) (1) A public school or ~~school-district~~ local educational agency (LEA) may use funds
164 distributed from the Safe Schools Fund created in §18-5-48 of this code or any other available
165 funds to meet the requirements of this section.

166 (2) A public school or ~~school-district~~ local educational agency (LEA) may accept gifts,
167 grants, or donations to meet the requirements of this section.

168 (t) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this
169 code to clarify the requirements of this section and address any unforeseen issues that might arise
170 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.