

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5643

By Delegates Funkhouser, Ridenour, Martin, Butler,

Phillips, Dean, White, and T. Howell

[Introduced February 17, 2026; referred to the
Committee on Education then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,
2 designated §18-5-55, relating to permitting public schools and public charter schools to
3 refuse to enroll a student who is unlawfully present in the United States.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-55. Permitting public schools and public charter schools to refuse to enroll a student who is unlawfully present in the United States.

1 (a) Legislative findings. –

2 (1) In the case of Plyler v. Doe, 457 U.S. 202 (1982), the United States Supreme Court
3 held that illegal alien children living in the United States could not be excluded from a free public
4 education based upon their immigration status.

5 (2) The Legislature finds that both the volume of illegal immigration, and its commensurate
6 drain on State resources, as well as federal immigration policy have materially changed since
7 1982, when Plyler was decided.

8 (3) The Legislature finds that data from the U.S. Immigration and Naturalization Service,
9 Office of Policy and Planning, Estimates of the Unauthorized Immigrant Population Residing in the
10 United States: 1990 to 2000, shows the "many States . . . had relatively few unauthorized
11 residents" when Plyler was decided, but have subsequently "experienced rapid growth of the
12 unauthorized population."

13 (4) The Legislature finds that data from the U.S. Department of Homeland Security shows
14 that the number of illegal aliens present in the United States has nearly quadrupled in the past
15 thirty years. The data estimates 10,990,000 were present in 2022. This number represents a
16 material change in the illegal immigration environment that existed when Plyler was decided.

17 (5) The Legislature finds that the sole focus of this act, individuals who have "exhausted all
18 available appeals" and are therefore subject to a valid final order of removal, is a large population.
19 At the end of fiscal year 2023, according to U.S. Immigration and Customs Enforcement, Fiscal

20 Year 2023 ICE Annual Report, 1,292,830 aliens had "completed the legal process and ha[d] been
21 ordered removed."

22 (6) The Legislature finds that, unlike the statute at issue in Plyler, because this act only
23 applies to individuals "who[se] proceedings have been completed", it is intended to "operate
24 harmoniously within the federal program" of immigration enforcement.

25 (7) The Legislature finds that given the 1,292,830 individuals who have been ordered
26 removed by a final order, there no longer is an "inchoate federal permission to remain" that was
27 present in Plyler v. Doe; rather, these 1,292,830 final orders of removal are a "fairly discernable"
28 "national policy that supports the State in" implementing this act.

29 (8) West Virginia is best suited to determine the educational needs of its citizenry; in fact,
30 unlike the United States Constitution, the West Virginia Constitution in Article XII, Section 1
31 requires that "The Legislature shall provide, by general law, for a thorough and efficient system of
32 free schools."

33 (9) The Legislature seeks to fully effectuate its own constitutional mandate in Article XII,
34 Section 1 of the West Virginia Constitution to provide for thorough and efficient system of free
35 schools by establishing an eligibility standard for West Virginia public schools.

36 (10) It is fitting and proper for the Legislature to fully exercise its constitutional powers and
37 duties in light of the exponential growth in the population of illegal aliens in this State, and to utilize
38 public funds for West Virginia citizens who are lawfully present in the United States, and to remove
39 the burden of providing a free publicly funded education for illegal alien children from West Virginia
40 taxpayers.

41 (b) Notwithstanding any other law to the contrary, a public school or public charter school in
42 this state shall enroll a school-age student who resides within the geographic boundaries of the
43 public school or public charter school and who provides documentation establishing that the
44 student:

45 (1) Is a citizen of the United States;

46 (2) Is in the process of obtaining citizenship; or

47 (3) Holds a legal immigration or visa status.

48 (c) A public school or public charter school shall require that each student who seeks to
49 enroll in the public school or public charter school provide documentation to establish that the
50 student meets one of the criteria in subsection (b) prior to enrolling the student.

51 (d) If a student or the parent or guardian of a student is unable to provide documentation to
52 establish that the student meets one of the criteria in subsection (b) of this section, and has
53 exhausted all available appeals pursuant to this section, then the public school or public charter
54 school may elect not to enroll the student without the student or the parent or guardian of the
55 student paying tuition as prescribed in this section.

56 (e) A public school or public charter school is not required to charge a student who does
57 not meet one of the criteria in subsection (b) of this section tuition in order to enroll in the public
58 school or public charter school.

59 (f) A public school or public charter school shall not refuse to enroll any such student in the
60 public school or public charter school without first allowing the student to enroll upon payment of
61 tuition in accordance with this section.

62 (g) Each public school and public charter school that elects to enroll students upon
63 payment of tuition who do not meet one of the criteria in subsection (b) of this section shall
64 annually establish a uniform tuition amount for such students. Except as otherwise provided in this
65 section, the uniform tuition amount must:

66 (1) Be no less than the base funding amount, as defined in this chapter, for the respective
67 school year;

68 (2) Not exceed the total average per pupil funding amount for the public school for the
69 respective school year; and

70 (3) Be paid in full before the student is enrolled.

71 (h) If a public school or public charter school determines that the documentation provided

72 by a student or a student's parent or guardian does not establish that the student meets one of the
73 criteria in subsection (b) of this section and that the student is not eligible to enroll in the public
74 school or a public charter school without paying tuition, then the public school or public charter
75 school may refuse to enroll the student if tuition is not paid. The public school or public charter
76 school shall immediately notify the student or the student's parent or guardian in writing of its
77 decision and of the student's or the parent's or guardian's right to appeal the public school's or
78 public charter school's decision to the West Virginia Department of Education (otherwise known as
79 the "department") no later than 21 days from the date of the public school 's or public charter
80 school's decision.

81 (1) The student or the parent or guardian of a student who is being denied enrollment
82 without first paying tuition pursuant to this subsection may appeal the public school's or public
83 charter school's decision to the department no later than 21 days from the date of the public
84 school's or public charter school's decision.

85 (2) The party who files an appeal with the department is entitled to an expedited hearing
86 before the department and bears the burden of proving by a preponderance of the evidence that
87 the student meets one of the criteria in subsection (b) of this section of this section.

88 (3) Notwithstanding this section to the contrary, a student shall not be denied enrollment,
89 even without first paying tuition, during the 21-day window for appealing the public school's or
90 public charter school's decision or during the appeal proceedings before the department. If the
91 student is enrolled in a public school or public charter school during either of those times, then the
92 public school or public charter school shall not remove the student from school during either of
93 those times.

94 (4) If the department determines on appeal that the student does not meet one of the
95 criteria in subsection (b) of this section, then the department shall notify the student, or the
96 student's parent or guardian, and the public school or public charter school of its determination.

97 (5) If the student or the student's parent or guardian does not appeal the public school's or

98 public charter school's decision that the student does not meet one of the criteria in subsection (a)
99 of this section or if the department determines on appeal that the student does not meet one of the
100 criteria in subsection (b) of this section then:

101 (A) The public school or public charter school may condition the student's enrollment or
102 continued enrollment in the public school or public charter school on the payment of tuition by the
103 student or the student's parent or guardian.

104 (B) Tuition must be determined pursuant to this section and may be prorated based on the
105 number of days the student will be enrolled, if enrollment is not for a full school year; or

106 (C) If the student is enrolled in the public school or public charter school when the student's
107 21 day appeal period expires or when the department's determination on appeal is issued, and if
108 the public school or public charter school requires payment of tuition for the student's enrollment,
109 then the public school or public charter school may remove the student from school, but only for
110 nonpayment of tuition.

111 (i) Notwithstanding this code, all records relating to the legality of a student's presence in
112 the United States and all correspondence between a public school or public charter school and the
113 department for purposes of this section are confidential records.

114 (j) The state board of education shall promulgate rules, including emergency rules, to
115 effectuate this section. The rules must, at a minimum, establish the appeal process required in this
116 act, and must be promulgated in accordance with the Uniform Administrative Procedures Act.

117 (k) This section takes effect July 1, 2026, the public welfare requiring it, and applies to the
118 2026-2027 school year and subsequent school years.

NOTE: The purpose of this bill is to permit public schools and public charter schools to refuse to enroll a student who is unlawfully present in the United States.

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