WEST VIRGINIA CODE: §18-2-7a

§18-2-7a. Legislative findings; required physical education; program in physical fitness.

(a) The Legislature finds that obesity is a problem of epidemic proportions in this state. There is increasing evidence that all segments of the population, beginning with children, are becoming more sedentary, more overweight and more likely to develop health risks and diseases including Type II Diabetes, high blood cholesterol and high blood pressure. The Legislature further finds that the promotion of physical activity during the school day for school children is a crucial step in combating this growing epidemic and in changing the attitudes and behavior of the residents of this state toward health promoting physical activity.

(b) As a result of these findings, the State Department of Education shall establish the requirement that each child enrolled in the public schools of this state actively participates in physical education classes during the school year to the level of his or her ability as follows:

(1) *Elementary school grades.* –- Not less than 30 minutes of physical education, including physical exercise and age-appropriate physical activities, for not less than three days a week.

(2) *Middle school grades.* –- Not less than one full period of physical education, including physical exercise and age-appropriate physical activities, each school day of one semester of the school year.

(3) *High school grades.* –- Not less than one full course credit of physical education, including physical exercise and age-appropriate physical activities, which shall be required for graduation and the opportunity to enroll in an elective lifetime physical education course.

(c) In providing a physical education curriculum, a school employee may not restrict participation in:

(1) Recess or other physical activity offered as part of the school's physical education curriculum for a student enrolled in kindergarten or in a grade level below grade six as a penalty for the student's academic performance or behavior; or

(2) Physical activity offered as part of the school's physical education curriculum for a student enrolled in grade level six, seven, or eight as a penalty for the student's academic performance or behavior.

(d) The Office of Healthy Lifestyles shall coordinate with the West Virginia Department of Education, to help develop and implement initiatives to improve the physical fitness of students in West Virginia under §16-67-5 and §16-67-7 of this code.

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(1) Research viability of programs such as:

(A) Develop a plan utilizing existing facilities, if available, to implement a mile trail surrounding the high schools or school grounds that would be open for the communities use to encourage participation in this fitness initiative.

(B) Implementing a school fitness month; that provides learning opportunities to students on maintaining their physical health.

(2) Providing the outcomes of all programs developed under this section to the Office of Healthy Lifestyles to include in the annual report to the Legislative Oversight Committee on Health and Human Resources Accountability under §16-67-5 of this code.

(e) Enrollment in physical education classes and activities required by the provisions of this section shall not exceed, and shall be consistent with, state guidelines for enrollment in all other subjects and classes: *Provided*, That schools which do not currently have the number of certified physical education teachers, do not currently have the required physical setting or would have to significantly alter academic offerings to meet the physical education requirements may develop alternate programs that will enable current staff, physical settings and offerings to be used to meet the physical education requirements established herein. These alternate programs shall be submitted to the state Department of Education and the Healthy Lifestyle Council for approval. Those schools needing to develop alternate programs shall not be required to implement this program until the school year commencing two thousand six.

(f) The state board shall prescribe a program within the existing health and physical education program which incorporates fitness testing, reporting, recognition, fitness events and incentive programs which requires the participation in grades four through eight and the required high school course. The state board shall adopt the Presidential Fitness Test as part of this program and ensure it is administered and operated in accordance with the guidance of the President's Council on Sports, Fitness, and Nutrition. For any areas of testing and preparation not addressed by the Presidential Fitness Test and the President's Council on Sports, Fitness, and Nutrition, those areas of the program shall be selected from nationally accepted fitness testing programs designed for school-aged children that test cardiovascular fitness, muscular strength and endurance, flexibility and body composition. The program shall include modified tests for exceptional students. Each school in the state shall participate in National Physical Fitness and Sports Month in May of each year and shall make every effort to involve the community it serves in the related events.

(g) The state board shall promulgate a rule in accordance with the provisions article three-b, chapter twenty-nine-a of this code that includes at least the following provisions to provide for the collection, reporting and use of body mass index data in the public schools:

(1) The data shall be collected using the appropriate methodology for assessing the body mass index from student height and weight data;

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(2) The data shall be collected on a scientifically drawn sample of students;

(3) The data shall be collected and reported in a manner that protects student confidentiality;

(4) The data shall be reported to the Department of Education; and

(5) All body mass index data shall be reported in aggregate to the Governor, the West Virginia Board of Education, the Office for Healthy Lifestyles, and the Legislative Oversight Commission on Health and Human Resources Accountability for use as an indicator of progress toward promoting healthy lifestyles among school-aged children.

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