WEST VIRGINIA CODE: §18-2E-10

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

(a) This section shall be known and may be cited as the Third Grade Success Act.

(b) The Legislature finds that:

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

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

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

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

(c) "Science of reading" means evidence-based reading instruction practices that address the acquisition of language, phonological and phonemic awareness, phonics and spelling, fluency, vocabulary, oral language, comprehension, and writing that can be differentiated to meet the needs of individual students.

(d) The state board shall, in accordance with §29A-3B-1 *et seq*. of this code, promulgate legislative rules as necessary to effectuate the provisions of this section. The rules shall provide for at least the following:

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(1) Development of a statewide comprehensive, systemic approach to close the reading and mathematics achievement gaps by third grade, which targets school readiness, the attendance gap, science of reading instruction (phonics, phonemic awareness, vocabulary, fluency, comprehension, and writing), summer learning loss, the use of screeners and/or benchmark assessments in English language arts and mathematics for students in grades kindergarten through three, and a multi-tiered system of support for students exhibiting a substantial reading or mathematics deficiency;

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

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

(4) Providing assistance to county boards with the training and implementation of the science of reading training for all kindergarten through grade three educators, early childhood classroom assistant teachers, aides, paraprofessionals and any interventionists that a county board may choose to employ instead of an early childhood classroom assistant teacher, aides, or paraprofessionals pursuant to §18-5-18a(b) of this code;

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

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

(7) Establishing an approved list of dyslexia screeners to be administered to students no less than twice per year in kindergarten through third grade and any time students with identified deficiencies are not responding to interventions;

(8) Any student in kindergarten or grades one through three who exhibits a deficiency in reading at any time, based upon the screeners and/or benchmark assessments, and/or the comprehensive statewide student assessment, and any fourth-grade student promoted for good cause shall receive an individual reading improvement plan no later than 30 days after the identification of the reading deficiency. The reading improvement plan shall be created by the teacher, principal, other pertinent school personnel, and the parent(s) or guardians, and shall describe the research-based reading intervention services the student will receive to remedy the reading deficit. Each student shall receive intensive reading intervention until

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the student no longer has a deficiency in reading. Reading interventions may include evidence-based strategies frequently used to remediate reading deficiencies and includes, but is not limited to, individual instruction, small-group instruction, tutoring, mentoring, or the use of technology that targets specific reading skills and abilities;

(9) Maximizing family engagement to result in the development of a culture of literacy and numeracy, which shall at least include:

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

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

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

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

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

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

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

(iv) That if the child's reading or mathematics deficiency is not corrected by the end of grade three, the child may not be promoted to grade four unless an exemption is met;

(10) Supporting high-quality schools and a workforce prepared to address early literacy and numeracy by the provision of professional development for administrators, kindergarten, first, second, and third grade teachers including, but not limited to, the following:

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

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(B) Comprehensive training on the science of reading and numeracy instruction to ensure all kindergarten through grade three teachers, early childhood classroom assistant teachers, aides and paraprofessionals, have the knowledge and skill to teach and/or support all students to read and perform mathematics at grade level. The rules also shall provide that any interventionist a county chooses to employ instead of an early childhood classroom assistant teacher, aides or paraprofessionals pursuant to §18-5-18a(b) receives this comprehensive training;

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

(D) Job-embedded, on-site teacher training on evidence-based reading and mathematics instruction and data-driven decision-making that provides kindergarten through grade three teachers with immediate feedback for improving instruction;

(11) Ensuring the employment of qualified teachers and service personnel in accordance with §18-5-39 and §18A-4-7c of this code to provide instruction to students enrolled in early literacy and numeracy support programs including, but not limited to, ensuring that educator preparation programs prepare candidates seeking licensure for elementary education with training and instruction to:

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

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

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

(12) Creating a formula or grant-based program for the distribution of funds appropriated specifically for the purposes of this section or otherwise available for the support of a targeted, multi-tiered system of support intervention for early literacy and numeracy;

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

(14) Receiving from county boards any applications and annual reports required by rule of the state board.

(e) A student in grades kindergarten through grade three shall be required to attend an extended year early literacy and numeracy instructional support program as a condition for promotion if:

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

(2) The county board has established a literacy and numeracy instructional support program during the extended year for the student's grade level.

(f) County boards shall provide high-quality educational facilities, equipment, and services to support literacy and numeracy instructional support programs established pursuant to this section. Extended year programs may be provided at a central location for kindergarten through third graders who qualify for the program.

(g) Each county board shall adopt high-quality instructional materials grounded in scientifically-based reading research and aligned to state standards to be used as the core curriculum. The instructional materials shall not include practices that are aligned with the Three-Cueing Systems Model of teaching reading.

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

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

(j) This section may not be construed to limit the authority of the county board to establish an extended year program in accordance with §18-5-39 of this code. County boards may not charge tuition for enrollment in early literacy and numeracy instructional support programs established pursuant to this section.

(k) Each county board shall implement the provisions of this section and the provisions of the state board rule required by subsection (b) of this section. The county board shall establish a process for ensuring the developmental and academic progress of all students through the auspices of student assistance teams as currently required by state board policy and perform a needs assessment to determine the potential capacity requirements for the multi-tiered system of support for early learners. Each county board also shall provide in-service training:

(1) For kindergarten through grade three early childhood classroom assistant teachers, aides and paraprofessionals, specifically related to literacy, numeracy, and their responsibilities and appropriate measures for exercising authority and control over students. The county board shall also provide this training to any interventionists it chooses to employ

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instead of an early childhood classroom assistant teacher, aide or professional pursuant to §18-5-18a(b) of this code; and

(2) For classroom teachers in grades kindergarten through three to help the classroom teachers gain a strong understanding of how to best utilize the early childhood classroom assistant teachers, aides, paraprofessionals or interventionists during classroom instruction and during other periods of the day.

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

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

(n) Legislative appropriations to the State Board of Education – State Department of Education Elementary Literacy and Numeracy Program shall be used for the implementation of the provisions of this section along with other funds available for providing a high-quality education.

(o) Effective for the school year beginning July 1, 2026, and thereafter, a public school student who generally demonstrates a minimal understanding of, and ability to apply, grade level English language arts or mathematics knowledge, skills, and abilities, or both, as indicated on the West Virginia General Summative Assessment relative to the West Virginia College and Career Readiness Standards at the end of third grade, shall upon the recommendation of the teacher and the student assistance team, be retained in the third grade for the ensuing school year subject to the following exceptions:

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

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

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

(4) A student who is in the process of a special education referral or evaluation for

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placement in special education, has been diagnosed as having a significant impairment, including dyslexia or dyscalculia, or is a child with a disability if the student's individualized education program team and the student's parent or guardian agree that promotion is appropriate based on the student's Individualized Education Plan;

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

(6) A student who demonstrates an acceptable level of performance on an alternative standardized assessment approved by the state board;

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

(8) A student whose parent or guardian has requested a good cause exemption within the time period established by the county board and the superintendent, or his or her designee, determines that the good cause exemption is in the best interests of the child: *Provided*, That a good cause exemption may not prohibit the grade level retention of a student by a classroom teacher based upon the student's lack of mastery of the subject matter and preparation for the subject matter at the next grade level.

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