WEST VIRGINIA CODE: §18-8-1

§18-8-1. Compulsory school attendance; exemptions.

(a) Exemption from the requirements of compulsory public school attendance established in §18-8-1a of this code shall be made on behalf of any child for the causes or conditions set forth in this section. Each cause or condition set forth in this section is subject to confirmation by the attendance authority of the county. A child who is exempt from compulsory school attendance under this section is not subject to prosecution under §18-8-2 of this code, nor is such a child a status offender as defined by §49-1-202 of this code.

(b) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to instruction in a private, parochial, or other approved school, are met. The instruction shall be in a school approved by the county board and for a time equal to the instructional term set forth in §18-5-45 of this code. In all private, parochial, or other schools approved pursuant to this subsection, it is the duty of the principal or other person in control, upon the request of the county superintendent, to furnish to the county board such information and records as may be required with respect to attendance, instruction, and progress of students enrolled.

(c) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of either subdivision (1) or subdivision (2) of this subsection, both relating to home instruction, are met.

(1) The instruction shall be in the home of the child or children or at some other place approved by the county board and for a time equal to the instructional term set forth in §18-5-45 of this code. If the request for home instruction is denied by the county board, good and reasonable justification for the denial shall be furnished in writing to the applicant by the county board. The instruction shall be conducted by a person or persons who, in the judgment of the county superintendent and county board, are qualified to give instruction in subjects required to be taught in public elementary schools in the state. The person or persons providing the instruction, upon request of the county superintendent, shall furnish to the county board information and records as may be required periodically with respect to attendance, instruction, and progress of students receiving the instruction. The state board shall develop guidelines for the home schooling of special education students including alternative assessment measures to assure that satisfactory academic progress is achieved.

(2) The child meets the requirements set forth in this subdivision: *Provided*, That the county superintendent may, after a showing of probable cause, seek from the circuit court of the county an order denying home instruction of the child. The order may be granted upon a showing of clear and convincing evidence that the child will suffer neglect in his or her education or that there are other compelling reasons to deny home instruction.

(A) Upon commencing home instruction under this section the parent of a child receiving

WV Legislature

home instruction shall present to the county superintendent or county board a notice of intent to provide home instruction that includes the name, address, and age of any child of compulsory school age to be instructed and assurance that the child shall receive instruction in reading, language, mathematics, science, and social studies, and that the child shall be assessed annually in accordance with this subdivision. The person providing home instruction shall notify the county superintendent upon termination of home instruction for a child who is of compulsory attendance age. Upon establishing residence in a new county, the person providing home instruction shall notify the previous county superintendent and submit a new notice of intent to the superintendent of the new county of residence: *Provided*, That if a child is enrolled in a public school, notice of intent to provide home instruction shall be given on or before the date home instruction is to begin.

(B) The person or persons providing home instruction shall submit satisfactory evidence of a high school diploma or equivalent, or a post-secondary degree or certificate from a regionally accredited institution, or from an institution of higher education that has been authorized to confer a post-secondary degree or certificate in West Virginia by the West Virginia Council for Community and Technical College Education or by the West Virginia Higher Education Policy Commission.

(C) Annually, the person or persons providing home instruction shall obtain an academic assessment of the child for the previous school year in one of the following ways:

(i) The child receiving home instruction takes a nationally normed standardized achievement test published or normed not more than 10 years from the date of administration and administered under the conditions as set forth by the published instructions of the selected test and by a person qualified in accordance with the test's published guidelines in the subjects of reading, language, mathematics, science, and social studies. The child is considered to have made acceptable progress when the mean of the child's test results in the required subject areas for any single year is within or above the fourth stanine or, if below the fourth stanine, shows improvement from the previous year's results;

(ii) The child participates in the testing program currently in use in the state's public schools. The test shall be administered to the child at a public school in the county of residence. Determination of acceptable progress shall be based on current guidelines of the state testing program;

(iii) A portfolio of samples of the child's work is reviewed by a certified teacher who determines whether the child's academic progress for the year is in accordance with the child's abilities. The teacher shall provide a written narrative about the child's progress in the areas of reading, language, mathematics, science, and social studies and shall note any areas which, in the professional opinion of the reviewer, show need for improvement or remediation. If the narrative indicates that the child's academic progress for the year is in accordance with the child's abilities, the child is considered to have made acceptable progress; or

WV Legislature

(iv) The child completes an alternative academic assessment of proficiency that is mutually agreed upon by the parent or legal guardian and the county superintendent.

(D) A parent or legal guardian shall maintain copies of each student's Academic Assessment for three years. When the annual assessment fails to show acceptable progress, the person or persons providing home instruction shall initiate a remedial program to foster acceptable progress. The county board upon request shall notify the parents or legal guardian of the child, in writing, of the services available to assist in the assessment of the child's eligibility for special education services. Identification of a disability does not preclude the continuation of home schooling. In the event that the child does not achieve acceptable progress for a second consecutive year, the person or persons providing instruction shall submit to the county superintendent additional evidence that appropriate instruction is being provided.

(E) The parent or legal guardian shall submit to the county superintendent the results of the academic assessment of the child at grade levels three, five, eight, and 11, as applicable, by June 30 of the year in which the assessment was administered.

(3) This subdivision applies to both home instruction exemptions set forth in subdivisions (1) and (2) of this subsection. The county superintendent or a designee shall offer such assistance, including textbooks, other teaching materials and available resources, all subject to availability, as may assist the person or persons providing home instruction. Any child receiving home instruction may upon approval of the county board exercise the option to attend any class offered by the county board as the person or persons providing home instruction may consider appropriate subject to normal registration and attendance requirements.

(d) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to physical or mental incapacity, are met. Physical or mental incapacity consists of incapacity for school attendance and the performance of school work. In all cases of prolonged absence from school due to incapacity of the child to attend, the written statement of a licensed physician or authorized school nurse is required. Incapacity shall be narrowly defined and in any case the provisions of this article may not allow for the exclusion of the mentally, physically, emotionally, or behaviorally handicapped child otherwise entitled to a free appropriate education.

(e) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if conditions rendering school attendance impossible or hazardous to the life, health, or safety of the child exist.

(f) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code upon regular graduation from a standard senior high school or alternate secondary program completion as determined by the state board.

WV Legislature

(g) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the child is granted a work permit pursuant to the subsection. After due investigation the county superintendent may grant work permits to youths under the termination age designated in §18-8-1a of this code, subject to state and federal labor laws and regulations. A work permit may not be granted on behalf of any youth who has not completed the eighth grade of school.

(h) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if a serious illness or death in the immediate family of the child has occurred. It is expected that the county attendance director will ascertain the facts in all cases of such absences about which information is inadequate and report the facts to the county superintendent.

(i) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to destitution in the home, are met. Exemption based on a condition of extreme destitution in the home may be granted only upon the written recommendation of the county attendance director to the county superintendent following careful investigation of the case. A copy of the report confirming the condition and school exemption shall be placed with the county director of public assistance. This enactment contemplates every reasonable effort that may properly be taken on the part of both school and public assistance authorities for the relief of home conditions officially recognized as being so destitute as to deprive children of the privilege of school attendance. Exemption for this cause is not allowed when the destitution is relieved through public or private means.

(j) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to church ordinances and observances of regular church ordinances, are met. The county board may approve exemption for religious instruction upon written request of the person having legal or actual charge of a child or children. This exemption is subject to the rules prescribed by the county superintendent and approved by the county board.

(k) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to alternative private, parochial, church, or religious school instruction, are met. Exemption shall be made for any child attending any private school, parochial school, church school, school operated by a religious order, or other nonpublic school which elects to comply with the provisions of §18-28-1 *et seq*. of this code.

(l) Completion of the eighth grade does not exempt any child under the termination age designated in §18-8-1a of this code from the compulsory attendance provision of this article.

(m) A child is exempt from the compulsory school attendance requirements set forth in §18-8-1a of this code if the child is an eligible recipient participating in the Hope Scholarship Program, as provided for in §18-31-1 *et seq*. of this code and provides a notice of intent to

WV Legislature

participate in the Hope Scholarship Program to the county superintendent. The county superintendent shall enter the following into the West Virginia Education Information System (WVEIS):

(1) The filing of the notice of intent pursuant to this subsection;

(2) In the case of a Hope Scholarship recipient who chooses an individualized instructional program, annually, the child's test results or determination that a student is making academic progress commensurate with his or her age and ability, as applicable, pursuant to §18-31-8(a)(4) of this code; and

(3) In the case of an eligible recipient enrolling in a participating school, annually, the filing of a notice of enrollment pursuant to §18-31-11(a)(6) of this code.

(n) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the child participates in a learning pod or microschool pursuant to this subsection.

(1) For the purposes of this subsection:

(A) "Learning pod" means a voluntary association of parents choosing to group their children together to participate in their elementary or secondary academic studies as an alternative to enrolling in a public school, private school, homeschool, or microschool, including participation in an activity or service provided to the children in exchange for payment; and

(B) "Microschool" means a school initiated by one or more teachers or an entity created to operate a school that charges tuition for the students who enroll and is an alternative to enrolling in a public school, private school, homeschool, or learning pod.

(2) Upon beginning participation in a learning pod or microschool pursuant to this subsection, the parent or legal guardian of the child participating shall present to the county superintendent or county board a notice of intent to participate in a learning pod or microschool that includes the name, address, and age of any child of compulsory school age participating and assurance that the child shall receive instruction in reading, language, mathematics, science, and social studies, and that the child shall be assessed annually in accordance with this subsection. The person providing instruction shall notify the county superintendent upon termination of participation in a learning pod or microschool for a child who is of compulsory attendance age. Upon establishing residence in a new county, the person providing instruction shall notify the previous county superintendent and submit a new notice of intent to the superintendent of the new county of residence: *Provided*, That if a child is enrolled in a public school, notice of intent to participate in a learning pod or microschool shall be given on or before the date participation is to begin.

(3) The person or persons providing instruction shall submit satisfactory evidence of a high school diploma or equivalent, or a post-secondary degree or certificate from a regionally

WV Legislature

accredited institution, or from an institution of higher education that has been authorized to confer a post-secondary degree or certificate in West Virginia by the West Virginia Council for Community and Technical College Education or by the West Virginia Higher Education Policy Commission.

(4) Annually, the person or persons providing instruction shall obtain an academic assessment of the child for the previous school year in one of the following ways:

(A) The child participating in a learning pod or microschool takes a nationally normed standardized achievement test published or normed not more than 10 years from the date of administration and administered under the conditions as set forth by the published instructions of the selected test and by a person qualified in accordance with the test's published guidelines in the subjects of reading, language, mathematics, science, and social studies. The child is considered to have made acceptable progress when the mean of the child's test results in the required subject areas for any single year is within or above the fourth stanine or, if below the fourth stanine, shows improvement from the previous year's results;

(B) The child participates in the testing program currently in use in the state's public schools. The test shall be administered to the child at a public school in the county of residence. Determination of acceptable progress shall be based on current guidelines of the state testing program;

(C) A portfolio of samples of the child's work is reviewed by a certified teacher who determines whether the child's academic progress for the year is in accordance with the child's abilities. The teacher shall provide a written narrative about the child's progress in the areas of reading, language, mathematics, science, and social studies and shall note any areas which, in the professional opinion of the reviewer, show need for improvement or remediation. If the narrative indicates that the child's academic progress for the year is in accordance with the child's abilities, the child is considered to have made acceptable progress; or

(D) The child completes an alternative academic assessment of proficiency that is mutually agreed upon by the parent or legal guardian and the county superintendent.

(5) A parent or legal guardian shall maintain copies of each student's Academic Assessment for three years. When the annual assessment fails to show acceptable progress, the person or persons providing instruction shall initiate a remedial program to foster acceptable progress. The county board upon request shall notify the parents or legal guardian of the child, in writing, of the services available to assist in the assessment of the child's eligibility for special education services. Identification of a disability does not preclude the continuation of participation in a learning pod or microschool. In the event that the child does not achieve acceptable progress for a second consecutive year, the person or persons providing instruction shall submit to the county superintendent additional evidence that appropriate instruction is being provided.

WV Legislature

(6) The parent, legal guardian, learning pod, or microschool shall submit to the county superintendent the results of the academic assessment of the child with the same frequency prescribed in §18-8-1(c)(2)(E) of this code: *Provided*, That instead of the academic assessment results being submitted individually, the learning pod or microschool may submit the school composite results.

(7) The county superintendent or a designee shall offer such assistance, including textbooks, other teaching materials and available resources, all subject to availability, as may assist the person or persons providing instruction. Any child participating in a learning pod or microschool may upon approval of the county board exercise the option to attend any class offered by the county board as the person or persons providing instruction may consider appropriate subject to normal registration and attendance requirements.

(8) No learning pod or microschool which meets the requirements of this subsection is subject to any other provision of law relating to education: *Provided*, That any learning pod or microschool which has a student requiring special education instruction must comply with the provisions of §18-20-11 of this code, including, but not limited to, placement of video cameras for the protection of that exceptional student.

(9) Making learning pods and microschools subject to the home instruction provisions and requirements does not make learning pods and microschools the same as homeschooling.

WV Legislature