

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978



**ENROLLED**

*Committee Substitute for*  
**SENATE BILL NO. 390**

(By Mr. *Gelson*)



PASSED *March 11* 1978

In Effect *thirty days from* Passage



**ENROLLED**  
~~FOR~~  
COMMITTEE SUBSTITUTE  
*FOR*  
**Senate Bill No. 390**  
(By MR. NELSON)

[Passed March 11, 1978; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, four, five and six, article twenty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to education of exceptional children; clarifying the responsibility of the state board of education and state superintendent of schools; prohibiting exclusion of educationally handicapped children from school; and expanding the composition of and duties of the advisory council for education of exceptional children.

*Be it enacted by the Legislature of West Virginia:*

That sections one, four, five and six, article twenty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

**ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

**§18-20-1. Establishment of special programs and teaching services for exceptional children.**

1 In accordance with the following provisions, county  
2 boards of education throughout the state shall establish  
3 and maintain for all exceptional children between five  
4 and twenty-three years of age special educational pro-  
5 grams, including but not limited to special schools, classes,  
6 regular classroom programs, home-teaching or visiting-  
7 teacher services for such type or classification as the  
8 state board of education shall approve. Provisions shall  
9 be made for educating such exceptional children (in-  
10 cluding the handicapped and the gifted) who differ from

11 the average or normal in physical, mental or emotional  
12 characteristics, or in communicative or intellectual devia-  
13 tion characteristics, or in both communicative and in-  
14 tellectual deviation characteristics, to the extent that  
15 they cannot be educated safely or profitably in the regular  
16 classes of the public schools or to the extent that they  
17 need special educational provisions within the regular  
18 classroom in order to educate them in accordance with  
19 their capacities, limitations and needs. In addition,  
20 county boards of education may establish and  
21 maintain other educational services for exceptional  
22 children as the state superintendent of schools may  
23 approve.

24 By the school year beginning on the first day of July,  
25 one thousand nine hundred seventy-four, county boards  
26 of education shall establish and maintain these special  
27 educational programs, including but not limited to special  
28 schools, classes, regular class programs, home-teaching  
29 and visiting-teacher services. The state board of educa-  
30 tion shall adopt rules and regulations to advance and  
31 accomplish this program and to assure that all excep-  
32 tional children in the state, including children in mental  
33 health facilities, residential institutions, and private  
34 schools will receive an education in accordance with the  
35 mandates of state and federal laws.

36 Nothing in this section shall be construed to prevent  
37 county boards of education from providing special edu-  
38 cational programs, including but not limited to special  
39 schools, classes, regular class programs, home-teaching  
40 or visiting-teacher services for such exceptional children  
41 who are three years of age or older.

**§18-20-4. Examination and report by medical or other special-  
ists.**

1 Each child prior to enrolling in a special education  
2 program shall be examined by an appropriate medical  
3 specialist, psychologist, or educational specialist (reading  
4 specialist, speech and language clinician, or other spe-  
5 cialists as required by the state board of education for  
6 specific areas of exceptionality) who shall report to the  
7 county superintendent of schools. The specialists' report

8 shall carry recommendation for eligibility and placement  
9 in regular school or in the special education facility,  
10 indicate the nature and extent of disability, and advise  
11 with reference to treatment and prosthesis for alleviating  
12 the child's disability.

13 No educationally exceptional child shall be excluded  
14 from attending public or other suitable schools.

**§18-20-5. Powers and duties of state superintendent.**

1 The state superintendent of schools shall have power  
2 to organize, promote and administer this program under  
3 his present organization and be responsible for:

4 (1) Stimulating and assisting county boards of edu-  
5 cation in establishing, organizing and maintaining special  
6 schools, classes, regular class programs, home-teaching  
7 and visiting-teacher services.

8 (2) Cooperating with all other public and private  
9 agencies engaged in relieving, caring for, curing, edu-  
10 cating and rehabilitating exceptional children, and in  
11 helping coordinate the services of such agencies.

12 (3) Preparing the necessary rules, regulations, formula  
13 for distribution of available appropriated funds, report-  
14 ing forms and procedures necessary to define minimum  
15 standards in providing suitable facilities for education of  
16 exceptional children, ensuring the employment, certifi-  
17 cation and approval of qualified teachers and therapists  
18 subject to approval by the state board of education.

19 (4) Receiving from county boards of education their  
20 applications, annual reports, and claims for reimburse-  
21 ment from such moneys as are appropriated by the  
22 Legislature, auditing such claims and preparing vouchers  
23 to reimburse said counties the amounts reimbursable  
24 to them.

25 (5) Assuring that all exceptional children in the state,  
26 including children in mental health facilities, residential  
27 institutions and private schools, receive an education in  
28 accordance with state and federal laws.

29 (6) Performing such other duties and assuming such  
30 other responsibilities in connection with this program as  
31 may be needed.

32 (7) Nothing herein contained shall be construed to  
33 prevent any county board of education from establish-

34 ing and maintaining special schools, classes, regular class  
35 programs, home-teaching or visiting-teaching services  
36 out of funds available from local revenue.

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

1 There shall be an advisory council for the education of  
2 exceptional children which shall advise and consult with  
3 the state board of education on matters pertinent thereto.  
4 The advisory council shall be composed of twelve mem-  
5 bers appointed by the state superintendent of free  
6 schools, four of which shall be parents of exceptional  
7 children utilizing or eligible for the services of the special  
8 educational programs established hereunder. Other  
9 members of the advisory council shall include at least  
10 one handicapped individual, teacher of exceptional chil-  
11 dren, state education official, local education official, and  
12 an administrator of programs for exceptional children.  
13 No more than two officers and employees of the state  
14 may be eligible for appointment to the advisory council.  
15 Members shall be appointed for terms of three years  
16 except for initial terms which may be for one, two or  
17 three years. Each year the terms of office of one third  
18 of the advisory council shall expire. The members of  
19 the advisory council shall be citizens and residents of  
20 this state, who by reason of their training, education or  
21 experience are qualified to carry out the functions of  
22 the advisory council under this article.

23 The first term of office for the newly appointed mem-  
24 bers shall begin the thirtieth day of June, one thousand  
25 nine hundred seventy-eight.

26 At its first meeting, to be held the second Wednesday  
27 in July, one thousand nine hundred seventy-eight, the  
28 advisory council shall elect a chairman from among its  
29 members, who shall preside over its meetings until the  
30 second Wednesday in July of the next year. Thereafter,  
31 the advisory council shall elect a chairman on the second  
32 Wednesday in May of each year.

33 All members shall be eligible for reappointment. A  
34 member shall, unless sooner removed, continue to serve  
35 until his term expires and his successor has been ap-  
36 pointed and has qualified. A vacancy caused by the death,

37 resignation or removal of a member prior to the expira-  
38 tion of his term shall be filled only for the remainder of  
39 such term.

40 For the purpose of carrying out its functions under  
41 this article, six members of the advisory council shall  
42 constitute a quorum. The advisory council shall meet at  
43 least four times each year at least two of which shall be  
44 held at a building in the state capitol complex and at a  
45 time designated by the chairman. Additional meetings  
46 may be held when called by the chairman or when re-  
47 quested by six members of the advisory council.

48 The time and place of all meetings and agenda items  
49 must be publicly announced and available to the public  
50 upon request at least ten days prior to the meeting, and  
51 meetings must be open to the public. Official minutes  
52 must be kept of all council meetings and shall be made  
53 available to the public upon request.

54 Members of the council shall not receive any compen-  
55 sation for their services on the council, but shall be re-  
56 imburSED any actual expenses incurred by them in carry-  
57 ing out their duties from funds appropriated to the de-  
58 partment of education.

59 The council shall:

60 (a) Consult with the state board of education concern-  
61 ing and comment publicly upon any rules and regula-  
62 tions formulated by such board regarding the education of  
63 handicapped children;

64 (b) Consult with and advise the state board and super-  
65 intendent and the Legislature concerning any problems  
66 presented to the council including unmet needs within  
67 the state in the education of handicapped children;

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

70 (d) Periodically review and comment publicly upon  
71 the state plan for special programs and make any rec-  
72 ommendations it may have concerning changes it may  
73 deem proper. By the first day of July of each year, the  
74 advisory council shall submit an annual report of its  
75 activities and suggestions to the state board of education  
76 and the superintendent, and shall make such report  
77 available to the public.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Clarence C. Cheston Jr  
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. C. Sicilian Jr.  
Clerk of the Senate

V. Blankenship  
Clerk of the House of Delegates

W. T. Brathwaite Jr.  
President of the Senate

Donald L. Kopp  
Speaker House of Delegates

The within is approved this the 30  
day of March, 1978.

John T. Ralston  
Governor



APPROVED AND SIGNED BY THE GOVERNOR

RECEIVED

MAR 17 11 03 AM '78

OFFICE OF THE GOVERNOR

Date Mar 30, 1978

Time 8:39 a.m.

RECEIVED

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OFFICE  
SECRETARY OF STATE