WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

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ENROLLED
Com. Sub. For
HOUSE BILL No. 3546

(By Delegate )

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Passed March 11, 1994
In Effect 90 Days From Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4546
(By Delegate Houvouras)
[Passed March 11, 1994; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compulsory school attendance and permitting all children, including those with disabilities or special needs and those scoring in the “average range” of standardized testing to participate in home instruction without discrimination.

Be it enacted by the Legislature of West Virginia:

That section one, article eight, 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 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Commencement and termination of compulsory school attendance; exemptions.

1. Compulsory school attendance shall begin with the school year in which the sixth birthday is reached prior to the first day of September of such year or upon enrolling in a publicly supported kindergarten program and continue to the sixteenth birthday.

6. Exemption from the foregoing requirements of compulsory public school attendance shall be made on
behalf of any child for the following causes or conditions,
each such cause or condition being subject to confirmation
by the attendance authority of the county:

Exemption A. Instruction in a private, parochial or
other approved school. — Such instruction shall be in a
school approved by the county board of education and
for a time equal to the school term of the county for the
year. In all such schools it shall be the duty of the
principal or other person in control, upon the request of
the county superintendent of schools, to furnish to the
county board of education such information and records
as may be required with respect to attendance, instruc-
tion and progress of pupils enrolled between the
entrance age and sixteen years;

Exemption B. Instruction in home or other approved
place. — (a) Such instruction shall be in the home of
such child or children or at some other place approved
by the county board of education and for a time equal
to the school term of the county. If such request for home
instruction is denied by the county board of education,
good and reasonable justification for such denial must
be furnished in writing to the applicant by the county
board of education. The instruction in such cases shall
be conducted by a person or persons who, in the
judgment of the county superintendent and county
board of education, are qualified to give instruction in
subjects required to be taught in the free elementary
schools of the state. It shall be the duty of the person
or persons providing the instruction, upon request of the
county superintendent, to furnish to the county board of
education such information and records as may be
required from time to time with respect to attendance,
instruction and progress of pupils enrolled between the
entrance age and sixteen years receiving such instruc-
tion. The state department of education shall develop
guidelines for the homeschooling of special education
students including alternative assessment measures to
assure that satisfactory academic progress is achieved.

(b) Notwithstanding the provisions of subsection (a) of
this Exemption B, the person or persons providing home
instruction meet the requirements for Exemption B
when the conditions of this subsection are met: Provided,
That the county superintendent shall have the right to
seek from the circuit court of the county an order
denyng the home instruction, which order may be
granted upon a showing of clear and convincing
evidence that the child will suffer educational neglect
or that there are other compelling reasons to deny home
instruction.

(1) The person or persons providing home instruction
present to the county superintendent or county board of
education a notice of intent to provide home instruction
and the name and address of any child of compulsory
school age to be instructed: Provided, That if a child is
enrolled in a public school, notice of intent to provide
home instruction shall be given at least two weeks prior
to withdrawing such child from public school;

(2) The person or persons providing home instruction
submit satisfactory evidence of (i) a high school diploma
or equivalent and (ii) formal education at least four
years higher than the most academically advanced child
for whom the instruction will be provided.

(3) The person or persons providing home instruction
outline a plan of instruction for the ensuing school year;
and

(4) The person or persons providing home instruction
shall annually obtain an academic assessment of the
child for the previous school year. This shall be satisfied
in one of the following ways:

(i) Any child receiving home instruction annually
takes a standardized test, to be administered at a public
school in the county where the child resides, or admin-
istered by a licensed psychologist or other person
authorized by the publisher of the test, or administered
by a person authorized by the county superintendent or
county board of education. The child shall be adminis-
tered a test which has been normed by the test publisher
on that child's age or grade group. In no event may the
child's parent or legal guardian administer the test.
Where a test is administered outside of a public school,
the child's parent or legal guardian shall pay the cost
of administering the test. The public school or other qualified person shall administer to children of compulsory school age the Comprehensive Test of Basic Skills, the California achievement test, the Stanford achievement test, or the Iowa tests of basic skills, achievement and proficiency, or an individual standardized achievement test that is nationally normed and provides statistical results which test will be selected by the public school, or other person administering the test, in the subjects of language, reading, social studies, science and mathematics; and shall be administered under standardized conditions as set forth by the published instructions of the selected test. No test shall be administered if the publication date is more than ten years from the date of the administration of the test. Each child's test results shall be reported as a national percentile for each of the six subjects tested. Each child’s test results shall be made available on or before the thirtieth day of June of the school year in which the test is to be administered to the person or persons providing home instruction, the child's parent or legal guardian and the county superintendent. Upon request of a duly authorized representative of the West Virginia department of education, each child’s test results shall be furnished by the person or persons providing home instruction, or by the child’s parent or legal guardian, to the state superintendent of schools. Upon notification of the mean of the child’s test results for any single year has fallen below the fortieth percentile, the county board of education shall notify the parents or legal guardian of said child, in writing, of the services available to assist in the assessment of the child’s eligibility for special education services: Provided, That the identification of a disability shall not preclude the continuation of home schooling.

If the mean of the child’s test results for any single year for language, reading, social studies, science and mathematics fall below the fortieth percentile on the selected tests, then the person or persons providing home instruction shall initiate a remedial program to foster achievement above that level and the student shall show improvement. If, after two calendar years, the
mean of the child's test results fall below the fortieth
percentile level, home instruction shall no longer satisfy
the compulsory school attendance requirement exemp-
tion; or

(ii) The county superintendent is provided with a
written narrative indicating that a portfolio of samples
of the child's work has been reviewed and that the
child's academic progress for the year is in accordance
with the child's abilities. This narrative shall be
prepared by a certified teacher or other person mutually
agreed upon by the parent or legal guardian and the
county superintendent. It shall be submitted on or
before the thirtieth day of June of the school year
covered by the portfolio. The parent or legal guardian
shall be responsible for payment of fees charged for the
narrative; or

(iii) Evidence of an alternative academic assessment
of the child's proficiency mutually agreed upon by the
parent or legal guardian and the county superintendent
is submitted to the county superintendent by the
thirtieth day of June of the school year being assessed.
The parent or legal guardian shall be responsible for
payment of fees charged for the assessment.

The superintendent or a designee shall offer such
assistance, including textbooks, other teaching materials
and available resources, as may assist the person or
persons providing home instruction subject to their
availability. Any child receiving home instruction may,
upon approval of the county board of education, exercise
the option to attend any class offered by the county
board of education as the person or persons providing
home instruction may deem appropriate subject to
normal registration and attendance requirements;

Exemption C. Physical or mental incapacity. —
Physical or mental incapacity shall consist 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 state-
ment of a licensed physician or authorized school nurse
shall be required under the provisions of this article:
Provided, That in all cases incapacity shall be narrowly defined and in no case shall the provisions of this article allow for the exclusion of the mentally, physically, emotionally or behaviorally handicapped child otherwise entitled to a free appropriate education;

Exemption D. Residence more than two miles from school or school bus route. — The distance of residence from a school, or school bus route providing free transportation, shall be reckoned by the shortest practicable road or path, which contemplates travel through fields by right of permission from the landholders or their agents. It shall be the duty of the county board of education, subject to written consent of landholders, or their agents, to provide and maintain safe foot bridges across streams off the public highways where such are required for the safety and welfare of pupils whose mode of travel from home to school or to school bus route must necessarily be other than along the public highway in order for said road or path to be not over two miles from home to school or to school bus providing free transportation;

Exemption E. Hazardous conditions. — Conditions rendering school attendance impossible or hazardous to the life, health or safety of the child;

Exemption F. High school graduation. — Such exemption shall consist of regular graduation from a standard senior high school;

Exemption G. Granting work permits. — The county superintendent may, after due investigation, grant work permits to youths under sixteen years of age, subject to state and federal labor laws and regulations: Provided, That a work permit may not be granted on behalf of any youth who has not completed the eighth grade of school;

Exemption H. Serious illness or death in the immediate family of the pupil. — 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 same to the county superintendent of schools;

Exemption I. Destitution in the home. — 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 such 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 shall not be allowed when such destitution is relieved through public or private means;

Exemption J. Church ordinances; observances of regular church ordinances. — The county board of education may approve exemption for religious instruction upon written request of the person having legal or actual charge of a child or children: Provided, That such exemption shall be subject to the rules prescribed by the county superintendent and approved by the county board of education;

Exemption K. Alternative private, parochial, church or religious school instruction. — In lieu of the provisions of Exemption A hereinabove, 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 article twenty-eight, chapter eighteen of the code of West Virginia.

The completion of the eighth grade shall not exempt any child under sixteen years of age from the compulsory attendance provision of this article: Provided, That there is a public high school or other public school of advanced grades or a school bus providing free transportation to any such school, the route of which is within two miles of the child's home by the shortest practicable route or path as hereinbefore specified under Exemption D of this section.
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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within was approved this the 8th day of March, 1994.

Governor