

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 18

BY SENATORS SYPOLT, SMITH AND BLAIR

[Originating in the Committee on Education; reported
on February 24, 2017]

1 A BILL to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended, relating
2 to requiring the state board to use a new comprehensive statewide student assessment
3 program beginning with the 2017-2018 school year; setting forth requirements for the new
4 assessment program; removing authorization to require student proficiencies be
5 measured through the ACT EXPLORE and the ACT PLAN assessments or other
6 comparable assessments; allowing state board to waive certain requirements for the new
7 assessment program if less than two vendors submit bids; clarifying that state board may
8 issue more than one request for proposals and contract with more than one vendor;
9 prohibiting the Smarter Balance Assessment System or the PARCC Assessment System
10 from being used; requiring the state board to include in its rule accountability measures
11 for students taking the comprehensive statewide assessment; prohibiting certain
12 summative assessments from taking more than two percent of a student's instructional
13 time; prohibiting a student from being required to complete a greater number of summative
14 assessments than is required by the Every Student Succeeds Act; providing exception;
15 and prohibiting collection of personal data as part of the assessment process except for
16 what is necessary for the students' instruction, academic and college and career search
17 needs.

Be it enacted by the Legislature of West Virginia:

18 That §18-2E-5 of the Code of West Virginia, 1931, as amended, be amended and
19 reenacted to read as follows:

ARTICLE 2E. HIGH-QUALITY EDUCATIONAL PROGRAMS.

**§18-2E-5. Process for improving education; education standards; statewide assessment
program; accountability measures; Office of Education Performance Audits; school
accreditation and school system approval; intervention to correct low performance.**

20 (a) *Legislative findings, purpose and intent.* — The Legislature makes the following
21 findings with respect to the process for improving education and its purpose and intent in the

22 enactment of this section:

23 (1) The process for improving education includes four primary elements, these being:

24 (A) Standards which set forth the knowledge and skills that students should know and be
25 able to perform as the result of a thorough and efficient education that prepares them for the
26 twenty-first century, including measurable criteria to evaluate student performance and progress;

27 (B) Assessments of student performance and progress toward meeting the standards;

28 (C) A system of accountability for continuous improvement defined by high-quality
29 standards for schools and school systems articulated by a rule promulgated by the state board
30 and outlined in subsection (c) of this section that will build capacity in schools and districts to meet
31 rigorous outcomes that assure student performance and progress toward obtaining the
32 knowledge and skills intrinsic to a high-quality education rather than monitoring for compliance
33 with specific laws and regulations; and

34 (D) A method for building the capacity and improving the efficiency of schools and school
35 systems to improve student performance and progress;

36 (2) As the constitutional body charged with the general supervision of schools as provided
37 by general law, the state board has the authority and the responsibility to establish the standards,
38 assess the performance and progress of students against the standards, hold schools and school
39 systems accountable and assist schools and school systems to build capacity and improve
40 efficiency so that the standards are met, including, when necessary, seeking additional resources
41 in consultation with the Legislature and the Governor;

42 (3) As the constitutional body charged with providing for a thorough and efficient system
43 of schools, the Legislature has the authority and the responsibility to establish and be engaged
44 constructively in the determination of the knowledge and skills that students should know and be
45 able to do as the result of a thorough and efficient education. This determination is made by using
46 the process for improving education to determine when school improvement is needed by
47 evaluating the results and the efficiency of the system of schools, by ensuring accountability and

48 by providing for the necessary capacity and its efficient use;

49 (4) In consideration of these findings, the purpose of this section is to establish a process
50 for improving education that includes the four primary elements as set forth in subdivision (1) of
51 this subsection to provide assurances that the high-quality standards are, at a minimum, being
52 met and that a thorough and efficient system of schools is being provided for all West Virginia
53 public school students on an equal education opportunity basis; and

54 (5) The intent of the Legislature in enacting this section and section five-c of this article is
55 to establish a process through which the Legislature, the Governor and the state board can work
56 in the spirit of cooperation and collaboration intended in the process for improving education, to
57 consult and examine the performance and progress of students, schools and school systems and,
58 when necessary, to consider alternative measures to ensure that all students continue to receive
59 the thorough and efficient education to which they are entitled. However, nothing in this section
60 requires any specific level of funding by the Legislature.

61 (b) *Electronic county and school strategic improvement plans.* — The state board shall
62 promulgate a rule consistent with the provisions of this section and in accordance with article
63 three-b, chapter twenty-nine-a of this code establishing an electronic county strategic
64 improvement plan for each county board and an electronic school strategic improvement plan for
65 each public school in this state. Each respective plan shall be for a period of no more than five
66 years and shall include the mission and goals of the school or school system to improve student,
67 school or school system performance and progress, as applicable. The strategic plan shall be
68 revised annually in each area in which the school or system is below the standard on the annual
69 performance measures. The plan shall be revised when required pursuant to this section to
70 include each annual performance measure upon which the school or school system fails to meet
71 the standard for performance and progress, the action to be taken to meet each measure, a
72 separate time line and a date certain for meeting each measure, a cost estimate and, when
73 applicable, the assistance to be provided by the department and other education agencies to

74 improve student, school or school system performance and progress to meet the annual
75 performance measure.

76 The department shall make available to all public schools through its website or the West
77 Virginia Education Information System an electronic school strategic improvement plan
78 boilerplate designed for use by all schools to develop an electronic school strategic improvement
79 plan which incorporates all required aspects and satisfies all improvement plan requirements. ~~of~~
80 ~~the No Child Left Behind Act~~

81 (c) *High-quality education standards and efficiency standards.* — In accordance with the
82 provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt and
83 periodically review and update high-quality education standards for student, school and school
84 system performance and processes in the following areas:

- 85 (1) Curriculum;
- 86 (2) Workplace readiness skills;
- 87 (3) Finance;
- 88 (4) Transportation;
- 89 (5) Special education;
- 90 (6) Facilities;
- 91 (7) Administrative practices;
- 92 (8) Training of county board members and administrators;
- 93 (9) Personnel qualifications;
- 94 (10) Professional development and evaluation;
- 95 (11) Student performance, progress and attendance;
- 96 (12) Professional personnel, including principals and central office administrators, and
97 service personnel attendance;
- 98 (13) School and school system performance and progress;
- 99 (14) A code of conduct for students and employees;

100 (15) Indicators of efficiency; and

101 (16) Any other areas determined by the state board.

102 (d) *Comprehensive statewide student assessment program.* ~~The state board shall~~
103 ~~establish a comprehensive statewide student assessment program to assess student~~
104 ~~performance and progress in grades three through twelve. The assessment program is subject to~~
105 ~~the following:~~

106 (1) The state board shall promulgate a rule in accordance with the provisions of article
107 three-b, chapter twenty-nine-a of this code establishing the comprehensive statewide student
108 assessment program.

109 (2) ~~Prior to the 2014-2015 school year, the state board shall align the comprehensive~~
110 ~~statewide student assessment for all grade levels in which the test is given with the college-~~
111 ~~readiness standards adopted pursuant to section thirty-nine, article two of this chapter or develop~~
112 ~~other aligned tests to be required at each grade level so that progress toward college readiness~~
113 ~~in English/language arts and math can be measured~~ Beginning with the 2017-2018 school year,
114 except as provided in subdivision (3) of this subsection, the state board shall use a new
115 comprehensive statewide student assessment program that meets the following requirements:

116 (A) The assessment program shall include an eleventh grade assessment that a
117 significant number of regionally accredited higher education institutions use for determining
118 college admissions;

119 (B) The assessment program shall comply with all Every Student Succeeds Act
120 requirements;

121 (C) The assessment program shall include a career readiness assessment that measures
122 and documents foundational workplace skills and leads to a nationally recognized work readiness
123 certificate for students that meet minimum proficiency requirements; and

124 (D) The assessment program used beginning with the 2017-2018 school year shall
125 continue to be used for at least a total of four consecutive years.

126 ~~(3) The state board may require that student proficiencies be measured through the ACT~~
127 ~~EXPLORE and the ACT PLAN assessments or other comparable assessments, which are~~
128 ~~approved by the state board and provided by future vendors. If less than two vendors submit~~
129 ~~bids, the state board may waive one or more of the requirements set forth in subdivision (2) of~~
130 ~~this subsection.~~

131 (4) The state board may issue more than one request for proposals and contract with
132 more than one vendor to meet the requirements of this subsection.

133 ~~(4)~~ (5) The state board may require that student proficiencies be measured through the
134 West Virginia writing assessment at any grade levels determined by the state board to be
135 appropriate. ~~and~~

136 ~~(5)~~ (6) The state board may provide, through the statewide assessment program, other
137 optional testing or assessment instruments applicable to grade levels kindergarten through grade
138 twelve which may be used by each school to promote student achievement. The state board
139 annually shall publish and make available, electronically or otherwise, to school curriculum teams
140 and teacher collaborative processes the optional testing and assessment instruments.

141 (7) Neither the Smarter Balance Assessment System or the PARCC Assessment System
142 may be used as the statewide assessment program.

143 (8) The state board shall include in the rule required by subdivision (1) of this subsection
144 accountability measures for students taking the comprehensive statewide assessment.

145 (9) No summative assessment approved by the state board may take more than two
146 percent of a student's instructional time.

147 (10) No student may be required to complete a greater number of summative assessments
148 than is required by the Every Student Succeeds Act except as otherwise required by this
149 subsection.

150 (11) Collection of personal data as part of the assessment process except for what is
151 necessary for the students' instruction, academic and college and career search needs is

152 prohibited.

153 (e) *State annual performance measures for school and school system accreditation.* —

154 The state board shall promulgate a rule in accordance with the provisions of article three-
155 b, chapter twenty-nine-a of this code that establishes a system to assess and weigh annual
156 performance measures for state accreditation of schools and school systems. The state board
157 also may establish performance incentives for schools and school systems as part of the state
158 accreditation system. On or before December 1, 2013, the state board shall report to the Governor
159 and to the Legislative Oversight Commission on Education Accountability the proposed rule for
160 establishing the measures and incentives of accreditation and the estimated cost therefor, if any.
161 Thereafter, the state board shall provide an annual report to the Governor and to the Legislative
162 Oversight Commission on Education Accountability on the impact and effectiveness of the
163 accreditation system. The rule for school and school system accreditation proposed by the board
164 may include, but is not limited to, the following measures:

165 (1) Student proficiency in English and language arts, math, science and other subjects
166 determined by the board;

167 (2) Graduation and attendance rate;

168 (3) Students taking and passing AP tests;

169 (4) Students completing a career and technical education class;

170 (5) Closing achievement gaps within subgroups of a school's student population; and

171 (6) Students scoring at or above average attainment on SAT or ACT tests.

172 (f) *Indicators of efficiency.* — In accordance with the provisions of article three-b, chapter
173 twenty-nine-a of this code, the state board shall adopt by rule and periodically review and update
174 indicators of efficiency for use by the appropriate divisions within the department to ensure
175 efficient management and use of resources in the public schools in the following areas:

176 (1) Curriculum delivery including, but not limited to, the use of distance learning;

177 (2) Transportation;

178 (3) Facilities;

179 (4) Administrative practices;

180 (5) Personnel;

181 (6) Use of regional educational service agency programs and services, including programs

182 and services that may be established by their assigned regional educational service agency or

183 other regional services that may be initiated between and among participating county boards; and

184 (7) Any other indicators as determined by the state board.

185 (g) *Assessment and accountability of school and school system performance and*

186 *processes.* — In accordance with the provisions of article three-b, chapter twenty-nine-a of this

187 code, the state board shall establish by rule a system of education performance audits which

188 measures the quality of education and the preparation of students based on the annual measures

189 of student, school and school system performance and progress. The system of education

190 performance audits shall provide information to the state board, the Legislature and the Governor,

191 upon which they may determine whether a thorough and efficient system of schools is being

192 provided. The system of education performance audits shall include:

193 (1) The assessment of student, school and school system performance and progress

194 based on the annual measures established pursuant to subsection (e) of this section;

195 (2) The evaluation of records, reports and other information collected by the Office of

196 Education Performance Audits upon which the quality of education and compliance with statutes,

197 policies and standards may be determined;

198 (3) The review of school and school system electronic strategic improvement plans; and

199 (4) The on-site review of the processes in place in schools and school systems to enable

200 school and school system performance and progress and compliance with the standards.

201 (h) *Uses of school and school system assessment information.* — The state board shall

202 use information from the system of education performance audits to assist it in ensuring that a

203 thorough and efficient system of schools is being provided and to improve student, school and

204 school system performance and progress. Information from the system of education performance
205 audits further shall be used by the state board for these purposes, including, but not limited to,
206 the following:

- 207 (1) Determining school accreditation and school system approval status;
- 208 (2) Holding schools and school systems accountable for the efficient use of existing
209 resources to meet or exceed the standards; and
- 210 (3) Targeting additional resources when necessary to improve performance and progress.

211 The state board shall make accreditation information available to the Legislature, the
212 Governor, the general public and to any individual who requests the information, subject to the
213 provisions of any act or rule restricting the release of information.

214 (i) *Early detection and intervention programs.* — Based on the assessment of student,
215 school and school system performance and progress, the state board shall establish early
216 detection and intervention programs using the available resources of the Department of
217 Education, the regional educational service agencies, the Center for Professional Development
218 and the Principals Academy, or other resources as appropriate, to assist underachieving schools
219 and school systems to improve performance before conditions become so grave as to warrant
220 more substantive state intervention. Assistance shall include, but is not limited to, providing
221 additional technical assistance and programmatic, professional staff development, providing
222 monetary, staffing and other resources where appropriate.

223 (j) *Office of Education Performance Audits.* —

224 (1) To assist the state board in the operation of a system of education performance audits,
225 the state board shall establish an Office of Education Performance Audits consistent with the
226 provisions of this section. The Office of Education Performance Audits shall be operated under
227 the direction of the state board independently of the functions and supervision of the State
228 Department of Education and state superintendent. The Office of Education Performance Audits
229 shall report directly to and be responsible to the state board in carrying out its duties under the

230 provisions of this section.

231 (2) The office shall be headed by a director who shall be appointed by the state board and
232 who serves at the will and pleasure of the state board. The annual salary of the director shall be
233 set by the state board and may not exceed eighty percent of the salary of the State Superintendent
234 of Schools.

235 (3) The state board shall organize and sufficiently staff the office to fulfill the duties
236 assigned to it by law and by the state board. Employees of the State Department of Education
237 who are transferred to the Office of Education Performance Audits shall retain their benefits and
238 seniority status with the Department of Education.

239 (4) Under the direction of the state board, the Office of Education Performance Audits shall
240 receive from the West Virginia Education Information System staff research and analysis data on
241 the performance and progress of students, schools and school systems, and shall receive
242 assistance, as determined by the state board, from staff at the State Department of Education,
243 the regional education service agencies, the Center for Professional Development, the Principals
244 Academy and the School Building Authority to carry out the duties assigned to the office.

245 (5) In addition to other duties which may be assigned to it by the state board or by statute,
246 the Office of Education Performance Audits also shall:

247 (A) Assure that all statewide assessments of student performance used as annual
248 performance measures are secure as required in section one-a of this article;

249 (B) Administer all accountability measures as assigned by the state board, including, but
250 not limited to, the following:

251 (i) Processes for the accreditation of schools and the approval of school systems; and

252 (ii) Recommendations to the state board on appropriate action, including, but not limited
253 to, accreditation and approval action;

254 (C) Determine, in conjunction with the assessment and accountability processes, what
255 capacity may be needed by schools and school systems to meet the standards established by

256 the state board and recommend to the state board plans to establish those needed capacities;

257 (D) Determine, in conjunction with the assessment and accountability processes, whether
258 statewide system deficiencies exist in the capacity of schools and school systems to meet the
259 standards established by the state board, including the identification of trends and the need for
260 continuing improvements in education, and report those deficiencies and trends to the state
261 board;

262 (E) Determine, in conjunction with the assessment and accountability processes, staff
263 development needs of schools and school systems to meet the standards established by the state
264 board and make recommendations to the state board, the Center for Professional Development,
265 the regional educational service agencies, the Higher Education Policy Commission and the
266 county boards;

267 (F) Identify, in conjunction with the assessment and accountability processes, school
268 systems and best practices that improve student, school and school system performance and
269 communicate those to the state board for promoting the use of best practices. The state board
270 shall provide information on best practices to county school systems; and

271 (G) Develop reporting formats, such as check lists, which shall be used by the appropriate
272 administrative personnel in schools and school systems to document compliance with applicable
273 laws, policies and process standards as considered appropriate and approved by the state board,
274 which may include, but is not limited to, the following:

275 (i) The use of a policy for the evaluation of all school personnel that meets the
276 requirements of sections twelve and twelve-a, article two, chapter eighteen-a of this code;

277 (ii) The participation of students in appropriate physical assessments as determined by
278 the state board, which assessment may not be used as a part of the assessment and
279 accountability system;

280 (iii) The appropriate licensure of school personnel; and

281 (iv) The appropriate provision of multicultural activities.

282 Information contained in the reporting formats is subject to examination during an on-site
283 review to determine compliance with laws, policies and standards. Intentional and grossly
284 negligent reporting of false information are grounds for dismissal of any employee.

285 (k) *On-site reviews.* —

286 (1) The system of education performance audits shall include on-site reviews of schools
287 and school systems which shall be conducted only at the specific direction of the state board upon
288 its determination that circumstances exist that warrant an on-site review. Any discussion by the
289 state board of schools to be subject to an on-site review or dates for which on-site reviews will be
290 conducted may be held in executive session and is not subject to the provisions of article nine-a,
291 chapter six of this code relating to open governmental proceedings. An on-site review shall be
292 conducted by the Office of Education Performance Audits of a school or school system for the
293 purpose of making recommendations to the school and school system, as appropriate, and to the
294 state board on such measures as it considers necessary. The investigation may include, but is
295 not limited to, the following:

296 (A) Verifying data reported by the school or county board;

297 (B) Examining compliance with the laws and policies affecting student, school and school
298 system performance and progress;

299 (C) Evaluating the effectiveness and implementation status of school and school system
300 electronic strategic improvement plans;

301 (D) Investigating official complaints submitted to the state board that allege serious
302 impairments in the quality of education in schools or school systems;

303 (E) Investigating official complaints submitted to the state board that allege that a school
304 or county board is in violation of policies or laws under which schools and county boards operate;
305 and

306 (F) Determining and reporting whether required reviews and inspections have been
307 conducted by the appropriate agencies, including, but not limited to, the State Fire Marshal, the

308 Health Department, the School Building Authority and the responsible divisions within the
309 Department of Education, and whether noted deficiencies have been or are in the process of
310 being corrected.

311 (2) The Director of the Office of Education Performance Audits shall notify the county
312 superintendent of schools five school days prior to commencing an on-site review of the county
313 school system and shall notify both the county superintendent and the principal five school days
314 before commencing an on-site review of an individual school: *Provided*, That the state board may
315 direct the Office of Education Performance Audits to conduct an unannounced on-site review of
316 a school or school system if the state board believes circumstances warrant an unannounced on-
317 site review.

318 (3) The Office of Education Performance Audits shall conduct on-site reviews which are
319 limited in scope to specific areas in which performance and progress are persistently below
320 standard as determined by the state board unless specifically directed by the state board to
321 conduct a review which covers additional areas.

322 (4) The Office of Education Performance Audits shall reimburse a county board for the
323 costs of substitutes required to replace county board employees who serve on a review team.

324 (5) At the conclusion of an on-site review of a school system, the director and team leaders
325 shall hold an exit conference with the superintendent and shall provide an opportunity for
326 principals to be present for at least the portion of the conference pertaining to their respective
327 schools. In the case of an on-site review of a school, the exit conference shall be held with the
328 principal and curriculum team of the school and the superintendent shall be provided the
329 opportunity to be present. The purpose of the exit conference is to review the initial findings of the
330 on-site review, clarify and correct any inaccuracies and allow the opportunity for dialogue between
331 the reviewers and the school or school system to promote a better understanding of the findings.

332 (6) The Office of Education Performance Audits shall report the findings of an on-site
333 review to the county superintendent and the principals whose schools were reviewed within thirty

334 days following the conclusion of the on-site review. The Office of Education Performance Audits
335 shall report the findings of the on-site review to the state board within forty-five days after the
336 conclusion of the on-site review. A school or county that believes one or more findings of a review
337 are clearly inaccurate, incomplete or misleading, misrepresent or fail to reflect the true quality of
338 education in the school or county or address issues unrelated to the health, safety and welfare of
339 students and the quality of education, may appeal to the state board for removal of the findings.
340 The state board shall establish a process for it to receive, review and act upon the appeals.

341 (7) The Legislature finds that the accountability and oversight of some activities and
342 programmatic areas in the public schools are controlled through other mechanisms and agencies
343 and that additional accountability and oversight may be unnecessary, counterproductive and
344 impair necessary resources for teaching and learning. Therefore, the Office of Education
345 Performance Audits may rely on other agencies and mechanisms in its review of schools and
346 school systems.

347 (l) *School accreditation.* —

348 (1) The state board shall establish levels of accreditation to be assigned to schools. The
349 establishment of levels of accreditation and the levels shall be subject to the following:

350 (A) The levels will be designed to demonstrate school performance in all the areas outlined
351 in this section and also those established by the state board;

352 (B) The state board shall promulgate legislative rules in accordance with the provisions of
353 article three-b, chapter twenty-nine-a of this code to establish the performance and standards
354 required for a school to be assigned a particular level of accreditation; and

355 (C) The state board will establish the levels of accreditation in such a manner as to
356 minimize the number of systems of school recognition, both state and federal, that are employed
357 to recognize and accredit schools.

358 (2) The state board annually shall review the information from the system of education
359 performance audits submitted for each school and shall issue to every school a level of

360 accreditation as designated and determined by the state board.

361 (3) The state board, in its exercise of general supervision of the schools and school
362 systems of West Virginia, may exercise any or all of the following powers and actions:

363 (A) To require a school to revise its electronic strategic plan;

364 (B) To define extraordinary circumstances under which the state board may intervene
365 directly or indirectly in the operation of a school;

366 (C) To appoint monitors to work with the principal and staff of a school where extraordinary
367 circumstances are found to exist and to appoint monitors to assist the school principal after
368 intervention in the operation of a school is completed;

369 (D) To direct a county board to target resources to assist a school where extraordinary
370 circumstances are found to exist;

371 (E) To intervene directly in the operation of a school and declare the position of principal
372 vacant and assign a principal for the school who will serve at the will and pleasure of the state
373 board. If the principal who was removed elects not to remain an employee of the county board,
374 then the principal assigned by the state board shall be paid by the county board. If the principal
375 who was removed elects to remain an employee of the county board, then the following procedure
376 applies:

377 (i) The principal assigned by the state board shall be paid by the state board until the next
378 school term, at which time the principal assigned by the state board shall be paid by the county
379 board;

380 (ii) The principal who was removed is eligible for all positions in the county, including
381 teaching positions, for which the principal is certified, by either being placed on the transfer list in
382 accordance with section seven, article two, chapter eighteen-a of this code, or by being placed
383 on the preferred recall list in accordance with section seven-a, article four of said chapter; and

384 (iii) The principal who was removed shall be paid by the county board and may be
385 assigned to administrative duties without the county board being required to post that position

386 until the end of the school term; and

387 (F) Other powers and actions the state board determines necessary to fulfill its duties of
388 general supervision of the schools and school systems of West Virginia.

389 (4) The county board may take no action nor refuse any action if the effect would be to
390 impair further the school in which the state board has intervened.

391 (m) *School system approval.* — The state board annually shall review the information
392 submitted for each school system from the system of education performance audits and issue
393 one of the following approval levels to each county board: Full approval, temporary approval,
394 conditional approval or nonapproval.

395 (1) Full approval shall be given to a county board whose schools have all been given full,
396 temporary or conditional accreditation status and which does not have any deficiencies which
397 would endanger student health or safety or other extraordinary circumstances as defined by the
398 state board. A fully approved school system in which other deficiencies are discovered shall
399 remain on full accreditation status for the remainder of the approval period and shall have an
400 opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

401 (2) Temporary approval shall be given to a county board whose education system is below
402 the level required for full approval. Whenever a county board is given temporary approval status,
403 the county board shall revise its electronic county strategic improvement plan in accordance with
404 subsection (b) of this section to increase the performance and progress of the school system to
405 a full approval status level. The revised plan shall be submitted to the state board for approval.

406 (3) Conditional approval shall be given to a county board whose education system is below
407 the level required for full approval, but whose electronic county strategic improvement plan meets
408 the following criteria:

409 (A) The plan has been revised in accordance with subsection (b) of this section;

410 (B) The plan has been approved by the state board; and

411 (C) The county board is meeting the objectives and time line specified in the revised plan.

412 (4) Nonapproval status shall be given to a county board which fails to submit and gain
413 approval for its electronic county strategic improvement plan or revised electronic county strategic
414 improvement plan within a reasonable time period as defined by the state board or which fails to
415 meet the objectives and time line of its revised electronic county strategic improvement plan or
416 fails to achieve full approval by the date specified in the revised plan.

417 (A) The state board shall establish and adopt additional standards to identify school
418 systems in which the program may be nonapproved and the state board may issue nonapproval
419 status whenever extraordinary circumstances exist as defined by the state board.

420 (B) Whenever a county board has more than a casual deficit, as defined in section one,
421 article one of this chapter, the county board shall submit a plan to the state board specifying the
422 county board's strategy for eliminating the casual deficit. The state board either shall approve or
423 reject the plan. If the plan is rejected, the state board shall communicate to the county board the
424 reason or reasons for the rejection of the plan. The county board may resubmit the plan any
425 number of times. However, any county board that fails to submit a plan and gain approval for the
426 plan from the state board before the end of the fiscal year after a deficit greater than a casual
427 deficit occurred or any county board which, in the opinion of the state board, fails to comply with
428 an approved plan may be designated as having nonapproval status.

429 (C) Whenever nonapproval status is given to a school system, the state board shall
430 declare a state of emergency in the school system and shall appoint a team of improvement
431 consultants to make recommendations within sixty days of appointment for correcting the
432 emergency. When the state board approves the recommendations, they shall be communicated
433 to the county board. If progress in correcting the emergency, as determined by the state board,
434 is not made within six months from the time the county board receives the recommendations, the
435 state board shall intervene in the operation of the school system to cause improvements to be
436 made that will provide assurances that a thorough and efficient system of schools will be provided.
437 This intervention may include, but is not limited to, the following:

438 (i) Limiting the authority of the county superintendent and county board as to the
439 expenditure of funds, the employment and dismissal of personnel, the establishment and
440 operation of the school calendar, the establishment of instructional programs and rules and any
441 other areas designated by the state board by rule, which may include delegating decision-making
442 authority regarding these matters to the state superintendent;

443 (ii) Declaring that the office of the county superintendent is vacant;

444 (iii) Declaring that the positions of personnel who serve at the will and pleasure of the
445 county superintendent as provided in section one, article two, chapter eighteen-a of this code are
446 vacant, subject to application and reemployment;

447 (iv) Delegating to the state superintendent both the authority to conduct hearings on
448 personnel matters and school closure or consolidation matters and, subsequently, to render the
449 resulting decisions and the authority to appoint a designee for the limited purpose of conducting
450 hearings while reserving to the state superintendent the authority to render the resulting decisions;

451 (v) Functioning in lieu of the county board of education in a transfer, sale, purchase or
452 other transaction regarding real property; and

453 (vi) Taking any direct action necessary to correct the emergency including, but not limited
454 to, the following:

455 (I) Delegating to the state superintendent the authority to replace administrators and
456 principals in low performing schools and to transfer them into alternate professional positions
457 within the county at his or her discretion; and

458 (II) Delegating to the state superintendent the authority to fill positions of administrators
459 and principals with individuals determined by the state superintendent to be the most qualified for
460 the positions. Any authority related to intervention in the operation of a county board granted
461 under this paragraph is not subject to the provisions of article four, chapter eighteen-a of this
462 code.

463 (n) Notwithstanding any other provision of this section, the state board may intervene

464 immediately in the operation of the county school system with all the powers, duties and
465 responsibilities contained in subsection (m) of this section if the state board finds the following:

466 (1) That the conditions precedent to intervention exist as provided in this section and that
467 delaying intervention for any period of time would not be in the best interests of the students of
468 the county school system; or

469 (2) That the conditions precedent to intervention exist as provided in this section and that
470 the state board had previously intervened in the operation of the same school system and had
471 concluded that intervention within the preceding five years.

472 (o) *Capacity*. — The process for improving education includes a process for targeting
473 resources strategically to improve the teaching and learning process. Development of electronic
474 school and school system strategic improvement plans, pursuant to subsection (b) of this section,
475 is intended, in part, to provide mechanisms to target resources strategically to the teaching and
476 learning process to improve student, school and school system performance. When deficiencies
477 are detected through the assessment and accountability processes, the revision and approval of
478 school and school system electronic strategic improvement plans shall ensure that schools and
479 school systems are efficiently using existing resources to correct the deficiencies. When the state
480 board determines that schools and school systems do not have the capacity to correct
481 deficiencies, the state board shall take one or more of the following actions:

482 (1) Work with the county board to develop or secure the resources necessary to increase
483 the capacity of schools and school systems to meet the standards and, when necessary, seek
484 additional resources in consultation with the Legislature and the Governor;

485 (2) Recommend to the appropriate body including, but not limited to, the Legislature,
486 county boards, schools and communities methods for targeting resources strategically to
487 eliminate deficiencies identified in the assessment and accountability processes. When making
488 determinations on recommendations, the state board shall include, but is not limited to, the
489 following methods:

490 (A) Examining reports and electronic strategic improvement plans regarding the
491 performance and progress of students, schools and school systems relative to the standards and
492 identifying the areas in which improvement is needed;

493 (B) Determining the areas of weakness and of ineffectiveness that appear to have
494 contributed to the substandard performance and progress of students or the deficiencies of the
495 school or school system and requiring the school or school system to work collaboratively with
496 the West Virginia Department of Education State System of Support to correct the deficiencies;

497 (C) Determining the areas of strength that appear to have contributed to exceptional
498 student, school and school system performance and progress and promoting their emulation
499 throughout the system;

500 (D) Requesting technical assistance from the School Building Authority in assessing or
501 designing comprehensive educational facilities plans;

502 (E) Recommending priority funding from the School Building Authority based on identified
503 needs;

504 (F) Requesting special staff development programs from the Center for Professional
505 Development, the Principals Academy, higher education, regional educational service agencies
506 and county boards based on identified needs;

507 (G) Submitting requests to the Legislature for appropriations to meet the identified needs
508 for improving education;

509 (H) Directing county boards to target their funds strategically toward alleviating
510 deficiencies;

511 (I) Ensuring that the need for facilities in counties with increased enrollment are
512 appropriately reflected and recommended for funding;

513 (J) Ensuring that the appropriate person or entity is held accountable for eliminating
514 deficiencies; and

515 (K) Ensuring that the needed capacity is available from the state and local level to assist

516 the school or school system in achieving the standards and alleviating the deficiencies.

517 (p) *Building leadership capacity.* — To help build the governance and leadership capacity
518 of a county board during an intervention in the operation of its school system by the state board,
519 and to help assure sustained success following return of control to the county board, the state
520 board shall require the county board to establish goals and action plans, subject to approval of
521 the state board, to improve performance sufficiently to end the intervention within a period of not
522 more than five years. The state superintendent shall maintain oversight and provide assistance
523 and feedback to the county board on development and implementation of the goals and action
524 plans. At a minimum, the goals and action plans shall include:

525 (A) An analysis of the training and development activities needed by the county board and
526 leadership of the school system and schools for effective governance and school improvement;

527 (B) Support for the training and development activities identified which may include those
528 made available through the state superintendent, regional education service agencies, Center for
529 Professional Development, West Virginia School Board Association, Office of Education
530 Performance Audits, West Virginia Education Information System and other sources identified in
531 the goals and action plans. Attendance at these activities included in the goals and action plans
532 is mandatory as specified in the goals and action plans; and

533 (C) Active involvement by the county board in the improvement process, working in
534 tandem with the county superintendent to gather, analyze and interpret data, write time-specific
535 goals to correct deficiencies, prepare and implement action plans and allocate or request from
536 the State Board of Education the resources, including board development training and coaching,
537 necessary to achieve approved goals and action plans and sustain system and school
538 improvement.

539 At least once each year during the period of intervention, the Office of Education
540 Performance Audits shall assess the readiness of the county board to accept the return of control
541 of the system or school from the state board and sustain the improvements, and shall make a

542 report and recommendations to the state board supported by documented evidence of the
543 progress made on the goals and action plans. The state board may end the intervention or return
544 any portion of control of the operations of the school system or school that was previously
545 removed at its sole determination. If the state board determines at the fifth annual assessment
546 that the county board is still not ready to accept return of control by the state board and sustain
547 the improvements, the state board shall hold a public hearing in the affected county at which the
548 attendance by all members of the county board is requested so that the reasons for continued
549 intervention and the concerns of the citizens of the county may be heard. The state board may
550 continue the intervention only after it holds the public hearing and may require revision of the
551 goals and action plans.

552 Following the termination of an intervention in the operation of a school system and return
553 of full control by the state board, the support for governance education and development shall
554 continue as needed for up to three years. If at any time within this three years the state board
555 determines that intervention in the operation of the school system is again necessary, the state
556 board shall again hold a public hearing in the affected county so that the reasons for the
557 intervention and the concerns of the citizens of the county may be heard.