

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 366

BY SENATORS RUCKER AND AZINGER

[Introduced January 24, 2018; Referred
to the Committee on Education; and then to the Committee
on Government Organization]

1 A BILL to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended, relating
 2 to prohibiting the State Board of Education from accepting federal education plans without
 3 approval of the Legislature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§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.

1 (a) *Legislative findings, purpose and intent.* — The Legislature makes the following
 2 findings with respect to the process for improving education and its purpose and intent in the
 3 enactment of this section:

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

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

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

9 (C) A system of accountability for continuous improvement articulated by a rule
 10 promulgated by the state board that will build capacity in and ensure the efficiency of schools and
 11 districts to meet rigorous outcomes that assure student performance and progress toward
 12 obtaining the knowledge and skills intrinsic to a high-quality education, rather than monitoring for
 13 compliance with specific laws and regulations; and

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

16 (2) ~~As the constitutional body charged with the general supervision of schools as provided
 17 by general law, the state board has the authority following constructive engagement of the
 18 Legislature as provided in section one, article two-h of this chapter and as delegated by the~~

19 ~~Legislature by general law to establish the standards and assess the performance and progress~~
20 ~~of students against the standards, and to exercise its supervisory responsibility to hold schools~~
21 ~~and school systems accountable and assist schools and school systems to build capacity and~~
22 ~~improve efficiency so that the standards are met, including, when necessary, seeking additional~~
23 ~~resources in consultation with the Legislature and the Governor~~ The Constitution of the State of
24 West Virginia, Section one, Article XII thereof, states: “The Legislature shall provide, by general
25 law, for a thorough and efficient system of free schools.” Furthermore, Section two of Article XII
26 of the Constitution states: “The general supervision of the free schools of the state shall be vested
27 in the West Virginia Board of Education which shall perform such duties as may be prescribed by
28 law.” Therefore, because the Legislature is empowered to identify “such duties as may be
29 prescribed by law” to the West Virginia Board of Education, it is clearly within the Legislature’s
30 authority to mandate, at any level of specificity, appropriate academic standards to be adopted
31 by the state board;

32 (3) As the constitutional body charged with providing for a thorough and efficient system
33 of schools, the Legislature has the authority and the responsibility to establish and be engaged
34 constructively in the determination of the knowledge and skills that students should know and be
35 able to do as the result of a thorough and efficient education. This determination is made by using
36 the process for improving education to determine when school improvement is needed by
37 evaluating the results and the efficiency of the system of schools, by ensuring accountability and
38 by providing for the necessary capacity and its efficient use;

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

44 (5) The intent of the Legislature in enacting this section is to establish a process through

45 which the Legislature, the Governor and the state board will constructively consult on any
46 measures affecting standards, assessments and accountability prior to their adoption, examine
47 the performance and progress of students, schools and school systems and, when necessary,
48 consider alternative measures to ensure that all students continue to receive the thorough and
49 efficient education to which they are entitled. However, nothing in this section requires any specific
50 level of funding by the Legislature; and

51 (6) The state board shall not adopt any national or regional testing program or academic
52 curriculum standards tied to federal funding without approval granted by an act of the Legislature.

53 (b) *Electronic county and school strategic improvement plans.* — The state board shall
54 promulgate a rule consistent with this section and in accordance with §29A-3B-1 *et seq.* of this
55 code establishing an electronic county strategic improvement plan for each county board and an
56 electronic school strategic improvement plan for each public school in this state. Each respective
57 plan shall be for a period of no more than five years and shall include the mission and goals of
58 the school or school system to improve student, school or school system performance and
59 progress, as applicable. The strategic plan shall be revised annually in each area in which the
60 school or system is below the standard on the annual performance measures. The plan shall be
61 revised when required pursuant to this section to include each annual performance measure upon
62 which the school or school system fails to meet the standard for performance and progress, the
63 action to be taken to meet each measure, a separate time line and a date certain for meeting
64 each measure, a cost estimate and, when applicable, the assistance to be provided by the
65 department and other education agencies to improve student, school or school system
66 performance and progress to meet the annual performance measure.

67 The department shall make available to all public schools through its website or the West
68 Virginia Education Information System an electronic school strategic improvement plan
69 boilerplate designed for use by all schools to develop an electronic school strategic improvement
70 plan which incorporates all required aspects and satisfies all improvement plan requirements of

71 the Every Student Succeeds Act or subsequent federal law.

72 (c) *High-quality education standards and efficiency standards.* — In accordance with
73 §29A-3B-1 *et seq.* of this code, the state board shall adopt and periodically review and update
74 high-quality education standards for student, school and school system performance and
75 processes in the following areas:

76 (1) Academic standards;

77 (2) Workplace readiness skills;

78 (3) Finance;

79 (4) Transportation;

80 (5) Special education;

81 (6) Facilities;

82 (7) Administrative practices;

83 (8) Training of county board members and administrators;

84 (9) Personnel qualifications;

85 (10) Professional development and evaluation;

86 (11) Student performance, progress and attendance;

87 (12) Professional personnel, including principals and central office administrators, and
88 service personnel attendance;

89 (13) School and school system performance and progress;

90 (14) A code of conduct for students and employees;

91 (15) Indicators of efficiency;

92 (16) Digital literacy skills; and

93 (17) Any other areas determined by the state board.

94 (d) *Comprehensive statewide student assessment program.* — The state board shall
95 establish a comprehensive statewide student assessment program to assess student
96 performance and progress in grades three through twelve. The assessment program is subject to

97 the following:

98 (1) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this
99 code establishing the comprehensive statewide student assessment program;

100 (2) Prior to the testing window of the 2017-2018 school year, the state board shall align
101 the comprehensive statewide student assessment for all grade levels in which the test is given
102 with the college-readiness standards adopted pursuant to §18-2-39 or develop other aligned tests
103 to be required in grades three through eight and administered once during the grade span of nine
104 through twelve to assess progress toward college and career readiness in English/language arts
105 and math. The assessment in science shall be administered once in grade spans three through
106 five, once in grade spans six through eight, and once in grade spans nine through twelve;

107 (3) In accordance with §18-2-1 *et seq.* and §18-2E-1 *et seq.* of this code, the state board
108 shall review or develop, and adopt a college and career readiness assessment to be administered
109 in grade eleven: *Provided*, That the adopted college and career readiness assessment
110 administered in grade eleven counts toward the statewide student assessment and must be used
111 by a significant number of regionally accredited higher education institutions for determining
112 college admissions;

113 (4) The comprehensive statewide student assessment shall be administered to students
114 in accordance with the requirements of the Every Student Succeeds Act or subsequent federal
115 law;

116 (5) The state board may provide, through the statewide assessment program, other
117 optional testing or assessment instruments applicable to grade levels kindergarten through grade
118 twelve which may be used by each school to promote student achievement. The state board
119 annually shall publish and make available, electronically or otherwise, to school curriculum teams
120 and teacher collaborative processes the optional testing and assessment instruments. For any
121 online assessment, the state board shall provide online assessment preparation to ensure that
122 students have the requisite digital literacy skills to be successful on the assessment;

123 (6) The state board may adopt a career readiness assessment that measures and
124 documents foundational workplace skills and leads to a nationally recognized work readiness
125 certificate for students that meet minimum proficiency requirements; and

126 (7) The comprehensive statewide student assessment adopted prior to the testing window
127 of the 2017-2018 school year shall continue to be used for at least a total of four consecutive
128 years;

129 (8) No summative assessment approved by the state board may take more than two
130 percent of a student's instructional time;

131 (9) No student may be required to complete a greater number of summative assessments
132 than is required by the Every Student Succeeds Act except as otherwise required by this
133 subsection; and

134 (10) Collection of personal data as part of the assessment process except for what is
135 necessary for the student's instruction, academic and college and career search needs is
136 prohibited.

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

138 The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code
139 that establishes a system that is based in multiple measures and meets the requirements of any
140 federal law to assess and weigh annual performance measures to assure that schools and school
141 systems are providing a thorough and efficient education to their students. State accreditation
142 shall be reviewed and approved in a balanced manner that gives fair credit to all measures
143 affecting students and subgroups of students in the schools and school systems. The state board
144 also may establish performance incentives for schools and school systems as part of the state
145 accreditation system. On or before December 1, 2018, the state board shall report to the Governor
146 and to the Legislative Oversight Commission on Education Accountability the proposed rule for
147 establishing the measures and incentives of accreditation and the estimated cost therefore, if any.
148 Thereafter, the state board shall provide an annual report to the Governor and to the Legislative

149 Oversight Commission on Education Accountability on the impact and effectiveness of the
150 accreditation system. The rule for school and school system accreditation proposed by the board
151 may include, but is not limited to, the following measures:

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

154 (2) Graduation and attendance rate;

155 (3) Students taking and passing AP tests;

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

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

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

159 (f) *Indicators of efficiency.* — In accordance with §29A-3B-1 *et seq.* of this code, the state
160 board shall adopt by rule and periodically review and update indicators of efficiency for use by the
161 appropriate divisions within the department to ensure efficient management and use of resources
162 in the public schools in the following areas:

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

164 (2) Transportation;

165 (3) Facilities;

166 (4) Administrative practices;

167 (5) Personnel; and

168 (6) Any other indicators as determined by the state board.

169 Each county board of education shall use the statewide electronic information system
170 established by the state board for data collection and reporting to the state Department of
171 Education.

172 (g) *Assessment and accountability of school and school system performance and*
173 *processes.* —

174 (1) Whereas Common Core, though prohibited by State Code, is still being used in West

175 Virginia classrooms, though under another name, we the constitutionally charged body of the
176 State Legislature declare:

177 (A) That Common Core, Next Generation Standards and College and Career Readiness
178 Standards, being one and the same, or any curriculum based on, derived from or related in any
179 way to the above list may not be adopted by the State Board of Education;

180 (B) That the State Board may not accept any federal educational funds if they are tied to
181 adopting a curriculum or testing standard without the approval of the Legislature;

182 (C) That the State Board of Education is charged with selecting an assessment test that
183 cannot be based on or used as an assessment for Common Core, Next Generation Standards or
184 College and Career Readiness Curriculum; and

185 (D) That any testing standard adopted by the State Board of Education must be approved
186 by the majority in the Legislature.

187 (2) In accordance with §29A-3B-1 *et seq.* of this code, the state board shall establish by
188 rule a system of education performance measures to evaluate the quality of education and the
189 preparation of students based on the annual measures of student, school and school system
190 performance and progress. The system of education performance measures shall provide
191 information to the state board, the Legislature and the Governor, upon which they may determine
192 whether a thorough and efficient system of schools is being provided. The system of education
193 performance measures shall include:

194 (A) The assessment of student, school and school system performance and progress
195 based on the annual measures established pursuant to subsection (e) of this section;

196 (B) The evaluation of records, reports and other documents that provide information on
197 the quality of education and compliance with statutes, policies and standards: and

198 (C) The review of school and school system electronic strategic improvement plans.

199 (h) *Uses of school and school system assessment information.* — The state board shall
200 use information from the system of education performance measures to assist it in ensuring that

201 a thorough and efficient system of schools is being efficiently provided and to improve student,
202 school and school system performance and progress. Information from the system of education
203 performance measures further shall be used by the state board for these purposes, including, but
204 not limited to, the following:

205 (1) Determining accountability and accreditation for schools and school system approval
206 status as required by state board rule and any federal law or regulations; and

207 (2) Holding schools and school systems accountable for the efficient use of existing
208 resources to meet or exceed the standards; and

209 (3) Targeting additional resources when necessary to improve performance and progress.

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

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

221 (j) The state board may employ experienced education professionals, who serve at the
222 will and pleasure of the state board, to coordinate on site and school system improvement efforts
223 with staff at the State Department of Education to support schools and school systems in
224 improving education performance measures.

225 (k) *School accreditation.* —

226 (1) The state board shall establish levels of accreditation to be assigned to schools. The

227 establishment of levels of accreditation shall be subject to the following:

228 (A) The levels will be designed to demonstrate school performance on multiple measures
229 as established by the state board by legislative rule in accordance with §29A-3B-1 *et seq.* of this
230 code and consistent with the applicable state laws, policies and standards, which include
231 standards for performance-based accountability, high-quality education, and continuous
232 improvement; and

233 (B) Will ensure compliance with federal law and applicable state laws, policies and
234 standards at a minimum.

235 (2) The state board annually shall review the information from the system of education
236 performance measures submitted for each school and shall accredit each school as designated
237 in the rule, and consistent with the applicable state laws, policies and standards; and

238 (3) Exercise other powers and actions the state board determines necessary to fulfill its
239 duties of general supervision of the schools and school systems of West Virginia.

240 (l) *School system approval.* — The state board annually shall review the information
241 submitted for each school system from the system of education performance measures and issue
242 to each county board an approval status in compliance with federal law and established by state
243 board rule.

244 (m) Nonapproval for extraordinary circumstances.

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

248 (2) When extraordinary circumstances exist, but do not rise to the level of immediate
249 intervention as described in subsection (n) of this section, the state board may declare a state of
250 emergency in the school system and shall direct designees to provide recommendations within
251 sixty days of appointment for correcting the extraordinary circumstances. When the state board
252 approves the recommendations, they shall be communicated to the county board. If progress in

253 correcting the extraordinary circumstances, as determined by the state board, is not made within
254 six months from the time the county board receives the recommendations, the state board shall
255 intervene in the operation of the school system to cause improvements to be made that will
256 provide assurances that a thorough and efficient system of schools will be provided. This
257 intervention may include, but is not limited to, the following:

258 (A) Limiting the authority of the county board in areas that compromise the delivery of a
259 thorough and efficient education to its students as designated by the state board by rule, which
260 may include delegating decision-making authority regarding these matters to the state
261 superintendent who may:

262 (B) Declare that the office of the county superintendent is vacant;

263 (C) Declare that the positions of personnel who serve at the will and pleasure of the county
264 superintendent as provided in §18A-2-1 of this code, are vacant, subject to application and
265 reemployment;

266 (D) Fill the declared vacancies during the period of intervention; and

267 (E) Take any direct action necessary to correct the extraordinary circumstance.

268 (n) Notwithstanding any other provision of this section, the state board may intervene
269 immediately in the operation of the county school system with all the powers, duties and
270 responsibilities contained in subsection (m) of this section, if the state board finds any of the
271 following:

272 (1) A county board fails to act on a statutory obligation which would interrupt the day-to-
273 day operations of the school system;

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

277 (3) That the conditions precedent to intervention exist as provided in this section and that
278 the state board had previously intervened in the operation of the same school system and had

279 concluded that intervention within the preceding five years.

280 (o) *Capacity*. — The process for improving education includes a process for targeting
281 resources strategically to improve the teaching and learning process. Development of electronic
282 school and school system strategic improvement plans, pursuant to subsection (b) of this section,
283 is intended, in part, to provide mechanisms to target resources strategically to the teaching and
284 learning process to improve student, school and school system performance. When deficiencies
285 are detected through the assessment and accountability processes, the revision and approval of
286 school and school system electronic strategic improvement plans shall ensure that schools and
287 school systems are efficiently using existing resources to correct the deficiencies. When the state
288 board determines that schools and school systems do not have the capacity to correct
289 deficiencies, the state board shall take one or more of the following actions:

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

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

298 The state board, or its designee, the West Virginia Department of Education, and county
299 school systems, shall work collaboratively in:

300 (1) Examining reports and electronic strategic improvement plans regarding the
301 performance and progress of students, schools and school systems relative to the standards and
302 identifying the areas in which improvement is needed;

303 (2) Determining the areas of weakness and of ineffectiveness that appear to have
304 contributed to the substandard performance and progress of students or the deficiencies of the

305 school or school system;

306 (3) Determining the areas of strength that appear to have contributed to exceptional
307 student, school and school system performance and progress and promoting their emulation
308 throughout the system;

309 (4) Requesting technical assistance from the School Building Authority in assessing or
310 designing comprehensive educational facilities plans;

311 (5) Recommending priority funding from the School Building Authority based on identified
312 needs;

313 (6) Recommending special staff development programs from county boards based on
314 identified needs;

315 (7) Submitting requests to the Legislature for appropriations to meet the identified needs
316 for improving education;

317 (8) Directing educational expertise and support services strategically toward alleviating
318 deficiencies;

319 (9) Ensuring that the need for facilities in counties with increased enrollment are
320 appropriately reflected and recommended for funding;

321 (10) Ensuring that the appropriate person or entity is held accountable for eliminating
322 deficiencies; and

323 (11) Ensuring that the needed capacity is available from the state and local level to assist
324 the school or school system in achieving the standards and alleviating the deficiencies.

325 (p) *Building leadership capacity.* — To help build the governance and leadership capacity
326 of a county board during an intervention in the operation of its school system, and to help assure
327 sustained success following return of control to the county board, the county board shall establish
328 goals and action plans, subject to approval of the state superintendent, to improve performance
329 sufficiently to end the intervention within a period of not more than five years. The state
330 superintendent shall maintain oversight and provide assistance and feedback to the county board

331 on development and implementation of the goals and action plans. At a minimum, the goals and
332 action plans shall include:

333 (1) An analysis of the training and development activities needed by the county board and
334 leadership of the school system for effective governance and school improvement;

335 (2) Support for the training and development activities identified which may include those
336 made available through the state superintendent, West Virginia School Board Association, and
337 other sources identified in the goals and action plans; and

338 (3) Active involvement by the county board in the improvement process, working in tandem
339 with the county superintendent to gather, analyze and interpret data, write time-specific goals to
340 correct deficiencies, prepare and implement action plans and allocate or request from the
341 Department of Education the resources, including board development training and coaching,
342 necessary to achieve approved goals and action plans and sustain system and school
343 improvement.

344 At least once each year during the period of intervention, the state board shall appoint a
345 designee to assess the readiness of the county board to accept the return of control of the system
346 or school from the state board and sustain the improvements, and shall make a report and
347 recommendations to the state board supported by documented evidence of the progress made
348 on the goals and action plans. The state board may return any portion of control of the operations
349 of the school system or end the intervention in its entirety by a majority vote. If the state board
350 determines at the fifth annual assessment that the county board is still not ready to accept return
351 of control by the state board and sustain the improvements, the state board shall hold a public
352 hearing in the affected county at which the attendance by all members of the county board is
353 requested so that the reasons for continued intervention and the concerns of the citizens of the
354 county may be heard. The state board may continue the intervention only after it holds the public
355 hearing and may require revision of the goals and action plans. The state board must thereafter
356 hold a public hearing after each annual assessment beyond the fifth year. If a school system is in

357 intervention status on the effective date of this provision, the total years of intervention shall be
358 calculated from the date of initial intervention.

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

NOTE: The purpose of this bill is to require the Legislature's approval of any national or regional testing program or academic curriculum standards before adoption by the State Board.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.