

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 624

SENATORS RUCKER, PLYMALE, ROBERTS AND CLINE, *original sponsors*

[Passed March 9, 2019; in effect from passage]

1 AN ACT to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended, relating
2 to allowing county boards of education to use an alternative assessment, such as the ACT
3 assessment, pursuant to the locally selected assessment option provided for in the Every
4 Student Succeeds Act; and setting forth requirements for the West Virginia Department of
5 Education pertaining to the alternative assessment.

Be it enacted by the Legislature of West Virginia:

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.

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 21st
7 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 §18-2H-1 of this code and as delegated by the Legislature by general
19 law to establish the standards and assess the performance and progress of students against the
20 standards, and to exercise its supervisory responsibility to hold schools and school systems
21 accountable and assist schools and school systems to build capacity and improve efficiency so
22 that the standards are met, including, when necessary, seeking additional resources in
23 consultation with the Legislature and the Governor;

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

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

36 (5) The intent of the Legislature in enacting this section is to establish a process through
37 which the Legislature, the Governor, and the state board will constructively consult on any
38 measures affecting standards, assessments, and accountability prior to their adoption, examine
39 the performance and progress of students, schools, and school systems and, when necessary,
40 consider alternative measures to ensure that all students continue to receive the thorough and

41 efficient education to which they are entitled. However, nothing in this section requires any specific
42 level of funding by the Legislature.

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

57 The department shall make available to all public schools through its website or the West
58 Virginia Education Information System an electronic school strategic improvement plan
59 boilerplate designed for use by all schools to develop an electronic school strategic improvement
60 plan which incorporates all required aspects and satisfies all improvement plan requirements of
61 the Every Student Succeeds Act or subsequent federal law.

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

66 (1) Academic standards;

- 67 (2) Workplace readiness skills;
- 68 (3) Finance;
- 69 (4) Transportation;
- 70 (5) Special education;
- 71 (6) Facilities;
- 72 (7) Administrative practices;
- 73 (8) Training of county board members and administrators;
- 74 (9) Personnel qualifications;
- 75 (10) Professional development and evaluation;
- 76 (11) Student performance, progress, and attendance;
- 77 (12) Professional personnel, including principals and central office administrators, and
- 78 service personnel attendance;
- 79 (13) School and school system performance and progress;
- 80 (14) A code of conduct for students and employees;
- 81 (15) Indicators of efficiency;
- 82 (16) Digital literacy skills; and
- 83 (17) Any other areas determined by the state board.

84 (d) *Comprehensive statewide student assessment program.* — The state board shall
85 establish a comprehensive statewide student assessment program to assess student
86 performance and progress in grades three through 12. The assessment program is subject to the
87 following:

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

90 (2) Prior to the testing window of the 2017-2018 school year, the state board shall align
91 the comprehensive statewide student assessment for all grade levels in which the test is given
92 with the college-readiness standards adopted pursuant to §18-2-39 of this code or develop other

93 aligned tests to be required in grades three through eight and administered once during the grade
94 span of nine through 12 to assess progress toward college and career readiness in
95 English/language arts and math. The assessment in science shall be administered once in grade
96 spans three through five, once in grade spans six through eight, and once in grade spans nine
97 through 12;

98 (3) In accordance with §18-2-1 *et seq.* and §18-2E-1 *et seq.* of this code, the state board
99 shall review or develop and adopt a college and career readiness assessment to be administered
100 in grade 11: *Provided*, That the adopted college and career readiness assessment administered
101 in grade 11 counts toward the statewide student assessment and must be used by a significant
102 number of regionally accredited higher education institutions for determining college admissions:
103 *Provided, however*, That the state board shall allow county boards of education to use an
104 alternative assessment, such as the ACT assessment, pursuant to the locally selected
105 assessment option provided for in the Every Student Succeeds Act. The state Department of
106 Education shall pay no more than the general summative assessment per-student cost for a
107 locally selected assessment used pursuant to the locally selected assessment option. If required
108 by the U.S. Department of Education, the state department shall be responsible for contracting
109 and paying no more than \$100,000 total of the costs of any studies required as part of the peer
110 review process to satisfy the requirements specified in 20 U.S.C. §6311 (b)(2)(H) and 34 CFR
111 200.3. If the U.S. Department of Education determines that an alignment study is needed for a
112 locally selected assessment option, the state department shall ensure that an independent
113 alignment study is used to evaluate the degree of alignment between the assessment and the
114 state academic standards and the study shall include at least three test forms. If the locally
115 selected assessment is approved by the U.S. Department of Education and meets federal and
116 state law, the state department shall enter into a contract that allows for county boards of
117 education to implement the locally selected assessment;

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

121 (5) The state board may provide, through the statewide assessment program, other
122 optional testing or assessment instruments applicable to grade levels kindergarten through grade
123 12 which may be used by each school to promote student achievement. The state board annually
124 shall publish and make available, electronically or otherwise, to school curriculum teams and
125 teacher collaborative processes the optional testing and assessment instruments. For any online
126 assessment, the state board shall provide online assessment preparation to ensure that students
127 have the requisite digital literacy skills to be successful on the assessment;

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

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

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

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

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

142 (e) *State annual performance measures for school and school system accreditation.* —
143 The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code that

144 establishes a system that is based in multiple measures and meets the requirements of any
145 federal law to assess and weigh annual performance measures to assure that schools and school
146 systems are providing a thorough and efficient education to their students. State accreditation
147 shall be reviewed and approved in a balanced manner that gives fair credit to all measures
148 affecting students and subgroups of students in the schools and school systems. The state board
149 also may establish performance incentives for schools and school systems as part of the state
150 accreditation system. On or before December 1, 2018, the state board shall report to the Governor
151 and to the Legislative Oversight Commission on Education Accountability the proposed rule for
152 establishing the measures and incentives of accreditation and the estimated cost therefor, if any.
153 Thereafter, the state board shall provide an annual report to the Governor and to the Legislative
154 Oversight Commission on Education Accountability on the impact and effectiveness of the
155 accreditation system. The rule for school and school system accreditation proposed by the board
156 may include, but is not limited to, the following measures:

- 157 (1) Student proficiency and growth in English and language arts, math, science, and other
158 subjects determined by the board;
- 159 (2) Graduation and attendance rate;
- 160 (3) Students taking and passing AP tests;
- 161 (4) Students completing a career and technical education class;
- 162 (5) Closing achievement gaps within subgroups of a school's student population; and
- 163 (6) Students scoring at or above average attainment on SAT or ACT tests.

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

- 168 (1) Curriculum delivery, including, but not limited to, the use of distance learning;
- 169 (2) Transportation;

- 170 (3) Facilities;
- 171 (4) Administrative practices;
- 172 (5) Personnel; and
- 173 (6) Any other indicators as determined by the state board.

174 Each county board of education shall use the statewide electronic information system
175 established by the state board for data collection and reporting to the State Department of
176 Education.

177 (g) *Assessment and accountability of school and school system performance and*
178 *processes.* — In accordance with §29A-3B-1 *et seq.* of this code, the state board shall establish
179 by rule a system of education performance measures to evaluate the quality of education and the
180 preparation of students based on the annual measures of student, school, and school system
181 performance and progress. The system of education performance measures shall provide
182 information to the state board, the Legislature, and the Governor, upon which they may determine
183 whether a thorough and efficient system of schools is being provided. The system of education
184 performance measures shall include:

- 185 (1) The assessment of student, school, and school system performance and progress
186 based on the annual measures established pursuant to subsection (e) of this section;
- 187 (2) The evaluation of records, reports, and other documents that provide information on
188 the quality of education and compliance with statutes, policies, and standards; and
- 189 (3) The review of school and school system electronic strategic improvement plans.

190 (h) *Uses of school and school system assessment information.* — The state board shall
191 use information from the system of education performance measures to assist it in ensuring that
192 a thorough and efficient system of schools is being efficiently provided and to improve student,
193 school, and school system performance and progress. Information from the system of education
194 performance measures further shall be used by the state board for these purposes, including, but
195 not limited to, the following:

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

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

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

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

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

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

216 (k) *School accreditation.* —

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

219 (A) The levels will be designed to demonstrate school performance on multiple measures
220 as established by the state board by legislative rule in accordance with §29A-3B-1 *et seq.* of this
221 code and consistent with the applicable state laws, policies, and standards, which include

222 standards for performance-based accountability, high-quality education, and continuous
223 improvement; and

224 (B) Will ensure compliance with federal law and applicable state laws, policies, and
225 standards at a minimum;

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

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

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

235 (m) *Nonapproval for extraordinary circumstances.* —

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

239 (2) When extraordinary circumstances exist, but do not rise to the level of immediate
240 intervention as described in subsection (n) of this section, the state board may declare a state of
241 emergency in the school system and shall direct designees to provide recommendations within
242 60 days of appointment for correcting the extraordinary circumstances. When the state board
243 approves the recommendations, they shall be communicated to the county board. If progress in
244 correcting the extraordinary circumstances, as determined by the state board, is not made within
245 six months from the time the county board receives the recommendations, the state board shall
246 intervene in the operation of the school system to cause improvements to be made that will

247 provide assurances that a thorough and efficient system of schools will be provided. This
248 intervention may include, but is not limited to, the following:

249 Limiting the authority of the county board in areas that compromise the delivery of a
250 thorough and efficient education to its students as designated by the state board by rule, which
251 may include delegating decision-making authority regarding these matters to the state
252 superintendent who may:

253 (i) Declare that the office of the county superintendent is vacant;

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

257 (iii) Fill the declared vacancies during the period of intervention; and

258 (iv) Take any direct action necessary to correct the extraordinary circumstance.

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

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

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

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

271 (o) *Capacity*. — The process for improving education includes a process for targeting
272 resources strategically to improve the teaching and learning process. Development of electronic

273 school and school system strategic improvement plans, pursuant to subsection (b) of this section,
274 is intended, in part, to provide mechanisms to target resources strategically to the teaching and
275 learning process to improve student, school, and school system performance. When deficiencies
276 are detected through the assessment and accountability processes, the revision and approval of
277 school and school system electronic strategic improvement plans shall ensure that schools and
278 school systems are efficiently using existing resources to correct the deficiencies. When the state
279 board determines that schools and school systems do not have the capacity to correct
280 deficiencies, the state board shall take one or more of the following actions:

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

284 (2) Recommend to the appropriate body including, but not limited to, the Legislature,
285 county boards, schools, and communities, methods for targeting resources strategically to
286 eliminate deficiencies identified in the assessment and accountability processes. When making
287 determinations on recommendations, the state board, or its designee, the West Virginia
288 Department of Education, shall work collaboratively with the county board of education.
289 Recommendations shall include, but are not limited to, the following methods:

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

293 (B) Determining the areas of weakness and of ineffectiveness that appear to have
294 contributed to the substandard performance and progress of students or the deficiencies of the
295 school or school system;

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

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

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

303 (F) Recommending special staff development programs from county boards based on
304 identified needs;

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

307 (H) Directing educational expertise and support services strategically toward alleviating
308 deficiencies;

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

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

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

315 (p) *Building leadership capacity.* — To help build the governance and leadership capacity
316 of a county board during an intervention in the operation of its school system, and to help assure
317 sustained success following return of control to the county board, the county board shall establish
318 goals and action plans, subject to approval of the state superintendent, to improve performance
319 sufficiently to end the intervention within a period of not more than five years. The state
320 superintendent shall maintain oversight and provide assistance and feedback to the county board
321 on development and implementation of the goals and action plans. At a minimum, the goals and
322 action plans shall include:

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

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

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

334 At least once each year during the period of intervention, the state board shall appoint a
335 designee to assess the readiness of the county board to accept the return of control of the system
336 or school from the state board and sustain the improvements, and shall make a report and
337 recommendations to the state board supported by documented evidence of the progress made
338 on the goals and action plans. The state board may return any portion of control of the operations
339 of the school system or end the intervention in its entirety by a majority vote. If the state board
340 determines at the fifth annual assessment that the county board is still not ready to accept return
341 of control by the state board and sustain the improvements, the state board shall hold a public
342 hearing in the affected county at which the attendance by all members of the county board is
343 requested so that the reasons for continued intervention and the concerns of the citizens of the
344 county may be heard. The state board may continue the intervention only after it holds the public
345 hearing and may require revision of the goals and action plans. The state board must thereafter
346 hold a public hearing after each annual assessment beyond the fifth year. If a school system is in
347 intervention status on the effective date of this provision, the total years of intervention shall be
348 calculated from the date of initial intervention.

349 Following the termination of an intervention in the operation of a school system and return
350 of full control by the state board, the support for governance education and development shall

351 continue as needed for up to three years. If at any time within these three years the state board
352 determines that intervention in the operation of the school system is again necessary, the state
353 board shall again hold a public hearing in the affected county so that the reasons for the
354 intervention and the concerns of the citizens of the county may be heard prior to intervening.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2019.

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Governor