

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 93

BY SENATOR RUCKER

[Introduced January 9, 2019; Referred
to the Committee on Education; and then to the Committee
on the Judiciary]

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 2E. 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 West Virginia Constitution,
24 Art. XII, §1, states: “The Legislature shall provide, by general law, for a thorough and efficient
25 system of free schools.” Furthermore, the West Virginia Constitution, Art. XII, §2 states: “The
26 general supervision of the free schools of the state shall be vested in the West Virginia Board of
27 Education which shall perform such duties as may be prescribed by law.” Therefore, because the
28 Legislature is empowered to identify “such duties as may be prescribed by law” to the West
29 Virginia Board of Education, it is clearly within the Legislature’s authority to mandate, at any level
30 of specificity, appropriate academic standards to be adopted by the state board;

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

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

43 (5) The intent of the Legislature in enacting this section is to establish a process through
44 which the Legislature, the Governor and the state board will constructively consult on any

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

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

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

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

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

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

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

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

99 (2) Prior to the testing window of the 2017-2018 school year, the state board shall align
100 the comprehensive statewide student assessment for all grade levels in which the test is given
101 with the college-readiness standards adopted pursuant to §18-2-39 or develop other aligned tests
102 to be required in grades three through eight and administered once during the grade span of nine
103 through 12 to assess progress toward college and career readiness in English/language arts and
104 math. The assessment in science shall be administered once in grade spans three through five,
105 once in grade spans six through eight, and once in grade spans nine through 12;

106 (3) In accordance with §18-2-1 *et seq.* and §18-2E-1 *et seq.* of this code, the state board
107 shall review or develop, and adopt a college and career readiness assessment to be administered
108 in grade 11: *Provided,* That the adopted college and career readiness assessment administered
109 in grade 11 counts toward the statewide student assessment and must be used by a significant
110 number of regionally accredited higher education institutions for determining college admissions;

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

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

121 (6) The state board may adopt a career readiness assessment that measures and
122 documents foundational workplace skills and leads to a nationally recognized work readiness

123 certificate for students that meet minimum proficiency requirements; and

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

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

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

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

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

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

149 may include, but is not limited to, the following measures:

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

152 (2) Graduation and attendance rate;

153 (3) Students taking and passing AP tests;

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

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

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

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

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

162 (2) Transportation;

163 (3) Facilities;

164 (4) Administrative practices;

165 (5) Personnel; and

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

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

170 (g) *Assessment and accountability of school and school system performance and*
171 *processes.* —

172 (1) Whereas Common Core, though prohibited by state code, is still being used in West
173 Virginia classrooms, though under another name, we the constitutionally charged body of the
174 State Legislature declare:

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

178 (B) That the state board may not accept any federal educational funds if they are tied to
179 adopting a curriculum or testing standard without the approval of the Legislature;

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

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

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

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

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

196 ~~(3)~~ (C) The review of school and school system electronic strategic improvement plans.

197 *(h) Uses of school and school system assessment information.* — The state board shall
198 use information from the system of education performance measures to assist it in ensuring that
199 a thorough and efficient system of schools is being efficiently provided and to improve student,
200 school and school system performance and progress. Information from the system of education

201 performance measures further shall be used by the state board for these purposes, including, but
202 not limited to, the following:

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

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

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

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

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

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

223 (k) *School accreditation.* —

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

226 (A) The levels will be designed to demonstrate school performance on multiple measures

227 as established by the state board by legislative rule in accordance with §29A-3B-1 *et seq.* of this
228 code and consistent with the applicable state laws, policies and standards, which include
229 standards for performance-based accountability, high-quality education, and continuous
230 improvement; and

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

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

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

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

242 (m) Nonapproval for extraordinary circumstances.

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

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

253 intervene in the operation of the school system to cause improvements to be made that will
254 provide assurances that a thorough and efficient system of schools will be provided. This
255 intervention may include, but is not limited to, the following:

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

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

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

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

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

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

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

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

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

278 (o) *Capacity*. — The process for improving education includes a process for targeting

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

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

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

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

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

301 (2) Determining the areas of weakness and of ineffectiveness that appear to have
302 contributed to the substandard performance and progress of students or the deficiencies of the
303 school or school system;

304 (3) Determining the areas of strength that appear to have contributed to exceptional

305 student, school and school system performance and progress and promoting their emulation
306 throughout the system;

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

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

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

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

315 (8) Directing educational expertise and support services strategically toward alleviating
316 deficiencies;

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

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

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

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

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

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

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

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

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