

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2580

By Delegates Longanacre, Forsht, Ridenour, and

Brooks

[Introduced January 16, 2023; Referred to the
Committee on Education]

1 A BILL to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended, relating
 2 to clarifying that K-12 students must exhibit satisfactory academic progress on the
 3 comprehensive statewide student assessment before they can advance to the next grade
 4 level.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2E. HIGH QUALITY EDUCATION 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
 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 of
20 students against the standards, and to exercise its supervisory responsibility to hold schools and
21 school systems accountable and assist schools and school systems to build capacity and improve
22 efficiency so that the standards are met, including, when necessary, seeking additional resources
23 in consultation with the Legislature and the Governor;

24 (3) As the constitutional body charged with providing for a thorough and efficient system of
25 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 met
34 and that a thorough and efficient system of schools is being provided for all West Virginia public
35 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 article three-b, chapter
45 twenty-nine-a of this code establishing an electronic county strategic improvement plan for each
46 county board and an electronic school strategic improvement plan for each public school in this
47 state. Each respective plan shall be for a period of no more than five years and shall include the
48 mission and goals of the school or school system to improve student, school or school system
49 performance and progress, as applicable. The strategic plan shall be revised annually in each
50 area in which the school or system is below the standard on the annual performance measures.
51 The plan shall be revised when required pursuant to this section to include each annual
52 performance measure upon which the school or school system fails to meet the standard for
53 performance and progress, the action to be taken to meet each measure, a separate time line and
54 a date certain for meeting each measure, a cost estimate and, when applicable, the assistance to
55 be provided by the department and other education agencies to improve student, school or school
56 system performance and 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 boilerplate
59 designed for use by all schools to develop an electronic school strategic improvement plan which
60 incorporates all required aspects and satisfies all improvement plan requirements of the Every
61 Student Succeeds Act or subsequent federal law.

62 (c) *High-quality education standards and efficiency standards.* — In accordance with
63 article three-b, chapter twenty-nine-a of this code, the state board shall adopt and periodically
64 review and update high-quality education standards for student, school and school system
65 performance and 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 twelve. The assessment program is subject to

87 the following:

88 (1) The state board shall promulgate a rule in accordance with article three-b, chapter

89 twenty-nine-a of this code establishing the comprehensive statewide student assessment

90 program;

91 (2) Prior to the testing window of the 2017-2018 school year, the state board shall align the

92 comprehensive statewide student assessment for all grade levels in which the test is given with

93 the college-readiness standards adopted pursuant to section thirty-nine, article two of this chapter

94 or develop other aligned tests to be required in grades three through eight and administered once

95 during the grade span of nine through twelve to assess progress toward college and career

96 readiness in English/language arts and math. The assessment in science shall be administered
97 once in grade spans three through five, once in grade spans six through eight, and once in grade
98 spans nine through twelve;

99 (3) In accordance with articles two and two-e, chapter eighteen of this code, the state
100 board shall review or develop, and adopt a college and career readiness assessment to be
101 administered in grade eleven: *Provided*, That the adopted college and career readiness
102 assessment administered in grade eleven counts toward the statewide student assessment and
103 must be used by a significant number of regionally accredited higher education institutions for
104 determining college admissions;

105 (4) The comprehensive statewide student assessment shall be administered to students in
106 accordance with the requirements of the Every Student Succeeds Act or subsequent federal law:
107 Provided, That, notwithstanding any other provision of this code to the contrary, all students, in
108 grade levels kindergarten through grade twelve must exhibit satisfactory academic progress on
109 the comprehensive statewide student assessment before they can advance to the next grade;

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

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

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

122 years;

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

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

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

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

132 The state board shall promulgate a rule in accordance with article three-b, chapter twenty-
133 nine-a of this code that establishes a system that is based in multiple measures and meets the
134 requirements of any federal law to assess and weigh annual performance measures to assure that
135 schools and school systems are providing a thorough and efficient education to their students.
136 State accreditation shall be reviewed and approved in a balanced manner that gives fair credit to
137 all measures affecting students and subgroups of students in the schools and school systems. The
138 state board also may establish performance incentives for schools and school systems as part of
139 the state accreditation system. On or before December 1, 2018, the state board shall report to the
140 Governor and to the Legislative Oversight Commission on Education Accountability the proposed
141 rule for establishing the measures and incentives of accreditation and the estimated cost
142 therefore, if any. Thereafter, the state board shall provide an annual report to the Governor and to
143 the Legislative Oversight Commission on Education Accountability on the impact and
144 effectiveness of the accreditation system. The rule for school and school system accreditation
145 proposed by the board may include, but is not limited to, the following measures:

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

- 148 (2) Graduation and attendance rate;
- 149 (3) Students taking and passing AP tests;
- 150 (4) Students completing a career and technical education class;
- 151 (5) Closing achievement gaps within subgroups of a school's student population; and
- 152 (6) Students scoring at or above average attainment on SAT or ACT tests.

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

- 157 (1) Curriculum delivery including, but not limited to, the use of distance learning;
- 158 (2) Transportation;
- 159 (3) Facilities;
- 160 (4) Administrative practices;
- 161 (5) Personnel; and
- 162 (6) Any other indicators as determined by the state board.

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

166 (g) *Assessment and accountability of school and school system performance and*
167 *processes*. — In accordance with article three-b, chapter twenty-nine-a of this code, the state
168 board shall establish by rule a system of education performance measures to evaluate the quality
169 of education and the preparation of students based on the annual measures of student, school and
170 school system performance and progress. The system of education performance measures shall
171 provide information to the state board, the Legislature and the Governor, upon which they may
172 determine whether a thorough and efficient system of schools is being provided. The system of
173 education performance measures shall include:

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

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

178 (3) The review of school and school system electronic strategic improvement plans.

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

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

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

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

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

193 (i) *Early detection and intervention programs.* — Based on the assessment of student,
194 school and school system performance and progress, the state board shall establish early
195 detection and intervention programs using the available resources of the Department of
196 Education, or other resources as appropriate, to assist underachieving schools and school
197 systems to improve performance before conditions become so grave as to warrant more
198 substantive state intervention. Assistance shall include, but is not limited to, providing additional
199 technical assistance and programmatic, professional staff development, and providing monetary,

200 staffing and other resources where appropriate.

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

205 (k) *School accreditation.* —

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

208 (A) The levels will be designed to demonstrate school performance on multiple measures
209 as established by the state board by legislative rule in accordance with article three-b, chapter
210 twenty-nine-a of this code and consistent with the applicable state laws, policies and standards,
211 which include standards for performance-based accountability, high-quality education, and
212 continuous improvement; and

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

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

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

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

224 (m) Nonapproval for extraordinary circumstances.

225 (1) The state board shall establish and adopt additional standards to identify school

226 systems in which the program may be nonapproved and the state board may issue nonapproval
227 status whenever extraordinary circumstances exist as defined by the state board.

228 (2) When extraordinary circumstances exist, but do not rise to the level of immediate
229 intervention as described in subsection (n) of this section, the state board may declare a state of
230 emergency in the school system and shall direct designees to provide recommendations within
231 sixty days of appointment for correcting the extraordinary circumstances. When the state board
232 approves the recommendations, they shall be communicated to the county board. If progress in
233 correcting the extraordinary circumstances, as determined by the state board, is not made within
234 six months from the time the county board receives the recommendations, the state board shall
235 intervene in the operation of the school system to cause improvements to be made that will
236 provide assurances that a thorough and efficient system of schools will be provided. This
237 intervention may include, but is not limited to, the following:

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

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

243 (C) Declare that the positions of personnel who serve at the will and pleasure of the county
244 superintendent as provided in section one, article two, chapter eighteen-a of this code, are vacant,
245 subject to application and reemployment;

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

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

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

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

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

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

260 (o) *Capacity*. — The process for improving education includes a process for targeting
261 resources strategically to improve the teaching and learning process. Development of electronic
262 school and school system strategic improvement plans, pursuant to subsection (b) of this section,
263 is intended, in part, to provide mechanisms to target resources strategically to the teaching and
264 learning process to improve student, school and school system performance. When deficiencies
265 are detected through the assessment and accountability processes, the revision and approval of
266 school and school system electronic strategic improvement plans shall ensure that schools and
267 school systems are efficiently using existing resources to correct the deficiencies. When the state
268 board determines that schools and school systems do not have the capacity to correct
269 deficiencies, the state board shall take one or more of the following actions:

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

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

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

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

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

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

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

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

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

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

297 (8) Directing educational expertise and support services strategically toward alleviating
298 deficiencies;

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

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

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

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

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

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

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

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

324 At least once each year during the period of intervention, the state board shall appoint a
325 designee to assess the readiness of the county board to accept the return of control of the system
326 or school from the state board and sustain the improvements, and shall make a report and
327 recommendations to the state board supported by documented evidence of the progress made on
328 the goals and action plans. The state board may return any portion of control of the operations of
329 the school system or end the intervention in its entirety by a majority vote. If the state board

330 determines at the fifth annual assessment that the county board is still not ready to accept return of
331 control by the state board and sustain the improvements, the state board shall hold a public
332 hearing in the affected county at which the attendance by all members of the county board is
333 requested so that the reasons for continued intervention and the concerns of the citizens of the
334 county may be heard. The state board may continue the intervention only after it holds the public
335 hearing and may require revision of the goals and action plans. The state board must thereafter
336 hold a public hearing after each annual assessment beyond the fifth year. If a school system is in
337 intervention status on the effective date of this provision, the total years of intervention shall be
338 calculated from the date of initial intervention.

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

NOTE: The purpose of this bill is to clarify that all K-12 students must exhibit satisfactory academic progress on the comprehensive statewide student assessment before they can advance to the next grade level.

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