WEST VIRGINIA CODE: §18-2E-5

§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.

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

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

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

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

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

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

(2) As the constitutional body charged with the general supervision of schools as provided by general law, the state board has the authority following constructive engagement of the Legislature as provided in §18-2H-1 of this code and as delegated by the Legislature by general law to establish the standards and assess the performance and progress of students against the standards, and to exercise its supervisory responsibility to hold schools and school systems accountable and assist schools and school systems to build capacity and improve efficiency so that the standards are met, including, when necessary, seeking additional resources in consultation with the Legislature and the Governor;

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

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

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

(5) The intent of the Legislature in enacting this section is to establish a process through which the Legislature, the Governor, and the state board will constructively consult on any measures affecting standards, assessments, and accountability prior to their adoption, examine the performance and progress of students, schools, and school systems and, when necessary, consider alternative measures to ensure that all students continue to receive the thorough and efficient education to which they are entitled. However, nothing in this section requires any specific level of funding by the Legislature.

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

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

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

(1) Academic standards;

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(2) Workplace readiness skills;

(3) Finance;

(4) Transportation;

(5) Special education;

(6) Facilities;

(7) Administrative practices;

(8) Training of county board members and administrators;

(9) Personnel qualifications;

(10) Professional development and evaluation;

(11) Student performance, progress, and attendance;

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

(13) School and school system performance and progress;

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

(15) Indicators of efficiency;

(16) Digital literacy skills; and

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

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

(1) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq*. of this code establishing the comprehensive statewide student growth assessment program which shall be composed of benchmark assessments that are given in the first 30 days of the school year and repeated at mid-year and a summative assessment at the end of the school year to determine student progression in reading and mathematics in grades three through eight;

(2) The state board shall align the comprehensive statewide student assessment for all grade levels in which the test is given with the academic standards adopted pursuant to subsection (c) of this section or develop other aligned tests to be required in grades three through eight

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

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

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

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

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

(7) The comprehensive statewide student growth assessment adopted prior to the testing window of the 2025-2026 school year shall continue to be used for at least a total of four consecutive years;

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

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

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

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

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The state board shall promulgate a rule in accordance with article §29A-3B-1 *et seq*. of this code that establishes a system that is based in multiple measures and meets the requirements of any federal law to assess and weigh annual performance measures to assure that schools and school systems are providing a thorough and efficient education to their students. State accreditation shall be reviewed and approved in a balanced manner that gives fair credit to all measures affecting students and subgroups of students in the schools and school systems. The state board also may establish performance incentives for schools and school systems as part of the state accreditation system. On or before December 1, 2018, the state board shall report to the Governor and to the Legislative Oversight Commission on Education Accountability the proposed rule for establishing the measures and incentives of accreditation and the estimated cost therefore, if any. Thereafter, the state board shall provide an annual report to the Governor and to the Legislative Oversight Commission on Education Accountability on the impact and effectiveness of the accreditation system. The rule for school and school system accreditation proposed by the board may include, but is not limited to, the following measures:

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

(2) Graduation and attendance rate;

(3) Students taking and passing AP tests;

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

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

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

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

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

(2) Transportation;

(3) Facilities;

(4) Administrative practices;

(5) Personnel; and

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

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

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

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

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

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

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

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

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

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

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

(i) Early detection and intervention programs. — Based on the assessment of student, school and school system performance, and progress, the state board shall establish early detection and intervention programs using the available resources of the Department of Education, or other resources as appropriate, to assist underachieving schools and school systems to improve performance before conditions become so grave as to warrant more substantive

state intervention. Assistance shall include, but is not limited to, providing additional technical assistance and programmatic, professional staff development, and providing monetary, staffing, and other resources where appropriate.

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

(k) School accreditation. —

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

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

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

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

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

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

(m) Non-approval for extraordinary circumstances.

(1) The state board shall establish and adopt additional standards to identify school systems in which the program may be non-approved and the state board may issue non-approval status whenever extraordinary circumstances exist as defined by the state board.

(2) When extraordinary circumstances exist, but do not rise to the level of immediate intervention as described in subsection (n) of this section, the state board may declare a state of emergency in the school system and shall direct designees to provide recommendations within 60 days of appointment for correcting the extraordinary

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

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

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

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

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

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

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

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

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

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

(o) Capacity. — The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of electronic school and school system strategic improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to improve student, school, and school system performance. When deficiencies are detected through the assessment and accountability processes, the revision and approval of school and school system electronic strategic

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improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall take one or more of the following actions:

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

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

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

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

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

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

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

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

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

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

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

(9) Ensuring that the need for facilities in counties with increased enrollment are

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appropriately reflected and recommended for funding;

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

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

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

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

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

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

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

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

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

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