WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4001

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

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Passed March 13, 2004

In Effect July 1, 2004
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COMMITTEE SUBSTITUTE

FOR

H. B. 4001

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)

[BY REQUEST OF THE EXECUTIVE]

[Passed March 13, 2004; in effect July 1, 2004.]

AN ACT to amend and reenact §18-2E-5 and §18-2E-5c of the code of West Virginia, 1931, as amended; to amend and reenact §18-5-15f of said code; to amend said code by adding thereto a new section, designated section §18-5-46; to amend and reenact §18-20-5 of said code; to amend and reenact §18A-2-12 of said code; to amend said code by adding thereto a new section, designated §18A-2-12a; and to amend and reenact §18A-5-1 and §18A-5-1a, all relating to the process for improving education and removing impediments to improving performance and progress; making technical references, grammatical corrections and stylistic changes; refocusing school and county improvement plans; requiring unified school improvement plan boilerplate; adding requirement for standards; revising performance measures and specifying their use; modifying requirements for assessments; adding indicators of exemplary performance and progress; specifying use of efficiency indicators; reorienting system of
education performance audits; changing policy for making on-site reviews of schools and school systems; modifying who office of education performance audits reports to; modifying salary cap for office director; revising and adding items specified for compliance documentation on checklist format; modifying process for selection of schools and school systems for on-site review; open meetings exemption for state board during certain discussions; modifying limitation in scope of on-site review; modifying persons to be included in an on-site review; expanding on-site exit conferences and specifying purpose; modifying time limitations for on-site review reports; making certain findings and excluding certain areas from review by performance audits; further specifying conditions for student transfers from seriously impaired schools; granting certain authority for real estate transactions to state board during state intervention; clarifying rights of principal removed from seriously impaired school; specifying certain notice requirements by state board to process for improving education council; recording suspensions and expulsions on the West Virginia education information system; prohibiting a teacher from being required to change grade; exception; limiting state rules, policies and standards for exceptional children programs to federal requirements and directing report of review and comparison of laws to legislative oversight commission; restricting publication of lesson plans; setting forth general statement on relations between county boards and school personnel; and placing sole responsibility for proper student discipline with county boards and requiring county board policies.

Be it enacted by the Legislature of West Virginia:

That §18-2E-5 and §18-2E-5c of the code of West Virginia, 1931, as amended, be amended and reenacted; that §18-5-15f be amended and reenacted; that said code be amended by adding thereto a new section, designated section §18-5-46; that §18-20-5 of said code be amended and reenacted; that §18A-2-12 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18A-2-12a; and that §18A-5-1 and §18A-5-1a be amended and reenacted, all to read as follows:
CHAPTER 18. EDUCATION.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. Process for improving education; education standards and accountability measures; office of education performance audits; school accreditation and school system approval; intervention to correct impairments.

(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 things that students should know and be able to do as the result of a thorough and efficient education including measurable criteria to evaluate student performance and progress;

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

(C) A system for holding schools and school systems accountable for student performance and progress toward obtaining a high quality education which is delivered in an efficient manner; 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 and the responsibility to establish the
standards, assess the performance and progress of students against the standards, 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 things 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 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.

(5) The intent of the Legislature in enacting this section and of section five-c of this article is to establish a process through which the Legislature, the governor and the state board can work in the spirit of cooperation and collaboration intended in the process for improving education to consult and examine the performance and progress of students, schools and school systems and, when necessary, to consider alternative measures to ensure that all students continue to receive the thorough and
56 efficient education to which they are entitled. However, nothing
57 in this section requires any specific level of funding by the
58 Legislature.

59 (b) **Unified county and school improvement plans.** — The
60 state board shall promulgate a rule consistent with the provi-
61 sions of this section and in accordance with article three-b,
62 chapter twenty-nine-a of this code establishing a unified county
63 improvement plan for each county board and a unified school
64 improvement plan for each public school in this state. Each
65 respective plan shall be a five-year plan that includes the
66 mission and goals of the school or school system to improve
67 student, school or school system performance and progress, as
68 applicable. The plan shall be revised annually in each area in
69 which the school or system is below the standard on the annual
70 performance measures. The revised annual plan also shall
71 identify any deficiency which is reported on the check lists
72 identified in paragraph (G), subdivision (5), subsection (j) of
73 this section including any deficit more than a casual deficit by
74 the county board. The plan shall be revised when required
75 pursuant to this section to include each annual performance
76 measure upon which the school or school system fails to meet
77 the standard for performance and progress, the action to be
78 taken to meet each measure, a separate time line and a date
79 certain for meeting each measure, a cost estimate and, when
80 applicable, the assistance to be provided by the department and
81 other education agencies to improve student, school or school
82 system performance and progress to meet the annual perfor-
83 mance measure.

84 The department shall make available on and after the first
85 day of July, two thousand four, to all public schools through its
86 web site or the West Virginia education information system an
87 electronic unified school improvement plan boilerplate de-
88 signed for use by all schools to develop a unified school
89 improvement plan which incorporates all required aspects and
satisfies all improvement plan requirements of the No Child
Left Behind Act.

(c) High quality education standards and efficiency
standards. — In accordance with the provisions of article three-
b, chapter twenty-nine-a 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) Curriculum;

(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 and progress;

(12) School and school system performance and progress;

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

(14) Indicators of efficiency; and

(15) Any other areas determined by the state board.
The standards shall assure that graduates are prepared for continuing post-secondary education, training and work and that schools and school systems are making progress toward achieving the education goals of the state.

(d) Annual performance measures. – The standards shall include annual measures of student, school and school system performance and progress. The following annual measures of student, school and school system performance and progress shall be the only measures for determining school accreditation and school system approval:

(1) The acquisition of student proficiencies as indicated by student performance and progress in grades three through eight, inclusive, and grade ten shall be measured by a uniform statewide assessment program. The indicators for student progress in reading and mathematics in grades kindergarten through second grade shall be measured by the informal assessment established the West Virginia department of education or other assessments, as determined by the school curriculum team. If the school fails to meet adequate yearly progress in reading or mathematics for two consecutive years, the county superintendent, the school principal and the school curriculum team shall decide whether a different assessment should be used to verify that benchmarks are being met. If the county superintendent, the school principal and the school curriculum team differ on what assessment is used, then each entity shall have one vote. Furthermore, the state board may require that student proficiencies be measured through the West Virginia writing assessment at any of the grades that are determined by the state board to be appropriate. It is the intent of the Legislature that in the future a grade eleven uniform statewide assessment be administered in lieu of the grade ten uniform statewide assessment. The state board shall perform an analysis of the costs and the benefits of administering the grade eleven uniform statewide assessment in lieu of the grade ten
uniform statewide assessment. The analysis also shall include reviewing the need for end of course exams in grades nine through twelve. The state board shall report the results of the analysis to the legislative oversight commission on education accountability prior to the first day of November, two thousand four. The state board may provide other testing or assessment instruments applicable to grade levels kindergarten through grade twelve through the statewide assessment program for the optional use by each school as determined by the school curriculum team to measure student performance and progress;

(2) Only for schools that do not include grade twelve, the school attendance rate which shall be no less than ninety percent in attendance. The following absences shall be excluded:

(A) Student absences excused in accordance with the state board rule promulgated pursuant to section four, article eight of this chapter;

(B) Students not in attendance due to disciplinary measures; and

(C) Absent students for whom the attendance director has pursued judicial remedies to compel attendance to the extent of his or her authority; and

(3) The high school graduation rate which shall be no less than eighty percent, or if the high school graduation rate is less than eighty percent, the high school graduation rate shall be higher than the high school graduation rate of the preceding year as determined from information on the West Virginia education information system on the fifteenth day of August.

(e) Indicators of exemplary performance and progress. — The standards shall include indicators of exemplary student, school and school system performance and progress. The
(1) The percentage of graduates who declare their intent to enroll in college and other post-secondary education and training following high school graduation;

(2) The percentage of graduates who receive additional certification of their skills, competence and readiness for college, other post-secondary education or employment above the level required for graduation; and

(3) The percentage of students who successfully complete advanced placement, dual credit and honors classes.

(f) Indicators of efficiency. — In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt 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;

(6) Utilization of regional educational service agency programs and services, including programs and services that
may be established by their assigned regional educational
service agency, or other regional services that may be initiated
between and among participating county boards; and

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

(g) Assessment and accountability of school and school
system performance and processes. — In accordance with the
provisions of article three-b, chapter twenty-nine-a of this code,
the state board shall establish by rule a system of education
performance audits which measures 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 audits shall provide
information to the state board, the Legislature and the governor,
both individually and collectively as the process for improving
education council, upon which they may judge whether a
thorough and efficient system of schools is being provided. The
system of education performance audits shall include:

(1) The assessment of student, school and school system
performance and progress based on the annual measures set
forth in subsection (d) of this section;

(2) The evaluation of records, reports and other information
collected by the department upon which the quality of educa-
tion and compliance with statutes, policies and standards may
be judged; (3) The review of school and school system unified
improvement plans; and

(4) The on-site review of the processes in place in schools
and school systems to enable school and school system perfor-
mance and progress and compliance with the standards.

(h) Uses of school and school system assessment informa-
tion. — The state board and the process for improving educa-
tion council established pursuant to section five-c of this article
shall use information from the system of education performance audits to assist them in ensuring that a thorough and efficient system of schools is being provided and to improve student, school and school system performance and progress. Information from the system of education performance audits further shall be used by the state board for these purposes, including, but not limited to, the following:

(1) Determining school accreditation and school system approval status;

(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 accreditation information available to the Legislature, the governor, the general public and to any individuals who request 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, the regional educational service agencies, the center for professional development and the principals academy, 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, providing monetary, staffing and other resources where appropriate, and,
if necessary, making appropriate recommendations to the
process for improving education council.

(j) Office of education performance audits. —

(1) To assist the state board and the process for improving
education council in the operation of a system of education
performance audits, the state board shall establish an office of
education performance audits consistent with the provisions of
this section. The office of education performance audits shall be
operated under the direction of the state board independently of
the functions and supervision of the state department of
education and state superintendent. The office of education
performance audits shall report directly to and be responsible to
the state board and the process for improving education council
created in section five-c of this article in carrying out its duties
under the provisions of this section.

(2) The office shall be headed by a director who shall be
appointed by the state board and who shall serve at the will and
pleasure of the state board. The annual salary of the director
shall be set by the state board and may not exceed eighty
percent of the salary cap of the state superintendent of schools.

(3) The state board shall organize and sufficiently staff the
office to fulfill the duties assigned to it by law and by the state
board. Employees of the state department of education who are
transferred to the office of education performance audits shall
retain their benefits and seniority status with the department of
education.

(4) Under the direction of the state board, the office of
education performance audits shall receive from the West
Virginia education information system staff research and
analysis data on the performance and progress of students,
schools and school systems, and shall receive assistance, as
determined by the state board, from staff at the state department
of education, the regional education service agencies, the center
for professional development, the principals academy and the
state school building authority to carry out the duties assigned
to the office.

(5) In addition to other duties which may be assigned to it
by the state board or by statute, the office of education perfor-
mance audits also shall:

(A) Assure that all statewide assessments of student
performance used as annual performance measures are secure
as required in section one-a of this article;

(B) Administer all accountability measures as assigned by
the state board, including, but not limited to, the following:

(i) Processes for the accreditation of schools and the
approval of school systems; and

(ii) Recommendations to the state board on appropriate
action, including, but not limited to, accreditation and approval
action;

(C) Determine, in conjunction with the assessment and
accountability processes, what capacity may be needed by
schools and school systems to meet the standards established by
the state board, and recommend to the state board and the
process for improving education council, plans to establish
those needed capacities;

(D) Determine, in conjunction with the assessment and
accountability processes, whether statewide system deficiencies
exist in the capacity of schools and school systems to meet the
standards established by the state board, including the identifi-
cation of trends and the need for continuing improvements in
education, and report those deficiencies and trends to the state
board and the process for improving education council;
(E) Determine, in conjunction with the assessment and accountability processes, staff development needs of schools and school systems to meet the standards established by the state board, and make recommendations to the state board, the process for improving education council, the center for professional development, the regional educational service agencies, the higher education policy commission, and the county boards;

(F) Identify, in conjunction with the assessment and accountability processes, exemplary schools and school systems and best practices that improve student, school and school system performance, and make recommendations to the state board and the process for improving education council for recognizing and rewarding exemplary schools and school systems and promoting the use of best practices. The state board shall provide information on best practices to county school systems and shall use information identified through the assessment and accountability processes to select schools of excellence; and

(G) Develop reporting formats, such as check lists, which shall be used by the appropriate administrative personnel in schools and school systems to document compliance with various of the applicable laws, policies and process standards as considered appropriate and approved by the state board, including, but not limited to, the following:

(i) The use of a policy for the evaluation of all school personnel that meets the requirements of sections twelve and twelve-a, article two, chapter eighteen-a of this code;

(ii) The participation of students in appropriate physical assessments as determined by the state board, which assessment may not be used as a part of the assessment and accountability system;

(iii) The appropriate licensure of school personnel; and
(iv) The school provides multi-cultural activities.

Information contained in the reporting formats shall be subject to examination during an on-site review to determine compliance with laws, policies and standards. Intentional and grossly negligent reporting of false information are grounds for dismissal.

(k) *On-site reviews.* —

(1) The system of education performance audits shall include on-site reviews of schools and school systems which shall be conducted only at the specific direction of the state board upon its determination that the performance and progress of the school or school system are persistently below standard or that other circumstances exist that warrant an on-site review. Any discussion by the state board of schools to be subject to an on-site review or dates for which on-site reviews will be conducted may be held in executive session, and is not subject to the provisions of article nine-a, chapter six of this code, relating to open governmental proceedings. An on-site review shall be conducted by the office of education performance audits of a school or school system for the purpose of investigating the reasons for performance and progress that are persistently below standard and making recommendations to the school and school system, as appropriate, and to the state board on such measures as it considers necessary to improve performance and progress to meet the standard. The investigation may include, but is not limited to, the following:

(A) Verifying data reported by the school or county board;

(B) Examining compliance with the laws and policies affecting student, school and school system performance and progress;
(C) Evaluating the effectiveness and implementation status of school and school system unified improvement plans;

(D) Investigating official complaints submitted to the state board that allege serious impairments in the quality of education in schools or school systems;

(E) Investigating official complaints submitted to the state board that allege that a school or county board is in violation of policies or laws under which schools and county boards operate; and

(F) Determining and reporting whether required reviews and inspections have been conducted by the appropriate agencies, including, but not limited to, the state fire marshal, the health department, the school building authority and the responsible divisions within the department of education, and whether noted deficiencies have been or are in the process of being corrected. The office of education performance audits may not conduct a duplicate review or inspection of any compliance reviews or inspections conducted by the department or its agents or other duly authorized agencies of the state, nor may it mandate more stringent compliance measures.

(2) The director of the office of education performance audits shall notify the county superintendent of schools five school days prior to commencing an on-site review of the county school system and shall notify both the county superintendent and the principal five school days prior to commencing an on-site review of an individual school: Provided, That the state board may direct the office of education performance audits to conduct an unannounced on-site review of a school or school system if the state board believes circumstances warrant an unannounced on-site review.

(3) The office of education performance audits shall conduct on-site reviews which are limited in scope to specific
areas in which performance and progress are persistently below
standard as determined by the state board unless specifically
directed by the state board to conduct a review which covers
additional areas.

(4) An on-site review of a school or school system shall
include a person or persons from the department of education
or a public education agency in the state who has expert
knowledge and experience in the area or areas to be reviewed,
and who has been trained and designated by the state board to
perform such functions. If the size of the school or school
system and issues being reviewed necessitate the use of an on-
site review team or teams, the person or persons designated by
the state board shall advise and assist the director to appoint the
team or teams. The person or persons designated by the state
board shall be the team leaders.

The persons designated by the state board shall be responsi-
ble for completing the report on the findings and recommenda-
tions of the on-site review in their area of expertise. It is the
intent of the Legislature that the persons designated by the state
board participate in all on-site reviews that involve their area of
expertise, to the extent practicable, so that the on-site review
process will evaluate compliance with the standards in a
uniform, consistent and expert manner.

(5) The office of education performance audits shall
reimburse a county board for the costs of substitutes required to
replace county board employees while they are serving on a
review team.

(6) At the conclusion of an on-site review of a school
system, the director and team leaders shall hold an exit confer-
ence with the superintendent and shall provide an opportunity
for principals to be present for at least the portion of the
conference pertaining to their respective schools. In the case of
an on-site review of a school, the exit conference shall be held
with the principal and curriculum team of the school and the
superintendent shall be provided the opportunity to be present.
The purpose of the exit conference is to review the initial
findings of the on-site review, clarify and correct any inaccura-
cies and allow the opportunity for dialogue between the
reviewers and the school or school system to promote a better
understanding of the findings.

(7) The office of education performance audits shall report
the findings of an on-site review to the county superintendent
and the principals whose schools were reviewed within thirty
days following the conclusion of the on-site review. The office
of education performance audits shall report the findings of the
on-site review to the state board within forty-five days after the
conclusion of the on-site review. A copy of the report shall be
provided to the process for improving education council at its
request.

(8) The Legislature finds that the accountability and
oversight of the following activities and programmatic areas in
the public schools is controlled through other mechanisms and
that additional accountability and oversight are not only
unnecessary but counter productive in distracting necessary
resources from teaching and learning. Therefore, notwithstanding
any other provision of this section to the contrary, the
following activities and programmatic areas are not subject to
review by the office of education performance audits:

(A) Work-based learning;

(B) Use of advisory councils;

(C) Program accreditation and student credentials;

(D) Student transition plans;
(E) Graduate assessment form;

(F) Casual deficit;

(G) Accounting practices;

(H) Transportation services;

(I) Special education services;

(J) Safe, healthy and accessible facilities;

(K) Health services;

(L) Attendance director;

(M) Business/community partnerships;

(N) Pupil-teacher ratio/split grade classes;

(O) Local school improvement council, faculty senate, student assistance team and curriculum team;

(P) Planning and lunch periods;

(Q) Skill improvement program;

(R) Certificate of proficiency;

(S) Training of county board members;

(T) Excellence in job performance;

(U) Staff development; and

(V) Preventive discipline, character education and student and parental involvement.
(1) School accreditation. — The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school one of the following approval levels: Exemplary accreditation status, full accreditation status, temporary accreditation status, conditional accreditation status, or seriously impaired status.

(1) Full accreditation status shall be given to a school when the school’s performance and progress meet or exceed the standards adopted by the state board pursuant to subsection (d) of this section and it does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A school that meets or exceeds the performance and progress standards but has the other deficiencies shall remain on full accreditation status for the remainder of the accreditation period and shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary accreditation status shall be given to a school when the school’s performance and progress are below the level required for full accreditation status. Whenever a school is given temporary accreditation status, the county board shall ensure that the school’s unified improvement plan is revised in accordance with subsection (b) of this section to increase the performance and progress of the school to a full accreditation status level. The revised plan shall be submitted to the state board for approval.

(3) Conditional accreditation status shall be given to a school when the school’s performance and progress are below the level required for full accreditation, but the school’s unified improvement plan meets the following criteria:

(A) The plan has been revised to improve performance and progress on the standard or standards by a date or dates certain;
(B) The plan has been approved by the state board; and

(C) The school is meeting the objectives and time line specified in the revised plan.

(4) Exemplary accreditation status shall be given to a school when the school’s performance and progress meet or exceed the standards adopted by the state board pursuant to subsections (d) and (e) of this section. The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a, designated to establish standards of performance and progress to identify exemplary schools.

(5) Seriously impaired accreditation status shall be given to a school whenever extraordinary circumstances exist as defined by the state board.

(A) These circumstances shall include, but are not limited to, the following:

(i) The failure of a school on temporary accreditation status to obtain approval of its revised unified school improvement plan within a reasonable time period as defined by the state board;

(ii) The failure of a school on conditional accreditation status to meet the objectives and time line of its revised unified school improvement plan; or

(iii) The failure of a school to meet a standard by the date specified in the revised plan.

(B) Whenever the state board determines that the quality of education in a school is seriously impaired, the state board shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correction of the
impairment. When the state board approves the recommendations, they shall be communicated to the county board. If progress in correcting the impairment 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 place the county board on temporary approval status and provide consultation and assistance to the county board to assist it in the following areas:

(i) Improving personnel management;

(ii) Establishing more efficient financial management practices;

(iii) Improving instructional programs and rules; or

(iv) Making any other improvements that are necessary to correct the impairment.

(C) If the impairment is not corrected by a date certain as set by the state board:

(i) The state board shall appoint a monitor who shall be paid at county expense to cause improvements to be made at the school to bring it to full accreditation status within a reasonable time period as determined by the state board. The monitor’s work location shall be at the school and the monitor shall work collaboratively with the principal. The monitor shall, at a minimum, report monthly to the state board on the measures being taken to improve the school’s performance and the progress being made. The reports may include requests for additional assistance and recommendations required in the judgment of the monitor to improve the school’s performance, including, but not limited to, the need for targeting resources strategically to eliminate deficiencies;
(ii) The state board may make a determination, in its sole judgment, that the improvements necessary to provide a thorough and efficient education to the students at the school cannot be made without additional targeted resources, in which case, it shall establish a plan in consultation with the county board that includes targeted resources from sources under the control of the state board and the county board to accomplish the needed improvements. Nothing in this subsection shall be construed to allow a change in personnel at the school to improve school performance and progress, except as provided by law;

(iii) If the impairment is not corrected within one year after the appointment of a monitor, the state board may make a determination, in its sole judgment, that continuing a monitor arrangement is not sufficient to correct the impairment and may intervene in the operation of the school 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, establishing instructional programs, taking such direct action as may be necessary to correct the impairments, declaring the position of principal is vacant and assigning a principal for the school who shall serve at the will and pleasure of and, under the sole supervision of, the state board: Provided, That prior to declaring that the position of the principal is vacant, the state board must make a determination that all other resources needed to correct the impairment are present at the school. If the principal who was removed elects not to remain an employee of the county board, then the principal assigned by the state board shall be paid by the county board. If the principal who was removed elects to remain an employee of the county board, then the following procedure applies:

(I) The principal assigned by the state board shall be paid by the state board until the next school term, at which time the

principal assigned by the state board shall be paid by the county board;

(II) The principal who was removed shall be eligible for all positions in the county, including teaching positions, for which the principal is certified, by either being placed on the transfer list in accordance with section seven, article two, chapter eighteen-a of this code, or by being placed on the preferred recall list in accordance with section seven-a, article four, chapter eighteen-a of this code; and

(III) The principal who was removed shall be paid by the county board and may be assigned to administrative duties, without the county board being required to post that position until the end of the school term;

(6) The county board shall take no action nor refuse any action if the effect would be to impair further the school in which the state board has intervened.

(7) The state board may appoint a monitor pursuant to the provisions of this subsection to assist the school principal after intervention in the operation of a school is completed.

(m) Transfers from seriously impaired schools. — Whenever a school is determined to be seriously impaired and fails to improve its status within one year, following state intervention in the operation of the school to correct the impairment, any student attending the school may transfer once to the nearest fully accredited school in the county, subject to approval of the fully accredited school and at the expense of the school from which the student transferred.

(n) School system approval. — The state board annually shall review the information submitted for each school system from the system of education performance audits and issue one of the following approval levels to each county board: Full
approval, temporary approval, conditional approval, or nonapproval.

(1) Full approval shall be given to a county board whose schools have all been given full, temporary or conditional accreditation status and which does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A fully approved school system in which such other deficiencies are discovered shall remain on full accreditation status for the remainder of the approval period and shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary approval shall be given to a county board whose education system is below the level required for full approval. Whenever a county board is given temporary approval status, the county board shall revise its unified county improvement plan in accordance with subsection (b) of this section to increase the performance and progress of the school system to a full approval status level. The revised plan shall be submitted to the state board for approval.

(3) Conditional approval shall be given to a county board whose education system is below the level required for full approval, but whose unified county improvement plan meets the following criteria:

(i) The plan has been revised in accordance with subsection (b) of this section;

(ii) The plan has been approved by the state board; and

(iii) The county board is meeting the objectives and time line specified in the revised plan.

(4) Nonapproval status shall be given to a county board which fails to submit and gain approval for its unified county
improvement plan or revised unified county improvement plan within a reasonable time period as defined by the state board or which fails to meet the objectives and time line of its revised unified county improvement plan or fails to achieve full approval by the date specified in the revised plan.

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

(B) Whenever a county board has more than a casual deficit, as defined in section one, article one of this chapter, the county board shall submit a plan to the state board specifying the county board’s strategy for eliminating the casual deficit. The state board either shall approve or reject the plan. If the plan is rejected, the state board shall communicate to the county board the reason or reasons for the rejection of the plan. The county board may resubmit the plan any number of times. However, any county board that fails to submit a plan and gain approval for the plan from the state board before the end of the fiscal year after a deficit greater than a casual deficit occurred or any county board which, in the opinion of the state board, fails to comply with an approved plan may be designated as having nonapproval status.

(C) Whenever nonapproval status is given to a school system, the state board shall declare a state of emergency in the school system and shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correcting the emergency. When the state board approves the recommendations, they shall be communicated to the county board. If progress in correcting the emergency, as determined by the state board, is not made within six months from the time the county board receives the recommen-
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:

(i) Limiting the authority of the county superintendent and county board as to the expenditure of funds, the employment and dismissal of personnel, the establishment and operation of the school calendar, the establishment of instructional programs and rules and any other areas designated by the state board by rule, which may include delegating decision-making authority regarding these matters to the state superintendent;

(ii) Declaring that the office of the county superintendent is vacant;

(iii) Delegating to the state superintendent both the authority to conduct hearings on personnel matters and school closure or consolidation matters and, subsequently, to render the resulting decisions, and the authority to appoint a designee for the limited purpose of conducting hearings while reserving to the state superintendent the authority to render the resulting decisions;

(iv) Functioning in lieu of the county board of education in a transfer, sale, purchase or other transaction regarding real property; and

(v) Taking any direct action necessary to correct the emergency including, but not limited to, the following:

(I) Delegating to the state superintendent the authority to replace administrators and principals in low performing schools and to transfer them into alternate professional positions within the county at his or her discretion; and
(II) Delegating to the state superintendent the authority to fill positions of administrators and principals with individuals determined by the state superintendent to be the most qualified for the positions. Any authority related to intervention in the operation of a county board granted under this paragraph is not subject to the provisions of article four, chapter eighteen-a of this code;

(o) 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 (n) of this section, if the state board finds the following:

(1) 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

(2) 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.

(p) Capacity. — The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of unified school and school system 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 unified 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 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.

The state board shall recommend to the appropriate body including, but not limited to, the process for improving education council, 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:

1. Examining reports and unified 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) Requesting special staff development programs from the center for professional development, the principals academy, higher education, regional educational service agencies and county boards based on identified needs;

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

(8) Directing county boards to target their funds strategically toward alleviating deficiencies;

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

§18-2E-5c. Process for improving education council established; membership; expenses; meetings; powers.

(a) Process for improving education council. — There is hereby established the process for improving education council for the purpose of providing opportunities for consultation among state policy leaders on the process for improving education, including, but not limited to, determination of the things that students should know and be able to do as the result of a thorough and efficient education, the performance and progress of students toward meeting the high quality standards established by the state board, and any further improvements necessary to increase the capacity of schools and school systems to deliver a thorough and efficient education.
(b) **Council membership.** — The legislative oversight commission on education accountability, together with the governor, ex officio, or the governor’s designee, and the chancellor of the higher education policy commission, ex officio, or the chancellor’s designee, comprise the process for improving education council. Ex officio members are entitled to vote. The governor or the governor’s designee shall convene the council, as appropriate, and shall serve as chair. The council may meet at any time at the call of the governor or the governor’s designee.

(c) **Compensation.** — Members of the council shall serve without compensation, but shall be reimbursed as provided by law by their respective agencies for all reasonable and necessary expenses actually incurred in the performance of their official duties under this section upon presentation of an itemized sworn statement of their expenses.

(d) **Powers of the council.** —

The council has the following powers:

(1) To meet and consult with the state board, or their designees, and make recommendations on issues related to student, school and school system performance. The following steps are part of the consultation process:

(A) The state board shall notify each member of the council whenever the state board proposes to amend its rules on any of the following issues:

(i) High quality education standards and efficiency standards established pursuant to section five of this article;

(ii) Indicators of efficiency established pursuant to section five of this article; and
(iii) Assessment and accountability of school and school system performance and processes established pursuant to section five of this article.

(B) The notice to be given pursuant to paragraph (A) of this subdivision shall contain a summary and explanation of the proposed changes, including a draft of the proposal when available, and shall be sent at least fifteen days prior to filing the proposal with the secretary of state for public comment.

(C) If the governor, or the governor’s designee, believes it is necessary for the council to meet and consult with the state board, or its designees, on changes proposed to any of the issues outlined in subdivision (1) of this subsection, he or she may convene a meeting of the council.

(D) If both the president of the Senate and the speaker of the House of Delegates believe it is necessary for the council to meet and consult with the state board, or its designees, they shall notify the governor who shall convene a meeting of the council.

(E) If the chancellor, or the chancellor’s designee, believes that it is necessary for the council to meet and consult with the state board, or its designees, he or she may request the governor to convene a meeting of the council.

(2) To require the state board, or its designees, to meet with the council to consult on issues that lie within the scope of the council’s jurisdiction;

(3) To participate as observers in any on-site review of a school or school system conducted by the office of education performance audits; and

(4) To authorize any employee of the agencies represented by council members to participate as observers in any on-site
ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15f. Affirmation regarding the suspension or expulsion of a pupil from school.

(a) Prior to the admission of a pupil to any public school in West Virginia, the county superintendent shall require the pupil’s parent(s), guardian(s) or custodian(s) to provide, upon registration, a sworn statement or affirmation indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in West Virginia or another state. Any person willfully making a materially false statement or affirmation shall be guilty of a misdemeanor and, upon conviction, the penalty shall be the same as provided for “false swearing” pursuant to section three, article five, chapter sixty-one of this code.

(b) Prior to the admission of a pupil to any public school, the principal of that school or his or her designee shall consult the uniform integrated regional computer information system (commonly known as the West Virginia Education Information System) described in subsection (f), section twenty-six, article two, chapter eighteen of this code, to determine whether the pupil requesting admission is, at the time of the request for admission, serving a suspension or expulsion from another public school in West Virginia.

(c) The state board of education shall provide for the West Virginia Education Information System to disallow the recording of the enrollment of any pupil who is, at the time of attempted enrollment, serving a suspension or expulsion from another public school in West Virginia, and for that system to notify the user who has attempted to record such enrollment.
that the pupil may not be enrolled, and to notify that user of the
reason therefor.

(d) Notwithstanding any other provision of this code to the
contrary, any pupil who has been suspended or expelled from
school pursuant to section one-a, article five, chapter eighteen-a
of this code, or who has been suspended or expelled from a
public or private school in another state, due to actions de-
scribed in section one-a, article five, chapter eighteen-a of this
code, may not be admitted to any public school within the state
of West Virginia until the period of suspension or expulsion has
expired.

§18-5-46. Requiring teacher to change grade prohibited.

No teacher may be required by a principal nor any other
person to change a student’s grade on either an individual
assignment or a report card unless there is clear and convincing
evidence that there was a mathematical error in calculating the
student’s grade.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-5. Powers and duties of state superintendent.

The state superintendent of schools shall organize, promote,
administer and be responsible for:

(1) Stimulating and assisting county boards of education in
establishing, organizing and maintaining special schools,
classes, regular class programs, home-teaching and visiting-
teacher services.

(2) Cooperating with all other public and private agencies
engaged in relieving, caring for, curing, educating and rehabili-
tating exceptional children, and in helping coordinate the
services of such agencies.
(3) Preparing the necessary rules, policies, formula for distribution of available appropriated funds, reporting forms and procedures necessary to define minimum standards in providing suitable facilities for education of exceptional children and ensuring the employment, certification and approval of qualified teachers and therapists subject to approval by the state board of education: Provided, That no state rule, policy or standard under this article nor any county board rule, policy or standard governing special education may exceed the requirements of federal law or regulation. The state superintendent shall conduct a comprehensive review and comparison of the rules, policies and standards of the state with federal law and report the findings to the legislative oversight commission on education accountability at its July, two thousand four interim meeting or as soon thereafter as requested by the commission.

(4) Receiving from county boards of education their applications, annual reports and claims for reimbursement from such moneys as are appropriated by the Legislature, auditing such claims and preparing vouchers to reimburse said counties the amounts reimbursable to them.

(5) Assuring that all exceptional children in the state, including children in mental health facilities, residential institutions, private schools and correctional facilities as provided in section thirteen-f, article two of this chapter receive an education in accordance with state and federal laws: Provided, That the state superintendent shall also assure that adults in correctional facilities and regional jails shall receive an education to the extent funds are provided therefor.

(6) Performing such other duties and assuming such other responsibilities in connection with this program as may be needed.
(7) Receive the county plan for integrated classroom submitted by the county boards of education and submit a state plan, approved by the state board of education, to the legislative oversight commission on education accountability no later than the first day of December, one thousand nine hundred ninety-five.

Nothing herein contained shall be construed to prevent any county board of education from establishing and maintaining special schools, classes, regular class programs, home-teaching or visiting-teacher services out of funds available from local revenue.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-12. Performance evaluations of school personnel; professional personnel evaluation process.

(a) The state board of education shall adopt a written system for the evaluation of the employment performance of personnel, which system shall be applied uniformly by county boards of education in the evaluation of the employment performance of personnel employed by the board.

(b) The system adopted by the state board of education for evaluating the employment performance of professional personnel shall be in accordance with the provisions of this section.

(c) For purposes of this section, “professional personnel”, “professional” or “professionals”, means professional personnel as defined in section one, article one of this chapter.

(d) In developing the professional personnel performance evaluation system, and amendments thereto, the state board shall consult with the professional development project of the
center for professional development created in section three, article three-a of this chapter. The center shall participate actively with the state board in developing written standards for evaluation which clearly specify satisfactory performance and the criteria to be used to determine whether the performance of each professional meets such standards.

(e) The performance evaluation system shall contain, but shall not be limited to, the following information:

(1) The professional personnel positions to be evaluated, whether they be teachers, substitute teachers, administrators, principals, or others;

(2) The frequency and duration of the evaluations, which shall be on a regular basis and of such frequency and duration as to insure the collection of a sufficient amount of data from which reliable conclusions and findings may be drawn: Provided, That for school personnel with five or more years of experience, who have not received an unsatisfactory rating, evaluations shall be conducted no more than once every three years unless the principal determines an evaluation for a particular school employee is needed more frequently: Provided, however, That a classroom teacher may exercise the option of being evaluated at more frequent intervals;

(3) The evaluation shall serve the following purposes:

(A) Serve as a basis for the improvement of the performance of the personnel in their assigned duties;

(B) Provide an indicator of satisfactory performance for individual professionals;

(C) Serve as documentation for a dismissal on the grounds of unsatisfactory performance; and
(D) Serve as a basis for programs to increase the professional growth and development of professional personnel;

(4) The standards for satisfactory performance for professional personnel and the criteria to be used to determine whether the performance of each professional meets such standards and other criteria for evaluation for each professional position evaluated. Effective the first day of July, two thousand three and thereafter, professional personnel, as appropriate, shall demonstrate competency in the knowledge and implementation of the technology standards adopted by the state board. If a professional fails to demonstrate competency, in the knowledge and implementation of these standards, he or she will be subject to an improvement plan to correct the deficiencies; and

(5) Provisions for a written improvement plan, which shall be specific as to what improvements, if any, are needed in the performance of the professional and shall clearly set forth recommendations for improvements, including recommendations for additional education and training during the professional’s recertification process.

(f) A professional whose performance is considered to be unsatisfactory shall be given notice of deficiencies. A remediation plan to correct deficiencies shall be developed by the employing county board of education and the professional. The professional shall be given a reasonable period of time for remediation of the deficiencies and shall receive a statement of the resources and assistance available for the purposes of correcting the deficiencies.

(g) No person may evaluate professional personnel for the purposes of this section unless the person has an administrative certificate issued by the state superintendent and has successfully completed education and training in evaluation skills through the center for professional development, or equivalent
education training approved by the state board, which will enable the person to make fair, professional, and credible evaluations of the personnel whom the person is responsible for evaluating. After the first day of July, one thousand nine hundred ninety-four, no person may be issued an administrative certificate or have an administrative certificate renewed unless the state board determines that the person has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education and training approved by the state board.

(h) Any professional whose performance evaluation includes a written improvement plan shall be given an opportunity to improve his or her performance through the implementation of the plan. If the next performance evaluation shows that the professional is now performing satisfactorily, no further action may be taken concerning the original performance evaluation. If the evaluation shows that the professional is still not performing satisfactorily, the evaluator either shall make additional recommendations for improvement or may recommend the dismissal of the professional in accordance with the provisions of section eight of this article.

(i) Lesson plans are intended to serve as a daily guide for teachers and substitutes for the orderly presentation of the curriculum. Lesson plans may not be used as a substitute for observations by an administrator in the performance evaluation process. A classroom teacher, as defined in section one, article one of this chapter, may not be required to post his or her lesson plans on the internet or otherwise make them available to students and parents nor to include in his or her lesson plans any of the following:

(1) Teach and reteach strategies;

(2) Write to learn activities;
(3) Cultural diversity;

(4) Color coding; or

(5) Any other similar items which are not required to serve as a guide to the teacher or substitute for daily instruction; and

(j) The Legislature finds that classroom teachers must be free of unnecessary paper work so that they can focus their time on instruction. Therefore, classroom teachers may not be required to keep records or logs of routine contacts with parents or guardians.

(k) Nothing in this section may be construed to prohibit classroom teachers from voluntarily posting material on the internet.

§18A-2-12a. Statement of policy and practice for the county boards and school personnel to minimize possible disagreement and misunderstanding.

(a) The Legislature makes the following findings:

(1) The effective and efficient operation of the public schools depends upon the development of harmonious and cooperative relationships between county boards and school personnel;

(2) Each group has a fundamental role to perform in the educational program and each has certain separate, distinct and clearly defined areas of responsibility as provided in chapters eighteen and eighteen-a of this code; and

(3) There are instances, particularly involving questions of wages, salaries and conditions of work, that are subject to disagreement and misunderstanding and may not be so clearly set forth.
(b) The purpose of this section is to establish a statement of policy and practice for the county boards and school personnel, as follows, in order to minimize possible disagreement and misunderstanding:

1. County boards, subject to the provisions of this chapter, chapter eighteen of this code and the policies and rules of the state board, are responsible for the management of the schools within their respective counties. The powers and responsibilities of county boards in setting policy and in providing for such management are broad, but not absolute;

2. The school personnel share the responsibility for putting into effect the policies and practices approved by the county board that employs them and the school personnel also have certain rights and responsibilities as provided in statute, in their contract;

3. School personnel are entitled to meet together, form associations and work in concert to improve their circumstances and the circumstances of the schools;

4. County boards and school personnel can most effectively discharge their total responsibilities to the public and to each other by establishing clear and open lines of communication. School personnel should be encouraged to make suggestions, proposals and recommendations through appropriate channels to the county board. Decisions of the county board concerning the suggestions, proposals and recommendations should be communicated to the school personnel clearly and openly;

5. Official meetings of county boards are public meetings. School personnel are free to attend the meetings without fear of reprisal and should be encouraged to attend;

6. All school personnel are entitled to know how well they are fulfilling their responsibilities and should be offered the opportunity of an open and honest evaluation of their perfor-
mance on a regular basis and in accordance with the provisions of section twelve of this article. All school personnel are entitled to an opportunity to improve their job performance prior to the termination or transfer of their services. Decisions concerning the promotion, demotion, transfer or termination of employment of school personnel, other than those for lack of need or governed by specific statutory provisions unrelated to performance, should be based upon such evaluations, and not upon factors extraneous thereto. All school personnel are entitled to due process in matters affecting their employment, transfer, demotion or promotion; and

(7) All official and enforceable personnel policies of a county board must be written and made available to its employees.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; corporal punishment abolished.

(a) The teacher shall stand in the place of the parent(s), guardian(s) or custodian(s) in exercising authority over the school and shall have control of all pupils enrolled in the school from the time they reach the school until they have returned to their respective homes, except that where transportation of pupils is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the children while they are in transit to and from the school.

(b) Subject to the rules of the state board of education, the teacher shall exclude from the school any pupil or pupils known to have or suspected of having any infectious disease, or any pupil or pupils who have been exposed to such disease, and
shall immediately notify the proper health officer or medical inspector of such exclusion. Any pupil so excluded shall not be readmitted to the school until such pupil has complied with all the requirements of the rules governing such cases or has presented a certificate of health signed by the medical inspector or other proper health officer.

(c) The teacher shall have authority to exclude from his or her classroom or school bus any pupil who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a pupil; or who willfully disobeys a school employee; or who uses abusive or profane language directed at a school employee. Any pupil excluded shall be placed under the control of the principal of the school or a designee. The excluded pupil may be admitted to the classroom or school bus only when the principal, or a designee, provides written certification to the teacher that the pupil may be readmitted and specifies the specific type of disciplinary action, if any, which was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of such action to the parent(s), guardian(s) or custodian(s). When a teacher excludes the same pupil from his or her classroom or from a school bus three times in one school year, and after exhausting all reasonable methods of classroom discipline provided in the school discipline plan, the pupil may be readmitted to the teacher’s classroom only after the principal, teacher and, if possible, the parent(s), guardian(s) or custodian(s) of the pupil have held a conference to discuss the pupil’s disruptive behavior patterns, and the teacher and the principal agree on a course of discipline for the pupil and inform the parent(s), guardian(s) or custodian(s) of the course of action. Thereafter, if the pupil’s disruptive behavior persists, upon the teacher’s request, the principal may, to the extent feasible, transfer the pupil to another setting.
(d) The Legislature finds that suspension from school is not appropriate solely for a pupil's failure to attend class. Therefore, no pupil may be suspended from school solely for not attending class. Other methods of discipline may be used for the pupil which may include, but are not limited to, detention, extra class time or alternative class settings.

(e) Corporal punishment of any pupil by a school employee is prohibited.

(f) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions. These policies shall encourage the use of alternatives to corporal punishment, providing for the training of school personnel in alternatives to corporal punishment and for the involvement of parent(s), guardian(s) or custodian(s) in the maintenance of school discipline. The county boards of education shall provide for the immediate incorporation and implementation in the schools of a preventive discipline program which may include the responsible student program and a student involvement program which may include the peer mediation program, devised by the West Virginia board of education. Each board may modify such programs to meet the particular needs of the county. The county boards shall provide in-service training for teachers and principals relating to assertive discipline procedures and conflict resolution. The county boards of education may also establish cooperatives with private entities to provide middle educational programs which may include programs focusing on developing individual coping skills, conflict resolution, anger control, self-esteem issues, stress management and decision making for students and any other program related to preventive discipline.
(g) For the purpose of this section: (1) "Pupil or student" shall include any child, youth or adult who is enrolled in any instructional program or activity conducted under board authorization and within the facilities of or in connection with any program under public school direction: Provided, That, in the case of adults, the pupil-teacher relationship shall terminate when the pupil leaves the school or other place of instruction or activity; and (2) "teacher" shall mean all professional educators as defined in section one, article one of this chapter and shall include the driver of a school bus or other mode of transportation.

(h) Teachers shall exercise such other authority and perform such other duties as may be prescribed for them by law or by the rules of the state board of education not inconsistent with the provisions of this chapter and chapter eighteen of this code.

§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.

(a) A principal shall suspend a pupil from school or from transportation to or from the school on any school bus if the pupil, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of subsection (b), section fifteen, article two, chapter sixty-one of this code; (ii) violated the provisions of subsection (b), section eleven-a, article seven of said chapter; or (iii) sold a narcotic drug, as defined in section one hundred one, article one, chapter sixty-a of this code, on the premises of an educational facility, at a school-sponsored function or on a
school bus. If a student has been suspended pursuant to this
subsection, the principal shall, within twenty-four hours,
request that the county superintendent recommend to the county
board that the student be expelled. Upon such a request by a
principal, the county superintendent shall recommend to the
county board that the student be expelled. Upon such recom-
mandation, the county board shall conduct a hearing in accor-
dance with subsections (e), (f) and (g) of this section to deter-
mine if the student committed the alleged violation. If the
county board finds that the student did commit the alleged
violation, the county board shall expel the student.

(b) A principal shall suspend a pupil from school, or from
transportation to or from the school on any school bus, if the
pupil, in the determination of the principal after an informal
hearing pursuant to subsection (d) of this section, has: (i)
Committed an act or engaged in conduct that would constitute
a felony under the laws of this state if committed by an adult;
or (ii) unlawfully possessed on the premises of an educational
facility or at a school-sponsored function a controlled substance
governed by the uniform controlled substances act as described
in chapter sixty-a of this code. If a student has been suspended
pursuant to this subsection, the principal may request that the
superintendent recommend to the county board that the student
be expelled. Upon such recommendation by the county superin-
tendent, the county board may hold a hearing in accordance
with the provisions of subsections (e), (f) and (g) of this section
to determine if the student committed the alleged violation. If
the county board finds that the student did commit the alleged
violation, the county board may expel the student.

(c) A principal may suspend a pupil from school, or
transportation to or from the school on any school bus, if the
pupil, in the determination of the principal after an informal
hearing pursuant to subsection (d) of this section: (i) Threatened
to injure, or in any manner injured, a pupil, teacher, administra-
tor or other school personnel; (ii) willfully disobeyed a teacher; (iii) possessed alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function; (iv) used profane language directed at a school employee or pupil; (v) intentionally defaced any school property; (vi) participated in any physical altercation with another person while under the authority of school personnel; or (vii) habitually violated school rules or policies. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(d) The actions of any pupil which may be grounds for his or her suspension or expulsion under the provisions of this section shall be reported immediately to the principal of the school in which the pupil is enrolled. If the principal determines that the alleged actions of the pupil would be grounds for suspension, he or she shall conduct an informal hearing for the pupil immediately after the alleged actions have occurred. The hearing shall be held before the pupil is suspended unless the principal believes that the continued presence of the pupil in the school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, in which case the pupil shall be suspended immediately and a hearing held as soon as practicable after the suspension.

The pupil and his or her parent(s), guardian(s) or custodian(s), as the case may be, shall be given telephonic notice, if possible, of this informal hearing, which notice shall briefly state the grounds for suspension.
At the commencement of the informal hearing, the principal shall inquire of the pupil as to whether he or she admits or denies the charges. If the pupil does not admit the charges, he or she shall be given an explanation of the evidence possessed by the principal and an opportunity to present his or her version of the occurrence. At the conclusion of the hearing or upon the failure of the noticed student to appear, the principal may suspend the pupil for a maximum of ten school days, including the time prior to the hearing, if any, for which the pupil has been excluded from school.

The principal shall report any suspension the same day it has been decided upon, in writing, to the parent(s), guardian(s) or custodian(s) of the pupil by regular United States mail. The suspension also shall be reported to the county superintendent and to the faculty senate of the school at the next meeting after the suspension.

(e) Prior to a hearing before the county board, the county board shall cause a written notice which states the charges and the recommended disposition to be served upon the pupil and his or her parent(s), guardian(s) or custodian(s), as the case may be. The notice shall state clearly whether the board will attempt at hearing to establish the student as a dangerous student, as defined by section one, article one of this chapter. The notice also shall include any evidence upon which the board will rely in asserting its claim that the student is a dangerous student. The notice shall set forth a date and time at which the hearing shall be held, which date shall be within the ten-day period of suspension imposed by the principal.

(f) The county board shall hold the scheduled hearing to determine if the pupil should be reinstated or should or, under the provisions of this section, must be expelled from school. If the county board determines that the student should or must be expelled from school, it may also determine whether the student
is a dangerous student pursuant to subsection (g) of this section. At this, or any hearing before a county board conducted pursuant to this section, the pupil may be represented by counsel, may call his or her own witnesses to verify his or her version of the incident and may confront and cross-examine witnesses supporting the charge against him or her. Such a hearing shall be recorded by mechanical means unless recorded by a certified court reporter. Any such hearing may be postponed for good cause shown by the pupil but he or she shall remain under suspension until after the hearing. The state board may adopt other supplementary rules of procedure to be followed in these hearings. At the conclusion of the hearing the county board shall either: (1) Order the pupil reinstated immediately at the end of his or her initial suspension; (2) suspend the pupil for a further designated number of days; or (3) expel the pupil from the public schools of the county.

(g) A county board that did not intend prior to a hearing to assert a dangerous student claim, that did not notify the student prior to the hearing that such a determination would be considered and that determines through the course of the hearing that the student may be a dangerous student shall schedule a second hearing within ten days to decide the issue. The hearing may be postponed for good cause shown by the pupil, but he or she remains under suspension until after the hearing.

A county board that expels a student, and finds that the student is a dangerous student, may refuse to provide alternative education. However, after a hearing conducted pursuant to this section for determining whether a student is a dangerous student, when the student is found to be a dangerous student, is expelled and is denied alternative education, a hearing shall be conducted within three months after the refusal by the board to provide alternative education to reexamine whether or not the student remains a dangerous student and whether the student shall be provided alternative education. Thereafter, a hearing
for the purpose of reexamining whether or not the student remains a dangerous student and whether the student shall be provided alternative education shall be conducted every three months for so long as the student remains a dangerous student and is denied alternative education. During the initial hearing, or in any subsequent hearing, the board may consider the history of the pupil’s conduct as well as any improvements made subsequent to the expulsion. If it is determined during any of the hearings that the student is no longer a dangerous student or should be provided alternative education, the student shall be provided alternative education during the remainder of the expulsion period.

(h) The superintendent may apply to a circuit judge or magistrate for authority to subpoena witnesses and documents, upon his or her own initiative, in a proceeding related to a recommended student expulsion or dangerous student determination, before a county board conducted pursuant to the provisions of this section. Upon the written request of any other party, the superintendent shall apply to a circuit judge or magistrate for the authority to subpoena witnesses, documents or both on behalf of the other party in a proceeding related to a recommended student expulsion or dangerous student determination before a county board. If the authority to subpoena is granted, the superintendent shall subpoena the witnesses, documents or both requested by the other party. Furthermore, if the authority to subpoena is granted, it shall be exercised in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code.

Any hearing conducted pursuant to this subsection may be postponed: (1) For good cause shown by the pupil; (2) when proceedings to compel a subpoenaed witness to appear must be instituted; or (3) when a delay in service of a subpoena hinders either party’s ability to provide sufficient notice to appear to a
witness. A pupil remains under suspension until after the hearing in any case where a postponement occurs.

The county boards are directed to report the number of pupils determined to be dangerous students to the state board of education. The state board will compile the county boards' statistics and shall report its findings to the legislative oversight commission on education accountability.

(i) Pupils may be expelled pursuant to the provisions of this section for a period not to exceed one school year, except that if a pupil is determined to have violated the provisions of subsection (a) of this section the pupil shall be expelled for a period of not less than twelve consecutive months: Provided, That the county superintendent may lessen the mandatory period of twelve consecutive months for the expulsion of the pupil if the circumstances of the pupil's case demonstrably warrant. Upon the reduction of the period of expulsion, the county superintendent shall prepare a written statement setting forth the circumstances of the pupil's case which warrant the reduction of the period of expulsion. The county superintendent shall submit the statement to the county board, the principal, the faculty senate and the local school improvement council for the school from which the pupil was expelled. The county superintendent may use the following factors as guidelines in determining whether or not to reduce a mandatory twelve-month expulsion:

(1) The extent of the pupil's malicious intent;

(2) The outcome of the pupil's misconduct;

(3) The pupil's past behavior history; and

(4) The likelihood of the pupil's repeated misconduct.
(j) In all hearings under this section, facts shall be found by a preponderance of the evidence.

(k) For purposes of this section, nothing herein may be construed to be in conflict with the federal provisions of the Individuals with Disabilities Education Act of 1990 (PL 101-476).

(l) Each suspension or expulsion imposed upon a pupil under the authority of this section shall be recorded in the uniform integrated regional computer information system (commonly known as the West Virginia Education Information System) described in subsection (f), section twenty-six, article two, chapter eighteen of this code.

(1) The principal of the school at which the pupil is enrolled shall create an electronic record within twenty-four hours of the imposition of the suspension or expulsion.

(2) Each record of a suspension or expulsion shall include the pupil's name and identification number, the reason for the suspension or expulsion, and the beginning and ending dates of the suspension or expulsion.

(3) The state board of education shall collect and disseminate data so that any principal of a public school in West Virginia can review the complete history of disciplinary actions taken by West Virginia public schools against any pupil enrolled or seeking to enroll at that principal's school. The purposes of this provision are to allow every principal to fulfill his or her duty under subsection (b), section fifteen-f, article five, chapter eighteen of this code to determine whether a pupil requesting to enroll at a public school in West Virginia is currently serving a suspension or expulsion from another public school in West Virginia and to allow principals to obtain general information about pupils' disciplinary histories.
(m) Principals may exercise any other authority and perform any other duties to discipline pupils consistent with state and federal law, including policies of the state board of education.

(n) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect July 1, 2004.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 6th day of April, 2004.

Governor
PRESENTED TO THE
GOVERNOR
DATE 3/21/02
TIME 9:30 A.M.