WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4436

(By Delegates Shaver, M. Poling, Perry, Williams, Ennis, Beach, Lawrence, Romine, Pethel, Paxton and Cann)

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Passed March 11, 2010

In Effect Ninety Days From Passage
AN ACT to amend and reenact §18-2E-5 and §18-5A-6 of the Code of West Virginia, 1931, as amended, relating to promoting student achievement; revising accountability finding; clarifying optional usage of certain testing or assessment instruments; publishing and making such instruments available to curriculum teams and teacher collaborations; making exclusions from accreditation and evaluations for failure to use or exercise of discretion in using certain assessments, strategies and programs; adding circumstance to definition of low performing school; providing for state system of support for low performing schools and modifying process and time lines for improvement; requiring schools and school systems to work collaboratively with state system of support in certain circumstances; requiring school curriculum teams to review certain non required tests and assessments and providing it discretion to determine usage; authorizing team to request waiver of state and county requirements to use certain assessments, instructional strategies or programs; updating
waivers for instructional resources; providing for optional adoption by schools of process for teacher collaboration to replace or in addition to school curriculum team; and providing for membership, mission and structure.

Be it enacted by the Legislature of West Virginia:

That §18-2E-5 and §18-5A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. Process for improving education; education standards; statewide assessment program; accountability measures; Office of Education Performance Audits; school accreditation and school system approval; intervention to correct low performance.

(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 do 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 defined by high quality standards for schools and school systems articulated by a rule promulgated by the state board and outlined in subsection (c) of this section that will build capacity in 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 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 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 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 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 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 the provisions of this section and in accordance with article three-b, chapter twenty-nine-a 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 a five-year plan that includes 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 revised annual plan also shall identify any deficiency which is reported on the check lists identified in paragraph (G), subdivision (5), subsection (1) of this section including any deficit more than a casual deficit.
by the county board. 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 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, as applicable, shall incorporate the state’s 21st Century Skills Initiative and 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) Comprehensive statewide student assessment program. -- The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing a comprehensive statewide student assessment program to assess student performance and progress in grades three through twelve. The state board may require that student proficiencies be measured through the ACT EXPLORE and the ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors. The state board may require that student proficiencies be
measured through the West Virginia writing assessment at any of the grade levels four, seven and ten determined by the state board to be appropriate: Provided, That, effective July 1, 2008, the state board may require that student proficiencies be measured through the West Virginia writing assessment at any of the grade levels four, seven and eleven determined by the state board to be appropriate. The state board may provide through the statewide assessment program other optional testing or assessment instruments applicable to grade levels kindergarten through grade twelve which may be used by each school to promote student achievement upon approval by the school curriculum team or the process for teacher collaboration to improve instruction and learning established by the faculty senate as provided in section six, article five-a of this chapter. The state board shall annually publish and make available, electronically or otherwise, to school curriculum teams and teacher collaborative processes the optional testing and assessment instruments. The failure of a school to use any optional testing and assessment may not be cited as a deficiency in any accreditation review of the school; nor may the exercise of its discretion, as provided in section six, article five-a of this chapter, in using the assessments and implementing the instructional strategies and programs that it determines best to promote student achievement at the school be cited as a deficiency in any accreditation review of the school or in the personnel evaluation of the principal. The use of assessment results are subject to the following:

(1) The assessment results for grade levels three through eight and eleven are the only assessment results which may be used for determining whether any school or school system has made adequate yearly progress (AYP);

(2) Only the assessment results in the subject areas of reading/language arts and mathematics may be used for
(3) The results of the West Virginia writing assessment, the ACT EXPLORE assessments and the ACT PLAN assessments may not be used for determining whether a school or school system has made adequate yearly progress (AYP); and

(4) The results of testing or assessment instruments provided by the state board for optional use by schools and school systems to promote student achievement may not be used for determining whether a school or school system has made adequate yearly progress (AYP); and

(5) All assessment provisions of the comprehensive statewide student assessment program in effect for the school year 2006-2007 shall remain in effect until replaced by the state board rule.

(e) Annual performance measures for Public Law 107-110, the Elementary and Secondary Education Act of 1965, as amended (No Child Left Behind Act of 2001). -- The standards shall include annual measures of student, school and school system performance and progress for the grade levels and the content areas defined by the act. The following annual measures of student, school and school system performance and progress shall be the only measures for determining whether adequately yearly progress under the No Child Left Behind Act has been achieved:

(1) The acquisition of student proficiencies as indicated by student performance and progress on the required accountability assessments at the grade levels and content areas as required by the act subject to the limitations set forth in subsection (d) of this section.
(2) The student participation rate in the uniform statewide assessment must be at least ninety-five percent or the average of the participation rate for the current and the preceding two years is ninety-five percent for the school, county and state;

(3) Only for schools that do not include grade twelve, the school attendance rate which shall be no less than ninety percent in attendance for the school, county and state. The following absences are 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 compelling attendance to the extent of his or her authority; and

(4) The high school graduation rate which shall be no less than eighty percent for the school, county and state; 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 August 15.

(f) State annual performance measures for school and school system accreditation. -- The state board shall establish a system to assess and weigh annual performance measures for state accreditation of schools and school systems in a manner that gives credit or points such as an index to prevent any one measure alone from causing a school to achieve less than full accreditation status or a school system from
achieving less than full approval status: Provided, That a school or school system that achieves adequate yearly progress is eligible for no less than full accreditation or approval status, as applicable, and the system established pursuant to this subsection applies only to schools and school systems that do not achieve adequate yearly progress.

The following types of measures, as may be appropriate at the various programmatic levels, may be approved by the state board for the school and school system accreditation:

(1) The acquisition of student proficiencies as indicated by student performance and progress on the uniform statewide assessment program at the grade levels as provided in subsection (d) of this section. The state board may approve providing bonus points or credits for students scoring at or above mastery and distinguished levels;

(2) Writing assessment results in grades tested;

(3) School attendance rates;

(4) Percentage of courses taught by highly qualified teachers;

(5) Percentage of students scoring at benchmarks on the currently tested ACT EXPLORE and ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors;

(6) Graduation rates;

(7) Job placement rates for vocational programs;

(8) Percent of students passing end-of-course career/technical tests;
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(9) Percent of students not requiring college remediation classes; and

(10) Bonus points or credits for subgroup improvement, advanced placement percentages, dual credit completers and international baccalaureate completers.

(g) Indicators of exemplary performance and progress.-- The standards shall include indicators of exemplary student, school and school system performance and progress. The indicators of exemplary student, school and school system performance and progress shall be used only as indicators for determining whether accredited and approved schools and school systems should be granted exemplary status. These indicators shall include, but are not limited to, the following:

(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.

(h) Indicators of efficiency.-- In accordance with the provisions of article three-b, chapter twenty-nine-a 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;

(6) Use 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.

(i) 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, individually and collectively as the Process for Improving Education Council, upon which they may determine 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 education and compliance with statutes, policies and standards may be determined;

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

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

(j) Uses of school and school system assessment information. -- The state board and the Process for Improving Education 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 individual who requests the information, subject to the provisions of any act or rule restricting the release of information.

(k) 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.

(1) 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 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 Performance 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 identification 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 multicultural activities.

Information contained in the reporting formats is 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.

(m) 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 electronic strategic 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 before 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.
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 responsible for completing the report on the findings and recommendations 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.

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.

At the conclusion of an on-site review of a school system, the director and team leaders shall hold an exit conference 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 inaccuracies 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. A school or county that believes one or more findings of a review are clearly inaccurate, incomplete or misleading, misrepresent or fail to reflect the true quality of education in the school or county or address issues unrelated to the health, safety and welfare of students and the quality of education, may appeal to the state board for removal of the findings. The state board shall establish a process for it to receive, review and act upon the appeals. The state board shall report to the Legislative Oversight Commission on Education Accountability during its July interim meetings, or as soon thereafter as practical, on each appeal during the preceding school year.

(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 counterproductive 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.

(n) 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, distinction accreditation
status, full accreditation status, temporary accreditation
status, conditional accreditation status or low performing
accreditation 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 (e) or (f), as applicable, 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
Whenever a school is given temporary accreditation status, the county board shall ensure that the school's electronic strategic 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 electronic strategic 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 substantially exceed the standards adopted by the state board pursuant to subsections (f) and (g) of this section. The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code designated to establish standards of performance and progress to identify exemplary schools.

(5) Distinction accreditation status shall be given to a school when the school’s performance and progress exceed the standards adopted by the state board. The state board
shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing standards of performance and progress to identify schools of distinction.

(6) Low-performing 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, any one or more of the following:

(i) The failure of a school on temporary accreditation status to obtain approval of its revised electronic school strategic 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 electronic school strategic improvement plan;

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

(iv) The results of the most recent statewide assessment in reading and math or other multiple measures as determined by the state board that identify the school as low performing at its programmatic level in three of the last five years.

(B) Whenever the state board determines that the quality of education in a school is low performing, the state board shall appoint a team of improvement consultants from the West Virginia Department of Education State System of Support to make recommendations for correction of the low performance. These recommendations shall be communicated to the county board and a process shall be established in
conjunction with the State System of Support to correct the identified deficiencies. If progress in correcting the low performance as determined by the state board is not made within one year following the implementation of the measures adopted to correct the identified deficiencies or by a date certain established by the state board after at least one year of implementation, 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 low performance.

(C) If the low performance 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 low performance 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 low performance 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 low performance, 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 low performance 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:
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 is 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.

(o) Transfers from low-performing schools. -- Whenever a school is determined to be low performing and fails to improve its status within one year, following state intervention in the operation of the school to correct the low performance, 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.

(p) 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 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 electronic
county strategic 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 electronic county strategic 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 electronic county strategic improvement plan or revised electronic county strategic 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 electronic county strategic 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 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:

(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;

(q) 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 (p) 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.

(r) Capacity. -- The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of
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 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 and requiring the
school or school system to work collaboratively with the
West Virginia Department of Education State System of
Support to correct the deficiencies;

(3) Determining the areas of strength that appear to have
c孝 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.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.


(a) There shall be established at each school in the state a school curriculum team composed of the school principal, the counselor designated to serve that school and no fewer than three teachers representative of the grades taught at the school and chosen by the faculty senate: Provided, That for a school curriculum team established at an elementary school or a combination elementary and middle school, when the counselor is not assigned to the school on at least a one-half time basis, the curriculum team may meet on days when the counselor is not at the school and the principal shall consult with the counselor on the issues relevant to the meeting agenda.

The school curriculum team shall establish the programs and methods for implementing a curriculum based on state-approved content standards based on the needs of the individual school with a focus on reading, composition, mathematics, science and technology. The curriculum thus established shall be submitted to the county board for approval or for return to the school for reconsideration.

The school curriculum team shall review the list of other non required testing and assessment instruments provided by the state board through the statewide assessment program as provided in section five, article two-e of this chapter and may select one or more of them that are applicable to the grade levels at the school for use at the school to improve student
The school has the discretion to use the assessments and implement the instructional strategies and programs, upon approval by the school curriculum team, that it determines best to promote student achievement at the school. The school curriculum team may apply for a waiver of any state or county policy requiring it to assess students using any specific assessment except the WESTEST2, the Alternative Performance Task Assessment, the Online Writing Assessment, and the National Assessment of Educational Progress (NAEP), or to employ any specific instructional strategy or program to achieve content standards for courses required by the state board. Attainment by the school of at least full accreditation status for the previous year shall be the factor considered for granting the waiver request.

The school curriculum team also may apply for a waiver for instructional resources approved and adopted pursuant to article two-a of this chapter if, in the judgment of the team, the instructional resources necessary for the implementation of the instructional strategies and programs best suited to teach the school’s curriculum are not available through the normal adoption process.

School curriculum teams may request waivers of non-state mandated tests listed in their county board policies. The determination of whether to grant the request shall be based on the school’s accreditation status. Waivers are in effect for one year only. School curriculum teams may resubmit the same or additional waiver requests the following year.

The school team may apply for a grant from the state board for the development or implementation, or both, of remedial and accelerated programs to meet the needs of the students at the individual school.
(b) Each faculty senate with approval of the principal may, in addition to or as an alternative to the school curriculum team provided for in subsection (a) of this section, establish a process for teacher collaboration to improve instruction and learning. The mission of the collaboration process is to review student academic performance based on multiple measures, to identify strategies to improve student performance and make recommendations for improvement to be implemented subject to approval of the principal. The collaborative process shall include such members as determined necessary by the faculty senate to address the needed improvements in the academic performance of students at the school and, if applicable, may consist of multiple subject area subcommittees which may meet independently.
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 ninety days from passage.

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 14th day of March, 2010.

Governor