WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4236

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

Passed March 10, 2012

To Take Effect Ninety Days From Passage
AN ACT to amend and reenact §18A-2-12 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §18A-3C-1, §18A-3C-2 and §18A-3C-3, all relating to establishing a new system of performance evaluations of classroom teachers, principals and assistant principals; exclusions from the definition of professional personnel for certain evaluation purposes; providing findings, purposes, definitions and intent of new provisions; providing for phased implementation and legislative oversight; requiring state board rules and submissions of draft rules to legislative oversight commission; providing minimum provisions of evaluation processes for teachers and principals and specific percentages of evaluation score to be based standards and student performance; providing for evaluations to serve certain purposes, including plans of improvement and personnel actions for unsatisfactory performance; requiring certain employee training prior to implementation of new evaluation processes; providing intent of new comprehensive system of support; requiring the state board to publish
guidelines for county boards on design and implementation of comprehensive system of support; restricting certain funding subject to adoption of comprehensive system plan by county that is verified by state board as meeting certain requirements; specifying contents of plan; and providing for transition of appropriations to support execution of plans and use of funds.

Be it enacted by the Legislature of West Virginia:

That §18A-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §18A-3C-1, §18A-3C-2 and §18A-3C-3, all to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

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

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

(b) The system adopted by the state board 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 but does not include classroom teachers, principals and assistant principals subject to the evaluation processes established pursuant to the provisions of section two, article three-c of this chapter when the school at which these
professional personnel are employed is selected to participate in those evaluation processes as part of the multi-step implementation leading to full statewide implementation by school year 2013-2014.

(d) In developing the professional personnel performance evaluation system, and amendments thereto, the state board shall consult with the Center for Professional Development created in 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 those standards.

(e) The performance evaluation system shall contain, but 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. 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. Until the school or school system at which they are employed is subject to the provisions of article three-c of this chapter, for classroom teachers with five or more years of experience who have not received an unsatisfactory rating, an evaluation shall be conducted or professional growth and development plan required only when the principal determines it is necessary.
for a particular classroom teacher or when a classroom
teacher exercises 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 those standards and other criteria for evaluation for
each professional position evaluated. 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 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 July 1, 1994, 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 or 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. Nothing in article three-c of this chapter may be construed to negate the provisions of subsections (i) and (j) of this section.
ARTICLE 3C. IMPROVING TEACHING AND LEARNING.

§18A-3C-1. Findings; purposes and definition.

(a) The Legislature makes the following findings:

(1) Processes set forth in this article for evaluation, teacher induction and professional growth is not intended to make up for substandard initial preparation of teachers, but instead is intended to build on a solid foundation created by the teacher preparation programs. Therefore, the Legislature expects the teacher preparation programs to graduate teachers who can perform at a level that increases student achievement. The Legislature expects that the processes set forth in this article will allow a teacher to excel beyond that level in the classroom;

(2) The comprehensive system of support provided for in this article should be implemented in a way that, as compared with the beginning teacher internship system, much more effectively provides for the professional growth of teachers;

(3) In order for the comprehensive system of support to much more effectively provide for professional growth for teachers, funding should be greatly increased over and above what has been provided for the beginning teacher internship system; and

(4) Although the quality of the teacher in the classroom is extremely important to the academic achievement of students, students cannot learn if they are not in the classroom. Therefore, attending school on a regular basis is of utmost importance to the academic success of students.

(b) The purpose of this article is to create a comprehensive infrastructure that routinely supports a
continuous process for improving teaching and learning. Its
focus is on developing strong teaching and school leadership,
without which effective learning does not occur. The general
components of this infrastructure include the following:

(1) High-quality teacher preparation, induction and
evaluation;

(2) Universal support for emerging teachers including
comprehensive new teacher induction and support for
student teachers, teachers teaching in assignments for which
they have less than a full professional credential and teacher
candidates pursuing certification through an alternative
route;

(3) Evaluation of the performance of teachers and leaders
in demonstrating high quality professional practice,
leadership and collaboration and the resulting growth in
student learning;

(4) Focused improvement in teaching and learning
through the use of evaluation data to inform the delivery of
professional development and additional supports to
improve teaching based on the evaluation results and to
inform the need for improvements in teacher preparation
programs; and

(5) The creation of a leadership culture that seeks and
builds powerful alliances among all stakeholders focused on
continuous growth in student learning.

(c) For purposes of this article “professional personnel”
includes classroom teachers, assistant principals and
 principals as defined in section one, article one chapter
eighteen-a of this code.
§18A-3C-2. Performance evaluations of professional personnel.

(a) The intent of the Legislature is to allow for a multi-step statewide implementation of performance evaluations for professional personnel pursuant to this section consistent with sound educational practices and resources available resulting in full state-wide implementation by no later than the school year 2013-2014. Beginning with the schools included in the evaluation processes for professional personnel piloted by the Department of Education during the 2011-2012 school year, additional schools or school systems shall be subject to the provisions of this article in accordance with a plan established by the state board to achieve full statewide implementation by no later than the school year 2013-2014. For schools and school systems subject to the provisions of this article, the provisions of this article shall govern when they are in conflict with other provisions of this chapter and chapter eighteen of this code. Specifically, the provisions of this article govern for the performance evaluation of classroom teachers, principals and assistant principals employed in these schools and school systems. To the extent that this article conflicts with the provisions of section twelve, article two of this chapter relating to professional personnel performance evaluations, this article shall govern. The state board shall submit a report on its plan for the phased implementation of this article to the Legislative Oversight Commission on Education Accountability at the Commission's July interim meeting in each year of the phased implementation. The report shall include an update on the implementation of this article including, but not limited to the evaluation process and a list of the schools and school systems subject to the provisions of this article. To assist the Legislative Oversight Commission on Education Accountability in monitoring the implementation of this article, the state board shall report to the Commission upon its request throughout the
implementation process, including but not limited to, reports
on the results of surveys of teachers and principals on the
implementation and use of the new evaluation system, the
adequacy of the professional development given to
employees on the purposes, instruments and procedures of
the evaluation process, the time consumed by the evaluation
process and the various tasks required for employees of
different levels of experience, the aggregate results of the
evaluations and any recommendations for changes in the
process or other aspects of the duties of affected employees
to improve the focus on the core mission of schools of
teaching and learning.

(b) Before July 1, 2013, the state board shall adopt a
legislative rule in accordance with article three-b, chapter
twenty-nine-a of this code, for evaluating the performance of
each professional person each year. The state board shall
submit a draft of the proposed rule to the Legislative
Oversight Commission on Education Accountability by
February 15, 2013, and a final draft proposed rule prior to
adoption. The rule shall provide for performance evaluations
of professional personnel to be conducted in accordance with
this section in each school and school system beginning with
the 2013-14 school year.

(c) (1) The process adopted by the state board for
evaluating the performance of classroom teachers shall
incorporate at least the following:

(A) Alignment with the West Virginia professional
teaching standards adopted by the state board that establish
the foundation for educator preparation, teacher assessment
and professional development throughout the state;

(B) Employment of the professional teaching standards to
provide explicit and extensive measures of the work of
teaching and what teachers must know and be able to do and provide evaluative measures of educator performance;

(C) The use of two pieces of evidence at two points in time over the instructional term to demonstrate student learning as an indicator of educator performance; and

(D) The use of school's school-wide student learning growth as measured by the state-wide summative assessment as an evaluative measure of all educators employed in the school.

(2) Eighty percent of the evaluation shall be based on an appraisal of the educator's ability to perform the critical standard elements of the professional teaching standards. The appraisal shall include conferences with the evaluator reinforced through observation. Fifteen percent of the evaluation shall be based on evidence of the learning of the students assigned to the educator in accordance with paragraph (C), subdivision (1) of this subsection, and five percent of the evaluation shall be based on student learning growth measured by the school-wide score on the state summative assessment in accordance with paragraph (D), subdivision (1) of this subsection.

(d) (1) The process adopted by the state board for evaluating the performance of principals and assistant principals shall include at least the following:

(A) Alignment with the West Virginia professional leadership standards adopted by the state board establishing the responsibility of principals for the collective success of their school including the learning, growth and achievement of students, staff and self;
(B) Employment of the professional leadership standards to provide explicit and extensive measures of the work of school leadership focused on the continuous improvement of teaching and learning. The process shall include conferences and goal setting with the superintendent or his or her designee and the use of a survey of stakeholders to assist in identifying the needs and establishing the goals for the school and the principal. The survey shall be distributed to at least the following stakeholders: Students, parents, teachers and service personnel. The evaluative measures shall include the use of data, evidence and artifacts to confirm the principal's performance on achieving the goals established by the principal and superintendent;

(C) The use of two pieces of evidence at two points in time over the instructional term to demonstrate the growth in student learning at the school; and

(D) The use of the school's school-wide student learning growth as measured by the state-wide summative assessment as an evaluative measure of all educators employed in the school.

(2) Eighty percent of the evaluation shall be based on an appraisal of the principal's or the assistant principal's ability to perform the critical standard elements of the professional leadership standards and achieve the goals established for the principal and the school. Fifteen percent of the evaluation shall be based on evidence of the learning of the students assigned to the school in accordance with paragraph (C), subdivision (1) of this subsection, and five percent of the evaluation shall be based on student learning growth measured by the school-wide score on the state summative assessment in accordance with paragraph (D), subdivision (1) of this subsection.
Evaluations of the performance of professional personnel shall serve the following purposes:

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

(2) Serve as the basis for providing professional development specifically targeted on the area or areas identified through the evaluation process as needing improvement. If possible, this targeted professional development should be delivered at the school-site using collaborative processes, mentoring or coaching or other approaches that maximize use of the instructional setting;

(3) Serve as the basis for establishing priorities for the provision of county-level professional development when aggregate evaluation data from the county's schools indicates an area or areas of needed improvement;

(4) Serve as a basis for informing the teacher preparation programs in this state of an area or areas of needed improvement in the programs, or informing a specific program of needed improvement, when state-level aggregate evaluation data indicates that beginning teachers who have graduated from the program have specific weaknesses;

(5) Provide an indicator of level of performance of the professional personnel;

(6) Serve as a basis for programs to increase the professional growth and development of professional personnel; and

(7) Serve as documentation for a dismissal on the grounds of unsatisfactory performance.
(f) The rule adopted by the state board shall include standards for performance of professional personnel and the criteria to be used to determine whether their performance meets the standards. The rule also shall include guidance on best practices for providing time within the school day for teachers subject to performance evaluations under this section to participate in the collaborative mentoring or coaching and planning processes necessary for execution of the performance evaluation process and achieving advanced levels of performance.

(g) The rule adopted by the state board shall include provisions for written improvement plans when necessary to improve the performance of the professional personnel. The written improvement plan shall be specific as to what improvements are needed in the performance of the professional personnel and shall clearly set forth recommendations for improvements including recommendations for additional education and training of professionals subject to recertification. Professional personnel 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.

(h) A professional person whose performance is considered to be unsatisfactory shall be given written notice of his or her deficiencies. A written improvement plan to correct these deficiencies shall be developed by the employing county board and the employee. The professional person shall be given a reasonable period of time, not exceeding twelve months, to accomplish the requirements of the improvement plan and shall receive a written statement of the resources and assistance available for the purposes of correcting the deficiencies. 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 written
recommendations for improvement or may recommend the
dismissal of the professional personnel in accordance with the
provisions of section eight, article two of this chapter.

(i) 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.

(j) Prior to implementation of the evaluation process
pursuant to this section at a school, each affected employee
shall be given training to ensure that the employees have a
full understanding of the purposes, instruments and
procedures used in evaluating their performance. Thereafter,
this training shall be held annually at the beginning of the
employment term.

§18A-3C-3. Comprehensive system for teacher induction and
professional growth.

(a) The intent of the Legislature is to allow for a multistep
statewide implementation of a comprehensive system of
support for building professional practice of beginning
teachers, specifically those on the initial and intermediate
progressions, consistent with sound educational practices and
resources available. In this regard, it is the intent of the
Legislature that the transition of schools and school systems
to a comprehensive system of support that includes support
for improved professional performance targeted on
deficiencies identified through the evaluation process will be
implemented concurrent with the first year that a school or
system receives final evaluation results from the performance
evaluation process pursuant to section two of this article.
Further, because of significant variability among the counties,
not only in the size of their teaching force, distribution of
facilities and available resources, but also because of their
varying needs, the Legislature intends for the implementation
of this section to be accomplished in a manner that provides
adequate flexibility to the counties to design and implement
a comprehensive system of support for improving
professional performance that best achieves the goals of this
section within the county. Finally, because of the critical
importance of ensuring that all teachers perform at the
accomplished level or higher in the delivery of instruction
that at least meets the West Virginia professional teaching
standards and because achieving this objective at a minimum
entails providing assistance to address the needs as indicated
by the data informed results of annual performance
evaluations, including the self-assessed needs of the teachers
themselves, the Legislature expects the highest priority for
county, regional and state professional development will be
on meeting these needs and that the transition to a
comprehensive system of support for improving professional
practice will reflect substantial redirection of existing
professional development resources toward this highest
priority.

(b) On or before July 1, 2012, the state board shall
publish guidelines on the design and implementation of a
comprehensive system of support for improving professional
practice. The purpose of the guidelines is to assist the county
board with the design and implementation of a system that
best achieves the goals of this section within the county. The
guidelines may include examples of best practices and resources available to county boards to assist them with the design and implementation of a comprehensive system.

(c) For schools and school systems subject to the provisions of this article, the provisions of this article govern when they are in conflict with section two-b, article three of this chapter relating to beginning teacher internships, or in conflict with other provisions of this chapter and chapter eighteen of this code.

(d) Effective for the school year beginning July 1, 2013, and thereafter, a county board is not eligible to receive state funding appropriated for the purposes of this section or any other provision of law related to beginning teacher internships and mentor teachers unless it has adopted a plan for implementation of a comprehensive system of support for improving professional practice, the plan has been verified by the state board as meeting the requirements of this section and the county is implementing the plan. The plan shall address the following:

(1) The manner in which the county will provide the strong school-based support and supervision that will assist beginning teachers in developing instructional and management strategies, procedural and policy expertise, and other professional practices they need to be successful in the classroom and perform at the accomplished level. Nothing in this subdivision prohibits a school or school system that was granted an exception or waiver from section two-c, article three of this chapter prior to the effective date of this section from continuing implementation of the program in accordance with the exception or waiver;

(2) The manner in which the county in cooperation with the teacher preparation programs in this state will provide
strong school-based support and assistance necessary to make student teaching a productive learning experience;

(3) The manner in which the county will use the data from the educator performance evaluation system to serve as the basis for providing professional development specifically targeted on the area or areas identified through the evaluation process as needing improvement. If possible, this targeted professional development should be delivered at the school-site using collaborative processes, mentoring or coaching or other approaches that maximize use of the instructional setting;

(4) The manner in which the county will use the data from the educator performance evaluation system to serve as the basis for establishing priorities for the provision of county-level professional development when aggregate evaluation data from the county’s schools indicates an area or areas of needed improvement;

(5) If a county uses master teachers, mentors, academic coaches or any other approaches using individual employees to provide support, supervision or other professional development or training to other employees for the purpose of improving their professional practice, the manner in which the county will select each of these individual employees based on demonstrated superior performance and competence as well as the manner in which the county will coordinate support for these employees: Provided, That the employment of persons for these positions shall adhere to the posting and other provisions of section seven-a, article four of this chapter utilizing subsection (c) of said section seven-a to judge the qualifications of the applicants. If the duties of the position are to provide mentoring to an individual teacher at only one school, then priority shall being given to applicants
employed at the school at which those duties will be performed;

(6) The manner in which the county will use local resources available including, but not limited to, funds for professional development and academic coaches, to focus on the priority professional development goals of this section;

(7) The manner in which the county will adjust its scheduling, use of substitutes, collaborative planning time, calendar or other measures as may be necessary to provide sufficient time for professional personnel to accomplish the goals of this section as set forth in the county’s plan; and

(8) The manner in which the county will monitor and evaluate the effectiveness of implementation and outcomes of the county system of support for improving professional practice.

(e) Effective the school year beginning July 1, 2013, and thereafter, appropriations for beginning teacher mentors and any new appropriation which may be made for the purposes of this section shall be expended by county boards only to accomplish the activities as set forth in their county plan pursuant to this section. Effective the school year beginning July 1, 2013, and thereafter, no specific level of compensation is guaranteed for any employee service or employment as a mentor and such service or employment is not subject to the provisions of this code governing extra duty contracts except as provided in subdivision (5), subsection (c) of this section.

(f) The Legislative Oversight Commission on Education Accountability shall review the progress of the implementation of this article and may make any recommendations it considers necessary to the Legislature during the 2013 regular legislative session.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within bill approved this the 30th day of March, 2012.
PRESENTED TO THE GOVERNOR

March 27, 2012

Time: 1:30 pm