

## FOREWORD

The West Virginia Department of Education is pleased to prepare the Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session 2017 as a document to assist educators and others in understanding and implementing education bills enacted by this year's Legislature.

This document should be placed with your most current copy of the School Laws of West Virginia as it contains new language/laws that must be reviewed in conjunction with the School Laws book.

For each of the acts included in this publication, the format is as follows: effective date, code reference, title and major new provisions. As time constraints have not permitted an in-depth analysis of these bills from the regular session, it must be emphasized that the information provided in this document must not be considered as official interpretations of the State Superintendent of Schools. Formal interpretations to specific questions will be provided upon request. Should you have any questions about a particular bill, please contact the West Virginia Department of Education contact listed on that bill.

The Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session 2017 will be of considerable value during the coming school year. Suggestions for improving this document as a service to the Department's clientele are always welcome. This document is also available online at <http://wvde.state.wv.us/legislature/2017greenbook.pdf>.

Please feel free to call or write if you need additional information regarding bills enacted during the 2017 regular session of the West Virginia Legislature.

Steven L. Paine, Ed.D.  
State Superintendent of Schools

**CODE CHANGES**

NEW CODE	REVISED CODE	
§18-2-7b (HB 2195)	§18-2-5b (SB 231)	§18-9A-5 (HB 2561)
§18-2-25b (SB 40)	§18-2-9 (HB 3080)	§18-9A-6a (HB 2561)
§18-5-13b (HB 2711)	§18-2-26 (HB 2711)	§18-9A-7 (HB 2561)
§18-5-13c (HB 2711)	§18-2E-1a (HB 2711)	§18-9A-8a (HB 2711)
§18-5-22d (SB 36)	§18-2E-4 (HB2494)	§18-9A-9 (HB 2561)
§18-5F-1 (SB 630)	§18-2E-5 (HB 2711)	§18-9A-10 (HB 2561)
§18-5F-2 (SB 630)	§18-5-13 (HB 2711)	§18-21-2 (HB 2188)
§18-5F-3 (SB 630)	§18-5-18 (SB 186)	§18A-2-3 (HB 2637)
§18-5F-4 (SB 630)	§18-5-22c (HB 2373)	§18A-3-2a (HB 2771)
§18-5F-5 (SB 630)	§18-5-44 (SB186)	§18A-3-6 (HB 2704)
§18-5F-6 (SB 630)	§18-5-45 (HB 2711)	§18A-3-10 (HB 2704)
§18-9D-4d (HB 2561)	§18-8-1a (SB 186)	§18A-4-14 (HB 2711)
§18A-4-22 (SB 256)	§18-8-4 (HB 2702)	§55-7-19 (SB 497)
§30-5-11a (HB 2846)	§18-9A-4 (HB 2561)	
<b>REPEALED CODE</b>		
§18-2-26a (HB 2711)		



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**Senate Bill 36:                   Permitting school nurses to possess and administer opioid antagoists**

Effective Date:                   June 30, 2017

Code Reference:                   Adds §18-5-22d

WVDE Contact:                   Becky King, Office of Special Education, 304-558-2696

Bill Summary:                   The bill permits both private and public schools to maintain an opioid antagonist (Narcan) for use by the school nurse, and nonmedical school personnel who have been trained in the administration of opioid antagonist and authorized by the school administrator. These individuals are authorized to administer when they believe a student, school personnel or person is experiencing an adverse opioid event. The parent/guardian of a student receiving an opioid antagonist must be notified after administration.

School nurses and trained nonmedical school personnel administering an opioid antagonist pursuant to the provisions of this section of code are immune from liability, unless such administration was done with gross negligence or was willful misconduct. The bill clarifies that nothing in bill requires a school to maintain an opioid antagonist at the school, and schools are not liable for not maintaining an opioid antagonist on site.

All county boards are required to collect and compile aggregate data on adverse opioid events resulting in the administration of an opioid antagonist maintained by a school. This is to be submit to State Superintendent, who must annually prepare a report and submit to Joint Committee on Government and Finance.

The State Board, after consulting with the State Health Officer, is required to adopt a policy to implement this bill. At a minimum, the policy must include: (1) minimum requirements for nonmedical school personnel to administer an opioid antagonist; (2) training requirements for nonmedical school personnel; (3) training on what constitutes an adverse opioid event; (4) storage requirements for the opioid antagonist; (5) notice requirements to parents if a student is administered an opioid antagonist; (6) documentation that must be maintained by the school; and (7) reporting requirements.

## ARTICLE 5. COUNTY BOARD OF EDUCATION.

### §18-5-22d. Providing for the maintenance and use of opioid antagonist; administration; notice; indemnity from liability; rules.

(a) A public, private, parochial or denominational school located within this state may possess and maintain at the school a supply of an opioid antagonist for use in emergency medical care or treatment for an adverse opioid event. Opioid antagonists shall be maintained by the school in a secure location which is only accessible by medical personnel and authorized nonmedical personnel and not by students.

(b) A school nurse, as set forth in section twenty-two of this article, is authorized to administer an opioid antagonist to a student, school personnel or a person during regular school hours, at a school function, or at an event on school property when the school nurse medically believes the individual is experiencing an adverse opioid event.

(c) Nonmedical school personnel who have been trained in the administration of an opioid antagonist and who have been designated and authorized by the school to administer the opioid antagonist are authorized to administer an opioid antagonist to a student, school personnel or a person during regular school hours, at a school function, at an event on school property when the authorized and designated nonmedical school personnel reasonably believes, based upon their training, that the individual is experiencing an adverse opioid event.

(d) Prior notice to the parents of a student of the administration of the opioid antagonist is not required. Immediately following the administration of the opioid antagonist, the school shall provide notice to the parent of a student who received the opioid antagonist.

(e) A school nurse or trained and authorized nonmedical school personnel who administer an opioid antagonist as provided in this section is immune from liability for any civil action arising out of an act or omission resulting from the administration of the opioid antagonist unless the act or omission was the result of the school nurse or trained and authorized nonmedical school personnel's gross negligence or willful misconduct.

(f) All county boards of education are required to collect and compile aggregate data on adverse opioid events resulting in the administration of school maintained opioid antagonist in their county during a school year and forward the data to State Superintendent of Schools. The State Superintendent of Schools shall prepare an annual report to be presented to the Joint Committee on Government and Finance as set forth in article three, chapter four of this code, by December 31 of each year.

(g) Nothing in this section requires a public, private, parochial or denominational school located within this state to possess an opioid antagonist. A public, private, parochial or denominational school located within this state or a county board of education is immune from liability from any civil action arising from the public, private,

parochial or denominational school located within this state not possessing an opioid antagonist in the school.

(h) The State Board of Education, as defined in article two of this chapter, shall consult with the State Health Officer, as defined in section four, article three, chapter thirty of this code, and promulgate rules necessary to effectuate the provisions of this section in accordance with the provisions of article three-b, chapter twenty-nine-a of this code. The rules shall provide, at a minimum, for:

(1) The criteria for selection and minimum requirements of nonmedical school personnel who may administer opioid antagonist following the necessary training;

(2) The training requirements necessary for nonmedical school personnel to be authorized to administer an opioid antagonist;

(3) Training on what constitutes an adverse opioid event;

(4) Storage requirements for maintaining the opioid antagonist within the schools;

(5) Comprehensive notice requirements to the parents of a student who was administered a school maintained opioid antagonist including who administered the antagonist, the rational for administering the antagonist, the approximate time of the administration of the opioid antagonist and any other necessary elements to make the student's parents fully aware of the circumstances surrounding the administration of the antagonist;

(6) Any and all necessary documentation to be kept and maintained regarding receipt, inventory, storage and usage of all opioid antagonist;

(7) Detailed reporting requirements for county boards of education on incidents of use of school maintained opioid antagonist during a school year; and

(8) Any other requirements necessary to fully implement this section.

Bill Sponsors: Senators Stollings, Gaunch, Ojeda, Facemire, Jeffries and Beach

**Senate Bill 40**

**Requiring the inclusion of protocols for response to after-school emergencies in school crisis response plans**

Effective Date:

August 1, 2017

Code Reference:

Adds §18-2-25b

WVDE Contact:

Betty Jo Jordan, Office of the State Superintendent, 304-558-2118

Bill Summary:

The bill requires the West Virginia Secondary Schools Activities Commission (WVSSAC) to establish a rule setting forth guidelines for emergency action plans for athletics for member schools. Such plans are designed to outline the response procedure to athletic injuries that occur on school property during school-sponsored athletic events. Plans must include at least: (1) protocols for practices and for games, (2) directives for personnel or equipment which should be available, and (3) training needed for school or volunteer personnel on an as-needed basis.

Member schools must submit plans to WVSSAC and their respective county board of education no later than December 31, 2017. The school must provide a copy of the plan to each local emergency response agency that has a role in the plan. The bill provides limited liability to health care providers that have an agreement with county board of education to provide care without remuneration, so long as any care provided is not grossly negligent.

## ARTICLE 2. STATE BOARD OF EDUCATION.

### §18-2-25b. Emergency action plans for athletics.

(a) No later than August 1, 2017, the West Virginia Secondary Schools Athletics Commission shall promulgate rules to establish guidelines for emergency action plans for athletics designed to respond to athletic injuries that occur on school property during school-sponsored athletic events. The rules shall address, at a minimum:

(1) Protocols for practices and for games;

(2) Directives for personnel or equipment which should be available on sports fields or in school buildings for both girls' and boys' teams; and

(3) Training needed for school or volunteer personnel on an as-needed basis.

(b) All member schools shall submit an emergency action plan for athletics to the West Virginia Secondary Schools Athletics Commission and their county boards of education by December 31, 2017: *Provided*, That the county boards shall keep the emergency plan of each school in the county on file and, unless otherwise provided for, provide a copy of each school's emergency action plan for athletics to each local emergency response agency that has a role in the plan.

(c) Any person licensed by, or certified or registered in, this state to provide health care or professional health care services who renders services of a medical nature to students under this section, who has an agreement with a county board of education that defines the scope of his or her duties as such, and for which no remuneration is demanded or received, is not liable for any civil damages as a result of rendering such services, or as a result of any act or failure to act in providing or arranging further medical treatment.

(1) The limitation of liability only applies if the services are provided in accordance with acceptable standards of care and the licensed health care provider is not grossly negligent or does not demonstrate willful misconduct.

(2) Any liability is limited to the applicable limits of the professional liability insurance provided by the State Board of Risk and Insurance Management in effect at the time.

(3) Nothing in this subsection nullifies the immunity from civil liability as granted pursuant to section fifteen, article seven, chapter fifty-five of this code or federal law except to the extent to which the actions are covered within the applicable limits of the professional liability insurance provided by the State Board of Risk and Insurance Management pursuant to this section and in effect at the time.

Bill Sponsors: Senators Stollings, Ojeda and Jeffries

**Senate Bill 186**

**Adjusting date when children become eligible for certain school programs and school attendance requirements**

Effective Date:

July 4, 2017

Code Reference:

Amends §18-5-18; §18-5-44 and §18-8-1a

WVDE Contact:

Monica DellaMea, Office of Early Learning, 304-558-9994

Bill Summary:

This piece of legislation modifies the kindergarten and pre-K enrollment cutoff date from September 1 to July 1. In order to not adversely affect any child currently enrolling in kindergarten or pre-K, the bill is phased in over the next two years:

Pre-K: Effective the 2018-2019 school year, children must attain the age of four prior to July 1 in order to enroll in pre-K.

Kindergarten: Effective the 2019-2020 school year, children must attain the age of five prior to July 1 in order to enroll in kindergarten.

## ARTICLE 5. COUNTY BOARD OF EDUCATION.

### §18-5-18. Kindergarten programs.

(a) County boards shall provide kindergarten programs for all children who have attained the age of five prior to September 1 of the school year in which the pupil enters the kindergarten program and may, pursuant to the provisions of section forty-four of this article five, chapter eighteen of this code, establish kindergarten programs designed for children below the age of five. The programs for children who shall have attained the age of five shall be full-day everyday programs.

(b) Beginning in the school year 2019-2020, county boards shall provide kindergarten programs for all children who have attained the age of five prior to July 1 of the school year in which the pupil enters the kindergarten program and may, pursuant to the provisions of section forty-four of this article, establish kindergarten programs designed for children below the age of five. The programs for children who shall have attained the age of five shall be full-day everyday programs.

~~(b)~~ (c) Persons employed as kindergarten teachers, as distinguished from paraprofessional personnel, shall be required to hold a certificate valid for teaching at the assigned level as prescribed by rules established by the state board. The state board shall establish the minimum requirements for all paraprofessional personnel employed in kindergarten programs established pursuant to the provisions of this section and no such paraprofessional personnel may be employed in any kindergarten program unless he or she meets the minimum requirements. Beginning July 1, 2014, any person previously employed as an aide in a kindergarten program and who is employed in the same capacity on and after that date and any new person employed in that capacity in a kindergarten program on and after that date shall hold the position of aide and either Early Childhood Classroom Assistant Teacher I, Early Childhood Classroom Assistant Teacher II or Early Childhood Classroom Assistant Teacher III. Any person employed as an aide in a kindergarten program that is eligible for full retirement benefits before July 1, 2020, may remain employed as an aide in that position and shall be granted an Early Childhood Classroom Assistant Teacher permanent authorization by the state superintendent pursuant to section two-a, article three, chapter eighteen-a of this code.

~~(e)~~ (d) The state board, with the advice of the state superintendent, shall establish and prescribe guidelines and criteria relating to the establishment, operation and successful completion of kindergarten programs in accordance with the other provisions of this section. Guidelines and criteria so established and prescribed also are intended to serve for the establishment and operation of nonpublic kindergarten programs and shall be used for the evaluation and approval of those programs by the state superintendent, provided application for the evaluation and approval is made in writing by proper authorities in control of the programs. The state superintendent, annually, shall publish a list of nonpublic kindergarten programs, including Montessori kindergartens that have been approved in accordance with the provisions of this section. Montessori kindergartens established and operated in accordance with usual and

customary practices for the use of the Montessori method which have teachers who have training or experience, regardless of additional certification, in the use of the Montessori method of instruction for kindergartens shall be considered to be approved.

~~(d)~~ (e) Pursuant to the guidelines and criteria, and only pursuant to the guidelines and criteria, the county boards may establish programs taking kindergarten to the homes of the children involved, using educational television, paraprofessional personnel in addition to and to supplement regularly certified teachers, mobile or permanent classrooms and other means developed to best carry kindergarten to the child in its home and enlist the aid and involvement of its parent or parents in presenting the program to the child; or may develop programs of a more formal kindergarten type, in existing school buildings, or both, as the county board may determine, taking into consideration the cost, the terrain, the existing available facilities, the distances each child may be required to travel, the time each child may be required to be away from home, the child's health, the involvement of parents and other factors as each county board may find pertinent. The determinations by any county board are final and conclusive.

#### **§18-5-44. Early childhood education programs.**

(a) For the purposes of this section, an “early childhood education program” means a program created under this section for children who have attained the age of four prior to September 1 of the school year in which the children enter the program.

~~(b) *Findings.*—~~ For the purposes of this section beginning in the school year 2018-2019, an “early childhood education program” means a program created under this section for children who have attained the age of four prior to July 1 of the school year in which the children enter the program.

~~(b) (c) *Findings.* — Beginning no later than the school year 2012-2013 and continuing thereafter, county boards shall provide early childhood education programs for all children who have attained the age of four prior to September 1 of the school year in which the children enter the early childhood education program. Beginning no later than the school year 2016-2017 and continuing thereafter, these early childhood education programs shall provide at least forty-eight thousand minutes annually and no less than fifteen hundred minutes of instruction per week.~~

(1) Among other positive outcomes, early childhood education programs have been determined to:

- (A) Improve overall readiness when children enter school;
- (B) Decrease behavioral problems;
- (C) Improve student attendance;

- (D) Increase scores on achievement tests;
  - (E) Decrease the percentage of students repeating a grade; and
  - (F) Decrease the number of students placed in special education programs;
- (2) Quality early childhood education programs improve school performance and low-quality early childhood education programs may have negative effects, especially for at-risk children;
- (3) West Virginia has the lowest percentage of its adult population twenty-five years of age or older with a bachelor's degree and the education level of parents is a strong indicator of how their children will perform in school;
- (4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty states in the percentage of school children eligible for free and reduced lunches and this percentage is a strong indicator of how the children will perform in school;
- (5) For the school year 2008-2009, 13,135 students were enrolled in prekindergarten, a number equal to approximately sixty-three percent of the number of students enrolled in kindergarten;
- (6) Excluding projected increases due to increases in enrollment in the early childhood education program, projections indicate that total student enrollment in West Virginia will decline by one percent, or by approximately 2,704 students, by the school year 2012-2013;
- (7) In part, because of the dynamics of the state aid formula, county boards will continue to enroll four-year-old students to offset the declining enrollments;
- (8) West Virginia has a comprehensive kindergarten program for five-year-olds, but the program was established in a manner that resulted in unequal implementation among the counties, which helped create deficit financial situations for several county boards;
- (9) Expansion of current efforts to implement a comprehensive early childhood education program should avoid the problems encountered in kindergarten implementation;
- (10) Because of the dynamics of the state aid formula, counties experiencing growth are at a disadvantage in implementing comprehensive early childhood education programs; and
- (11) West Virginia citizens will benefit from the establishment of quality comprehensive early childhood education programs.

~~(d) The program shall meet the following criteria: County boards shall provide early childhood education programs for all children who have attained the age of four prior to September 1 of the school year in which the children enter the early childhood education program. These early childhood education programs shall provide at least forty-eight thousand minutes annually and no less than fifteen hundred minutes of instruction per week.~~

~~(1) It shall be voluntary, except that, upon enrollment, the provisions of section one-a, article eight of this chapter apply to an enrolled student, subject to subdivision (4) of this subsection;~~

~~(2) It shall be open to all children meeting the age requirement set forth in this section;~~

~~(3) It shall provide no less than fifteen hundred minutes of instruction per week, in a full-day program with at least forty-eight thousand minutes of instruction annually; and~~

~~(4) It shall permit a parent of an enrolled child to withdraw the child from that program by notifying the district in writing. A child withdrawn under this section is not subject to the attendance provisions of this chapter until that child again enrolls in a public school in this state.~~

~~(e) Enrollment of students in Head Start, or in any other program approved by the state superintendent as provided in this section, may be counted toward satisfying the requirement of subsection (c) of this section. Beginning in the school year 2018-2019, county boards shall provide early childhood education programs for all children who have attained the age of four prior to July 1 of the school year in which the children enter the early childhood education program.~~

~~(f) For the purposes of implementation financing, all counties are encouraged to make use of funds from existing sources, including: The program shall meet the following criteria:~~

~~(1) Federal funds provided under the Elementary and Secondary Education Act pursuant to 20 U. S. C. §6301, *et seq.*; It shall be voluntary, except that, upon enrollment, the provisions of section one-a, article eight of this chapter apply to an enrolled student, subject to subdivision (4) of this subsection;~~

~~(2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, *et seq.*; It shall be open to all children meeting the age requirement set forth in this section;~~

~~(3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601, *et seq.*; It shall provide no less than fifteen hundred minutes of instruction per week, in a full-day program with at least forty-eight thousand minutes of instruction annually; and~~

~~(4) Funds provided by the School Building Authority pursuant to article nine-d of this chapter; It shall permit a parent of an enrolled child to withdraw the child from that program by notifying the district in writing. A child withdrawn under this section is not subject to the attendance provisions of this chapter until that child again enrolls in a public school in this state.~~

~~(5) In the case of counties with declining enrollments, funds from the state aid formula above the amount indicated for the number of students actually enrolled in any school year; and~~

~~(6) Any other public or private funds.~~

~~(g) Each county board shall develop a plan for implementing the program required by this section. The plan shall include the following elements: Enrollment of students in Head Start, or in any other program approved by the state superintendent as provided in this section, may be counted toward satisfying the requirement of subsection (c) of this section.~~

~~(1) An analysis of the demographics of the county related to early childhood education program implementation;~~

~~(2) An analysis of facility and personnel needs;~~

~~(3) Financial requirements for implementation and potential sources of funding to assist implementation;~~

~~(4) Details of how the county board will cooperate and collaborate with other early childhood education programs including, but not limited to, Head Start, to maximize federal and other sources of revenue;~~

~~(5) Specific time lines for implementation; and~~

~~(6) Any other items the state board may require by policy.~~

~~(h) A county board shall submit its plan to the Secretary of the Department of Health and Human Resources. The secretary shall approve the plan if the following conditions are met: For the purposes of implementation financing, all counties are encouraged to make use of funds from existing sources, including:~~

~~(1) The county board has maximized the use of federal and other available funds for early childhood programs; and Federal funds provided under the Elementary and Secondary Education Act pursuant to 20 U. S. C. §6301, et seq.;~~

~~(2) The county board has provided for the maximum implementation of Head Start programs and other public and private programs approved by the state superintendent~~

pursuant to the terms of this section; or Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, et seq.;

~~(3) The secretary finds that, if the county board has not met one or more of the requirements of this subsection, the county board has acted in good faith and the failure to comply was not the primary fault of the county board. Any denial by the secretary may be appealed to the circuit court of the county in which the county board is located. Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601, et seq.;~~

(4) Funds provided by the School Building Authority pursuant to article nine-d of this chapter;

(5) In the case of counties with declining enrollments, funds from the state aid formula above the amount indicated for the number of students actually enrolled in any school year; and

(6) Any other public or private funds.

~~(i) The county board shall submit its plan for approval to the state board. The state board shall approve the plan if the county board has complied substantially with the requirements of subsection (g) of this section and has obtained the approval required in subsection (h) of this section. Each county board shall develop a plan for implementing the program required by this section. The plan shall include the following elements:~~

(1) An analysis of the demographics of the county related to early childhood education program implementation;

(2) An analysis of facility and personnel needs;

(3) Financial requirements for implementation and potential sources of funding to assist implementation;

(4) Details of how the county board will cooperate and collaborate with other early childhood education programs including, but not limited to, Head Start, to maximize federal and other sources of revenue;

(5) Specific time lines for implementation; and

(6) Any other items the state board may require by policy.

~~(j) Every county board shall submit its plan for reapproval by the Secretary of the Department of Health and Human Resources and by the state board at least every two years after the initial approval of the plan and until full implementation of the early childhood education program in the county. As part of the submission, the county board shall provide a detailed statement of the progress made in implementing its plan. The~~

~~standards and procedures provided for the original approval of the plan apply to any reapproval. A county board shall submit its plan to the Secretary of the Department of Health and Human Resources. The secretary shall approve the plan if the following conditions are met:~~

~~(1) The county board has maximized the use of federal and other available funds for early childhood programs; and~~

~~(2) The county board has provided for the maximum implementation of Head Start programs and other public and private programs approved by the state superintendent pursuant to the terms of this section; or~~

~~(3) The secretary finds that, if the county board has not met one or more of the requirements of this subsection, the county board has acted in good faith and the failure to comply was not the primary fault of the county board. Any denial by the secretary may be appealed to the circuit court of the county in which the county board is located.~~

~~(k) A county board may not increase the total number of students enrolled in the county in an early childhood program until its program is approved by the Secretary of the Department of Health and Human Resources and the state board. The county board shall submit its plan for approval to the state board. The state board shall approve the plan if the county board has complied substantially with the requirements of subsection (g) of this section and has obtained the approval required in subsection (h) of this section.~~

~~(l) The state board annually may grant a county board a waiver for total or partial implementation if the state board finds that all of the following conditions exist: Every county board shall submit its plan for reapproval by the Secretary of the Department of Health and Human Resources and by the state board at least every two years after the initial approval of the plan and until full implementation of the early childhood education program in the county. As part of the submission, the county board shall provide a detailed statement of the progress made in implementing its plan. The standards and procedures provided for the original approval of the plan apply to any reapproval.~~

~~(1) The county board is unable to comply either because:~~

~~(A) It does not have sufficient facilities available; or~~

~~(B) It does not and has not had available funds sufficient to implement the program;~~

~~(2) The county has not experienced a decline in enrollment at least equal to the total number of students to be enrolled; and~~

~~(3) Other agencies of government have not made sufficient funds or facilities available to assist in implementation.~~

~~Any county board seeking a waiver shall apply with the supporting data to meet the criteria for which they are eligible on or before March 25 for the following school year. The state superintendent shall grant or deny the requested waiver on or before April 15 of that same year.~~

~~(m) The provisions of subsections (b), (c) and (d), section eighteen of this article relating to kindergarten apply to early childhood education programs in the same manner in which they apply to kindergarten programs. A county board may not increase the total number of students enrolled in the county in an early childhood program until its program is approved by the Secretary of the Department of Health and Human Resources and the state board.~~

~~(n) Except as required by federal law or regulation, no county board may enroll students who will be less than four years of age prior to September 1 for the year they enter school. The state board annually may grant a county board a waiver for total or partial implementation if the state board finds that all of the following conditions exist:~~

~~(1) The county board is unable to comply either because:~~

~~(A) It does not have sufficient facilities available; or~~

~~(B) It does not and has not had available funds sufficient to implement the program;~~

~~(2) The county has not experienced a decline in enrollment at least equal to the total number of students to be enrolled; and~~

~~(3) Other agencies of government have not made sufficient funds or facilities available to assist in implementation.~~

~~Any county board seeking a waiver shall apply with the supporting data to meet the criteria for which they are eligible on or before March 25 for the following school year. The state superintendent shall grant or deny the requested waiver on or before April 15 of that same year.~~

~~(o) Neither the state board nor the state department may provide any funds to any county board for the purpose of implementing this section unless the county board has a plan approved pursuant to subsection (h), (i) and (j) of this section. The provisions of subsections (b), (c) and (d), section eighteen of this article relating to kindergarten apply to early childhood education programs in the same manner in which they apply to kindergarten programs.~~

~~(p) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this section. The state board shall consult with the Secretary of the Department of Health and Human Resources in the preparation of the rule. The rule shall contain the following: Except as required by federal law or regulation, no county~~

board may enroll students who will be less than four years of age prior to September 1 for the year they enter school.

~~(1) Standards for curriculum;~~

~~(2) Standards for preparing students;~~

~~(3) Attendance requirements;~~

~~(4) Standards for personnel; and~~

~~(5) Any other terms necessary to implement the provisions of this section.~~

(q) The rule shall include the following elements relating to curriculum standards: Except as required by federal law or regulation, beginning in the school year 2018-2019, no county board may enroll students who will be less than four years of age prior to July 1 for the year they enter school.

~~(1) A requirement that the curriculum be designed to address the developmental needs of four-year-old children consistent with prevailing research on how children learn;~~

~~(2) A requirement that the curriculum be designed to achieve long-range goals for the social, emotional, physical and academic development of young children;~~

~~(3) A method for including a broad range of content that is relevant, engaging and meaningful to young children;~~

~~(4) A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and instructional strategies to respond to differences in prior experience, maturation rates and learning styles that young children bring to the classroom;~~

~~(5) A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;~~

~~(6) A requirement that the curriculum meet the recognized standards of the relevant subject matter disciplines;~~

~~(7) A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;~~

~~(8) A requirement that the curriculum emphasize the development of thinking, reasoning, decision-making and problem-solving skills;~~

~~(9) A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and~~

~~(10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.~~

~~(r) After the school year 2012-2013, on or before July 1 of each year, each county board shall report the following information to the Secretary of the Department of Health and Human Resources and the state superintendent: Neither the state board nor the state department may provide any funds to any county board for the purpose of implementing this section unless the county board has a plan approved pursuant to subsections (h), (i) and (j) of this section.~~

~~(1) Documentation indicating the extent to which county boards are maximizing resources by using the existing capacity of community-based programs, including, but not limited to, Head Start and child care; and~~

~~(2) For those county boards that are including eligible children attending approved, contracted community-based programs in their net enrollment for the purposes of calculating state aid pursuant to article nine-a of this chapter, documentation that the county board is equitably distributing funding for all children regardless of setting.~~

~~(s) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this section. The state board shall consult with the Secretary of the Department of Health and Human Resources in the preparation of the rule. The rule shall contain the following:~~

~~(1) Standards for curriculum;~~

~~(2) Standards for preparing students;~~

~~(3) Attendance requirements;~~

~~(4) Standards for personnel; and~~

~~(5) Any other terms necessary to implement the provisions of this section.~~

~~(t) The rule shall include the following elements relating to curriculum standards:~~

~~(1) A requirement that the curriculum be designed to address the developmental needs of four-year-old children consistent with prevailing research on how children learn;~~

~~(2) A requirement that the curriculum be designed to achieve long-range goals for the social, emotional, physical and academic development of young children;~~

(3) A method for including a broad range of content that is relevant, engaging and meaningful to young children;

(4) A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and instructional strategies to respond to differences in prior experience, maturation rates and learning styles that young children bring to the classroom;

(5) A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;

(6) A requirement that the curriculum meet the recognized standards of the relevant subject matter disciplines;

(7) A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;

(8) A requirement that the curriculum emphasize the development of thinking, reasoning, decisionmaking and problem-solving skills;

(9) A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and

(10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.

(u) After the school year 2012-2013, on or before July 1 of each year, each county board shall report the following information to the Secretary of the Department of Health and Human Resources and the state superintendent:

(1) Documentation indicating the extent to which county boards are maximizing resources by using the existing capacity of community-based programs, including, but not limited to, Head Start and child care; and

(2) For those county boards that are including eligible children attending approved, contracted community-based programs in their net enrollment for the purposes of calculating state aid pursuant to article nine-a of this chapter, documentation that the county board is equitably distributing funding for all children regardless of setting.

## **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

**§18-8-1a. Commencement and termination of compulsory school attendance; public school entrance requirements; exceptions.**

(a) Notwithstanding the provisions of section one of this article, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to September 1 of such year or upon enrolling in a publicly supported kindergarten program and, subject to subdivision (3) of this subsection, continues to the sixteenth birthday or for as long as the student continues to be enrolled in a school system after the sixteenth birthday.

(1) A child may be removed from such kindergarten program when the principal, teacher and parent or guardian concur that the best interest of the child would not be served by requiring further attendance: *Provided*, That the principal shall make the final determination with regard to compulsory school attendance in a publicly supported kindergarten program.

(2) The compulsory school attendance provision of this article shall be enforced against a person eighteen years of age or older for as long as the person continues to be enrolled in a school system, and may not be enforced against the parent, guardian or custodian of the person.

~~(3) Beginning with the 2011-2012 high school freshman cohort class of students,~~ and Notwithstanding the provisions of section one of this article, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to September 1 of such year or upon enrolling in a publicly supported kindergarten program and continues to the seventeenth birthday or for as long as the student continues to be enrolled in a school system after the seventeenth birthday: *Provided*, That beginning in the school year 2019-2020, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to July 1 of such year or upon enrolling in a publicly supported kindergarten program.

(b) Attendance at a state-approved or Montessori kindergarten, as provided in section eighteen, article five of this chapter, is deemed school attendance for purposes of this section. Prior to entrance into the first grade in accordance with section five, article two of this chapter, each child must have either:

(1) Successfully completed such publicly or privately supported, state-approved kindergarten program or Montessori kindergarten program; or

(2) Successfully completed an entrance test of basic readiness skills approved by the county in which the school is located. The test may be administered in lieu of kindergarten attendance only under extraordinary circumstances to be determined by the county board.

(c) Notwithstanding the provisions of this section ~~and of~~, section five, article two of this chapter and section eighteen, article five of this chapter, a county board may provide for advanced entrance or placement under policies adopted by said board for any child who has demonstrated sufficient mental and physical competency for such entrance or placement.

(d) This section does not prevent a student from another state from enrolling in the same grade in a public school in West Virginia as the student was enrolled at the school from which the student transferred.

Bill Sponsors: Senators Jeffries, Ojeda, Facemire and Woelfel

**Senate Bill 231****Relating to State Board of Education and Medicaid-eligible children**Effective Date:

July 1, 2017

Code Reference:

Amends §18-2-5b

WVDE Contact:

Amy Willard, Office of School Finance, 304-558-6300

Bill Summary:

Presently, county boards of education are required to seek Medicaid reimbursement for services rendered, even if the cost of seeking the reimbursement exceeds the amount of reimbursement being sought. In these difficult financial times and with the changing landscape in the Medicaid reimbursement process, it was recognized that counties needed the option to not pursue reimbursements when the act of seeking the reimbursement exceeds the amount of reimbursement the county is seeking. Thus, the bill gives flexibility to counties to seek Medicaid reimbursement for services when it determines the costs and time involved in seeking reimbursement do not exceed the actual amount sought in the reimbursement. In instances where the costs and time involved in seeking reimbursement exceeds the actual reimbursement amount, counties have the option of not pursuing such reimbursement.

## ARTICLE 2. STATE BOARD OF EDUCATION.

### §18-2-5b. Medicaid-eligible children; school health services advisory committee.

(a) The state board shall become a Medicaid provider and seek out Medicaid-eligible students for the purpose of providing Medicaid and related services to students eligible under the Medicaid program and to maximize federal reimbursement for all services available under the Omnibus Budget Reconciliation Act of 1989, as it relates to Medicaid expansion and any future expansions in the Medicaid program for Medicaid and related services for which state dollars are or will be expended. ~~Provided, That~~

(b) The state board may delegate this provider status and subsequent reimbursement to regional education service agencies (RESA), ~~and/or~~ county boards or both: ~~Provided, however, That~~ a county board is not required to seek reimbursement if it determines there is not a net benefit after consideration of costs and time involved with seeking the reimbursement for eligible services and that the billing process detracts from the educational program.

(c) ~~Annually, no later than January 1,~~ the state board shall report on a county by county basis to the Legislature:

(1) The number and age of children eligible for Medicaid;

(2) The number and age of children with Medicaid coverage;

(3) The types of Medicaid-eligible services provided;

(4) The frequency of services provided;

(5) The Medicaid dollars reimbursed; and

(6) ~~The problems encountered in the implementation of this system and that this report shall be on a county by county basis and made available no later than the first day of January, one thousand nine hundred ninety two, and annually thereafter.~~

~~(b)~~ (d) The state board shall appoint and convene a school health services advisory committee to advise the Secretary of Health and Human Resources and the state superintendent on ways to improve the ability of regional education service agencies, local school boards, and Department of Health and Human Resources employees to provide Medicaid-eligible children with all the school-based Medicaid services for which they are eligible and to ensure that the school-based Medicaid service providers bill for and receive all the Medicaid reimbursement to which they are entitled.

(e) The committee shall consist of at least the following individuals:

(1) The person within the Department of Education responsible for coordinating the provision of and billing for school-based Medicaid services in schools throughout the state, who shall provide secretarial, administrative and technical support to the advisory committee;

(2) The person within the Department of Health and Human Resources responsible for coordinating the enrollment of Medicaid-eligible school children throughout the state;

(3) Two representatives of regional education service agencies who are experienced with the process of billing Medicaid for school-based health services;

(4) Two Department of Health and Human Resources employees responsible for supervising employees;

(5) Two persons jointly appointed by the Secretary of Health and Human Resources and the state superintendent; and

(6) One representative of the Governor's task force on school health.

(f) The school health services advisory committee shall meet in the first instance at the direction of the state superintendent, select a chairperson from among its members, and meet thereafter at the direction of the chairperson. The committee shall report its findings and recommendations to the state board and Department of Health and Human Resources, which findings shall then be included in the report to the Legislature by the state board and Department of Health and Human Resources provided for in subsection ~~(a)~~ (c) of this section.

(g) All actual and necessary travel expenses of the members of the committee shall be reimbursed by the member's employing agency, for those members not employed by a state agency, the member's actual and necessary travel expenses shall be paid by the state board. All such expenses shall be reimbursed in the same manner as the expenses of state employees are reimbursed.

Bill Sponsor: Senator Hall

**Senate Bill 256**

**Relating to prohibiting aiding and abetting of sexual abuse by school personnel**

Effective Date:

July 5, 2017

Code Reference:

Adds §18A-4-22

WVDE Contact:

Heather Hutchens, Office of Legal Services & Accountability, 304-558-3667

Bill Summary:

This bill prohibits both private and public school personnel, their contractors, and their agents or any employee of a state, regional, or local education agency from assisting school employees, contractors or agents in obtaining a new job if the individual knows, or has probable cause to believe, that the person seeking the new employment has engaged in sexual misconduct with a minor or student.

Enactment of this bill is a requirement of the Every Student Succeeds Act (ESSA), 20 U.S.C. § 7926.

## ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

### §18A-4-22. Prohibition on aiding and abetting sexual abuse.

(a) No school personnel, contractor or agent, or any employee of any state, regional or local educational agency including any employee of a public or private school, may assist an individual employed as school personnel, a contractor or an agent in obtaining a new job if the individual or agency knows, or has probable cause to believe, that such school employee, contractor or agent engaged in sexual misconduct regarding a minor or student in violation of the law: *Provided*, That nothing in this section shall be construed to prohibit the routine transmission of administrative and personnel files.

(b) The requirements of subsection (a) of this section shall not apply if:

(1) The information giving rise to probable cause has been properly reported to a law-enforcement agency with jurisdiction over the alleged misconduct and reported to any other authorities as required by federal, state or local law; and

(2) One of the following has happened:

(A) The matter has been officially closed, or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school personnel, contractor or agent engaged in sexual misconduct regarding a minor or student in violation of the law;

(B) The school personnel, contractor or agent has been charged with and acquitted or otherwise exonerated of the alleged misconduct; or

(C) The case or investigation remains open and there have been no charges filed against, or indictment of, the school personnel, contractor or agent within four years of the date on which the information was reported to a law-enforcement agency.

(c) Nothing in this section shall be construed to override a statute, regulation or policy that provides greater or additional protections to prohibit any individual who is school personnel, contractor or agent, or any state, regional or local educational agency from assisting a school employee who engaged in sexual misconduct regarding a minor or student in violation of the law in obtaining a new job.

Bill Sponsors: Senators Trump, Boso, Cline, Gaunch and Woelfel

**Senate Bill 497**

**Relating to liability for health care providers who provide services at school athletic events**

Effective Date:

June 29, 2017

Code Reference:

Amends §55-7-19

WVDE Contact:

Heather Hutchens, Office of Legal Services & Accountability, 304-558-3667

Bill Summary:

The bill limits the liability of persons licensed, certified or registered in this state or another state to provide health care services that render, in good faith, emergency care at private or public school athletic events. Such individuals will only be liable if their actions amount to gross negligence or willful misconduct.

## ARTICLE 7. ACTIONS FOR INJURIES.

### §55-7-19. Liability of ~~physicians~~ health care providers who render services at school athletic events; limiting liability; exceptions.

(a) Any person licensed to practice medicine and surgery pursuant to the provisions of article three, chapter thirty of this code or any person licensed to practice medicine and surgery as an osteopathic physician and surgeon pursuant to the provisions of article fourteen, chapter thirty of this code: by, or certified or registered in, this state or another state to provide health care or professional health care services: (1) Who is acting in the capacity of a volunteer team physician in attendance at an athletic event sponsored by a public or private elementary or secondary school; and (2) who gratuitously and in good faith prior to the athletic event agrees to render emergency care or treatment to any participant during such the event in connection with an emergency arising during or as the result of such the event, without objection of such the participant, shall may not be held liable for any civil damages as a result of such the care or treatment, or as a result of any act or failure to act in providing or arranging further medical treatment; to an extent greater than the applicable limits of his or her professional liability insurance policy or policies when such care or treatment was rendered in accordance with the acceptable standard of care established in section three, article seven b of this chapter.

(b) The limitation of liability established by the provisions of this section does not apply to acts or omissions constituting gross negligence or willful misconduct. For purposes of this section, the term "athletic event" includes scheduled practices for any athletic event.

Bill Sponsors: Senators Stollings, Takubo, Plymale, Moroney and Facmire

## Senate Bill 630

## Establishing Accessibility and Equity in Public Education Enhancement Act

Effective Date:

April 8, 2017

Code Reference:

Adds §18-5F-1; §18-5F-2; §18-5F-3; §18-5F-4; §18-5F-5 and §18-5F-6

WVDE Contact:

Joey Wiseman, Office of Middle/Secondary Learning, 304-558-5325

Bill Summary:

The bill establishes the Accessibility and Equity in Public Education Enhancement Act with the stated purpose of enhancing access and equity in public education in WV. The bill clarifies that the Act is not intended to save money through the reduction of school personnel positions.

The Act allows county boards of education to adopt a policy to provide a virtual school pathway for earning a high school diploma. Students in grades 6-12 are permitted to enroll in the virtual school pathway starting July 1, 2017; grades K-5 are eligible to enroll after a virtual school's first year of operation. Districts can offer such instruction on their own, or can partner with other districts and offer virtual school instruction through a multicounty consortium. The bill allows, but does not require, districts and multicounty consortiums to contract with virtual school providers to provide the instruction.

The county policy governing the virtual school pathway must include at least the following:

- Scope, instructional model and capacity for the virtual education program
- Assessment protocol and specific requirements for monitoring performance that are consistent with 18-2E-25
- Plan for monitoring students receiving virtual instruction in accordance with pacing and completion of the required virtual coursework
- Faculty qualifications (at minimum, must have teaching certificate)
- Requirement that any virtual school provider contracted with must adhere to state and federal privacy laws

Virtual school instruction must cover the standards adopted by the WVBE and virtual school students must take the annual statewide summative assessment. Statutes and policy relating to physical presence of a student, student monitoring and security, maximum teacher-pupil ratios, to the extent they conflict with the delivery of virtual instruction, do not apply to the virtual school pathway. The virtual school pathway is not subject to state online course restrictions. Students enrolled in the virtual school pathway are exempt from compulsory school attendance requirements and instructional term requirements. Virtual school students will be counted in the net enrollment of the school district in which the student resides for the purposes of calculating and receiving state aid (i.e., districts will get funding for students in the virtual school pathway). Students that successfully complete the virtual school pathway will receive a diploma from the school district in which they reside.

Students enrolled in a virtual school pathway may participate in cocurricular and extracurricular activities at the school district in which they reside, subject to the same participation requirements imposed on traditional students attending school.

At the end of any year a virtual school pathway is implemented, the WVDE must report to LOCEA on all aspects of the program. WVDE is to consult with the county boards implementing the pathway in the preparation of the report.

**ARTICLE 5F. ACCESSIBILITY AND EQUITY IN PUBLIC EDUCATION  
ENHANCEMENT ACT.**

**§18-5F-1. Short title.**

This article shall be known and may be cited as the Accessibility and Equity in Public Education Enhancement Act.

**§18-5F-2. Legislative findings; purpose.**

(a) The Legislature finds and declares that:

(1) County school districts have called for more local control and flexibility to meet the education needs of their communities;

(2) Students, parents and teachers are seeking alternatives to the traditional classroom delivery of education that better meets the educational needs of students;

(3) Public schools should be able to provide a variety of instructional delivery models;

(4) The county school districts can enhance education opportunities for students, using technology;

(5) Using technology to deliver instruction can provide flexibility and increase options for instruction;

(6) Giving county school districts the flexibility to create innovative programs will provide teachers with new instructional opportunities; and

(7) This Act is not intended to save money through the reduction of school personnel positions.

(b) The purpose of this article is to enhance access and equity in public education in West Virginia.

**§18-5F-3. Definitions.**

For the purposes of this article, unless a different meaning clearly appears from the context:

(a) “Blended program” means a formal education program in which a student learns:

(1) At least in part through online learning, with some element of student control over time, place, path or pace;

(2) At least in part in a supervised setting outside the home; and

(3) In such a way that the modalities of each student's learning path within a course or subject are connected to provide an integrated learning experience;

(b) "Eligible student" means a student eligible for attendance in public schools in a school district that provides a virtual instruction program, that is a member of a multicounty consortium providing a virtual instruction program or that does not provide a virtual instruction program and is not a member of a multicounty consortium but participates through a collaborative agreement between the school district in which the student is enrolled and a school district or a multicounty consortium providing a virtual instruction program;

(c) "Multicounty consortium" means a written arrangement where two or more county boards act in concert to establish a virtual school that will serve eligible students; and

(d) "Virtual instruction program" means a program implemented by a county board or multicounty consortium that provides a full-time online or blended program of instruction for students enrolled in any composition of grades kindergarten through twelve.

#### **§18-5F-4. County board policy adoption.**

(a) A county board or a multicounty consortium may create a virtual instruction program for one or more schools serving any composition of grades kindergarten through twelve by adopting a policy creating the program and after adopting the policy may contract with virtual school providers. When there is a multicounty consortium, each county board in the consortium shall adopt a policy creating the virtual instruction program. The virtual instruction program may begin July 1, 2017, or at any point thereafter: *Provided*, That, notwithstanding any other provision of this article to the contrary, no eligible students in grades kindergarten through five may participate in a virtual instruction program until after the program has been in operation for one full school year.

(b) The policy adopted by the county board pursuant to this section shall govern the virtual instruction program offered by the county board or multicounty consortium.

(c) The policy shall be consistent with this article and may offer eligible students in grades kindergarten through twelve an online pathway for earning a high school diploma and, at a minimum, shall include the following:

(1) The scope, instructional model and capacity for the virtual education program;

(2) Assessment protocol and specific requirements for monitoring performance that are consistent with section five, article two-e of this chapter;

(3) A plan for monitoring students receiving virtual instruction in accordance with pacing and completion of the required virtual coursework: *Provided*, That, if virtual instruction occurs in a public school classroom then a teacher, professional personnel, professional educator or paraprofessional employed by that county must be present to monitor;

(4) Qualifications of faculty, which at a minimum shall include a teaching certificate issued pursuant to article three, chapter eighteen-a of this code and state board rules; and

(5) A requirement that any virtual school provider contracted with comply with state and federal privacy laws.

**§18-5F-5. Compliance with existing state law.**

(a) An eligible student enrolled in a virtual instruction program shall:

(1) Be counted in the net enrollment of the school district in which the student resides for the purposes of calculating and receiving state aid;

(2) Be subject to the same state assessment requirements as other students in the school district; and

(3) Receive a diploma from the school district, upon completing the same coursework required of regular public school students in the district.

(b) An eligible student participating in a virtual instruction program, to the extent the program as delineated in the county board policy allows or requires instruction to occur outside of a school building, is not required to comply with compulsory school attendance requirements set forth in article eight of this code or any other provision of law or state board rule relating to attendance.

(c) Neither the school district, the eligible student nor the parents of the student participating in a virtual instruction program, to the extent the program as delineated in the county board policy allows or requires instruction to occur outside of a school building, may incur any penalty or be held accountable for the absence of the student from the school building.

(d) For an eligible student participating in a virtual instruction program, neither the school district nor the student, to the extent the program as delineated in the county board policy is a learn at your own pace program, is required to comply with the instructional term requirement set forth in section forty-five, article five of this chapter or any other law or state board rule requiring a student to be receiving instruction for any set time.

(e) An eligible student participating in a virtual instruction program shall be considered to be attending the school in the attendance district created by the county board pursuant to section sixteen, article five of this chapter that the eligible student resides in unless otherwise transferred to another school pursuant to that section or any other provision of this code. The eligible student may participate in any cocurricular and extracurricular activities of that school, but is subject to the same participation requirements imposed on a traditional student attending the school.

(f) A county board is exempt from any provision of law or state board rule that applies to the traditional delivery of instruction such as requirements relating to the physical presence of a student, student monitoring and security, the maximum teacher-pupil ratio set forth in section eighteen-a, article five of this chapter, instructional time requirements and physical education requirements to the extent any of the foregoing conflict with the delivery of the virtual instruction program.

(g) The virtual instruction program is not subject to online course restrictions imposed by the state board, state superintendent or the West Virginia Department of Education.

(h) Coursework offered through a virtual instruction program shall be aligned to the appropriate academic standards as required by state law and state board rule.

(i) The assessment results of a student shall be included in the assessment results of the school and the school district in which the student is considered enrolled pursuant to this section for purposes of accountability.

**§18-5F-6. Report to Legislative Oversight Commission on Education Accountability.**

At the end of the first year any virtual instruction program is implemented pursuant to this article, the West Virginia Department of Education, after consulting with the county board or boards implementing the program, shall report to the Legislative Oversight Commission on Education Accountability on all aspects of the program. The report, at least, shall include the grade levels of the students the program was offered to; the number of students who enrolled in the program; the number of students who were enrolled in the program full-time and number who participated in a blended program; the number of students who were homeschooled, enrolled in a private school and enrolled in a public school immediately preceding enrollment in the virtual instruction program; and how the students performed academically as compared with students in a traditional classroom setting.

Bill Sponsors: Senators Mann, Hall and Sypolt

**House Bill 2188**

**Extending the length of time for the special  
Community-Based Pilot Demonstration Project to  
Improve Outcomes for At-Risk Youth**

Effective Date:

July 3, 2017

Code Reference:

Amends §18-21-2

WVDE Contact:

Jason Butcher, Office of the WV Board of Education, 304-558-3660

Bill Summary:

The bill extends the Special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth from 4 years to 7 years. In effect, the program was set to sunset this year, but will be extended 3 more years under the bill.

**ARTICLE 21. SPECIAL COMMUNITY-BASED PILOT DEMONSTRATION  
PROJECT TO IMPROVE OUTCOMES FOR AT-RISK YOUTH.**

**§18-21-2. Creation of a special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth.**

Effective July 1, 2012, if funds are available, the Secretary of the West Virginia Department of Health and Human Resources shall select a community-based organization to establish a special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth in a specified community for a duration of ~~four~~ seven years. The project will identify, implement and document best practices that can be replicated in other communities. The designated community-based organization shall operate the special pilot project under the direction of the Secretary of the Department of Health and Human Resources and shall work in collaboration with the State School Superintendent, local county school superintendent, Chancellor for Community and Technical College Education, the closest community and technical college and four-year college or university, State Workforce Investment Division, Executive Director of the West Virginia Vocational Rehabilitation Services, the local juvenile court system, the local workforce investment board, the Chancellor for Higher Education, the Director of West Virginia Division of Juvenile Services, the local mental or behavioral health organizations and other governmental and community-based organizations.

Bill Sponsors: Delegates Rowe, Pushkin, Sobonya, Fleischauer and Hornbuckle

**House Bill 2195**

**Relating to requiring comprehensive drug awareness and prevention program in all public schools**

Effective Date:

July 5, 2017

Code Reference:

Adds §18-2-7b

WVDE Contact:

Joey Wiseman, Office of Middle/Secondary Learning, 304-558-5325

Bill Summary:

The bill requires county boards of education to implement a comprehensive drug awareness and prevention program for K-12 students no later than the 2018-19 school year. In establishing the program, the board must coordinate the delivery of instruction with educators, drug rehabilitation specialists and law-enforcement agencies to periodically provide age appropriate student education on their experiences with the impacts of illegal alcohol and drug use.

Starting in the 2018-2019 school year, health education classes in grades 6 through 12, as considered appropriate by the county board, must include at least 60 minutes of instruction on the dangers of opioid use, the additive characteristics of opioids, and safer alternatives to treat pain.

## ARTICLE 2. STATE BOARD OF EDUCATION.

### §18-2-7b. Programs in drug prevention and violence reduction.

(a) In order for the schools to become healthy learning environments and to provide a strong defense against drug use and violence, the State Board of Education shall prescribe programs within the existing health and physical education program which teach resistance and life skills to counteract societal and peer pressure to use drugs, alcohol and tobacco, and shall include counselors, teachers and staff in full implementation of the program. The board shall also prescribe programs to coordinate violence reduction efforts in schools and between schools and their communities and to train students, teachers, counselors and staff in conflict resolution skills. The program shall be comprehensive, interdisciplinary and shall begin in elementary school.

(b) No later than the start of the 2018-2019 school year, a county board shall implement comprehensive drug awareness and prevention programs for students in grades K through 12 to receive instruction regarding the dangers of substance abuse. The purpose of the drug awareness and prevention program is to:

(1) Keep students from illegally using alcohol, tobacco or other drugs;

(2) Reduce or eliminate the incidence and prevalence of student's alcohol, tobacco and other drug abuse;

(3) Reduce the factors that place students at risk of abusing alcohol, tobacco or other drugs through school and a community based planning processes;

(4) Contribute to the development of school environments and alternative activities that are alcohol, tobacco and drug-free;

(5) Increase the knowledge and skills of students, staff and community members for avoiding the harmful effects of alcohol, tobacco and drug use, and of blood borne pathogens;

(6) Actively involve staff, students, parents and community members in the development and implementation of the drug awareness and prevention program plans;

(7) Facilitate an understanding and appreciation of the risks to, duties of, and likely actions by law-enforcement officers when conducting investigations; and

(8) Instruct how to respond to an officer during a vehicular or other stop or police interaction, including problematic or dangerous action and behaviors that could result in a person being detained or arrested.

(c) The county board shall coordinate the delivery of instruction to meet the purposes of subsection (b) of this section with educators, drug rehabilitation specialists

and law-enforcement agencies to periodically provide age appropriate student education on their experiences with the impacts of illegal alcohol and drug use.

(d) Beginning with the 2018-2019 school year, instruction required pursuant to section nine of this article in the subject of health education in any of the grades six through twelve as considered appropriate by the county board shall include at least sixty minutes of instruction for each student on the dangers of opioid use, the additive characteristics of opioids, and safer alternatives to treat pain.

Bill Sponsors: Delegates Rohrbach, Cooper, Rowan, Hornbuckle, Ambler, Hicks, Sobonya, Firch and Thompson

**House Bill 2373**

**Authorizing school bus drivers trained in administration of epinephrine auto-injectors to administer auto-injectors**

Effective Date:

July 5, 2017

Code Reference:

Amends §18-5-22c

WVDE Contact:

Becky King, Office of Special Education, 304-558-2696

Bill Summary:

The bill permits school transportation employees to administer an epinephrine auto-injector to a student or school personnel during transportation to/from school function when such employee reasonably believes that student/school personnel is experiencing an anaphylactic reaction. Before the school transportation employee is permitted to administer an epinephrine auto-injector he or she must have received training on administration and must be authorized to administer an epinephrine auto-injector by the school or county board of education. The school transportation employee must defer administration of an epinephrine auto-injector to an individual present that possess a higher degree of medical education or if the parent of the student experiencing the anaphylactic reaction is present. The bill is permissive and places no affirmative requirement upon school transportation employees to administer an epinephrine auto-injector. The bill limits the liability of school transportation employees that do administer an epinephrine auto-injector in good faith and without gross negligence or willful misconduct.

The bill exempts school transportation employees trained and authorized to administer an epinephrine auto-injector from the provisions of 18-5-22. That section of code deals with specialized healthcare procedures.

The WVBE is required to establish a policy that: (1) sets the criteria for selection of and minimum requirements for school transportation employees to be authorized to administer an epinephrine auto-injector, and (2) sets the training requirements necessary for school transportation employees to be authorized to administer an epinephrine auto-injector.

## ARTICLE 5. COUNTY BOARD OF EDUCATION.

### **§18-5-22c. Providing for the maintenance and use of epinephrine auto-injectors; administration of injections; notice; indemnity from liability; rules.**

(a) A public, private, parochial or denominational school located within this state may possess and maintain at the school a supply of epinephrine auto-injectors for use in emergency medical care or treatment for an anaphylactic reaction. A prior diagnosis for a student or school personnel requiring the use of epinephrine auto-injectors is not necessary to permit the school to stock epinephrine auto-injectors. Epinephrine auto-injectors shall be maintained by the school in a secure location which is only accessible by medical personnel and authorized nonmedical personnel and not by students.

(b) An allopathic physician licensed to practice pursuant to the provisions of article three, chapter thirty of this code or an osteopathic physician licensed to practice pursuant to the provisions of article fourteen, chapter thirty of this code may prescribe within the course of his or her professional practice standing orders and protocols for use when necessary by a school which wishes to maintain epinephrine auto-injector pursuant to the provisions of this section.

(c) A school nurse, as set forth in section twenty-two of this article, ~~is authorized to~~ may administer an epinephrine auto-injector to a student or school personnel during regular school hours or at a school function when the school nurse medically believes the individual is experiencing an anaphylactic reaction. A school nurse may use the school supply of epinephrine auto-injectors for a student or school personnel authorized to self-administer that meet the requirements of a prescription on file with the school.

(d) Nonmedical school personnel who have been trained in the administration of an epinephrine auto-injector and who have been designated and authorized by the school or county board to administer the epinephrine auto-injector are authorized to administer an epinephrine auto-injector to a student or school personnel during regular school hours or at a school function when the authorized and designated nonmedical school personnel reasonably believes, based upon their training, that the individual is experiencing an anaphylactic reaction. Nonmedical school personnel may use the school supply of epinephrine auto-injectors for a student or school personnel authorized to self-administer that meet the requirements of a prescription on file with the school.

(e) School transportation employees, including bus drivers, who have been trained in the administration of an epinephrine auto-injector and who have been designated and authorized by the school or county board to administer an epinephrine auto-injector may administer an epinephrine auto-injector to a student or school personnel during transportation to or from a school function when the school transportation employee reasonably believes, based upon his or her training, that the individual is experiencing an anaphylactic reaction. A school transportation employee may use the individual's personal supply of epinephrine auto-injectors or the school's supply of epinephrine auto-injectors for a student or school personnel authorized to self-administer that meet the

requirements of a prescription on file with the school: *Provided*, That a school transportation employee shall defer to an individual possessing a higher degree of medical training or the parent of the child experiencing an anaphylactic reaction, if either are present at the time of the reaction; *Provided, however*, That the school transportation employee, trained and authorized to administer epinephrine auto-injectors, is not subject to the terms of section twenty-two of this article.

~~(e)~~ (f) Prior notice to the parents of a student of the administration of the epinephrine auto-injector is not required. Immediately following the administration of the epinephrine auto-injector, the school shall provide notice to the parent of a student who received an auto-injection.

~~(f)~~ (g) A school nurse, a trained school transportation employee, or trained and authorized nonmedical school personnel who administer an epinephrine auto-injection to a student or to school personnel as provided in this section is immune from liability for any civil action arising out of an act or omission resulting from the administration of the epinephrine auto-injection unless the act or omission was the result of the school nurse, school transportation employee, or trained and authorized nonmedical school personnel's gross negligence or willful misconduct.

~~(g)~~ (h) For the purposes of this section, all county boards of education may participate in free or discounted drug programs from pharmaceutical manufacturers to provide epinephrine auto-injectors to schools in their counties which choose to stock auto-injectors.

~~(h)~~ (i) All county boards of education are required to collect and compile aggregate data on incidents of anaphylactic reactions resulting in the administration of school maintained epinephrine auto-injectors in their county during a school year and forward the data to the state superintendent of schools. The state superintendent of schools shall prepare an annual report to be presented to the Joint Committee on Government and Finance as set forth in article three, chapter four of this code, by December 31 of each year.

~~(i)~~ (j) The State Board of Education, as defined in article two of this chapter, shall consult with the state health officer, as defined in section four, article three, chapter thirty of this code, and promulgate rules necessary to effectuate the provisions of this section in accordance with the provisions of article three-b, chapter twenty-nine-a of this code. The rules shall provide, at a minimum, for:

(1) The criteria for selection and minimum requirements of nonmedical school personnel and school transportation employees who may administer epinephrine auto-injectors following the necessary training;

(2) The training requirements necessary for nonmedical school personnel and school transportation employees to be authorized to administer an epinephrine auto-injection;

(3) Training on anaphylaxis and allergy awareness for food service workers in the school system, if easily available locally;

(4) Storage requirements for maintaining the epinephrine auto-injectors within the schools;

(5) Comprehensive notice requirements to the parents of a student who was administered a school maintained epinephrine auto-injection including who administered the injection, the rationale for administering the injection, the approximate time of the injection and any other necessary elements to make the student's parents fully aware of the circumstances surrounding the administration of the injection;

(6) Any and all necessary documentation to be kept and maintained regarding receipt, inventory, storage and usage of all epinephrine auto-injectors;

(7) Detailed reporting requirements for county boards of education on incidents of use of school maintained epinephrine auto-injectors during a school year; and

(8) Any other requirements necessary to fully implement this section.

Bill Sponsors: Delegates Statler, Hill, Espinosa, Kessinger, N. Foster, Wagner, McGeehan, Higginbotham, Ward, Williams and Ellington

**House Bill 2494**

**Providing that statewide school report cards are only to be made available to custodial parents and guardians of students upon request**

Effective Date:

July 5, 2017

Code Reference:

Amends §18-2E-4

WVDE Contact:

Betty Jo Jordan, Office of the State Superintendent, 304-558-2118

Bill Summary:

The bill modifies the requirements for the annual school report card prepared by school districts. Rather than requiring the report card to be mailed to the parents of each student, the bill allows the report card to be posted online on the county board website. If requested, a hard copy of the report card will be mailed to a student's parent. The bill removes the following information as a requirement to be included in the report card: percent of enrollments in courses in high school mathematics, science, English and social science; amount of time per day devoted to mathematics, science, English and social science at middle, junior high and high school grade levels; percentage distribution of students by career cluster as indicated on the individualized student transition plan; number of exceptions to pupil-teacher ratio requested by county board and number granted; number of split grade levels; number of administrators, classroom teachers and service personnel employed that exceed the number allowed by the school aid formula; the amount of salary supplements that would be available per authorized employee if all expenditures for the excess employees were converted to annual salaries for state authorized administrators, classroom teachers and school personnel; whether county board members have attended an orientation program for new members; and number of training hours county board member has received.

## ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

### §18-2E-4. Better schools accountability; school, school district and statewide school report cards.

(a) For the purpose of providing information to the parents of public school children and the general public on the quality of education in the public schools which is uniform and comparable between schools within and among the various school districts, the state board shall ~~prepare forms~~ provide a uniform format for school, school district and statewide school report cards and shall promulgate rules concerning the collection and reporting of data and the preparation, ~~printing and distribution~~ of report cards under this section. The ~~forms~~ format shall provide for brief, concise reporting in nontechnical language of required information. Any technical or explanatory material a county board wishes to include shall be contained in a separate appendix available ~~to the general public~~ upon request.

(b) The school report cards shall include information as prescribed ~~by lawfully promulgated rule by the state board~~ in this section to give the parents of students at the school and the general public an indication of the quality of education at the school and other programs supportive of community needs, including, but not limited to, the following:

(1) Indicators of student performance at the school in comparison with the county, state, regional and national student performance, as applicable, including student performance by grade level in the various subjects measured pursuant to a uniform statewide assessment program adopted by the state board; school attendance rates; the percent of students not promoted to next grade; and the graduation rate;

(2) Indicators of school performance in comparison with the aggregate of all other schools in the county and the state, as applicable, including enrollment; average class size; ~~percent of enrollments in courses in high school mathematics, science, English and social science; amount of time per day devoted to mathematics, science, English and social science at middle, junior high and high school grade levels; percentage distribution of students by career cluster as indicated on the individualized student transition plan; pupil-teacher ratio; number of exceptions to pupil-teacher ratio requested by the county board and the number of exceptions granted; the number of split-grade classrooms;~~ pupil-administrator ratio; operating expenditure per pupil; county expenditure by fund in graphic display; and the average degree classification and years of experience of the administrators and teachers at the school;

(3) The names of the members of the local school improvement council, created pursuant to section two, article five-a of this chapter; and

(4) The name or names of the business partner or partners of the school.

~~In addition, every county board annually shall determine the number of administrators, classroom teachers and service personnel employed that exceeds the number allowed by the public school support plan and determine the amount of salary supplements that would be available per state authorized employee if all expenditures for the excess employees were converted to annual salaries for state authorized administrators, classroom teachers and service personnel within their county. The information shall be published annually in each school report card of each such county.~~

(c) The school district report card shall include the data for each school for each separately listed applicable indicator and the aggregate of the data for all schools, as applicable, in the county for each indicator. The statewide school report card shall include the data for each county for each separately listed indicator and the aggregate for all counties for each indicator.

(d) The report cards shall be prepared using actual local school, county, state, regional and national data indicating the present performance of the school and also shall include the state norms and the upcoming year's targets for the school and the county board.

The state board shall provide technical assistance to each county board in preparing the school and school district report cards.

Each county board shall prepare report cards in accordance with the guidelines set forth in this section. The school district report cards shall be presented at a regular school board meeting subject to applicable notice requirements and shall be made available to a newspaper of general circulation serving the district. ~~The school and school district report cards shall be mailed directly to the parent or parents of each child enrolled in that school~~ made easily accessible on, or through a report card icon or link on, the county board website and provided in paper form upon request to the parent or parents, guardian or custodian of a child enrolled in that school. In addition, each county board shall submit the completed report cards to the state board which shall make copies available to any person requesting them. The report cards shall be completed and disseminated prior to January 1, 1989, and in each year thereafter, and shall be based upon information for the current school year, or for the most recent school year for which the information is available, in which case the year shall be clearly footnoted.

(e) In addition to the requirements of subsection (c) of this section, the school district report card shall list the following information:

(1) ~~The names of the members of the county board, and the dates upon which their terms expire; and whether they have attended an orientation program for new members approved by the state board and conducted by the West Virginia School Board Association or other approved organizations;~~

~~(2) (3) The number of hours of training that meets state board standards that county board members have received during the school term reported; and~~ The names of the

county school superintendent and every assistant and associate superintendent and any training programs related to their area of school administration which they have attended.

~~The information also shall be reported by district in the statewide school report card.~~

(f) The state board shall develop and implement a separate report card for nontraditional public schools pursuant to the appropriate provisions of this section to the extent practicable.

Bill Sponsors: Delegates Westfall, Statler, White, Atkinson and Higginbotham

## **House Bill 2561**

## **Relating to public school support**

### Effective Date:

July 1, 2017

### Code Reference:

Amends §18-9A-4; §18-9A-5; §18-9A-6a; §18-9A-7;  
§18-9A-9 and §18-9A-10

Adds §18-9D-4d

### WVDE Contact:

Amy Willard, Office of School Finance, 304-558-6300

### Bill Summary:

The bill provides flexibility for districts in the use of school aid funds and creates an SBA reserve fund for financially distressed county BOEs. The flexibility provided is as follows:

- The calculation for Step 1 – Allowance for Professional Educators was modified to remove the language that limited the number of personnel funded to the number actually employed by the county and now funds county boards of education at set ratios. For county boards of education that employ less professional educators than the number funded, the allowance for those positions is based on the county's average state funded professional educator salary.
- The professional educator limits specified in code remain at the existing levels, but old statutory language from the phase-in of the changes made during the 2008 Legislative session was updated to make those limit amounts more clear.
- The professional instructional (PI) personnel requirements under Step 1 were changed from a certain number of PI required per thousand students in net enrollment to a required percentage of the lesser of the number of professional educators actually employed or the number of professional educators funded. The percentages were developed based on the existing PI requirements. For the 2017-18 year only, no county may be penalized for not meeting the required PI ratio.
- The calculation for Step 2 – Allowance for Service Personnel was modified to remove the language that limited the number of personnel funded to the

number actually employed by the county and now funds county boards of education at set ratios. For county boards of education that employ less service personnel than the number funded, the allowance for those positions is based on the county's average state funded professional educator salary.

- The language regarding the calculation of the retirement allowance was updated to reflect the current calculation methodology. The statute was not updated previously when the professional student support personnel classification was created during the 2008 legislative session and the statute was not updated to reflect changes over time in the required contribution rates for the applicable retirement plans.

The language now indicates that the allowance will be based on the average retirement contribution rate for each county board of education, which is based on the required employer contributions for state aid eligible employees participating in the applicable retirement plans.

- Language was added to the Step 4 – Allowance for Student Transportation provision that allows up to \$200,000 of bus replacement funds per year to be used by a county for alternate purposes after submission of a request to the state superintendent.

The request for approval must include the amount and intended use of the funds. The state superintendent must verify the serviceability of the bus fleet based upon the state school bus inspection defect rate of the county over the two prior years before approving the request from the county superintendent.

- The calculation for Step 6a – Current Expense was changed from being 10% of the salary allowances under Steps 1, 2, and 5 to a method that considers the actual operations and maintenance costs of the county boards, the square footage of the school buildings in each county, and student enrollment.

- The non-salary related expenditures for operations and maintenance, exclusive of expenditures reported in special revenue funds, for the latest school year available for each county is divided by the total square

- footage of the school buildings in each county to calculate a state average expenditure per square foot for operations and maintenance.
- The total square footage of school buildings in each county is divided by each county's net enrollment for school aid purposes is used to calculate a state average square footage per student.
  - Each county's net enrollment for school aid purposes is multiplied by the state average expenditure per square foot for operations and maintenance and multiplied by the state average square footage per student. This amount is then multiplied by 70.25% to determine the Step 6a allowance for each county.
  - For county boards of education that participate a multi-county vocational center (MCVC), the net enrollment numbers utilized in the Step 6a calculation are adjusted by the net enrollment of the students participating in the MCVC from each participating county. The MCVC net enrollment is subtracted from the sending county and added to the fiscal agent county so that the Step 6a funding for the MCVC facility is included in the Step 6a amount for the fiscal agent county.
- The percentage of Step 7a – Allowance for the Improvement of Instructional Programs funds allowed to be used for the employment of personnel was increased from 25% to 50%. The requirement to use a portion of the personnel funds for Technology Systems Specialists (TSS) was removed.
  - A provision was added that allows up to 25% of the Step 7a funds to be used for alternative purposes. The amount of the allocation used for alternative purposes must be included and justified in the county's Step 7a plan.
  - A provision was added that allows Step 7b - Allowance for the Improvement of Instructional Technology funds to be used for the employment of TSS positions essential for the technology systems of the schools of the county to be fully functional and

readily available when needed by classroom teachers. The amount of the Step 7b allocation being used for the employment of TSS must be included and justified in the county's strategic technology learning plan. No limitation on what percentage of the funds can be used for TSS employment was included in the statute.

- A provision was added that allows up to 50% of the Step 7b funds to be used for alternative purposes. The amount of the allocation used for alternative purposes must be included and justified in the county's strategic technology learning plan.
- For the SBA funds needed to meet debt service requirements on revenue bonds issued prior to January 1, 1994, the statute was modified to make it clear that the funds will be paid by the West Virginia Department of Education into the School Building Capital Improvements Fund in accordance with the expenditure schedule approved by the State Budget Office.
- A new provision was added that requires the SBA to maintain a reserve fund (from their existing funding) of not less than \$600,000 for the purpose of making emergency grants to financially distressed county boards to assist them in making repairs or performing urgent maintenance to facilities or facility related equipment or facility related equipment replacement necessary to maintain the serviceability or structural integrity of school facilities currently in use or necessary for educating students of the county. A "financially distressed county" is defined as a county either in a deficit or on the most recently established watch list established by the West Virginia Department of Education of those county boards at-risk of becoming in a deficit.

## ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

### §18-9A-4. Foundation allowance for professional educators.

(a) The basic foundation allowance to the county for professional educators shall be is the amount of money required to pay the state minimum salaries, in accordance with provisions of article four, chapter eighteen-a of this code, ~~to the personnel employed;~~ subject to the following:

(1) ~~Subject to subdivision (2) of this subsection,~~ In making this computation ~~no~~ a county shall receive an allowance for ~~the personnel which number is in excess of~~ state aid eligible professional educators positions to each one thousand students in net enrollment as follows:

(A) For each high-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ seventy-two and ~~one-tenth~~ three tenths professional educators per each one thousand students in net enrollment;

(B) For each medium-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ seventy-two and ~~twenty-five~~ forty-five one hundredths professional educators per each one thousand students in net enrollment;

(C) For each low-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ seventy-two and ~~four tenths~~ six tenths professional educators per each one thousand students in net enrollment; ~~and~~

(D) For each sparse-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ seventy-two and ~~fifty-five~~ seventy-five one hundredths professional educators per each one thousand students in net enrollment; and

(E) For any professional educator positions, or fraction thereof, determined for a county pursuant to paragraphs (A), (B), (C) and (D) of this subdivision that exceed the number employed, the county's allowance for these positions shall be determined using the average state funded salary of professional educators for the county;

~~(2) For the ratios applicable to each of the four density categories set forth in subdivision (1) of this subsection, The number of professional educators per each one thousand students in net enrollment increases by five one hundredths per year for each fiscal years two thousand ten, two thousand eleven, two thousand twelve and two thousand thirteen and the allowance for personnel paid in part by state and county funds shall be prorated; and. For each fiscal year thereafter, the ratios remain at the two thousand thirteen level~~

~~(3) The number of and the allowance for personnel paid in part by state and county funds shall be prorated; and~~ Where two or more counties join together in support of a

vocational or comprehensive high school or any other program or service, the professional educators for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and the personnel shall be considered within the above-stated limit.

~~(4) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional educators for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and the personnel shall be considered within the above-stated limit.~~

(b) ~~Subject to subsection (c) of this section,~~ Each county board shall establish and maintain a minimum ratio of professional instructional personnel per ~~one thousand students in net enrollment~~ state aid funded professional educators as follows:

(1) For each high-density county, the minimum ~~number~~ ratio of professional instructional personnel per ~~one thousand students in net enrollment~~ state aid funded professional educators, or the number employed, whichever is less, is ~~sixty-five and eight tenths~~ ninety-one and twenty-nine one hundredths percent;

(2) For each medium-density county, the minimum ~~number~~ ratio of professional instructional personnel per ~~one thousand students in net enrollment~~ state aid funded professional educators, or the number employed, whichever is less, is ~~sixty-five and nine tenths~~ ninety-one and twenty-four one hundredths percent;

(3) For each low-density county, the minimum ~~number~~ ratio of professional instructional personnel per ~~one thousand students in net enrollment~~ state aid funded professional educators, or the number employed, whichever is less, is ~~sixty-six~~ ninety-one and eighteen one hundredths percent;

(4) For each sparse-density county, the minimum ~~number~~ ratio of professional instructional personnel per ~~one thousand students in net enrollment~~ state aid funded professional educators, or the number employed, whichever is less, is ~~sixty-six and five one hundredths.~~ ninety-one and seven one hundredths percent; and

(5) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional instructional personnel for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and the personnel shall be considered within the above-stated limit.

(c) ~~For the ratios applicable to each of the four density categories set forth~~ Any county board which does not establish and maintain the applicable minimum ratio required in subsection (b) of this subsection, ~~the number of professional instructional personnel per each one thousand students~~ shall suffer a pro rata reduction in the allowance for professional educators under this section: *Provided,* That a county may

~~not be penalized if it has increases in net enrollment increases by five one hundredths per year for each of fiscal years two thousand ten, two thousand eleven, two thousand twelve and two thousand thirteen. during that school year. For each fiscal year thereafter, the ratios remain at the two thousand thirteen level *Provided, however, That for the school year 2017-2018, only, a county may not be penalized for not meeting the applicable minimum ratio required in subsection (b) of this section.*~~

~~(d) Any county board which does not establish and maintain the applicable minimum ratio required in subsection (b) of this section shall suffer a pro rata reduction in the allowance for professional educators under this section: *Provided, That no county shall be penalized if it has increases in enrollment during that school year: *Provided, however, That for the school year two thousand eight – two thousand nine, only, no county shall be penalized for not meeting the applicable minimum ratio required in subsection (b) of this section. A county may not increase the number of administrative personnel employed as either professional educators or pay grade AH@ service personnel above the number which were employed, or for which positions were posted, on June 30, 1990, and, therefore, county boards shall whenever possible utilize classroom teachers for curriculum administrative positions through the use of modified or extended contracts.**~~

~~(e) No county shall increase the number of administrative personnel employed as either professional educators or pay grade "H" service personnel above the number which were employed, or for which positions were posted, on the thirtieth day of June, one thousand nine hundred ninety, and, therefore, county boards shall whenever possible utilize classroom teachers for curriculum administrative positions through the use of modified or extended contracts.~~

~~(f) As the number of professional educators per each one thousand students in net enrollment increases during fiscal years two thousand nine through two thousand thirteen, any additional positions that are created as a result of that increase shall be positions that will enhance student achievement and are consistent with the needs as identified in each county board's electronic county strategic improvement plan. County boards are encouraged to fill at least some of the additional positions with technology integration specialists.~~

~~(g) During the two thousand eight – two thousand nine interim period, and every three interim periods thereafter, the Legislative Oversight Commission on Education Accountability shall review the four density categories created in section two of this article, the ratios for professional educators established in this section and the ratios for service personnel established in section five of this article.~~

#### **§18-9A-5. Foundation allowance for service personnel.**

(a) The basic foundation allowance to the county for service personnel shall be the amount of money required to pay the annual state minimum salaries in accordance with the provisions of article four, chapter eighteen a of this code, to such service personnel employed, subject to the following:

~~(1) For the school year beginning on the first day of July, two thousand eight, and thereafter, no A county shall receive an allowance for an amount in excess of state aid eligible service personnel positions per one thousand students in net enrollment, as follows:~~

~~(A) For each high-density county, the number of personnel for which a county shall receive the allowance shall not exceed forty-three and ninety-seven one hundredths service personnel per one thousand students in net enrollment;~~

~~(B) For each medium-density county, the number of personnel for which a county shall receive the allowance shall not exceed forty-four and fifty-three one hundredths service personnel per one thousand students in net enrollment;~~

~~(C) For each low-density county, the number of personnel for which a county shall receive the allowance shall not exceed forty-five and one tenth service personnel per one thousand students in net enrollment; and~~

~~(D) For each sparse-density county, the number of personnel for which a county shall receive the allowance shall not exceed forty-five and sixty-eight one hundredths service personnel per one thousand students in net enrollment; and~~

~~(E) For any service personnel positions, or fraction thereof, determined for a county pursuant to subdivision (1) of this subsection that exceed the number employed, the county's allowance for these positions shall be determined using the average state funded minimum salary of service personnel for the county;~~

~~(2) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the service personnel for the school or program may be prorated amount the participating counties on the basis of each one's enrollment therein and that the personnel shall be considered within the above-stated limit. The number of and the allowance for personnel paid in part by state and county funds shall be prorated; and~~

~~(3) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the service personnel for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and that the personnel shall be considered within the above-stated limit.~~

#### **§18-9A-6a. Teachers retirement fund allowance; unfunded liability allowance.**

(a) The total teachers retirement fund allowance ~~shall be~~ is the sum of the basic foundation allowance for professional educators, ~~and the basic foundation allowance for professional student support personnel and the basic foundation allowance for service personnel, as provided in sections four, and five and eight of this article; all salary equity appropriations authorized in section five, article four of chapter eighteen-a; and such~~

amounts as are to be paid by the counties pursuant to sections five-a and five-b of said article to the extent such county salary supplements are equal to the amount distributed for salary equity among the counties, multiplied by ~~fifteen percent~~ the average retirement contribution rate for each county board. The average contribution rate for each county board is based on the required employer contributions for state aide eligible employees participating in the retirement plans pursuant to articles seven-a and seven-b of this chapter.

(b) The teachers retirement fund allowance amounts provided for in subsection (a) of this section shall be accumulated in the employers accumulation fund of the State Teachers Retirement System pursuant to section eighteen, article seven-a of this chapter, and shall be in lieu of the contribution required of employers pursuant to subsection (b) of said section as to all personnel included in the allowance for state aid in accordance with sections four ~~and~~, five and eight of this article.

(c) In addition to the teachers retirement fund allowance provided for in subsection (a) of this section, there shall be an allowance for the reduction of any unfunded liability of the teachers retirement fund in accordance with the following provisions of this subsection. On or before December 31, of each year, the actuary or actuarial firm employed in accordance with the provisions of section four, article ten-d, chapter five of this code shall submit a report to the President of the Senate and the Speaker of the House of Delegates which sets forth an actuarial valuation of the teachers retirement fund as of the preceding thirtieth day of June. Each annual report shall recommend the actuary's best estimate, at that time, of the funding necessary to both eliminate the unfunded liability over a forty-year period beginning on July 1, 1994, and to meet the cash flow requirements of the fund in fulfilling its future anticipated obligations to its members. In determining the amount of funding required, the actuary shall take into consideration all funding otherwise available to the fund for that year from any source: *Provided*, That the appropriation and allocation to the teachers' retirement fund made pursuant to the provisions of section six-b of this article shall be included in the determination of the requisite funding amount. In any year in which the actuary determines that the teachers retirement fund is not being funded in such a manner, the allowance made for the unfunded liability for the next fiscal year shall be not less than the amount of the actuary's best estimate of the amount necessary to conform to the funding requirements set forth in this subsection.

#### **§18-9A-7. Foundation allowance for transportation cost.**

(a) The allowance in the foundation school program for each county for transportation ~~shall be~~ is the sum of the following computations:

(1) A percentage of the transportation costs incurred by the county for maintenance, operation and related costs exclusive of all salaries, including the costs incurred for contracted transportation services and public utility transportation, as follows:

(A) For each high-density county, eighty-seven and one-half percent;

(B) For each medium-density county, ninety percent;

(C) For each low-density county, ninety-two and one-half percent;

(D) For each sparse-density county, ninety-five percent;

(E) For any county for the transportation cost for maintenance, operation and related costs, exclusive of all salaries, for transporting students to and from classes at a multicounty vocational center, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional ten percent; and

(F) For any county for that portion of its school bus system that uses as an alternative fuel compressed natural gas or propane, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional ten percent: *Provided*, That for any county receiving an additional ten percent for that portion of their bus system using bio-diesel as an alternative fuel during the school year 2012-2013, bio-diesel shall continue to qualify as an alternative fuel under this paragraph to the extent that the additional percentage applicable to that portion of the bus system using bio-diesel shall be decreased by two and one-half percent per year for four consecutive school years beginning in school year 2014-2015: *Provided, however*, That any county using an alternative fuel and qualifying for the additional allowance under this subdivision shall submit a plan regarding the intended future use of alternatively fueled school buses;

(2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation;

(3) An amount equal to eight and one-third percent of the current replacement value of the bus fleet within each county as determined by the state board. ~~Provided, That the amount for the school year beginning July 1, 2015, will be \$15,000,000 and the amount for the school year beginning July 1, 2016, will be \$18,000,000.~~ The amount shall only be used for the replacement of buses except as provided in subdivision (4) of this subsection. Buses purchased after July 1, 1999 that are driven one hundred eighty thousand miles, regardless of year model, ~~will be~~ are subject to the replacement value of eight and one-third percent as determined by the state board. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the state superintendent for funding for an additional bus or buses. The state superintendent shall make a decision regarding each application based upon an analysis of the individual school district's net enrollment history and transportation needs: *Provided*, That the superintendent ~~shall~~ may not consider any application which fails to document that the county has applied for federal funding for additional buses. If the state superintendent finds that a need exists, a request for funding shall be included in the budget request submitted by the state board for the upcoming fiscal year; ~~and~~

(4) ~~Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving the aid within each county. Notwithstanding the restriction on the use of funds for the replacement of buses pursuant to subdivision (3) of this subsection, up to \$200,000 of these funds in any school year may be used by a county for school facility and equipment repair, maintenance and improvement or replacement or other current expense priorities if a request by the county superintendent listing the amount, the intended use of the funds and the serviceability of the bus fleet is approved by the state superintendent. Before approving the request, the state superintendent shall verify the serviceability of the county's bus fleet based upon the state school bus inspection defect rate of the county over the two prior years; and~~

(5) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving the aid within each county.

(b) The total state share for this purpose is the sum of the county shares: *Provided*, That ~~no~~ a county ~~shall~~ may not receive an allowance which is greater than one-third above the computed state average allowance per transportation mile multiplied by the total transportation mileage in the county exclusive of the allowance for the purchase of additional buses

(c) One half of one percent of the transportation allowance distributed to each county ~~shall be~~ is for the purpose of trips related to academic classroom curriculum and not related to any extracurricular activity. Any remaining funds credited to a county for the purpose of trips related to academic classroom curriculum during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the appropriation for the next fiscal year. The state board may request a county to document the use of funds for trips related to academic classroom curriculum if the board determines that it is necessary.

**§18-9A-9. Foundation allowance for other current expense and substitute employees and faculty senates.**

The total allowance for other current expense and substitute employees ~~shall be~~ is the sum of the following:

(1) For current expense: ~~ten percent of the sum of the computed state allocation for professional educators, professional student support personnel and service personnel as determined in sections four, five and eight of this article. Distribution to the counties shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment; plus~~

(A) The non-salary related expenditures for operations and maintenance, exclusive of expenditures reported in special revenue funds, for the latest available school year, in each county, divided by the total square footage of school buildings in each county is used to calculate a state average expenditure per square foot for operations and maintenance;

(B) The total square footage of school buildings in each county divided by each county's net enrollment for school aid purposes is used to calculate a state average square footage per student;

(C) Each county's net enrollment for school aid purposes multiplied by the state average expenditure per square foot for operations and maintenance as calculated in paragraph (A) of this subdivision and multiplied by the state average square footage per student as calculated in paragraph (B) of this subdivision is that county's state average costs per square footage per student for operations and maintenance;

(D) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the allowance for current expense may be prorated among the participating counties by adjusting the net enrollment for school aid purposes utilized in the calculation by the number of students enrolled therein for each county; and

(E) Each county's allowance for current expense is 70.25% of the county's state average costs per square footage per student for operations and maintenance amount as calculated in paragraph (C) of this subdivision; plus

(2) For professional educator substitutes or current expense, two and five-tenths percent of the computed state allocation for professional educators and professional student support personnel as determined in sections four and eight of this article. Distribution to the counties ~~shall be~~ is made proportional to the number of professional educators and professional student support personnel authorized for the county in compliance with sections four and eight of this article; plus

(3) For service personnel substitutes or current expense, two and five-tenths percent of the computed state allocation for service personnel as determined in section five of this article. Distribution to the counties ~~shall be~~ is made proportional to the number of service personnel authorized for the county in compliance with section five of this article; plus

(4) For academic materials, supplies and equipment for use in instructional programs, \$200 multiplied by the number of professional instructional personnel and professional student support personnel employed in the schools of the county. Distribution is made to each county for allocation to the faculty senate of each school in the county on the basis of \$200 per professional instructional personnel employed at the school. "Faculty Senate" means a faculty senate created pursuant to section five, article five-a of this chapter. Decisions for the expenditure of such funds ~~shall be~~ are made at the school level by the faculty senate in accordance with the provisions of said section five, article five-a and shall may not be used to supplant the current expense expenditures of the county. Beginning on September 1, 1994, and every September thereafter, county boards shall forward to each school for the use by faculty senates the appropriation specified in this section. Each school shall be responsible for keeping accurate records of expenditures.

**§18-9A-10. Foundation allowance to improve instructional programs and instructional technology.**

(a) The total allowance to improve instructional programs and instructional technology ~~shall be~~ is the sum of the following:

(1) For instructional improvement, in accordance with county and school electronic strategic improvement plans required by section five, article two-e of this chapter, an amount equal to ten percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be ~~distributed~~ allocated to the counties as follows:

(A) One hundred fifty thousand dollars shall be allocated to each county; and

(B) ~~Distribution~~ Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

~~Moneys allocated by provision of this subdivision shall be used to improve instructional programs according to the county and school strategic improvement plans required by section five, article two-e of this chapter and approved by the state board. *Provided, That notwithstanding any other provision of this code to the contrary, moneys allocated by provision of this section also may be used in the implementation and maintenance of the uniform integrated regional computer information system.*~~

Up to ~~twenty-five~~ fifty percent of this allocation for the improvement of instructional programs may be used to employ professional educators and service personnel in the ~~counties after all applicable provisions of sections four and five of this article have been fully utilized~~ county. Prior to the use of any funds from this subdivision for personnel costs, the county board must receive authorization from the state superintendent. The state superintendent shall require the county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; (3) sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget; and (4) employment of technology integration specialists to meet the needs for implementation of the West Virginia Strategic Technology Learning Plan. County boards shall make application for the use of funds for personnel for the next fiscal year by May 1 of each year. On or before June 1, the state superintendent shall review all applications and notify applying county boards of the approval or disapproval of the use of funds for personnel during the fiscal year appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county's inability to meet the requirements of state law or state board policy.

~~The provisions relating to the use of any funds from this subdivision for personnel costs are subject to the following:~~

~~(1) The funds available for personnel under this subsection subdivision may not be used to increase the total number of professional noninstructional personnel in the central office beyond four.; and (2) For the school year beginning July 1, 2013, and thereafter, any funds available to a county for use for personnel under this subsection above the amount available for the 2012-2013 school year, only may be used for technology systems specialists until the state superintendent determines that the county has sufficient technology systems specialists to serve the needs of the county.~~

The plan shall be made available for distribution to the public at the office of each affected county board; plus

(2) For the purposes of improving instructional technology, an amount equal to twenty percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be ~~distributed~~ allocated to the counties as follows:

(A) Thirty thousand dollars shall be allocated to each county; and

(B) ~~Distribution~~ Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

~~Effective July 1, 2014, Moneys allocated by provision of this subdivision shall be used to improve instructional technology programs according to the county board's and school strategic improvement plans technology learning plan.; plus~~

This allocation for the improvement of instructional technology programs may also be used for the employment of technology system specialists essential for the technology systems of the schools of the county to be fully functional and readily available when needed by classroom teachers. The amount of this allocation used for the employment of technology system specialists shall be included and justified in the county board's strategic technology learning plan; plus

(3) One percent of the state average per pupil state aid multiplied by the number of students enrolled in dual credit, advanced placement and international baccalaureate courses, as defined by the state board, distributed to the counties proportionate to enrollment in these courses in each county; plus

(4) An amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to January 1, 1994, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to January 1, 1994, shall be paid by the Department of Education in

accordance with the expenditure schedule approved by the state budget office into the School Building Capital Improvements Fund created by section six, article nine-d of this chapter and shall be used solely for the purposes of that article. The School Building Capital Improvements Fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the School Building Debt Service Fund have been pledged for repayment pursuant to that section.

(b) Notwithstanding the restrictions on the use of funds pursuant to subdivisions (1) and (2), subsection (a) of this section, a county board may:

(1) Utilize up to twenty-five percent of the allocation for the improvement of instructional programs in any school year for school facility and equipment repair, maintenance and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county and school strategic improvement plans or amendments thereto; and

(2) Utilize up to fifty percent of the allocation for improving instructional technology in any school year for school facility and equipment repair, maintenance and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county board's strategic technology learning plan or amendments thereto.

~~(b)~~ (c) When the school improvement bonds secured by funds from the School Building Capital Improvements Fund mature, the State Board of Education shall annually deposit an amount equal to \$24,000,000 from the funds allocated in this section into the School Construction Fund created pursuant to the provisions of section six, article nine-d of this chapter to continue funding school facility construction and improvements.

~~(c)~~ (d) Any project funded by the School Building Authority shall be in accordance with a comprehensive educational facility plan which must be approved by the state board and the School Building Authority.

## **ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**

### **§18-9D-4d. Emergency facility and equipment repair or replacement fund for financially distressed counties.**

From the funds available to it the School Building Authority shall maintain a reserve fund in the amount of not less than \$600,000 for the purpose of making emergency grants to financially distressed county boards to assist them in making repairs or performing urgent maintenance to facilities or facility related equipment or facility related equipment replacement necessary to maintain the serviceability or structural integrity of school facilities currently in use or necessary for educating the students of the county. The grants shall be made in accordance with guideline established by the school

building authority. For the purposes of this section, “financially distressed county” means a county either in deficit or on the most recently established watch list established by the Department of Education of those counties at-risk of becoming in deficit.

Bill Sponsors: Delegates Espinosa, Upson, Blair, Westfall, R. Romine, Rowan, Cooper, Statler, Kelly, Dean and Rohrbach

**House Bill 2637**

**Relating to employment of retired teachers and prospective employable professional personnel in areas of critical need and shortage**

Effective Date:

July 7, 2017

Code Reference:

Amends §18A-2-3

WVDE Contact:

Robert Hagerman, Office of Educator Effectiveness and Licensure, 304-558-7010

Bill Summary:

The bill extends until 2020 the statutory provision that allows districts to employ retired teachers as substitutes in areas of critical need and shortage without adversely affecting the retired teacher's retirement benefits. The bill also expands the definition of professional personnel that may utilize this provision to include speech pathologists and school nurses.

The bill increases the number of prospective personnel that may be hired at a job fair to the number needed fill critical need and shortage positions. Presently, the limit is 3 full time professional personnel per 100 professional personnel employed or 25 professional personnel, whichever is less. Before making an offer at a job fair, the district must have properly posted the position.

The bill allows county boards of education to offer one-time financial incentives to attract professional personnel for critical need and shortage positions. The financial incentives must be paid from local funds.

**§18A-2-3. Employment of substitute teachers; employment of retired teachers as substitutes in areas of critical need and shortage; and employment of prospective employable professional personnel.**

(a) The county superintendent, subject to approval of the county board, may employ and assign substitute teachers to any of the following duties:

(1) Fill the temporary absence of any teacher or an unexpired school term made vacant by resignation, death, suspension or dismissal;

(2) Fill a teaching position of a regular teacher on leave of absence; and

(3) Perform the instructional services of any teacher who is authorized by law to be absent from class without loss of pay, providing the absence is approved by the board of education in accordance with the law.

The substitute shall be a duly certified teacher.

(b) Notwithstanding any other provision of this code to the contrary, a substitute teacher who has been assigned as a classroom teacher in the same classroom continuously for more than one half of a grading period and whose assignment remains in effect two weeks prior to the end of the grading period, shall remain in the assignment until the grading period has ended, unless the principal of the school certifies that the regularly employed teacher has communicated with and assisted the substitute with the preparation of lesson plans and monitoring student progress or has been approved to return to work by his or her physician. For the purposes of this section, teacher and substitute teacher, in the singular or plural, mean professional educator as defined in section one, article one of this chapter.

(c) (1) The Legislature hereby finds and declares that due to a shortage of qualified substitute teachers, a compelling state interest exists in expanding the use of retired teachers to provide service as substitute teachers in areas of critical need and shortage. The Legislature further finds that diverse circumstances exist among the counties for the expanded use of retired teachers as substitutes.

(2) For the purposes of this subsection:

(A) "Area of critical need and shortage for substitute teachers" means an area of certification and training in which the number of available substitute teachers in the county who hold certification and training in that area and who are not retired is insufficient to meet the projected need for substitute teachers; and

(B) "Teacher or substitute teacher" includes speech pathologists and school nurses.

~~(2)~~ (3) A person receiving retirement benefits under article seven-a, chapter eighteen of this code or who is entitled to retirement benefits during the fiscal year in

which that person retired may accept employment as a critical needs substitute teacher for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled if the following conditions are satisfied:

(A) The county board adopts a policy recommended by the superintendent to address areas of critical need and shortage for substitute teachers;

(B) The policy sets forth the areas of critical need and shortage for substitute teachers in the county in accordance with the definition of area of critical need and shortage for substitute teachers set forth in subdivision ~~(4)~~ (2) of this subsection;

(C) The policy provides for the employment of retired teachers as critical needs substitute teachers during the school year on an expanded basis in areas of critical need and shortage for substitute teachers as provided in this subsection;

(D) The policy provides that a retired teacher may be employed as a substitute teacher in an area of critical need and shortage for substitute teachers on an expanded basis as provided in this subsection only when no other teacher who holds certification and training in the area and who is not retired is available and accepts the substitute assignment;

(E) The policy is effective for one school year only and is subject to annual renewal by the county board;

(F) The state board approves the policy and the use of retired teachers as substitute teachers on an expanded basis in areas of critical need and shortage for substitute teachers as provided in this subsection; and

(G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond the post-retirement employment limitations established by the Consolidated Public Retirement Board, the superintendent of the affected county submits to the state board in a form approved by the Consolidated Public Retirement Board and the state board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired teachers as substitutes to address areas of critical need and shortage, the name or names of the person or persons to be employed as a critical needs substitute pursuant to the policy, the critical need and shortage area position filled by each person, the date that the person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. Upon verification of compliance with this section and the eligibility of the critical needs substitute teacher for employment beyond the post-retirement limit, the state board shall submit the affidavit to the Consolidated Public Retirement Board.

~~(3)~~ (4) Any person who retires and begins work as a critical needs substitute teacher within the same ~~employment term~~ fiscal year in which that person retired shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree critical needs substitute teacher in that ~~employment term~~ fiscal

year and ending with the month following the date the retiree ceases to perform service as a critical needs substitute teacher.

(4) (5) Retired teachers employed to perform expanded substitute service pursuant to this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and may not accrue seniority.

~~(5)~~ (6) A retired teacher is eligible to be employed as a critical needs substitute teacher to fill a vacant position without any loss of retirement benefits attributed to the annuity reserve only if the retired teacher's retirement became effective at least twenty days before the beginning of the employment term- before the first day of July preceding at least the fiscal year during which he or she is employed as a critical needs substitute teacher.

~~(6)~~ (7) When a retired teacher is employed as a critical needs substitute to fill a vacant position, the county board shall continue to post the vacant position until it is filled with a regularly employed teacher who is fully certified or permitted for the position.

~~(7)~~ (8) When a retired teacher is employed as a critical needs substitute to fill a vacant position, the position vacancy shall be posted electronically and easily accessible to prospective employees as determined by the state board.

~~(8)~~ (9) Until this subsection is expired pursuant to subdivision ~~(9)~~ (10) of this subsection, the state board, ~~annually,~~ shall report to the Joint Committee on Government and Finance, prior to February 1 of each year, information indicating the effectiveness of the provisions of this subsection on reducing the critical need and shortage of substitute teachers including, but not limited to, the number of retired teachers, by critical need and shortage area position filled and by county, employed beyond the post-retirement employment limit established by the Consolidated Public Retirement Board, the date that each person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. Additionally, A copy of the report shall also be provided to the Legislative Oversight Commission on Education Accountability. ~~The report shall contain information indicating the effectiveness of the provisions of this subsection on reducing the critical need and shortage of substitute teachers including, but not limited to, the number of retired teachers, by critical need and shortage area position filled and by county, employed beyond the post-retirement employment limit established by the Consolidated Public Retirement Board, the date that each person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement.~~

~~(9)~~ (10) The provisions of this subsection shall expire on June 30, ~~2017~~ 2020.

(d) (1) Notwithstanding any other provision of this code to the contrary, each year a county superintendent may employ prospective employable professional personnel on a reserve list at the county level subject to the following conditions:

(A) ~~The county board adopts a policy authorizing the employment of prospective employable professional personnel to address areas of critical need and shortage as identified by the state board. The policy shall include authorization to employ prospective employable professional personnel;~~

(B) ~~The county board posts a notice of the areas of critical need and shortage area positions in the county in a conspicuous place in each school or on the county website for at least ten working days prior to making offers of employment to prospective candidates; and~~

(C) ~~There are not any potentially qualified applicants available and willing to fill the position.~~

(2) ~~Prospective employable professional personnel may only be employed from candidates at a job fair who have or will graduate from college in the current school year and whose will commence employment contract with a county board has or will be terminated due to a reduction in force in the current fiscal year at the next employment term.~~

(3) ~~The number of prospective employable professional personnel employed are is limited to three full-time prospective employable professional personnel per one hundred professional personnel employed in a county or twenty-five full-time prospective employable professional personnel in a county, whichever is less the number required to fill the critical need and shortage area positions posted in accordance with subdivision (1) of this subsection.~~

(4) ~~Prospective employable professional personnel shall be granted benefits at a cost to the county board and as a condition of the employment contract as approved by the county board.~~

(5) ~~Regular employment status for prospective employable professional personnel may be obtained only upon recommendation by the superintendent and approval by the county board following consideration of the qualifications of the candidate in accordance with the applicable provisions of section seven-a, article four of this chapter. Upon board approval, prospective employable professional personnel may be placed into a critical needs position if the job has been posted at least once in accordance with paragraph (B), subdivision (1) of this subsection resulting in no qualified applicants. Employment of the prospective employable professional personnel pursuant to this subsection may occur without the need for additional postings and without the need for additional faculty senate involvement other than the initial faculty senate involvement required in the case of a classroom teaching position pursuant to section seven-a, article four of this chapter.~~

(6) ~~Nothing in this subsection prevents a county board from filling a posted vacancy in an established, existing or newly created position at any time in accordance with the other provisions of this chapter.~~

(7) For the purpose of recruiting professional personnel in critical needs areas and to attract professional personnel in a critical need or shortage area, county boards of education may from local funds pay prospective employable professional personnel a one-time financial incentive such as, but not limited to, a signing bonus or moving expenses, after a contract of employment has been signed.

Bill Sponsors: Delegates Espinosa, Statler, Upson, Blair, Wilson, Westfall, R. Romine, Higginbotham, Harshbarger, Cooper and Folk

**House Bill 2702**

**Relating to excused absences for personal illness from school**

Effective Date:

July 1, 2017

Code Reference:

Amends §18-8-4

WVDE Contact:

Heather Hutchens, Office of Legal Services and Accountability, 304-558-3667

Bill Summary:

Presently, an excused absence includes personal illness or injury of a student's parent, guardian, custodian or family member. The bill adds the requirement that the excuses submitted for such absences must provide a reasonable explanation for why the student's absence was necessary and caused by the illness or injury in the family.

The bill requires that all documentation relating to absences be provided to a school within 3 instructional days after the student returns to school.

The bill also changes the 3 day notice sent to parents when a student receives 3 unexcused absences from mandatory to permissive. Under the bill, such notice may be sent out at the discretion of the attendance director or assistant. Similarly, the bill changes the requirement that an attendance director file a truancy complaint against a student's parents/guardians after 10 unexcused absences from mandatory to permissive.

## ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

### §18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

(a) The county attendance director and the assistants shall diligently promote regular school attendance. The director and assistants shall:

(1) Ascertain reasons for unexcused absences from school of students of compulsory school age and students who remain enrolled beyond the compulsory school age as defined under section one-a of this article;

(2) Take such steps as are, in their discretion, best calculated to encourage the attendance of students and to impart upon the parents and guardians the importance of attendance and the seriousness of failing to do so; ~~and~~

(3) For the purposes of this article, the following definitions shall apply:

(A) "Excused absence" ~~shall be defined to include~~ includes:

(i) Personal illness or injury of the student ~~or in the family~~;

(ii) Personal illness or injury of the student's parent, guardian, custodian, or family member: *Provided*, That the excuse must provide a reasonable explanation for why the student's absence was necessary and caused by the illness or injury in the family;

~~(ii)~~ (iii) Medical or dental appointment with written excuse from physician or dentist;

~~(iii)~~ (iv) Chronic medical condition or disability that impacts attendance;

~~(iv)~~ (v) Participation in home or hospital instruction due to an illness or injury or other extraordinary circumstance that warrants home or hospital confinement;

~~(v)~~ (vi) Calamity, such as a fire or flood;

~~(vi)~~ (vii) Death in the family;

~~(vii)~~ (viii) School-approved or county-approved curricular or extra-curricular activities;

~~(viii)~~ (ix) Judicial obligation or court appearance involving the student;

~~(ix)~~ (x) Military requirement for students enlisted or enlisting in the military;

~~(x)~~ (xi) Personal or academic circumstances approved by the principal; and

~~(xi)~~ (xii) Such other situations as may be further determined by the county board: *Provided*, That absences of students with disabilities shall be in accordance with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in compliance therewith; and

(B) "Unexcused absence" ~~shall be~~ means any absence not specifically included in the definition of "excused absence"; and

(4) All documentation relating to absences shall be provided to the school no later than three instructional days after the first day the student returns to school.

(b) In the case of three total unexcused absences of a student during a school year, the attendance director or assistant ~~shall~~ may serve notice by written ~~notice or other means~~ to the parent, guardian, or custodian of the student that the attendance of the student at school is required and that if the student has five unexcused absences, a conference with the principal, administrative head or other ~~designated representative~~ chief administrator will be required.

(c) In the case of five total unexcused absences, the attendance director or assistant shall serve written notice to the parent, guardian or custodian of the student that within five days of receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report in person to the school the student attends for a conference with the principal, administrative head or other ~~designated representative~~ chief administrator of the school in order to discuss and correct the circumstances causing the unexcused absences of the student, including the adjustment of unexcused absences based ~~upon~~ such on the meeting.

(d) In the case of ten total unexcused absences of a student during a school year, the attendance director or assistant ~~shall~~ may make a complaint against the parent, guardian or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent, guardian or custodian may be charged in a complaint. Initial service of a summons or warrant issued pursuant to the provisions of this section shall be attempted within ten calendar days of receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

(e) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in section eight, article one, chapter fifty of this code, shall assign the case to a magistrate within ten days of execution of the summons or warrant. The hearing shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least ten days' advance notice of the date, time and place of the hearing.

(f) When any doubt exists as to the age of a student absent from school, the attendance director and assistants have authority to require a properly attested birth certificate or an affidavit from the parent, guardian or custodian of the student, stating age of the student. In the performance of his or her duties, the county attendance director and assistants have authority to take without warrant any student absent from school in violation of the provisions of this article and to place the student in the school in which he or she is or should be enrolled.

(g) The county attendance director and assistants shall devote such time as is required by section three of this article to the duties of attendance director in accordance with this section during the instructional term and at such other times as the duties of an attendance director are required. All attendance directors and assistants hired for more than two hundred days may be assigned other duties determined by the superintendent during the period in excess of two hundred days. The county attendance director is responsible under direction of the county superintendent for efficiently administering school attendance in the county.

(h) In addition to those duties directly relating to the administration of attendance, the county attendance director and assistant directors also shall perform the following duties:

(1) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

(2) Confer with principals and teachers on the comparison of school census and enrollment for the detection of possible nonenrollees;

(3) Cooperate with existing state and federal agencies charged with enforcing child labor laws;

(4) Prepare a report for submission by the county superintendent to the State Superintendent of Schools on school attendance, at such times and in such detail as may be required. The state board shall promulgate a legislative rule pursuant to article three-b, chapter twenty-nine-a of this code that set forth student absences that are excluded for accountability purposes. The absences that are excluded by the rule shall include, but are not limited to, excused student absences, students not in attendance due to disciplinary measures and absent students for whom the attendance director has pursued judicial remedies to compel attendance to the extent of his or her authority. The attendance director shall file with the county superintendent and county board at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;

(5) Promote attendance in the county by compiling data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;

(6) Participate in school teachers' conferences with parents and students;

(7) Assist in such other ways as the county superintendent may direct for improving school attendance;

(8) Make home visits of students who have excessive unexcused absences, as provided ~~above~~ in subsection-a of this section, or if requested by the chief administrator, principal or assistant principal; and

(9) Serve as the liaison for homeless children and youth.

Bill Sponsors: Delegates Westfall, Cooper, Ambler, Wagner, Moye, Atkinson, Marcum and Higginbotham

**House Bill 2704**

**Prohibiting persons convicted of sexual offenses against children with whom they hold positions of trust from holding certification or license valid in public schools**

Effective Date:

July 7, 2017

Code Reference:

Amends §18A-3-6 and §18A-3-10

WVDE Contact:

Heather Hutchens, Office of Legal Services and Accountability, 304-558-3667

Bill Summary:

This bill provides for an automatic license revocation when a licensed educator has been convicted for sexual abuse by a person in a position of trust (W. Va. Code §61-8D-5).

The bill also allows the WVDE to require a licensee to undergo a criminal history record check when: (1) the licensee has lived outside of WV for more than one year since his or her licensure by the WVDE, or (2) there is a reasonable belief that the licensee has failed to provide notification of a felony conviction, conviction of an offense under Chapter 61-8B or similar offenses.

### **Article 3. Training, Certification, Licensing, Professional Development.**

#### **§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.**

(a) The state superintendent may, after ten days' notice and upon proper evidence, revoke the certificates of any teacher for any of the following causes: Intemperance; untruthfulness; cruelty; immorality; the conviction of a felony or a guilty plea or a plea of no contest to a felony charge; the conviction, guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student; or for using fraudulent, unapproved or insufficient credit to obtain the certificates: *Provided*, That the certificates of a teacher may not be revoked for any matter for which the teacher was disciplined, less than dismissal, by the county board that employs the teacher, nor for which the teacher is meeting or has met an improvement plan determined by the county board, unless it can be proven by clear and convincing evidence that the teacher has committed one of the offenses listed in this subsection and his or her actions render him or her unfit to teach: *Provided, however*, That in order for any conduct of a teacher involving intemperance; cruelty; immorality; or using fraudulent, unapproved or insufficient credit to obtain the certificates to constitute grounds for the revocation of the certificates of the teacher, there must be a rational nexus between the conduct of the teacher and the performance of his or her job. The state superintendent may designate the West Virginia commission for professional teaching standards or members thereof to conduct hearings on revocations or certificate denials and make recommendations for action by the state superintendent: *Provided further*, That a teacher convicted under chapter sixty-one, article eight-d, section five shall have his or her certificate or license automatically revoked.

(b) It shall be the duty of any county superintendent who knows of any acts on the part of any teacher for which a certificate may be revoked in accordance with this section to report the same, together with all the facts and evidence, to the state superintendent for such action as in the state superintendent's judgment may be proper.

(c) If a certificate has been granted through an error, oversight, or misinformation, the state superintendent has authority to recall the certificate and make such corrections as will conform to the requirements of law and the state board.

#### **§18A-3-10. Criminal history check of applicants for licensure by the state Department of Education.**

~~(a) Beginning the first day of January, two thousand two,~~ Any applicant for an initial license issued by the West Virginia Department of Education shall be fingerprinted by the West Virginia state police in accordance with state board policy in order to determine the applicant's suitability for licensure. The fingerprints shall be analyzed by the State Police for a state criminal history record check through the central abuse registry and then forwarded to the federal bureau of investigation for a national criminal history record check.

(b) Information contained in either the central abuse registry record or the federal bureau of investigation record may form the basis for the denial of a certificate for just cause.

(c) The applicant for initial certification pays for the cost of obtaining the central abuse registry record and the federal bureau of investigation record.

(d) Upon written consent to the state department by the applicant and within ninety days of the state fingerprint analysis, the results of a state analysis may be provided to a county board with which the applicant is applying for employment without further cost to the applicant.

(e) Information maintained by the state department or a county board which was obtained for the purpose of this section is exempt from the disclosure provisions of chapter twenty-nine-b of this code. Nothing in this section prohibits disclosure or publication of information in a statistical or other form which does not identify the individuals involved or provide personal information.

(f) After an initial license has been issued by the West Virginia Department of Education, the West Virginia Department of Education may require any licensee to be fingerprinted by the West Virginia state police in accordance with state board policy: *Provided*, That the licensee lived outside of the state of West Virginia for a period of one year or more since his or her licensure, or the West Virginia Department of Education or the school administrator has a reasonable belief that the licensee has not notified the school administrator of any felony conviction, conviction of any offense under chapter sixty-one, article eight-b of this code, or offenses of similar nature to those in chapter sixty-one, article eight-b of this code that have been established under any other state or the United States. The fingerprints may be analyzed by the West Virginia State Police for a state criminal history record check through the central abuse registry and then forwarded to the federal bureau of investigation for a national criminal history record check.

Bill Sponsors: Espinosa, Statler, Dean, Rohrbach, Wilson, Rowan, Harshbarger, R. Romine, Wagner, Cooper and Higginbotham

**House Bill 2711**

**Abolishing regional educational services agencies and providing for the transfer of property and records**

Effective Date:

July 7, 2017

Code Reference:

Amends §18-2-26; §18-2E-1a; §18-2E-5; §18-5-13; §18-5-45; §18-9A-8a and §18A-4-14

Adds §18-5-13b and §18-5-13c

Repeals §18-2-26a;

WVDE Contact:

Clayton Burch, Office of the Associate Superintendent, 304-558-3762

Bill Summary:

The bill requires constructive engagement of the Legislature and the Governor's Office before adopting new standards/assessment/accountability system. It provides that the statewide summative assessment is only to be given in grades 3-8 and once in high school for ELA and math, and once per grade band in science. For the high school assessment, the bill requires the WVBE to adopt a standard, curriculum based achievement college entrance exam. The WVBE may adopt career readiness assessment, but is not required to do so

The bill provides that the accountability system implemented by the WVBE must be based on multiple measures and include measures that assure schools and districts are providing a thorough and efficient education for all students.

The bill eliminates OEPA. The WVBE is authorized to employ experienced education professionals to coordinate on site and districts improvement efforts with the WVDE to support schools and districts in improving education performance measures. The WVBE has the responsibility of annually reviewing performance measures and accrediting each school as provided in WVBE policy and in accordance with federal law. The bill removes many of the statutory requirements currently placed on the WVBE's accreditation system (specific statutory direction regarding full approval, temporary approval, conditional approval, and nonapproval statuses has been removed).

The bill eliminates intervention at the school level so that

school specific administrative issues can be managed by the county superintendent and locally elected BOE. It restricts intervention to: (1) when a district is directed to make improvements within 60 days and fails to make progress, and (2) extraordinary circumstances as defined by WVBE. The WVBE is expressly authorized to intervene immediately if district fails to meet statutory obligation resulting in interruption of day to day operations.

The bill establishes 4 geographic Superintendent's Advisory Councils to provide county superintendents with regional forums to discuss/identify areas where counties can coordinate, cooperate, and share services, and make recommendations to the State Superintendent and State Board on law and policy to promote more local control. The quadrants do not restrict or define how counties may enter into Educational Services Cooperatives (ESC) or cooperative agreements.

The bill authorizes county BOEs to enter educational service cooperatives with other county BOEs. Cooperatives are not limited by geographic location; requires such agreements to be in writing. ESCs will have a governing council similar to the RESA regional council to oversee the administration, including employment authority, of the cooperative.

RESAs are abolished as of July 1, 2018, but may continue to operate in until then unless/until modified by a cooperative agreement or dissolved on July 1, 2018. The bill removes the school aid general revenue allocation (~\$3.5 million) from code, but does not restrict other grants and funds from continuing to pass through to the RESAs in FY 2018, and thereafter to the ESCs.

The bill allows districts to use accrued time (up to 5 days) to make up lost days due to inclement weather to meet 180 day requirement. Districts may also use alternative methods of instruction, subject to approval of WVBE, when schools are closed due to inclement weather (up to 5 days) to meet 180 day requirement. Accrued time may also be used to recover lost time due to late arrivals/early dismissals. The bill provides more flexibility for the times when faculty senates must meet.

The bill provides that educators are to receive uninterrupted planning periods each day during which they cannot be

asked to complete duties beyond instructional planning.

## ARTICLE 2. STATE BOARD OF EDUCATION.

### **§18-2-26. Establishment of multicounty regional educational service agencies; purpose; authority of state board; governance; annual performance standards. Abolishment and transition of regional education service agencies.**

~~(a) *Legislative intent.* -- The intent of the Legislature in providing for establishment of regional education service agencies, hereinafter referred to in this section as agency or agencies, is to provide for high quality, cost effective education programs and services to students, schools and school systems.~~

~~Since the first enactment of this section in 1972, the focus of public education has shifted from a reliance on input models to determine if education programs and services are providing to students a thorough and efficient education to a performance based accountability model which relies on the following:~~

~~(1) Development and implementation of 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;~~

~~(2) Development and implementation of assessments to measure student performance and progress toward meeting the standards;~~

~~(3) Development and implementation of 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~~

~~(4) Development and implementation of a method for building the capacity and improving the efficiency of schools and school systems to improve student performance and progress.~~

(a) The regional education service agencies previously established by this section and W. Va. 126CSR72, filed October 15, 2015, and effective November 16, 2015, shall remain and may continue to operate in accordance with the provisions of this section prior to its amendment and reenactment at the Regular Session of the Legislature, 2017, and with said rule, unless and until modified by a cooperative agreement entered into by county boards within the agency boundaries or dissolved by said county boards: *Provided, That on July 1, 2018, the regional education service agencies as provided under prior provisions of this section are dissolved.*

~~(b) *Purpose.* -- In establishing the agencies the Legislature envisions certain areas of service in which the agencies can best assist the state board in implementing the standards based accountability model pursuant to subsection (a) of this section and, thereby, in providing high quality education programs. These areas of service include the following:~~

~~(1) Providing technical assistance to low performing schools and school systems;~~

~~(2) Providing high quality, targeted staff development designed to enhance the performance and progress of students in state public education;~~

~~(3) Facilitating coordination and cooperation among the county boards within their respective regions in such areas as cooperative purchasing; sharing of specialized personnel, communications and technology; curriculum development; and operation of specialized programs for exceptional children;~~

~~(4) Installing, maintaining and/or repairing education related technology equipment and software with special attention to the state level technology learning tools for public schools program;~~

~~(5) Receiving and administering grants under the provisions of federal and/or state law; and~~

~~(6) Developing and/or implementing any other programs or services as directed by law, the state board or the regional council.~~

(b) On July 1, 2018, all property, equipment and records held by the regional education service agencies necessary to effectuate the purposes of this article shall be transferred or liquidated or disbursed in accordance with section thirteen-c, article five of this chapter.

~~(c) *State board rule.*— The state board shall reexamine the powers and duties of the agencies in light of the changes in state level education policy that have occurred and shall establish multicounty regional education service agencies by rule, promulgated in accordance with the provisions of article three-b, chapter twenty-nine-a of this code.~~

~~The rule shall contain all information necessary for the effective administration and operation of the agencies. In developing the rule, the state board may not delegate its Constitutional authority for the general supervision of schools to the agencies, however, it may allow the agencies greater latitude in the development and implementation of programs in the service areas outlined in subsection (b) of this section with the exceptions of providing technical assistance to low performing schools and school systems and providing high quality, targeted staff development designed to enhance the performance and progress of students in state public education. These two areas constitute the most important responsibilities for the agencies.~~

~~The rule establishing the agencies shall be promulgated before November 1, 2015, and shall be consistent with the provisions of this section. It shall include, but is not limited to, the following procedures:~~

~~(1) Providing for a uniform governance structure for the agencies containing at least these elements:~~

~~(A) Selection by the state board of an executive director who shall be responsible for the administration of his or her respective agency. The rule shall provide for the state board to select the executive director only upon the nomination of one or more candidates by the regional council of the agency. In case the board refuses to select any of the candidates nominated, the regional council shall nominate others and submit them to the board. All candidates nominated must meet the qualifications for the position established by the state board. Nothing shall prohibit the timely employment of persons to perform necessary duties;~~

~~(B) Development of a job description and qualifications for the position of executive director, together with procedures for informing the public of position openings, for taking and evaluating applications, for making nominations for these positions, and for annually evaluating the performance of persons employed as executive director. The state board shall consult with the regional councils on the development of the job description, qualifications and procedures;~~

~~(C) Provisions for the annual performance evaluation of the executive director that provide for one half of the evaluation rating to be determined by the regional council;~~

~~(D) Provisions for the agencies to employ other staff, as necessary, with the approval of the state board and upon the recommendation of the executive director: *Provided*, That prior to July 1, 2003, no person who is an employee of an agency on the effective date of this section may be terminated or have his or her salary and benefit levels reduced as the sole result of the changes made to this section or by state board rule;~~

~~(E) Appointment by the county boards of a regional council in each agency area consisting of representatives of county boards and county superintendents from within that area for the purpose of advising, assisting and informing the executive director in carrying out his or her duties to achieve the purposes of this section and provide educational services to the county school systems within the region. The state board may provide for membership on the regional council for representatives from other agencies and institutions who have interest or expertise in the development or implementation of regional education programs; and~~

~~(F) Selection by the state superintendent of a representative from the state Department of Education to serve on each regional council. These representatives shall meet with their respective regional councils at least quarterly;~~

~~(2) Establishing statewide standards by the state board for service delivery by the agencies. These standards may be revised annually and shall include, but are not limited to, programs and services to fulfill the purposes set forth in subsection (b) of this section;~~

~~(3) Establishing procedures for developing and adopting an annual basic operating budget for each agency and for other budgeting and accounting procedures as the state board may require;~~

~~(4) Establishing procedures clarifying that agencies may acquire and hold real property;~~

~~(5) Dividing the state into appropriate, contiguous geographical areas and designating an agency to serve each area. The rule shall provide that each of the state's counties is contained within a single service area and that all counties located within the boundaries of each agency, as determined by the state board, shall be members of that agency; and~~

~~(6) Such other standards or procedures as the state board finds necessary or convenient.~~

~~(d) *Regional services.* -- In furtherance of the purposes provided for in this section, the state board and the regional council of each agency shall continually explore possibilities for the delivery of services on a regional basis which will facilitate equality in the education offerings among counties in its service area, permit the delivery of high quality education programs at a lower per student cost, strengthen the cost effectiveness of education funding resources, reduce administrative and/or operational costs, including the consolidation of administrative, coordinating and other county level functions into region level functions, and promote the efficient administration and operation of the public school systems generally.~~

Technical, operational, programmatic or professional services are among the types of services appropriate for delivery on a regional basis. Nothing in this section prohibits regional education service agencies from cooperating, sharing or combining services or programs with each other, at their discretion, to further the purposes of this section.

~~(e) *Virtual education.* -- The state board, in conjunction with the various agencies, shall develop an effective model for the regional delivery of instruction in subjects where there exists low student enrollment or a shortage of certified teachers or where the delivery method substantially improves the quality of an instructional program. The model shall incorporate an interactive electronic classroom approach to instruction. To the extent funds are appropriated or otherwise available, county boards or regional education service agencies may adopt and utilize the model for the delivery of the instruction.~~

~~(f) *Computer information system.* -- Each county board of education shall use the statewide electronic information system established by the state board for data collection and reporting to the state Department of Education.~~

~~(g) *Reports and evaluations.* -- Each agency shall submit to the state superintendent on such date and in such form as specified in the rules adopted by the state board a~~

~~report and evaluation of the technical assistance and other services provided and utilized by the schools within each respective region and their effectiveness. Additionally, any school may submit an evaluation of the services provided by the agency to the state superintendent at any time. This report shall include an evaluation of the agency program, suggestions on methods to improve utilization and suggestions on the development of new programs and the enhancement of existing programs. The reports and evaluations submitted pursuant to this subsection shall be submitted to the state board and shall be made available upon request to the standing committees on education of the West Virginia Senate and House of Delegates and to the secretary of education and the arts.~~

~~(h) *Funding sources.* -- An agency may receive and disburse funds from the state and federal governments, from member counties, or from gifts and grants.~~

~~(i) *Employee expenses.* -- Notwithstanding any other provision of this code to the contrary, employees of agencies shall be reimbursed for travel, meals and lodging at the same rate as state employees under the travel management office of the Department of Administration.~~

~~A county board member may not be an employee of an agency.~~

~~(j) *Meetings and compensation.* --~~

~~(1) Agencies shall hold at least one half of their regular meetings during hours other than those of a regular school day. The executive director of each agency shall attend at least one meeting of each of the member county boards of education each year to explain the agency's services, garner suggestions for program improvement and provide any other information as may be requested by the county board.~~

~~(2) Notwithstanding any other provision of this code to the contrary, county board members serving on regional councils may receive compensation at a rate not to exceed \$100 per meeting attended, not to exceed fifteen meetings per year. County board members serving on regional councils may be reimbursed for travel at the same rate as state employees under the rules of the travel management office of the Department of Administration.~~

## **ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

### **§18-2E-1a. Standards, assessment and accountability programs; duties of the state board.**

~~(a) In order to further the purposes of this article, on or before the first day of January, one thousand nine hundred ninety-nine, Prior to adoption or revision of academic standards in mathematics, English language arts, science and social studies, the state board shall ~~develop and recommend to the~~ constructively engage with the legislative oversight commission on education accountability ~~an assessment program to measure~~~~

~~the progress of public school students in attaining a high quality education as outlined in subsection (b). In addition, to further the purposes of this article, on or before the first day of January, one thousand nine hundred ninety-nine~~ Prior to adoption of a new statewide summative assessment, the state board shall constructively engage with the legislative oversight commission on education accountability on the assessment program it intends to adopt to measure the progress of public school students in attaining a high quality education. Prior to the full implementation of a new accountability system, the state board shall develop and recommend to the legislative oversight commission on education accountability an accountability program to help ensure a thorough and efficient system of schools. In developing the standards, assessment program and the accountability program, the state board shall take into consideration recommendations arising from any legislative interim study undertaken at the direction of the joint committee on government and finance and also shall take into consideration any recommendations made by the legislative oversight commission on education accountability.

(b) As part of their on-going responsibility for developing and implementing a program of standards, assessments and a program of accountability, the state board shall perform the following functions:

~~(1) Review assessment tools, including tests of student performance and measures of school and school system performance, and determine when any improvements or additions are necessary~~ Is prohibited from implementing the Common Core academic standards;

~~(2) Consider multiple assessments, including, but not limited to, a state testing program developed in conjunction with the state's professional educators with assistance from such knowledgeable consultants as may be necessary, which may include criterion referenced tests~~ Shall allow West Virginia educators the opportunity to participate in the development of the academic standards;

~~(3) Review all accountability measures, such as the accreditation and personnel evaluation systems and consider any improvements or additions deemed necessary; and~~ Shall provide by rule for a cyclical review, by West Virginia educators, of any academic standards that are proposed by the state board;

~~(4) Ensure that all statewide assessments of student performance are secure. Shall review assessment tools, including tests of student performance and measures of school and school system performance, and determine when any improvements or additions are necessary;~~

~~(5) Shall consider multiple assessments, including, but not limited to, a state testing program developed in conjunction with the state's professional educators with assistance from such knowledgeable consultants as may be necessary, which may include criterion referenced tests;~~

(6) Is prohibited from adopting the Smarter Balanced Assessment system or the PARCC assessment system as the statewide summative assessment;

(7) Shall review all accountability measures, such as the accreditation and personnel evaluation systems and consider any improvements or additions deemed necessary; and

(8) Shall ensure that all statewide assessments of student performance are secure.(c) The state board shall not adopt any national or regional testing program tied to federal funding, or national or regional academic standards tied to federal funding, without oversight by the legislative oversight commission on education accountability.

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

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

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

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

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

(C) A system of accountability for continuous improvement ~~defined 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 and ensure the efficiency of schools and districts to meet rigorous outcomes that assure student performance and progress toward obtaining the knowledge and skills intrinsic to a high-quality education, rather than monitoring for compliance with specific laws and regulations; and

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

(2) As the constitutional body charged with the general supervision of schools as provided by general law, the state board has the authority ~~and the responsibility~~ following constructive engagement of the Legislature as provided in section one, article

two-h of this chapter and as delegated by the Legislature by general law to establish the standards; and assess the performance and progress of students against the standards, and to exercise its supervisory responsibility to hold schools and school systems accountable and assist schools and school systems to build capacity and improve efficiency so that the standards are met, including, when necessary, seeking additional resources in consultation with the Legislature and the Governor;

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

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

(5) The intent of the Legislature in enacting this section ~~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 of improving education, to~~ will constructively consult on any measures affecting standards, assessments and accountability prior to their adoption, 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 for a period of no more than five years and shall include the mission and goals of the school or school system to improve student, school or school system performance and progress, as applicable. The strategic plan shall be revised annually in each area in which the school or system is below the standard on the annual performance measures. The plan shall be revised when required pursuant to this section to include each annual performance measure upon which the school or school system fails to meet the standard for performance and progress, the action to be taken to meet each measure, a separate time line and a date certain for meeting each measure, a cost estimate and,

when applicable, the assistance to be provided by the department and other education agencies to improve student, school or school system performance and progress to meet the annual performance measure.

The department shall make available to all public schools through its website or the West Virginia Education Information System an electronic school strategic improvement plan boilerplate designed for use by all schools to develop an electronic school strategic improvement plan which incorporates all required aspects and satisfies all improvement plan requirements of the ~~No Child Left Behind Act~~ *Every Student Succeeds Act* or subsequent federal law.

(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~~ Academic standards;
- (2) Workplace readiness skills;
- (3) Finance;
- (4) Transportation;
- (5) Special education;
- (6) Facilities;
- (7) Administrative practices;
- (8) Training of county board members and administrators;
- (9) Personnel qualifications;
- (10) Professional development and evaluation;
- (11) Student performance, progress and attendance;
- (12) Professional personnel, including principals and central office administrators, and service personnel attendance;
- (13) School and school system performance and progress;
- (14) A code of conduct for students and employees;
- (15) Indicators of efficiency; ~~and~~

(16) ~~Any other areas determined by the state board.~~ Digital literacy skills; and

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

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

(1) The state board shall promulgate a rule in accordance with ~~the provisions of~~ article three-b, chapter twenty-nine-a of this code establishing the comprehensive statewide student assessment program;

(2) Prior to the ~~2014-2015~~ testing window of the 2017-2018 school year, the state board shall align the comprehensive statewide student assessment for all grade levels in which the test is given with the college-readiness standards adopted pursuant to section thirty-nine, article two of this chapter or develop other aligned tests to be required at each grade level so that in grades three through eight and administered once during the grade span of nine through twelve to assess progress toward college and career readiness in English/language arts and math can be measured. The assessment in science shall be administered once in grade spans three through five, once in grade spans six through eight, and once in grade spans nine through twelve;

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

(4) ~~The state board may require that student proficiencies be measured through the West Virginia writing assessment at any grade levels determined by the state board to be appropriate; and~~ The comprehensive statewide student assessment shall be administered to students in accordance with the requirements of the Every Student Succeeds Act or subsequent federal law;

(5) The state board may provide, through the statewide assessment program, other optional testing or assessment instruments applicable to grade levels kindergarten through grade twelve which may be used by each school to promote student achievement. The state board annually shall publish and make available, electronically or otherwise, to school curriculum teams and teacher collaborative processes the optional testing and assessment instruments. For any online assessment, the state

board shall provide online assessment preparation to ensure that students have the requisite digital literacy skills to be successful on the assessment;

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

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

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

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

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

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

The state board shall promulgate a rule in accordance with ~~the provisions of article three-b, chapter twenty-nine-a of this code that establishes a system that is based in multiple measures and meets the requirements of any federal law to assess and weigh annual performance measures for state accreditation of~~ to assure that schools and school systems are providing a thorough and efficient education to their students. State accreditation shall be reviewed and approved in a balanced manner that gives fair credit to all measures affecting students and subgroups of students in the schools and school systems. The state board also may establish performance incentives for schools and school systems as part of the state accreditation system. On or before December 1, ~~2013~~ 2018, the state board shall report to the Governor and to the Legislative Oversight Commission on Education Accountability the proposed rule for establishing the measures and incentives of accreditation and the estimated cost therefore, if any. Thereafter, the state board shall provide an annual report to the Governor and to the Legislative Oversight Commission on Education Accountability on the impact and effectiveness of the accreditation system. The rule for school and school system accreditation proposed by the board may include, but is not limited to, the following measures:

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

(2) Graduation and attendance rate;

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

(f) *Indicators of efficiency.* — In accordance with ~~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; and
- (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.~~

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

(g) *Assessment and accountability of school and school system performance and processes.* — In accordance with ~~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 to evaluate the quality of education and the preparation of students based on the annual measures of student, school and school system performance and progress. The system of education performance ~~audits~~ measures shall provide information to the state board, the Legislature and the Governor, upon which they may determine whether a thorough and efficient system of schools is being provided. The system of education performance ~~audits~~ measures shall include:

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

(2) The evaluation of records, reports and other ~~information collected by the Office of Education Performance Audits upon which~~ documents that provide information on the quality of education and compliance with statutes, policies and standards ~~may be determined;~~ and

(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.~~

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

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

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

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

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

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

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

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

~~(1) To assist the state board 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 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 serves 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 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 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;~~

~~(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 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, school systems and best practices that improve student, school and school system performance and communicate those to the state board for promoting the use of best practices. The state board shall provide information on best practices to county school systems; 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 applicable laws, policies and process standards as considered appropriate and approved by the state board, which may include, but is 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 appropriate provision of 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 of any employee.~~

~~(k) *On-Site reviews* School accreditation. —~~

~~(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 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 making recommendations to the school and school system, as appropriate, and to the state board on such measures as it considers necessary. The investigation may include, but is not limited to, the following: The state board shall establish levels of accreditation to be assigned to schools. The establishment of levels of accreditation shall be subject to the following:~~

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

~~(B) Examining compliance with the laws and policies affecting student, school and school system performance and progress; Will ensure compliance with federal law and applicable state laws, policies and standards at a minimum.~~

~~(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.

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

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

~~(4) The Office of Education Performance Audits shall reimburse a county board for the costs of substitutes required to replace county board employees who serve on a review team.~~

~~(5) 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.~~

~~(6) 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 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.~~

~~(7) The Legislature finds that the accountability and oversight of some activities and programmatic areas in the public schools are controlled through other mechanisms and agencies and that additional accountability and oversight may be unnecessary, counterproductive and impair necessary resources for teaching and learning. Therefore, the Office of Education Performance Audits may rely on other agencies and mechanisms in its review of schools and school systems.~~

~~(l) *School Accreditation. School system approval.* —~~

~~(1) The state board shall establish levels of accreditation to be assigned to schools. The establishment of levels of accreditation and the levels shall be subject to the following: The state board annually shall review the information submitted for each school system from the system of education performance measures and issue to each county board an approval status in compliance with federal law and established by state board rule.~~

~~(A) The levels will be designed to demonstrate school performance in all the areas outlined in this section and also those established by the state board;~~

~~(B) The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to establish the performance and standards required for a school to be assigned a particular level of accreditation; and~~

~~(C) The state board will establish the levels of accreditation in such a manner as to minimize the number of systems of school recognition, both state and federal, that are employed to recognize and accredit schools.~~

~~(2) 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 a level of accreditation as designated and determined by the state board.~~

~~(3) The state board, in its exercise of general supervision of the schools and school systems of West Virginia, may exercise any or all of the following powers and actions:~~

~~(A) To require a school to revise its electronic strategic plan;~~

~~(B) To define extraordinary circumstances under which the state board may intervene directly or indirectly in the operation of a school;~~

~~(C) To appoint monitors to work with the principal and staff of a school where extraordinary circumstances are found to exist and to appoint monitors to assist the school principal after intervention in the operation of a school is completed;~~

~~(D) To direct a county board to target resources to assist a school where extraordinary circumstances are found to exist;~~

~~(E) To intervene directly in the operation of a school and declare the position of principal vacant and assign a principal for the school who will serve at the will and pleasure of the state board. 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 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; and~~

~~(F) Other powers and actions the state board determines necessary to fulfill its duties of general supervision of the schools and school systems of West Virginia.~~

~~(4) The county board may take no action nor refuse any action if the effect would be to impair further the school in which the state board has intervened.~~

~~(m) *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. Nonapproval for extraordinary circumstances.~~

~~(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. 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.~~

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

~~(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:~~

~~(A) The plan has been revised in accordance with subsection (b) of this section; Limiting the authority of the county board in areas that compromise the delivery of a thorough and efficient education to its students as designated by the state board by rule, which may include delegating decision-making authority regarding these matters to the state superintendent who may:~~

~~(B) The plan has been approved by the state board; and Declare that the office of the county superintendent is vacant;~~

~~(C) The county board is meeting the objectives and time line specified in the revised plan. Declare that the positions of personnel who serve at the will and pleasure of the county superintendent as provided in section one, article two, chapter eighteen-a of this code, are vacant, subject to application and reemployment;~~

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

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

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

~~(iv) 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;~~

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

~~(vi) 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.~~

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

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

(2) ~~That the conditions precedent to intervention exist as provided in this section; and that the state board had previously intervened in the operation of the same school system and had concluded that intervention within the preceding five years.~~ delaying intervention for any period of time would not be in the best interests of the students of the county school system; or

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

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

correct deficiencies, the state board shall take one or more of the following actions:

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

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

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

~~(B) (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;~~

~~(C) (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;~~

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

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

~~(F) (6) Requesting Recommending 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;~~

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

~~(H) (8) Directing county boards to target their funds educational expertise and support services strategically toward alleviating deficiencies;~~

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

appropriately reflected and recommended for funding;

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

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

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

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

~~(B)~~ (2) Support for the training and development activities identified which may include those made available through the state superintendent, ~~regional educational service agencies, Center for Professional Development, West Virginia School Board Association, Office of Education Performance Audits, West Virginia Education Information System~~ and other sources identified in the goals and action plans. ~~Attendance at these activities included in the goals and action plan is mandatory as specified in the goals and action plans;~~ and

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

At least once each year during the period of intervention, the ~~Office of Education Performance Audits~~ state board shall appoint a designee to assess the readiness of the county board to accept the return of control of the system or school from the state board and sustain the improvements, and shall make a report and recommendations to the state board supported by documented evidence of the progress made on the goals and action plans. The state board may ~~end the intervention or return any portion of control of the operations of the school system or school that was previously removed at its sole determination~~ end the intervention in its entirety by a majority vote. If the state board

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

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

## **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

### **§18-5-13. Authority of boards generally.**

Subject to the provisions of this chapter and the rules of the state board, each county board may:

(a) Control and manage all of the schools and school interests for all school activities and upon all school property owned or leased by the county, including:

(1) Requiring schools to keep records regarding funds connected with the school or school interests, including all receipts and disbursements of all funds collected or received by:

(A) Any principal, teacher, student or other person in connection with the schools and school interests;

(B) Any program, activity or other endeavor of any nature operated or conducted by or in the name of the school; and

(C) Any organization or body directly connected with the school;

(2) Allowing schools to expend funds for student, parent, teacher and community recognition programs. A school may use only funds it generates through a fund-raising or donation-soliciting activity. Prior to commencing the activity, the school shall:

(A) Publicize the activity as intended for this purpose; and

(B) Designate for this purpose the funds generated;

(3) Auditing the records and conserving the funds, including securing surety bonds by expending board moneys. The funds described in this subsection are quasipublic funds, which means the moneys were received for the benefit of the school system as a result of curricular or noncurricular activities;

(b) Establish:

(1) Schools, from preschool through high school;

(2) Vocational schools; and

(3) Schools and programs for post-high school instruction, subject to approval of the state board;

(c) Close any school:

(1) Which is unnecessary and assign the students to other schools. The closing shall occur pursuant to official action of the county board. Except in emergency situations when the timing and manner of notification are subject to approval by the state superintendent, the county board shall notify the affected teachers and service personnel of the county board action not later than the first Monday in April. The board shall provide notice in the same manner as set forth in section four of this article; or

(2) Pursuant to ~~the provisions of~~ subsection (e) of this section;

(d) Consolidate schools;

(e) Close any elementary school whose average daily attendance falls below twenty students for two consecutive months. The county board may assign the students to other schools in the district or to schools in adjoining districts. If the teachers in the closed school are not transferred or reassigned to other schools, they shall receive one month's salary;

(f) Provide transportation according to rules established by the county board, as follows:

(1) To provide at public expense adequate means of transportation:

(A) For all children of school age who live more than two miles distance from school by the nearest available road;

(B) For school children participating in county board-approved curricular and extracurricular activities;

(C) Across county lines for students transferred from one district to another by mutual agreement of both county boards. The agreement shall be recorded in the meeting minutes of each participating county board and is subject to the provisions of subsection (h) of this section; and

(D) Within available revenues, for students within two miles distance of the school; and

(2) To provide transportation for participants in projects operated, financed, sponsored or approved by the Bureau of Senior Services. This transportation shall be provided at no cost to the county board. All costs and expenses incident in any way to this transportation shall be borne by the bureau or the local or county affiliate of the bureau;

(3) Any school bus owned by the county board may be operated only by a bus operator regularly employed by the county board, except as provided in subsection (g) of this section;

(4) Pursuant to rules established by the state board, the county board may provide for professional employees to be certified to drive county board-owned vehicles that have a seating capacity of fewer than ten passengers. These employees may use the vehicles to transport students for school-sponsored activities, but may not use the vehicles to transport students between school and home. Not more than one of these vehicles may be used for any school-sponsored activity;

(5) Students may not be transported to a school-sponsored activity in any county-owned or leased vehicle that does not meet school bus or public transit ratings. This section does not prohibit a parent from transporting ten or fewer students in a privately-owned vehicle;

(6) Students may be transported to a school-sponsored activity in a vehicle that has a seating capacity of sixteen or more passengers which is not owned and operated by the county board only as follows:

(A) The state board shall promulgate a rule to establish requirements for:

(i) Automobile insurance coverage;

(ii) Vehicle safety specifications;

(iii) School bus or public transit ratings; and

(iv) Driver training, certification and criminal history record check; and

(B) The vehicle owner shall provide to the county board proof that the vehicle and driver satisfy the requirements of the state board rule; and

(7) Buses shall be used for extracurricular activities as provided in this section only when the insurance coverage required by this section is in effect;

(g) Lease school buses pursuant to rules established by the county board.

(1) Leased buses may be operated only by bus operators regularly employed by the county board, except that these buses may be operated by bus operators regularly employed by another county board in this state if bus operators from the owning county are unavailable.

(2) The lessee shall bear all costs and expenses incurred by, or incidental to the use of, the bus.

(3) The county board may lease buses to:

(A) Public and private nonprofit organizations and private corporations to transport school-age children for camps or educational activities;

(B) Any college, university or officially recognized campus organization for transporting students, faculty and staff to and from the college or university. Only college and university students, faculty and staff may be transported pursuant to this paragraph. The lease shall include provisions for:

(i) Compensation for bus operators;

(ii) Consideration for insurance coverage, repairs and other costs of service; and

(iii) Any rules concerning student behavior;

(C) Public and private nonprofit organizations, including education employee organizations, for transportation associated with fairs, festivals and other educational and cultural events. The county board may charge fees in addition to those charges otherwise required by this subsection;

(h) To provide at public expense for insurance coverage against negligence of the drivers of school buses, trucks or other vehicles operated by the county board. Any contractual agreement for transportation of students shall require the vehicle owner to maintain insurance coverage against negligence in an amount specified by the county board;

(i) Provide for the full cost or any portion thereof for group plan insurance benefits not provided or available under the West Virginia Public Employees Insurance Act. Any of these benefits shall be provided:

(1) Solely from county board funds; and

(2) For all regular full-time employees of the county board;

(j) Employ teacher aides; to provide in-service training for the aides pursuant to rules established by the state board; and, prior to assignment, to provide a four-clock-hour program of training for a service person assigned duties as a teacher aide in an exceptional children program. The four-clock-hour program shall consist of training in areas specifically related to the education of exceptional children;

(k) Establish and operate a self-supporting dormitory for:

(1) Students attending a high school or participating in a post high school program;  
and

(2) Persons employed to teach in the high school or post high school program;

(l) At the county board's discretion, employ, contract with or otherwise engage legal counsel in lieu of using the services of the prosecuting attorney to advise, attend to, bring, prosecute or defend, as the case may be, any matters, actions, suits and proceedings in which the county board is interested;

(m) Provide appropriate uniforms for school service personnel;

(n) Provide at public expense for payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by the county board, subject to rules established by the county board;

(o) Allow designated employees to use publicly provided carriage to travel from their residences to their workplace and return. The use:

(1) Is subject to the supervision of the county board; and

(2) Shall be directly connected with, required by and essential to the performance of the employee's duties and responsibilities;

(p) Provide at public expense adequate public liability insurance, including professional liability insurance, for county board employees;

(q) (1) Enter into cooperative agreements with other one or more county boards or educational services cooperative to provide improvements to the instructional needs of each district. The cooperative agreements may be used to employ specialists in a field of academic study or for support functions or services for the field. The agreements are subject to approval by the state boards;

(2) Enter into cooperative agreements with one or more county boards to facilitate coordination and cooperation in areas of service to reduce administrative and/or

operational costs, including the consolidation of administrative, coordinating, and other county level functions into shared functions to promote the efficient administration and operation of the public school systems including, but not limited to:

(A) Purchasing;

(B) Operation of specialized programs for exceptional children;

(C) Employment of any school personnel as defined in section one, article one, chapter eighteen-a of this code;

(D) Professional development;

(E) Technology including, but not limited to WVEIS; and

(F) Billing for school-based Medicaid services in schools throughout the state. Each such cooperative agreement shall be in writing and agreed to by each county board participating in the cooperative agreement. Each cooperative agreement that is an employment agreement may be entered into on a case-by-case basis. Notwithstanding the geographic quadrants as provided in section thirteen-b of this article, school systems may enter into cooperative agreements with any school system in the state.

(3) Enter into a cooperative agreement with other county boards to establish educational services cooperatives as provided in section thirteen-c of this article.

(r) Provide information about vocational and higher education opportunities to exceptional students. The county board shall provide in writing to the students and their parents or guardians information relating to programs of vocational education and to programs available at state institutions of higher education. The information may include sources of available funding, including grants, mentorships and loans for students who wish to attend classes at institutions of higher education;

(s) Enter into agreements with other county boards for the transfer and receipt of any funds determined to be fair when students are permitted or required to attend school in a district other than the district of their residence. These agreements are subject to the approval of the state board; and

(t) Enter into job-sharing arrangements, as defined in section one, article one, chapter eighteen-a of this code, with its employees, subject to the following provisions:

(1) A job-sharing arrangement shall meet all the requirements relating to posting, qualifications and seniority, as provided in article four, chapter eighteen-a of this code;

(2) Notwithstanding any contrary provision of this code or legislative rule and specifically ~~the provisions of~~ article sixteen, chapter five of this code, a county board that enters into a job-sharing arrangement:

(A) Shall provide insurance coverage to the one employee mutually agreed upon by the employees participating in that arrangement; and

(B) May not provide insurance benefits of any type to more than one of the job-sharing employees, including any group plan available under the State Public Employees Insurance Act;

(3) Each job-sharing agreement shall be in writing on a form prescribed and furnished by the county board. The agreement shall designate specifically one employee only who is entitled to the insurance coverage. Any employee who is not designated is not eligible for state public employees insurance coverage regardless of the number of hours he or she works;

(4) All employees involved in the job-sharing agreement shall meet the requirements of subdivision (3), section two, article sixteen, chapter five of this code; and

(5) When entering into a job-sharing agreement, the county board and the participating employees shall consider issues such as retirement benefits, termination of the job-sharing agreement and any other issue the parties consider appropriate. Any provision in the agreement relating to retirement benefits may not cause any cost to be incurred by the retirement system that is more than the cost that would be incurred if a single employee were filling the position; and

(u) Under rules it establishes for each child, expend an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

**§18-5-13b. County Superintendents' Advisory Council, purpose, reports.**

(a) The County Superintendents' Advisory Council, ("the Council") is hereby established. The purpose of the council is to promote collaboration among county districts and to provide input to the State Board of Education and state superintendent on issues facing school systems.

(b) After the effective date of this section, but no later than June 1, 2017, all fifty-five county superintendents shall convene to divide the state into four geographic quadrants for the purpose of carrying out the work of the council as described herein.

(c) County superintendents' responsibilities –

(1) County superintendents belonging to the same geographic quadrant shall meet to select a county superintendent to represent the geographic quadrant. The method of selection of the representative is at the discretion of each geographic quadrant. The representative of each geographic quadrant will represent the council at the state level.

(2) County superintendents of each geographic quadrant shall meet as necessary to identify coordination and cooperation in areas of service to reduce administrative and/or operational costs, including the consolidation of administrative, coordinating, and other county level functions into shared functions to promote the efficient administration and operation of the public school systems. These areas of service include, but are not limited to, the cooperative agreement areas as provided in subsection (q), section thirteen of this article.

(d) The representative from each of the four geographic quadrants of the council shall identify issues facing their geographic quadrants and present them at the state level as follows:

(1) Meet semiannually with the State Superintendent of Schools;

(2) Meet annually with the State Board of Education; and

(3) Provide an annual report to Legislative Oversight Commission on Education Accountability and the Governor on or before June 30 of each year.

(e) At least one meeting in each geographic quadrant annually shall include on the meeting agenda a discussion of any recommendations of the county boards in the quadrant for changes in laws or policies needed to better empower them to meet the state's education goals. A report of these recommendations, if any, shall be included in the annual report to Legislative Oversight Commission on Education Accountability and the Governor.

**§18-5-13c. Educational services cooperatives; purpose; establishment; governance; authorized functions and services.**

(a) Pursuant to subsection (q), section thirteen of this article, a county board is authorized to enter into a cooperative agreement with one or more other county boards to establish educational services cooperatives which shall serve as regional units to provide for high quality, cost effective lifelong education programs and services to students, schools, school systems, and communities in accordance with this section. Each educational services cooperative may serve as a regional public multi-service agency to develop, manage, and provide such services or programs as determined by its governing council and as provided in this section or otherwise provided in this code. All references in this code to regional education service agencies or RESA's mean an educational services cooperative as authorized under this section.

(b) The regional education service agencies previously established by section twenty-six, article two of this chapter and W. Va. 126CSR72, filed October 15, 2015, and effective November 16, 2015, shall remain and may continue to operate in accordance with said section and rule unless and until modified by a cooperative agreement entered into by county boards within the boundaries of the agency or dissolved by said county boards: *Provided*, That on July 1, 2018, the regional education service agencies as

provided under prior provisions of section twenty-six, article two of this chapter are dissolved. If a regional education service agency is reconfigured pursuant to a cooperative agreement or is dissolved, all property, equipment and records held by the regional education service agency necessary to effectuate the purposes of this section shall be transferred or liquidated and disbursed in accordance with the following priority order: (1) To any successor educational services cooperative substantially covering the same geographical area; (2) To the county boards who were members of the regional education service agency as agreed upon by those counties; or (3) To the state board or to other appropriate entities as provided by law.

(c) An educational services cooperative shall be under the direction and control of a governing council consisting of the following members:

(1) The county superintendent of each county participating in the cooperative agreement;

(2) A member of the board of education from each county participating in the cooperative agreement selected by the county board of education as provided in the bylaws of the governing council of the educational services cooperative; and

(3) The following representatives, if any, to be selected by the educational services cooperative administrator with the consent of the governing council:

(A) Representatives of institutions of higher education and community and technical colleges serving the geographical area covered by the educational services cooperative;

(B) One non-superintendent chief instructional leader employed by a member county;

(C) One school principal employed by a member county;

(D) One teacher employed by a member county; and

(E) Additional members representing business and industry, or other appropriate entities, as the governing council determines fit to meet its responsibilities.

(d) The governing council of an educational services cooperative:

(1) Shall adopt bylaws concerning the appointment and terms of its members, including the authorization of designees by its members, the selection of officers and their terms, the filling of vacancies, the appointment of task forces and study groups, the evaluation of the executive director and staff and any other provisions necessary for the operation of the educational services cooperative. A quorum for governing council meetings shall be a simple majority of the number of members of each governing council;

(2) Shall appoint an individual to serve as the educational services cooperative administrator who shall serve at the will and pleasure of the governing council and shall implement the policies of the governing council.

(3) May employ regular full-time and part-time staff, as necessary, after a majority of the members of a governing council, by vote, verify that such employment is necessary for effective provision of services and to perform services or other projects that may require staff and support services for effective implementation. Staff who are hired into a position that requires a specified certification must maintain the certification for the duration of employment. The governing council is the sole employer of the educational services cooperative's personnel it employs and shall be responsible for any benefit and liability programs necessitated by such employment. Employees of the educational services cooperative are considered state employees for the purposes of participation in the state's public employees' insurance and retirement programs. A recipient of personnel services from the educational services cooperative is not deemed an employer because of the exercise of supervision or control over any personnel services provided;

(4) May purchase, hold, encumber and dispose of real property, in the name of the educational services cooperative, for use as its office or for any educational service provided by the educational services cooperative if a resolution to do so is adopted by a two-thirds vote of the members of the governing council and then approved by three-fourths of the county boards in the educational services cooperative by majority vote of each county board;

(5) Shall operate as Local Educational Agencies (LEA's) for financial purposes, including grants and cooperative purchasing, and collectively as essential agencies responsible for performing service functions to the total community. An educational services cooperative is eligible as an LEA to participate in partnership with or on behalf of any county school system or school in those programs that will accomplish implementation of the strategic plan and/or state education initiative of the system or school, or to further statutory priorities consistent with educational services cooperative operations;

(6) May receive, expend and disburse funds from the state and federal governments, from member counties, or from gifts and grants and may contract with county boards of education, the West Virginia Department of Education, institutions of higher education, persons, companies, or other agencies to implement programs and services at the direction of the council. The state board, department of education, or any member county board may request implementation of programs and services by the educational services cooperative. An educational services cooperative may also receive funds from profit-generating enterprises, the funds of which will contribute to the educational services cooperative initiatives. Each educational services cooperative is encouraged to partner with member school systems, particularly those designated as low-performing, and other organizations as appropriate to attract and leverage resources available from federal programs to maximize its capacity for meeting the needs of

member schools and school systems. Educational services cooperatives are recognized as eligible LEA's for the purposes of applying, on behalf of school systems, for grant funds consistent with performing regional services and functions and/or supportive of education initiatives of the educational services cooperative;

(7) Upon the request of one or more county boards of education, or by the state board as permitted or contracted, and if directed by law, an educational services cooperative may assume responsibility for one or more functions otherwise performed by one or more county boards of education;

(8) May offer technical assistance, including targeted comprehensive staff development services, or other technical assistance to any member school or school system, and give priority to those schools and school systems that are found to be out of compliance with a state law or federal law;

(9) May serve as repositories of research-based teaching and learning practices, and shall use technology, particularly web-based technology, to ensure maximum access to such practices by public schools in the region and state; and

(10) Shall develop and/or implement any other programs or services as directed by law or the governing council, or requested by individual member counties or groups of member counties subject to available funds. The Legislature expects that the assistance and programs developed and/or implemented by the educational services cooperatives may differ among the schools, counties and educational services cooperatives.

(d) The administrator of each educational services cooperative shall submit annually a plan to the governing council that identifies the programs and services which are suggested for implementation by the educational services cooperative during the following year. The plan shall contain components of long-range planning determined by the governing council. These programs and services may include, but are not limited to, the following areas:

(1) Administrative services;

(2) Curriculum development;

(3) Data processing;

(4) Distance learning and other telecommunication services;

(5) Evaluation and research;

(6) Staff development;

(7) Media and technology centers;

- (8) Publication and dissemination of materials;
- (9) Pupil personnel services;
- (10) Planning;
- (11) Secondary, postsecondary, community, adult, and adult vocational education;
- (12) Teaching and learning services, including services for students with special talents and special needs;
- (13) Employee personnel and employment services;
- (14) Vocational rehabilitation;
- (15) Health, diagnostic, and child development services and centers;
- (16) Leadership or direction in early childhood and family education;
- (17) Community services;
- (18) Fiscal services and risk management programs;
- (19) Legal services;
- (20) Technology planning, training, and support services;
- (21) Health and safety services;
- (22) Student academic challenges;
- (23) Cooperative purchasing services; and
- (24) Other programs and services as may be provided pursuant to other provisions of this Code.

(e) The educational services cooperative administrator, with advice and assistance of the governing council, may select as its fiscal agent one of the county boards of education comprising the educational services cooperative. The county board so selected may maintain a separate bank account or accounts for the receipt and disbursement of all educational services cooperative funds and perform the accounting functions specified in the policies adopted by the state board. A county board of education serving as a fiscal agent may not initiate action, direct the programs or substitute its judgment for that of the educational services cooperative administrator as advised by the governing council. The county board of education may reject an action of

the educational services cooperative administrator if sufficient funds are not available, or if it perceives a legal conflict. The educational services cooperative administrator shall make arrangements for an annual audit to be conducted in accordance with the requirements of the OMB Uniform Guidance<sup>4</sup> (2 C.F.R. 200) and the cost of the audit shall be incurred by the educational services cooperative. Prior to making those arrangements, the educational services cooperative administrator must coordinate with the respective fiscal agent to ensure the audit addresses all applicable issues.

(f) Notwithstanding any other provision of this code to the contrary, employees of educational services cooperatives shall be reimbursed for travel, meals and lodging at the same rate as state employees under the travel management office of the Department of Administration.

(g) Notwithstanding any other provision of this code to the contrary, county board members serving on governing councils of educational services cooperatives may receive compensation at a rate not to exceed \$100 per meeting attended, not to exceed fifteen meetings per year. County board members serving on governing councils may be reimbursed for travel at the same rate as state employees under the rules of the travel management office of the Department of Administration. A county board member may not be an employee of an educational services cooperative.

#### **§18-5-45. School calendar.**

(a) As used in this section:

(1) "Instructional day" means a day within the instructional term which meets the following criteria:

(A) Instruction is offered to students for at least the minimum amount of hours provided by state board rule; number of minutes as follows:

(i) For early childhood programs as provided in subsection (d) section forty-four of this article;

(ii) For schools with grade levels kindergarten through and including grade five, 315 minutes of instructional time per day;

(iii) For schools with grade levels six through and including grade eight, 330 minutes of instructional time per day; and

(iv) For schools with grade levels nine through and including grade twelve, 345 minutes of instructional time per day.

(B) Instructional time is used for instruction and cocurricular activities; and

(C) Other criteria as the state board determines appropriate.

(2) "Cocurricular activities" are activities that are closely related to identifiable academic programs or areas of study that serve to complement academic curricula as further defined by the state board; and

(3) "Instruction delivered through alternative methods" means a plan developed by a county board and approved by the state board for teachers to assign and grade work to be completed by students on days when schools are closed due to inclement weather or other unforeseen circumstances.

(b) *Findings.* –

(1) The primary purpose of the school system is to provide instruction for students.

(2) The school calendar, as defined in this section, is designed to define the school term both for employees and for instruction.

(3) The school calendar shall provide for one hundred eighty separate instructional days or an equivalent amount of instructional time as provided in this section.

(c) The county board shall provide a school term for its schools that contains the following:

(1) An employment term that excludes Saturdays and Sundays and consists of at least two hundred days, which need not be successive. The beginning and closing dates of the employment term may not exceed forty-eight weeks;

(2) Within the employment term, an instructional term for students of no less than one hundred eighty separate instructional days, which includes an inclement weather and emergencies plan designed to guarantee an instructional term for students of no less than one hundred eighty separate instructional days; subject to the following:

(A) A county board may increase the length of the instructional day as defined in this section by at least thirty minutes per day to ensure that it achieves at least an amount of instructional time equivalent to one hundred and eighty separate instructional days within its school calendar and:

(i) Apply up to five days of this equivalent time to cancel days lost due to necessary school closures;

(ii) Plan within its school calendar and not subject to cancellation and rescheduling as instructional days up to an additional five days or equivalent portions of days, without students present, to be used as determined by the county board exclusively for activities by educators at the school level designed to improve instruction; and

(iii) Apply any additional equivalent time to recover time lost due to late arrivals and

early dismissals;

(B) Subject to approval of its plan by the state board, a county board may deliver instruction through alternative methods on up to five days when schools are closed due to inclement weather or other unforeseen circumstances and these days are instructional days notwithstanding the closure of schools; and

(C) The use of equivalent time gained by lengthening the school day to cancel days lost, and the delivery of instruction through alternative methods, both as defined in this section, shall be considered instructional days for the purpose of meeting the 180 separate day requirement and as employment days for the purpose of meeting the 200 day employment term.

(3) Within the employment term, noninstructional days shall total twenty and shall be comprised of the following:

(A) Seven paid holidays;

(B) Election day as specified in section two, article five, chapter eighteen-a of this code;

(C) Six days to be designated by the county board to be used by the employees outside the school environment, with at least four outside the school environment days scheduled to occur after the one hundred and thirtieth instructional day of the school calendar; and

~~(D) The remaining days~~ One day to be designated by the county board for purposes to include, but not be limited to to be used by the employees for preparation for opening school and one day to be designated by the county board to be used by the employees for preparation for closing school: *Provided*, That the school preparation days may be used for the purposes set forth in paragraph (E) of this subdivision at the teacher's discretion; and

(E) The remaining days to be designated by the county board for purposes to include, but not be limited to:

(i) Curriculum development;

(ii) ~~Preparation for opening and closing school~~ Professional development;

(iii) ~~Professional development~~ Teacher-pupil-parent conferences;

(iv) ~~Teacher-pupil-parent conferences~~ Professional meetings;

(v) ~~Professional meetings~~ Making up days when instruction was scheduled but not conducted; and

~~(vi) Making up days when instruction was scheduled but not conducted; and~~ At least six two-hour blocks of time for faculty senate meetings with at least one two-hour block of time scheduled in the first month of the employment term, at least one two-hour block of time scheduled in the last month of the employment term and at least one two-hour block of time scheduled in each of the months of October, December, February and April; and

~~(vii) At least four two-hour blocks of time for faculty senate meetings with each two-hour block of time scheduled once at least every forty-five instructional days; and~~

(4) Scheduled out-of-calendar days that are to be used for instructional days in the event school is canceled for any reason.

(d) A county board of education shall develop a policy that requires additional minutes of instruction in the school day or additional days of instruction to recover time lost due to late arrivals and early dismissals.

(e) If it is not possible to complete one hundred eighty separate instructional days with the current school calendar, ~~and the additional five days of instructional time gained by increasing the length of the instructional day as provided in subsection (c) of this section are insufficient to offset the loss of separate instructional days,~~ the county board shall schedule instruction on any available noninstructional day, regardless of the purpose for which the day originally was scheduled, or an out-of-calendar day and the day will be used for instruction of students: *Provided*, That the provisions of this subsection do not apply to:

~~(A) (1) Holidays;~~

~~(B) (2) Election day;~~

~~(C) (3) Saturdays and Sundays; and~~

(4) The five days or equivalent portions of days planned within the school calendar exclusively for activities by educators at the school level to improve instruction that are gained by increasing the length of the instructional day as provided in subsection (c) of this section.

(f) The instructional term shall commence and terminate on a date selected by the county board.

(g) The state board may not schedule the primary statewide assessment program more than thirty days prior to the end of the instructional year unless the state board determines that the nature of the test mandates an earlier testing date.

(h) The following applies to cocurricular activities:

- (1) The state board shall determine what activities may be considered cocurricular;
- (2) The state board shall determine the amount of instructional time that may be consumed by cocurricular activities; and
- (3) Other requirements or restrictions the state board may provide in the rule required to be promulgated by this section.
- (i) Extracurricular activities may not be used for instructional time.
- (j) Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach.
- (k) Prior to implementing the school calendar, the county board shall secure approval of its proposed calendar from the state board or, if so designated by the state board, from the state superintendent.
- (l) In formulation of a school's calendar, a county school board shall hold at least two public meetings that allow parents, teachers, teacher organizations, businesses and other interested parties within the county to discuss the school calendar. The public notice of the date, time and place of the public hearing must be published in a local newspaper of general circulation in the area as a Class II legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.
- (m) The county board may contract with all or part of the personnel for a longer term of employment.
- (n) The minimum instructional term may be decreased by order of the state superintendent in any county declared a federal disaster area and where in any county subject to an emergency or disaster declaration by the Governor when the event causing the declaration is substantially related to a reduction the loss of instructional days in the county.
- (o) Notwithstanding any provision of this code to the contrary, the state board may grant a waiver to a county board for its noncompliance with provisions of chapter eighteen, eighteen-a, eighteen-b and eighteen-c of this code to maintain compliance in reaching the mandatory one hundred eighty separate instructional days established in this section.
- (p) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section.
- ~~(q) The amendments to this section during the 2013 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2014, and the~~

~~provisions of this section existing immediately prior to the 2013 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2014.~~

## **ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.**

### **§18-5A-5. Public school faculty senates established; election of officers; powers and duties.**

(a) There is established at every public school in this state a faculty senate which is comprised of all permanent, full-time professional educators employed at the school who shall all be voting members. "Professional educators", as used in this section, means "professional educators" as defined in chapter eighteen-a of this code. A quorum of more than one half of the voting members of the faculty shall be present at any meeting of the faculty senate at which official business is conducted. Prior to the beginning of the instructional term each year, but within the employment term, the principal shall convene a meeting of the faculty senate to elect a chair, vice chair and secretary and discuss matters relevant to the beginning of the school year. The vice chair shall preside at meetings when the chair is absent. Meetings of the faculty senate shall be held during the times provided in accordance with subdivision (12), subsection (b) of this section as determined by the faculty senate. Emergency meetings may be held during noninstructional time at the call of the chair or a majority of the voting members by petition submitted to the chair and vice chair. An agenda of matters to be considered at a scheduled meeting of the faculty senate shall be available to the members at least two employment days prior to the meeting. For emergency meetings the agenda shall be available as soon as possible prior to the meeting. The chair of the faculty senate may appoint such committees as may be desirable to study and submit recommendations to the full faculty senate, but the acts of the faculty senate shall be voted upon by the full body.

(b) In addition to any other powers and duties conferred by law, or authorized by policies adopted by the state or county board or bylaws which may be adopted by the faculty senate not inconsistent with law, the powers and duties listed in this subsection are specifically reserved for the faculty senate. The intent of these provisions is neither to restrict nor to require the activities of every faculty senate to the enumerated items except as otherwise stated. Each faculty senate shall organize its activities as it considers most effective and efficient based on school size, departmental structure and other relevant factors.

(1) Each faculty senate shall control funds allocated to the school from legislative appropriations pursuant to section nine, article nine-a of this chapter. From those funds, each classroom teacher and librarian shall be allotted \$100 for expenditure during the instructional year for academic materials, supplies or equipment which, in the judgment of the teacher or librarian, will assist him or her in providing instruction in his or her assigned academic subjects or shall be returned to the faculty senate: *Provided*, That nothing contained herein prohibits the funds from being used for programs and materials that, in the opinion of the teacher, enhance student behavior, increase academic

achievement, improve self-esteem and address the problems of students at risk. The remainder of funds shall be expended for academic materials, supplies or equipment in accordance with a budget approved by the faculty senate. Notwithstanding any other provisions of the law to the contrary, funds not expended in one school year are available for expenditure in the next school year: *Provided, however,* That the amount of county funds budgeted in a fiscal year may not be reduced throughout the year as a result of the faculty appropriations in the same fiscal year for such materials, supplies and equipment. Accounts shall be maintained of the allocations and expenditures of such funds for the purpose of financial audit. Academic materials, supplies or equipment shall be interpreted broadly, but does not include materials, supplies or equipment which will be used in or connected with interscholastic athletic events.

(2) A faculty senate may establish a process for members to interview or otherwise obtain information regarding applicants for classroom teaching vacancies that will enable the faculty senate to submit recommendations regarding employment to the principal. To facilitate the establishment of a process that is timely, effective, consistent among schools and counties, and designed to avoid litigation or grievance, the state board shall promulgate a rule pursuant to article three-b, chapter twenty-nine-a of this code to implement the provisions of this subdivision. The rule may include the following:

(A) A process or alternative processes that a faculty senate may adopt;

(B) If determined necessary, a requirement and procedure for training for principals and faculty senate members or their designees who may participate in interviews and provisions that may provide for the compensation based on the appropriate daily rate of a classroom teacher who directly participates in the training for periods beyond his or her individual contract;

(C) Time lines that will assure the timely completion of the recommendation or the forfeiture of the right to make a recommendation upon the failure to complete a recommendation within a reasonable time;

(D) The authorization of the faculty senate to delegate the process for making a recommendation to a committee of no less than three members of the faculty senate; and

(E) Such other provisions as the state board determines are necessary or beneficial for the process to be established by the faculty senate.

(3) A faculty senate may nominate teachers for recognition as outstanding teachers under state and local teacher recognition programs and other personnel at the school, including parents, for recognition under other appropriate recognition programs and may establish such programs for operation at the school.

(4) A faculty senate may submit recommendations to the principal regarding the assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

(5) A faculty senate may submit recommendations to the principal regarding establishment of the master curriculum schedule for the next ensuing school year.

(6) A faculty senate may establish a process for the review and comment on sabbatical leave requests submitted by employees at the school pursuant to section eleven, article two of this chapter.

(7) Each faculty senate shall elect three faculty representatives to the local school improvement council established pursuant to section two of this article.

(8) Each faculty senate may nominate a member for election to the county staff development council pursuant to section eight, article three, chapter eighteen-a of this code.

(9) Each faculty senate shall have an opportunity to make recommendations on the selection of faculty to serve as mentors for beginning teachers under beginning teacher internship programs at the school.

(10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations and any other funds made available to the faculty senate: *Provided*, That the faculty senate shall select a member who has the duty of maintaining a record of all funds received and expended by the faculty senate, which record shall be kept in the school office and is subject to normal auditing procedures.

(11) Any faculty senate may review the evaluation procedure as conducted in their school to ascertain whether the evaluations were conducted in accordance with the written system required pursuant to section twelve, article two, chapter eighteen-a of this code or pursuant to section two, article three-c, chapter eighteen-a of this code, as applicable, and the general intent of this Legislature regarding meaningful performance evaluations of school personnel. If a majority of members of the faculty senate determine that such evaluations were not so conducted, they shall submit a report in writing to the State Board of Education: *Provided*, That nothing herein creates any new right of access to or review of any individual's evaluations.

(12) A local board shall provide to each faculty senate ~~a two-hour block~~ at least six two-hour blocks of time for a faculty senate meetings ~~on a day scheduled for the opening of school prior to the beginning of the instructional term and at least four additional two-hour blocks of time during noninstructional days, with each two-hour block of time scheduled once at least every forty-five instructional days~~ with at least one two-hour block of time scheduled in the first month of the employment term, one two-hour block of time scheduled in the last month of the employment term and at least one two-hour block of time scheduled in each of the months of October, December, February and April. A faculty senate may meet for an unlimited block of time during noninstructional days to discuss and plan strategies to improve student instruction and to conduct other faculty senate business. A faculty senate meeting scheduled on a

noninstructional day shall be considered as part of the purpose for which the noninstructional day is scheduled. This time may be used and determined at the local school level and includes, but is not limited to, faculty senate meetings.

(13) Each faculty senate shall develop a strategic plan to manage the integration of special needs students into the regular classroom at their respective schools and submit the strategic plan to the superintendent of the county board periodically pursuant to guidelines developed by the State Department of Education. Each faculty senate shall encourage the participation of local school improvement councils, parents and the community at large in developing the strategic plan for each school.

Each strategic plan developed by the faculty senate shall include at least: (A) A mission statement; (B) goals; (C) needs; (D) objectives and activities to implement plans relating to each goal; (E) work in progress to implement the strategic plan; (F) guidelines for placing additional staff into integrated classrooms to meet the needs of exceptional needs students without diminishing the services rendered to the other students in integrated classrooms; (G) guidelines for implementation of collaborative planning and instruction; and (H) training for all regular classroom teachers who serve students with exceptional needs in integrated classrooms.

## **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

### **§18-9A-8a. Foundation allowance for regional education service agencies.**

For the fiscal year beginning on July 1, 2006, and for each fiscal year thereafter, the foundation allowance for regional education service agencies shall be equal to sixty-three one-hundredths percent of the allocation for professional educators as determined in section four of this article, but not more than \$3,690,750. The allowance shall be distributed to the regional education service agencies in accordance with rules adopted by the state board. The allowance for regional education service agencies shall be excluded from the computation of total basic state aid as provided in section twelve of this article: Provided, That the foundation allowance for regional education service agencies shall be reduced to zero for the fiscal year beginning on July 1, 2017, and for each fiscal year thereafter.

## **CHAPTER 18A. SCHOOL PERSONNEL.**

### **ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

#### **§18A-4-14. Duty-free lunch and daily planning period for certain employees.**

(a) Notwithstanding the provisions of section seven, article two of this chapter, every teacher who is employed for a period of time more than one half the class periods of the regular school day and every service person whose employment is for a period of more than three and one-half hours per day and whose pay is at least the amount indicated in the state minimum pay scale as set forth in section eight-a of this article shall be

provided a daily lunch recess of not less than thirty consecutive minutes, and the employee shall not be assigned any responsibilities during this recess. The recess shall be included in the number of hours worked, and no county shall increase the number of hours to be worked by an employee as a result of the employee being granted a recess under ~~the provisions of~~ this section.

(b) Every teacher who is regularly employed for a period of time more than one half the class periods of the regular school day shall be provided at least one planning period within each school instructional day to be used to complete necessary preparations for the instruction of pupils. No teacher may be assigned any responsibilities during this period, and no county shall increase the number of hours to be worked by a teacher as a result of such teacher being granted a planning period subsequent to the adoption of this section (March 13, 1982). Educators shall receive uninterrupted time for planning periods each day. Administrators may not require a teacher to use the planning period time allotted to complete duties beyond instructional planning, including, but not limited to, administrative tasks and meetings.

The duration of the planning period shall be in accordance with the following:

(1) For grades where the majority of the student instruction is delivered by only one teacher, the planning period shall be no less than forty minutes; and

(2) For grades where students take separate courses during at least four separate periods of instruction, most usually delivered by different teachers for each subject, the planning period shall be the length of the usual class period taught by the teacher, but no less than forty minutes. Principals, and assistant principals, where applicable, shall cooperate in carrying out the provisions of this subsection, including, but not limited to, assuming control of the class period or supervision of students during the time the teacher is engaged in the planning period. Substitute teachers may also be utilized to assist with classroom responsibilities under this subsection: *Provided*, That any substitute teacher who is employed to teach a minimum of two consecutive days in the same position shall be granted a planning period pursuant to this section.

(c) Nothing in this section prevents any teacher from exchanging his or her lunch recess or a planning period or any service person from exchanging his or her lunch recess for any compensation or benefit mutually agreed upon by the employee and the county superintendent or his or her agent: *Provided*, That a teacher and the superintendent or his or her agent may not agree to terms which are different from those available to any other teacher granted rights under this section within the individual school or to terms which in any way discriminate among those teachers within the individual school, and a service person granted rights under this section and the superintendent or his or her agent may not agree to terms which are different from those available to any other service personnel within the same classification category granted rights under this section within the individual school or to terms which in any way discriminate among those service personnel within the same classification category within the individual school.

~~(d) The state board shall conduct a study on planning periods. The study shall include, but not be limited to, the appropriate length for planning periods at the various grade levels and for the different types of class schedules. The board shall report its findings and recommendations to the Legislative Oversight Commission on Education Accountability no later than December 31, 2013.~~

Bill Sponsors: Mr. Speaker (Mr. Armstead) and Delegate Miley

**House Bill 2771**

**Relating to temporary teaching certificates for Armed Forces spouses**

Effective Date:

July 7, 2017

Code Reference:

Amends: §18A-3-2a

WVDE Contact:

Robert Hagerman, Office of Educator Effectiveness and Accountability, 304-558-7010

Bill Summary:

The bill authorizes the issuance of a temporary teaching certificate for an individual that: holds a valid teacher certification in another state or U.S. territory, and (2) spouse is a member of the Armed Forces on active duty stationed in West Virginia or within fifty air miles of the West Virginia border. The certificate is valid for one year and may be renewed for additional one year terms if the applicant continues to meet the issuance criteria. Certificates may be denied or revoked as per existing process and protocol based on same circumstances as for all licensed teachers.

### ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

#### **§18A-3-2a. Certificates valid in the public schools that may be issued by the state superintendent.**

In accordance with state board rules for the education of professional educators adopted pursuant to section one of this article and subject to the limitations and conditions of that section, the state superintendent may issue the following certificates valid in the public schools of the state:

(a) *Professional teaching certificates.* –

(1) A professional teaching certificate for teaching in the public schools may be issued to a person who meets the following conditions:

(A) Holds at least a bachelor's degree from a regionally accredited institution of higher education, and

(i) Has passed appropriate state board approved basic skills and subject matter tests in the area for which licensure is being sought; and

(ii) Has completed a program for the education of teachers which meets the requirements approved by the state board; or

(iii) Has met equivalent standards at institutions in other states; or

(iv) Has completed three years of successful teaching experience within the last seven years under a license issued by another state in the area for which licensure is being sought; or

(v) Has completed an alternative program approved by another state; or

(B) Holds at least a bachelor's degree from an accredited institution of higher education; and

(i) Has passed appropriate state board approved basic skills and subject matter tests; and

(ii) Has completed an alternative program for teacher education as provided in this article; and

(iii) Is recommended for a certificate in accordance with the provisions of section one-i of this article relating to the program; and

(iv) Is recommended by the state superintendent based on documentation submitted.

(2) The certificate shall be endorsed to indicate the grade level or levels or areas of specialization in which the person is certified to teach or to serve in the public schools.

(3) The initial professional certificate is issued provisionally for a period of three years from the date of issuance:

(A) The certificate may be converted to a professional certificate valid for five years subject to successful completion of a beginning teacher induction program, if applicable; or

(B) The certificate may be renewed subject to rules adopted by the state board.

(b) *Alternative program teacher certificate.* -- An alternative program teacher certificate may be issued to a candidate who is enrolled in an alternative program for teacher education approved by the state board.

(1) The certificate is valid only for the alternative program position in which the candidate is employed and is subject to enrollment in the program.

(2) The certificate is valid while the candidate is enrolled in the alternative program, up to a maximum of three years, and may not be renewed.

(c) *Professional administrative certificate.* –

(1) A professional administrative certificate, endorsed for serving in the public schools, with specific endorsement as a principal, vocational administrator, supervisor of instructions or superintendent, may be issued to a person who has completed requirements all to be approved by the state board as follows:

(A) Holds at least a master's degree from an institution of higher education accredited to offer a master's degree; and

(i) Has successfully completed an approved program for administrative certification developed by the state board in cooperation with the chancellor for higher education, and

(ii) Has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education and training in evaluation skills approved by the state board, and

(iii) Possesses three years of management level experience.

(2) Any person serving in the position of dean of students on June 4, 1992, is not required to hold a professional administrative certificate.

(3) The initial professional administrative certificate is issued provisionally for a period of five years. This certificate may be converted to a professional administrative certificate valid for five years or renewed, subject to the regulations of the state board.

(d) *Paraprofessional certificate.* -- A paraprofessional certificate may be issued to a person who meets the following conditions:

(1) Has completed thirty-six semester hours of post-secondary education or its equivalent in subjects directly related to performance of the job, all approved by the state board; and

(2) Demonstrates the proficiencies to perform duties as required of a paraprofessional as defined in section eight, article four of this chapter.

(e) *Other certificates; permits.* --

(1) Other certificates and permits may be issued, subject to the approval of the state board, to persons who do not qualify for the professional or paraprofessional certificate.

(2) A certificate or permit may not be given permanent status and a person holding one of these credentials shall meet renewal requirements provided by law and by regulation, unless the state board declares certain of these certificates to be the equivalent of the professional certificate.

(3) Within the category of other certificates and permits, the state superintendent may issue certificates for persons to serve in the public schools as athletic coaches or coaches of other extracurricular activities, whose duties may include the supervision of students, subject to the following limitations:

(A) The person is employed under a contract with the county board of education.

(i) The contract specifies the duties to be performed, specifies a rate of pay that is equivalent to the rate of pay for professional educators in the district who accept similar duties as extra duty assignments, and provides for liability insurance associated with the activity; and

(ii) The person holding this certificate is not considered an employee of the board for salary and benefit purposes other than as specified in the contract.

(B) The person completes an orientation program designed and approved in accordance with state board rules.

(f) *Teacher-In-Residence Permit.* --

(1) A teacher-in-residence permit may be issued to a candidate who is enrolled in a teacher-in-residence program in accordance with an agreement between an institution of higher education and a county board. The agreement is developed pursuant to subsection (e), section one of this article and requires approval by the state board.

(2) The permit is valid only for the teacher-in-residence program position in which the candidate is enrolled and is subject to enrollment in the program. The permit is valid for no more than one school year and may not be renewed.

(g) Temporary teaching certificates for Armed Forces spouses. –

(1) A temporary teaching certificate for an Armed Forces spouse may be issued to an individual who meets the following criteria:

(A) He or she is married to a member of the Armed Forces of the United States who is on active duty;

(B) He or she holds a current unencumbered teaching certificate or license issued by an equivalent credentialing department, board, or authority, as determined by the state superintendent, in another state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, another territory or protectorate of the United States or a foreign country; and

(C) He or she provides proof acceptable to the state superintendent that his or her spouse is assigned to a duty station in this state or at a military installation within fifty air miles of the West Virginia border and that he or she is also assigned to a duty station in this state or at a military installation within fifty air miles of the West Virginia border under his or her spouse's official active duty military orders.

(2) The state superintendent shall deny a temporary teaching certificate to an individual described in (1) above for fraud, material misrepresentation or concealment in the person's application for a temporary teaching certificate or for a conviction for which an individual's teaching certificate may be revoked under section six of this article.

(3) A temporary teaching certificate issued under (1) above is valid for one year and may be renewed for additional one year terms if the state superintendent determines the individual holding the temporary teaching certificate continues to meet the requirements of (1) above. The state superintendent may revoke a temporary teaching certificate for a conviction for which an individual's teaching certificate may be revoked under section six of this article.

Bill Sponsors: Delegates Upson, Espinosa, Statler, Blair, Cooper, Ambler, Householder, Moore, Butler, Kessinger and Lewis

**House Bill 2846**

**Including high school students participating in a competency based pharmacy technician education and training program as persons qualifying to be a pharmacy technician trainee**

Effective Date:

July 7, 2017

Code Reference:

Adds: §30-5-11a

WVDE Contact:

Dr. Kathy D'Antoni, Division of Career Technical Education, 304-558-2346

Bill Summary:

The bill allows students enrolled in a high school competency based pharmacy technician education and training program to be eligible to register as a pharmacy technician trainee to assist in the practice of pharmacist care. The bill also allows individuals that have graduated from high school or obtained a GED to be eligible to register as a pharmacy technician trainee. The bill outlines the requirements a student must meet to register as a pharmacy technician trainee, including:

- Pay applicable fees
- Not be a drug abuser (Board of Pharmacy has discretion to admit recovering drug abusers participating in recovery programs)
- Not be convicted of a felony in the past 10 years
- Not be convicted of a misdemeanor that bears a rational nexus to the practice of pharmacy
- Undergo a criminal history check

The bill clarifies that the Board of Pharmacy's rules applicable to pharmacy technicians also apply to pharmacy technician trainees. Additionally, the Board of Pharmacy is granted emergency rulemaking authority to promulgate a rule to effectuate the bill.

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS  
AND PHARMACIES.**

**§30-5-11a. Pharmacy technician trainee qualifications.**

(a) To be eligible for registration as a pharmacy technician trainee to assist in the practice of pharmacist care, the applicant shall:

(1) Submit a written application to the board;

(2) Pay the applicable fees;

(3) (A) Have graduated from a high school or obtained a Certificate of General Educational Development (GED), or

(B) Be currently enrolled in a high school competency based pharmacy technician education and training program;

(4) (A) Be currently enrolled in a competency-based pharmacy technician education and training program of a learning institution or training center approved by the board; or

(B) Be an employee of a pharmacy in an on-the-job competency-based pharmacy technician training program.

(5) Not be an alcohol or drug abuser as these terms are defined in section 11, article one-a, chapter twenty-seven of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered;

(6) Not have been convicted of a felony in any jurisdiction within ten years preceding the date of application for registration, which conviction remains unreversed;

(7) Not have been convicted of a misdemeanor or felony in any jurisdiction which bears a rational nexus to the practice of pharmacist care, which conviction remains unreversed; and

(8) Have requested and submitted to the board the results of a fingerprint-based state and a national electronic criminal history records check.

(b) The rules, authorized duties and unauthorized prohibitions as set out in section twelve of this article for pharmacy technicians apply to pharmacy technician trainees.

(c) The board shall promulgate an emergency rule and legislative rule pursuant article two, chapter twenty-nine a, to authorize the requirements of this section to permit pharmacy technician trainees.

Bill Sponsors: Delegates Fast, O'Neal, Kessinger, Sobonya, Rowan, G. Foster, Mr. Speaker (Mr. Armstead) and Frich

## House Bill 3080

## Requiring instruction in the Declaration of Independence and the United States Constitution

Effective Date:

July 7, 2017

Code Reference:

Amends: §18-2-9

WVDE Contact:

Joey Wiseman, Office of Middle/Secondary Learning, 304-558-5325

Bill Summary:

The bill declares the week in which September 11 falls as “Celebrate Freedom Week.” During this week, all public, private, parochial and denominational school students are to be educated about the sacrifices made for freedom in the founding of this country and the values on which the country was founded.

The bill specifies that instruction in every social studies class in all public, private, parochial and denominational schools must include the following:

- In-depth study of intent, meaning and importance of Declaration of Independence and US Constitution, with an emphasis on the Bill of Rights
- Use historical, political and social environments surrounding documents at the time of its initial passage or ratification
- Study of historical documents to firmly establish historical background leading to the establishment of the provisions of the Constitution and the Bill of Rights by founding fathers for the purposes of safeguarding our Constitutional republic

Starting in the 2018-2019 school year, at some point during grades 9 through 12, public school students must take the civics portion of the naturalization test used by the US Citizenship and Immigration Services. The results of this test may be reported in the aggregate to the county board of education for evaluation.

## ARTICLE 2. STATE BOARD OF EDUCATION.

### §18-2-9. Required courses of instruction.

(a) In all public, private, parochial and denominational schools located within this state there shall be given prior to the completion of the eighth grade at least one year of instruction in the history of the State of West Virginia. The schools shall require regular courses of instruction by the completion of the twelfth grade in the history of the United States, in civics, in the Constitution of the United States and in the government of the State of West Virginia for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of political and economic democracy in America and increasing the knowledge of the organization and machinery of the government of the United States and of the State of West Virginia. The state board shall, with the advice of the state superintendent, prescribe the courses of study covering these subjects for the public schools. It shall be the duty of the officials or boards having authority over the respective private, parochial and denominational schools to prescribe courses of study for the schools under their control and supervision similar to those required for the public schools. To further such study, every high school student eligible by age for voter registration shall be afforded the opportunity to register to vote pursuant to section twenty-two, article two, chapter three of this code.

(b) The state board shall cause to be taught in all of the public schools of this state the subject of health education, including instruction in any of the grades six through twelve as considered appropriate by the county board, on: (1) The prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases; (2) substance abuse, including the nature of alcoholic drinks and narcotics, tobacco products and other potentially harmful drugs, with special instruction as to their effect upon the human system and upon society in general; (3) the importance of healthy eating and physical activity to maintaining healthy weight; and (4) education concerning cardiopulmonary resuscitation and first aid, including instruction in the care for conscious choking, and recognition of symptoms of drug or alcohol overdose. The course curriculum requirements and materials for the instruction shall be adopted by the state board by rule in consultation with the Department of Health and Human Resources. The state board shall prescribe a standardized health education assessment to be administered within health education classes to measure student health knowledge and program effectiveness.

(c) An opportunity shall be afforded to the parent or guardian of a child subject to instruction in the prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases to examine the course curriculum requirements and materials to be used in the instruction. The parent or guardian may exempt the child from participation in the instruction by giving notice to that effect in writing to the school principal.

(d) After July 1, 2015, the required instruction in cardiopulmonary resuscitation in subsection (b) of this section shall include at least thirty minutes of instruction for each

student prior to graduation on the proper administration of cardiopulmonary resuscitation (CPR) and the psychomotor skills necessary to perform cardiopulmonary resuscitation. The term "psychomotor skills" means the use of hands-on practicing to support cognitive learning. Cognitive-only training does not qualify as "psychomotor skills". The CPR instruction must be based on an instructional program established by the American Heart Association or the American Red Cross or another program which is nationally recognized and uses the most current national evidence-based Emergency Cardiovascular Care guidelines and incorporates psychomotor skills development into the instruction. A licensed teacher is not required to be a certified trainer of cardiopulmonary resuscitation to facilitate, provide or oversee such instruction. The instruction may be given by community members, such as emergency medical technicians, paramedics, police officers, firefighters, licensed nurses and representatives of the American Heart Association or the American Red Cross. These community members are encouraged to provide necessary training and instructional resources such as cardiopulmonary resuscitation kits and other material at no cost to the schools. The requirements of this subsection are minimum requirements. A local school district may offer CPR instruction for longer periods of time and may enhance the curriculum and training components, including, but not limited to, incorporating into the instruction the use of an automated external defibrillator (AED): *Provided*, That any instruction that results in a certification being earned must be taught by an authorized CPR/AED instructor.

(e) The full week of classes during the week within which September 11 falls shall be recognized as "Celebrate Freedom Week." The purpose of Celebrate Freedom Week is to educate students about the sacrifices made for freedom in the founding of this country and the values on which this country was founded.

Celebrate Freedom Week must include appropriate instruction in each social studies class which:

(1) Includes an in-depth study of the intent, meaning and importance of the Declaration of Independence and the Constitution of the United States with an emphasis on the Bill of Rights;

(2) Uses the historical, political and social environments surrounding each document at the time of its initial passage or ratification; and

(3) Includes the study of historical documents to firmly establish the historical background leading to the establishment of the provisions of the Constitution and Bill of Rights by the founding fathers for the purposes of safeguarding our Constitutional republic.

The requirements of this subsection are applicable to all public, private, parochial and denominational schools located within this state. Nothing in this subsection creates a standard or requirement subject to state accountability measures.

(f) Beginning the 2018-2019 school year, students in the public schools shall be administered a test the same as or substantially similar to the civics portion of the naturalization test used by the United States Citizenship and Immigration Services between their ninth and twelfth grade years as an indicator of student achievement in the area of civics education. The test results may be reported in the aggregate to the county board for evaluation by the board's curriculum director and reported to the board members. Nothing in this subsection creates a standard or requirement subject to state accountability measures.

Bill Sponsors: Mr. Speaker (Mr. Armstead), Maynard, Cooper, Overington and Moyer