

H. B. 2774

(By Delegates Butler, Gearheart, Frich, R. Smith J. Nelson,
Moffatt, Azinger, Cadle, McGeehan, Kelly and Ihle)

[Introduced February 16, 2015; referred to the
Committee on Education.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-1A-1, §18-1A-2, §18-1A-3, §18-1A-4, §18-1A-5, §18-1A-6, §18-1A-7, §18-1A-8 and §18-1A-9, all relating to public school standards and assessments; prohibiting the school board from ceding authority over standards or student data to the federal government or private entities; prohibiting the use of common core standards and assessments; implementing temporary standards; limiting the use of statewide assessments; prohibiting the sharing of student level data or personally identifiable data; creating the West Virginia Legislative Education Standards Development Commission and Standards Development committees; and prohibiting colleges in the state from denying admission based on participation in common core programs or tests.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18-1A-1, §18-1A-2, §18-1A-3, §18-1A-4, §18-1A-5, §18-1A-6, §18-1A-7, §18-1A-8 and §18-1A-9, all to read as follows:

1 **ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.**

2 **§18-1A-1. Findings.**

3 The Legislature recognizes that parents have a fundamental right to direct the education of
4 their children and that, in order to exercise this right, parents must maintain the right to opt out of
5 state assessments without penalty to the student, teacher, school, school district or state.

6 **§18-1A-2. Definitions.**

7 For purposes of this section:

8 (1) "Commission" means the West Virginia Legislative Education Standards Development
9 Commission.

10 (2) "Common Core" means the Common Core state standards adopted by the West Virginia
11 State Board of Education on May 12, 2010, and also referred to as the West Virginia Next
12 Generation Standards.

13 (3) "Common Core assessments" means the Smarter Balanced Assessments or any other
14 student assessments intended to measure student achievement in the common core standards.

15 (4) "Standards" means the set of standards, developed by a standards development
16 committee, regarding the essential academic content and skills in a particular subject that students
17 are expected to know and be able to demonstrate at the completion of each grade level.

18 (5) "Standards Development Committee" means the English Language Arts Standards
19 Development Committee or the Mathematics Standards Development Committee.

20 **§18-1A-3. Development, establishment, and revision of standards.**

21 (a) Notwithstanding any other provision of law to the contrary, effective July 1, 2015, the
22 State Board of Education may not continue to implement the academic content standards developed

1 by the Common Core State Standards Initiative in mathematics and English language arts or any
2 assessments currently implemented as part of the initiative.

3 (b) Effective immediately, the West Virginia State Superintendent of Schools shall initiate
4 the procedure, outlined in the Smarter Balanced Assessment Consortium Governance Structure
5 Document (July 1, 2010, amended August 26, 2014), to withdraw the state from such consortium.
6 All statewide K12 tests and assessments shall be solely owned and solely controlled by the State of
7 West Virginia and may not be in any way conditioned on, linked to, or controlled by the federal
8 government or any state government or any privately or publicly funded assessment consortium.

9 (c) The State of West Virginia shall retain sole control over the development, establishment,
10 and revision of standards established pursuant to this article. Neither the State Board of Education
11 nor any other state education entity, nor any state official, may join any consortium or any other
12 organization when participation in that consortium or organization would cede any measure of
13 control over any aspect of West Virginia public education to entities outside the state, nor may any
14 such person or entity condition or delay a decision on standards or curriculum on the decision of any
15 consortium, organization, any other state government, or the federal government. Only standards
16 that were developed under the sole authority of the State of West Virginia may be adopted or
17 implemented.

18 **§18-1A-4. Temporary standards.**

19 For academic school years beginning after July 1, 2015, and ending before July 1, 2018, the
20 State Board of Education shall adopt the official Massachusetts Curriculum Frameworks
21 implemented by the Massachusetts Department of Elementary and Secondary Education in the year
22 2004 as the mandatory curriculum frameworks for English language arts and mathematics.

1 **§18-1A-5. Limitations on use of statewide assessments.**

2 (a) Effective immediately, statewide academic assessments may be administered to students
 3 only in grades three, eight, and eleven, not more than once per year, and no earlier than the final full
 4 month of the academic year. The results of a statewide assessment may not be used to determine a
 5 student's grade, to prevent promotion of a student to the next grade-level or as the sole consideration
 6 to determine a student's curricular path.

7 (b) Effective immediately, statewide academic assessment results of students may not be used
 8 for the professional evaluation of a teacher or as a justification to withhold funding to a school
 9 district.

10 **§18-1A-6. Education Standards Development Commission; powers and duties; composition.**

11 (a) Commission. --

12 (1) The Legislature hereby establishes an Education Standards Development Commission
 13 to create standards that will lead to a broad liberal-arts education resulting in college and career
 14 readiness for all students. The commission will have the following powers and duties as prescribed
 15 in this code:

16 (A) To establish statewide educational standards;

17 (B) To review and approve the selected membership of each committee of the commission;

18 (C) To oversee the development of standards by commission staff and committee members;

19 (2) The commission will be chaired by the chancellor of the West Virginia Higher Education
 20 Policy Commission and will have the following additional members:

21 (A) Two members of the House of Delegates, selected by the Speaker of the House;

22 (B) Two members of the Senate, selected by the President of the Senate;

1 (C) An English Language Arts Development Chair, selected by the Legislature from a list
2 of at least two candidates and who meets the following qualifications:

3 (i) Is employed as a teaching faculty member of the English languages arts department of an
4 undergraduate institution, which does not include the Education department of the institution; and

5 (ii) Has been nominated by the president of a four-year accredited university or college where
6 the candidate is employed.

7 (D) A Mathematics Standards Development Chair, selected by the Legislature, from a list
8 of at least two candidates and who meets the following qualifications:

9 (i) Is employed as a teaching faculty member of the mathematics, science or engineering
10 department of an undergraduate institution, which does not include the Education department of the
11 institution; and

12 (ii) Has been nominated by the president of a four-year accredited university or college where
13 the candidate is employed.

14 (3) Each Standards Development Chair shall have the following responsibilities:

15 (A) Maintain schedules and timelines;

16 (B) Lead and coordinate the work of the Standards Development Committees;

17 (C) Assure that standards are written with emphasis on disciplinary content and accuracy;

18 and

19 (D) Work with the Executive Director.

20 (4) On or before January 1, 2016, the commission shall select and hire an Executive Director,
21 who will report directly to the commission. The Executive Director will have the following duties:

22 (A) Supervise and provide support for the statewide standards development processes;

1 (B) Ensure that complete and accurate reports of the standards development process are
2 provided to the Legislature, the Governor and the public at large;

3 (C) Work directly with English and mathematics chairs of the standards development
4 committees;

5 (D) Work directly with and provide administrative support to scribes hired by the
6 commission who report to the respective English language arts and Mathematics Chairs on the
7 commission;

8 (E) Create and maintain a commission website; and

9 (F) Compile and respond to any public comments.

10 (5) The commission shall select and hire two document scribes: An English languages arts
11 scribe and a mathematics scribe. Each scribe must have an expertise in his or her assigned subject
12 matter and be adept at using digital technology. Document scribes will have the following duties:

13 (A) Process nominations of individuals for participation in subgroups and prepare a database
14 of all such nominations;

15 (B) Schedule, secure sites and arrange for meeting facilitators for all in-person and virtual
16 meetings of the commission;

17 (C) Take detailed notes and minutes for commission meetings;

18 (D) Provide on-going updates on the standards-writing process to committees and create
19 public reports;

20 (E) Work with the Executive Director to provide content for the commission website;

21 (F) Work with the Executive Director to compile and respond to any public comments; and

22 (G) Maintain all drafts and revisions of curricular plans throughout the standards

1 development process.

2 (b) Standards development committees. --

3 (1) The commission shall establish two standards development committees: the English
4 Language Arts Standards Development Committee and the Mathematics Standards Development
5 Committee. Standards committees are responsible for developing and recommending to the
6 commission standards for the subject area within the committee's expertise.

7 (2) The commission shall request district superintendents to nominate teachers for
8 participation on standards development committees.

9 (3) Each district superintendent may nominate one teacher for each subgroup in the English
10 language arts development committee and one teacher for each subgroup in the Math development
11 committee. The superintendents shall use the one page nomination form developed by the
12 commission.

13 (4) Each standards development committee shall include three subgroups; one for standards
14 in grades PreK through five, one for grades six through eight and one for grades nine through twelve.

15 (5) Each subgroup shall be comprised of four teachers from nominees by the district
16 superintendents, selected by the commission in conjunction with the chair and vice chair of each
17 respective committee.

18 (6) The members of the English language arts subgroups shall:

19 (A) Have seven years of teaching experience at the educational level of the subgroup in
20 which they seek to participate;

21 (B) Have a current teaching assignment at one of the grade levels of the subgroup in which
22 they seek to participate;

1 (C) For those seeking placement in either the grades six through eight subgroup or the grades
2 nine through twelve subgroup, possess either at least Minor in English or listed courses completed
3 in literature, composition or rhetoric; and

4 (D) For those in the PreK through grade eight subgroup, have completed reading methods
5 course work.

6 (7) The members of the Mathematics subgroups shall:

7 (A) Have seven years experience at the educational level of the subgroup in which they seek
8 to participate;

9 (B) Have a current teaching assignment at one of the grade levels of the subgroup in which
10 they seek to participate; and

11 (C) For those seeking placement in either the grades six through eight subgroup or the grades
12 nine through twelve subgroup, possess at least a minor in mathematics, science, or engineering.

13 (8) The English Language Arts Standards Development Committee will be comprised of the
14 following members:

15 (A) The English Language Arts chair on the commission, who will chair the English
16 Language Arts Development Committee;

17 (B) An English Language Arts vice-chair, selected by the English language arts chair. The
18 vice-chair must be a teaching faculty member of the English language arts department of a four-year
19 undergraduate university or college and shall not be a member of the faculty of the education
20 department of the institution;

21 (C) Subgroup: Four PreK through grade five school teachers;

22 (D) Subgroup: Four Middle school teachers (grades six through eight);

- 1 (E) Subgroup: Four High school teachers at each grade level (grades nine through twelve);
2 and
- 3 (F) One Librarian (nominated by the West Virginia Library Association).
- 4 (9) The Mathematics Standards Development committee will be comprised of the following
5 members:
- 6 (A) The mathematics chair on the commission who will chair the Mathematics Standards
7 Development Committee;
- 8 (B) The mathematics vice-chair who will be selected by the mathematics chair and who is
9 currently a teaching faculty member in an undergraduate mathematics department of a four-year
10 university or college with a dissertation in mathematics and who shall not be a member of the
11 Education Department of the institution;
- 12 (C) Subgroup: Four PreK through grade five teachers;
- 13 (D) Subgroup: Four Middle school teachers (grades six through eight);
- 14 (E) Subgroup: Four teachers currently teaching a grade in the grades nine through twelve
15 range, including one Algebra I teacher, one Geometry teacher, one Algebra II teacher, and one
16 Precalculus or Trigonometry teacher; and
- 17 (F) One Engineer nominated by a state engineering professional organization or university
18 faculty.
- 19 (c) Draft Review committees. --
- 20 (1) The commission shall establish two draft review committees, a First Draft Review
21 Committee and a Second Draft Review Committee, responsible for reviewing preliminary drafts of
22 the commission's standards.

1 (2) The First Draft Review Committee will be comprised of all standards development
2 committee nominees who were not selected to serve on those committees. Individuals on the First
3 Draft Review Committee shall review the standards for the subgroup for which the individual
4 member was nominated, for grade level appropriateness and wording, with high school teachers
5 reviewing all documents.

6 (3) Following review by First Draft Review Committee, the scribe for the respective
7 standards development committee shall compile all comments for review and action by the Standards
8 Development Committee. The commission shall review and approve the final first draft approved
9 by each standards development committee.

10 (4) The Second Draft Review Committee will be comprised of representatives of educational
11 and professional organizations with expertise in education or the academic subjects included in the
12 standards. Members shall be selected by the commission chair and shall include one each or as many
13 as possible from the following categories and groups:

14 (i) The State Chamber of Commerce;

15 (ii) Statewide business and industry professional organizations;

16 (iii) Statewide engineering organizations;

17 (iv) Early childhood advocacy organizations;

18 (v) Special education advocacy organizations;

19 (vi) English language learners advocacy organizations;

20 (vii) School counselor professional organizations;

21 (viii) Speech pathology professional organizations;

22 (ix) Undergraduate teaching faculty in science, engineering, mathematics, or English

1 literature or language.

2 (5) The Second Draft Review Committee shall review the standards and advise on classroom
3 application, vertical alignment and provide comments on how the standards will affect the
4 population the member represents, with all responses signed and submitted electronically.

5 (6) Following review by Second Draft Review Committee, the scribe for the respective
6 standards development committee shall compile all comments for review and action by the standards
7 development committee. The commission shall review and approve the final second draft approved
8 by each standards development committee. During the second draft editing and review process, the
9 commission shall provide recommendations and direction to the standard development committee
10 chairs as needed.

11 (d) *External Evaluation Panel.* --

12 (1) The presidents, provost, and faculty of four year West Virginia colleges will nominate
13 two well known or well published experts in each subject area, who are not currently teachers at a
14 state college or university. The commission shall select an External Evaluation Panel comprised of
15 two members, one of whom is a distinguished expert in English Language Arts and one of whom
16 is a distinguished expert in mathematics or science, from the college nominees. The members of the
17 External Evaluation Panel will be selected by the commission based on their qualifications.

18 (2) The External Evaluation Panel shall review and report on the second draft of the
19 standards. The External Evaluation Panel shall submit a report on the quality of the academic
20 standards to the commission and to the Legislature.

21 **§18-1A-7. Procedure for development of standards.**

22 (a) Each standards development committee shall select for use a highly-rated set of pre2009

1 state standards as the foundation blueprint for an academic plan.

2 (1) The set of state standards used for an English language arts blueprint shall be drawn from:
3 The pre-2010 California standards, the 2006 Indiana standards, the Massachusetts 2001 standards,
4 and/or "An English Language Arts Curriculum Framework for American Schools: A Model,"
5 released by Sandra Stotsky in 2013.

6 (2) The set of state standards used for mathematics shall be drawn from: The pre-2010
7 California standards; the 2006 Indiana standards, the Massachusetts 2001 standards, the Washington
8 2008 standards, and/or the current Minnesota standards.

9 (b) After the second draft review, the standards development committees will review, revise
10 and submit a final draft to the commission.

11 (c) The commission shall publicly post the final draft of the standards for a forty-five day
12 public comment period and shall schedule a public hearing for the proposed plan at the state Capitol.
13 Public comments will be incorporated as deemed appropriate by the Standards Development
14 Committees.

15 (d) The commission shall submit the finalized statewide plan to the Legislative Oversight
16 Commission on Education Accountability.

17 (e) After reviewing the plan, the Legislative Oversight Commission on Education
18 Accountability may make any changes to the standards needed to comply with statutory law, and
19 shall submit the Final Draft to the State Legislature for Legislative Hearings and final approval.

20 (f) After the Legislature has approved the curricular plan during a regular legislative session,
21 the standards will be the official standards for the state, beginning on June 1 of that year. The
22 standards development process may not be revised or altered without legislative approval, but must

1 be reviewed on a timely basis following the same steps used for initial development of the standards.

2 **§18-1A-8. Restrictions on collection and sharing of personally identifiable data.**

3 (a) No person, private or public entity, or governmental agency including, but not limited to,
4 the State Board of Education, the state Department of Education, local Boards of Education, local
5 District Schools, Regional Education Agencies and contractors or vendors who have access to
6 student information may divulge, or in any manner allow access to, student level data or personally
7 identifiable information to anyone, including, but not limited to, persons, private or public entities,
8 and governmental agencies not authorized by this chapter to have access to such information without
9 first obtaining the informed written consent of the parent or guardian of the student: *Provided, That*
10 a student that has attained the age of majority may provide the written informed consent required by
11 this section. In any other case, only aggregate level data may be divulged.

12 (b) On and after July 1, 2015, the state board, the department, or any other education entity
13 shall not:

14 (1) Collect personally identifiable information on any student or teacher without receiving
15 prior affirmative written consent, and only after providing the parent or teacher with a written
16 explanation of why the information is being requested, and what it will be used for;

17 (2) Expend any funds, whether from federal grants, American Recovery and Reinvestment
18 Act Funds, or elsewhere, on construction, enhancement, or expansion of any state-wide longitudinal
19 data system designed to track students beyond their K-12 careers, or to compile their personal,
20 nonacademic information beyond what is necessary either for administrative functions directly
21 related to the student's education, for evaluation of academic programs and student progress, or for
22 compliance with the requirements of the United States Department of Education;

1 (3) Share any personally identifiable information compiled on students or teachers with any
2 entity outside the State of West Virginia, except as provided in this section: *Provided*, That this
3 does not include hard data storage located in safe locations outside the state, or cloud data storage
4 as long as the cloud computing provider agrees in writing that it will not redisclose such information
5 or use the information for any secondary purposes that benefit the provider or any third party,
6 including, but not limited to, online behavioral advertising, creating or correcting an individual or
7 household profile primarily for the provider's benefit, the sale of data for any commercial purpose,
8 or any other commercial for-profit activity;

9 (4) Share any personally identifiable information about any student or teacher with any entity
10 that will use that information for development of commercial products or services or that will
11 transfer that data to any other entity for use in development of commercial products or services;

12 (c) No state or national student assessment may be adopted or administered in this state that
13 collects any type of psychological data, including assessment of noncognitive skills or attributes,
14 psychological resources, mindsets, learning strategies, effortful control, attitudes, dispositions, social
15 skills, or other interpersonal or intrapersonal resources.

16 **§18-1A-9. College admissions; use of common core standards prohibited.**

17 Notwithstanding any other provision of this code, a higher education institution in this state
18 may not deny admission to any applicant based solely on the student's nonparticipation in a common
19 core educational program or assessment.

NOTE: The purpose of this bill is to develop better West Virginia Educational Standards tailored to West Virginia students, developed by West Virginia education professionals; to promote

involvement of local educators and parents; to prohibit the school board from ceding authority over standards or student data to federal government or private entities; to prohibit the use of common core standards and assessments; to implement temporary standards; to limit the use of statewide assessments; to prohibit the sharing of student level data; to create the West Virginia Legislative Education Standards Development Steering Commission and Education Standards Development Subcommittees; and to prohibit colleges in this state from denying admission based on participation in common core programs or tests.

These sections are new; therefore, they have been completely underscored.