

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 369**

**FISCAL  
NOTE**

BY SENATORS SYPOLT, BOSO, PLYMALE, PREZIOSO AND

WILLIAMS

[Introduced January 21, 2016;

Referred to the Committee on Education.]

1 A BILL to repeal §18-2-5g of the Code of West Virginia, 1931, as amended; to repeal §18-2E-3g  
2 of said code; to amend and reenact §18-2E-5 of said code; to amend and reenact §18-2I-  
3 5 of said code; to amend and reenact §18-3-12 of said code; to amend and reenact §18-  
4 5-44 of said code; to amend and reenact §18-20-5 and §18-20-8 of said code; to amend  
5 and reenact §18A-2-3 of said code; to amend and reenact §18A-4-7a of said code; to  
6 amend and reenact §18A-5-1a of said code; to amend and reenact §18B-1D-8 of said  
7 code; to amend said code by adding thereto a new section, designated §18B-1D-8a; and  
8 to amend and reenact §18B-1E-3 and §18B-1E-4 of said code, all relating to legislative  
9 education reporting requirements; repealing obsolete section providing for establishment  
10 of a special five-year demonstration professional development school project for improving  
11 academic achievement including requirement for status reports to commission; repealing  
12 requirement for review, evaluation and report to commission on reports required to be  
13 written by principals and teachers; removing requirement for Office of Education  
14 Performance Audits to report to commission on each appeal of on-site review findings;  
15 removing requirement for report to the commission on the effectiveness of staff  
16 development resulting from expenditures from the Strategic Staff Development Fund;  
17 removing requirement for status report to commission relating to the Special Community  
18 Development School Pilot Program; removing requirement for report to commission on  
19 the progress of implementation of early childhood education programs for all children who  
20 have attained the age of four prior to September 1 of the school year in which the pupil  
21 enters the program; removing requirement for report to the commission and the Joint  
22 Committee on Government and Finance that addresses, at a minimum, certain early  
23 childhood education program issues; removing requirement for State Superintendent of  
24 Schools to review the rules, policies and standards of the state and federal law for serving  
25 the needs of certain exceptional children and removing requirement for report to  
26 commission on the findings of the review along with an accounting of the services provided

27 and the costs thereof; removing requirement for annual report to commission, the Joint  
28 Committee on Education, the Legislative Commission on Juvenile Law and other  
29 agencies, as appropriate, which recommends policies, procedures and legislation for  
30 effectively providing early intervention services and reports on the status of existing  
31 programs; removing requirement for State Board of Education to review the status of  
32 employing prospective employable professional personnel and the requirement for an  
33 annual report to the commission which must include certain minimum prospective  
34 employable professional personnel-related items; removing requirement that county board  
35 of education submit a copy of its policy defining which policies are lateral positions to the  
36 state board within thirty days of any adoption or modification and the requirement that the  
37 state board compile a report and submit the report to the commission; removing the  
38 requirement that county boards report the number of students determined to be dangerous  
39 students to the state board and the requirement that the state board compile the statistics  
40 and report its findings to the commission; adding to the list of reports to the commission  
41 that are not required to be prepared and submitted annually unless a member of the  
42 Legislature makes a specific request for a particular report, including reports related to  
43 community and technical college progress toward meeting statutory goals, whether  
44 statewide independently accredited community and technology should be created, the  
45 progress of community and technical colleges meeting statutory objectives, workforce  
46 development initiatives, community and technical college system performance, capital  
47 investment priorities and recommendations for statutory changes, training of commission,  
48 council and board of governors members, the status of the Higher Education Adult Part-  
49 Time Student Grant Program, the number of nursing scholarship recipients, and the  
50 annual recommendation to encourage recipients to live and work in West Virginia after  
51 graduation; listing certain reports that are not required to be made annually to the  
52 Legislature, but instead requiring them to be combined with other reports, including certain

53 personnel, classification, compensation and human resources reports, all capital  
 54 appropriation requests, priorities and campus and state capital development plans, all  
 55 academic-related matters and reports, and all financial aid reports; removing obsolete  
 56 requirements that the findings, conclusions and recommendations of the Revitalization  
 57 Project for WVU-Tech study, together with the revitalization plan for implementation, shall  
 58 be reported to the commission and the governing board, that the revitalization plan be  
 59 delivered to the commission, and that the commission consider the proposed plan and  
 60 approve or disapprove; removing requirement that the chancellor report to the commission  
 61 on the allocation of funds to support the revitalization project at WVU-Tech and on  
 62 progress made in implementing the purposes and intent of the revitalization project article  
 63 and the components of the revitalization plan; and removing the requirement that the  
 64 commission and governing board provide to the commission a detailed summary of all  
 65 revitalization project activities undertaken.

*Be it enacted by the Legislature of West Virginia:*

1 That §18-2-5g of the Code of West Virginia, 1931, as amended, be repealed; that §18-2E-  
 2 3g of said code be repealed; that §18-2E-5 of said code be amended and reenacted; that §18-2I-  
 3 5 of said code be amended and reenacted; that §18-3-12 of said code be amended and  
 4 reenacted; that §18-5-44 of said code be amended and reenacted; that §18-20-5 and §18-20-8  
 5 of said code be amended and reenacted; that §18A-2-3 of said code be amended and reenacted;  
 6 that §18A-4-7a of said code be amended and reenacted; that §18A-5-1a of said code be amended  
 7 and reenacted; that §18B-1D-8 of said code be amended and reenacted; that said code be  
 8 amended by adding thereto a new section, designated §18B-1D-8a; and that §18B-1E-3 and  
 9 §18B-1E-4 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 18. EDUCATION.**

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

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

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

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

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

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

9           (C) A system of accountability for continuous improvement defined by high-quality  
10 standards for schools and school systems articulated by a rule promulgated by the state board  
11 and outlined in subsection (c) of this section that will build capacity in schools and districts to meet  
12 rigorous outcomes that assure student performance and progress toward obtaining the  
13 knowledge and skills intrinsic to a high-quality education rather than monitoring for compliance  
14 with specific laws and regulations; and

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

17           (2) As the Constitutional body charged with the general supervision of schools as provided  
18 by general law, the state board has the authority and the responsibility to establish the standards,  
19 assess the performance and progress of students against the standards, hold schools and school  
20 systems accountable and assist schools and school systems to build capacity and improve  
21 efficiency so that the standards are met, including, when necessary, seeking additional resources  
22 in consultation with the Legislature and the Governor;

23           (3) As the Constitutional body charged with providing for a thorough and efficient system

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

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

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

42 (b) *Electronic county and school strategic improvement plans.* -- The state board shall  
43 promulgate a rule consistent with the provisions of this section and in accordance with article  
44 three-b, chapter twenty-nine-a of this code establishing an electronic county strategic  
45 improvement plan for each county board and an electronic school strategic improvement plan for  
46 each public school in this state. Each respective plan shall be for a period of no more than five  
47 years and shall include the mission and goals of the school or school system to improve student,  
48 school or school system performance and progress, as applicable. The strategic plan shall be

49 revised annually in each area in which the school or system is below the standard on the annual  
50 performance measures. The plan shall be revised when required pursuant to this section to  
51 include each annual performance measure upon which the school or school system fails to meet  
52 the standard for performance and progress, the action to be taken to meet each measure, a  
53 separate time line and a date certain for meeting each measure, a cost estimate and, when  
54 applicable, the assistance to be provided by the department and other education agencies to  
55 improve student, school or school system performance and progress to meet the annual  
56 performance measure.

57 The department shall make available to all public schools through its website or the West  
58 Virginia Education Information System an electronic school strategic improvement plan  
59 boilerplate designed for use by all schools to develop an electronic school strategic improvement  
60 plan which incorporates all required aspects and satisfies all improvement plan requirements of  
61 the No Child Left Behind Act.

62 (c) *High-quality education standards and efficiency standards.* -- In accordance with the  
63 provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt and  
64 periodically review and update high-quality education standards for student, school and school  
65 system performance and processes in the following areas:

- 66 (1) Curriculum;
- 67 (2) Workplace readiness skills;
- 68 (3) Finance;
- 69 (4) Transportation;
- 70 (5) Special education;
- 71 (6) Facilities;
- 72 (7) Administrative practices;
- 73 (8) Training of county board members and administrators;

- 74 (9) Personnel qualifications;
- 75 (10) Professional development and evaluation;
- 76 (11) Student performance, progress and attendance;
- 77 (12) Professional personnel, including principals and central office administrators, and
- 78 service personnel attendance;
- 79 (13) School and school system performance and progress;
- 80 (14) A code of conduct for students and employees;
- 81 (15) Indicators of efficiency; and
- 82 (16) Any other areas determined by the state board.

83 (d) *Comprehensive statewide student assessment program.* -- The state board shall

84 establish a comprehensive statewide student assessment program to assess student

85 performance and progress in grades three through twelve. The assessment program is subject to

86 the following:

87 (1) The state board shall promulgate a rule in accordance with the provisions of article

88 three-b, chapter twenty-nine-a of this code establishing the comprehensive statewide student

89 assessment program;

90 (2) Prior to the 2014-2015 school year, the state board shall align the comprehensive

91 statewide student assessment for all grade levels in which the test is given with the college-

92 readiness standards adopted pursuant to section thirty-nine, article two of this chapter or develop

93 other aligned tests to be required at each grade level so that progress toward college readiness

94 in English/language arts and math can be measured;

95 (3) The state board may require that student proficiencies be measured through the ACT

96 EXPLORE and the ACT PLAN assessments or other comparable assessments, which are

97 approved by the state board and provided by future vendors;

98 (4) The state board may require that student proficiencies be measured through the West



99 Virginia writing assessment at any grade levels determined by the state board to be appropriate;  
100 and

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

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

107 The state board shall promulgate a rule in accordance with the provisions of article three-  
108 b, chapter twenty-nine-a of this code that establishes a system to assess and weigh annual  
109 performance measures for state accreditation of schools and school systems. The state board  
110 also may establish performance incentives for schools and school systems as part of the state  
111 accreditation system. On or before December 1, 2013, the state board shall report to the Governor  
112 and to the Legislative Oversight Commission on Education Accountability the proposed rule for  
113 establishing the measures and incentives of accreditation and the estimated cost therefore, if any.  
114 Thereafter, the state board shall provide an annual report to the Governor and to the Legislative  
115 Oversight Commission on Education Accountability on the impact and effectiveness of the  
116 accreditation system. The rule for school and school system accreditation proposed by the board  
117 may include, but is not limited to, the following measures:

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

120 (2) Graduation and attendance rate;

121 (3) Students taking and passing AP tests;

122 (4) Students completing a career and technical education class;

123 (5) Closing achievement gaps within subgroups of a school's student population; and

124 (6) Students scoring at or above average attainment on SAT or ACT tests.

125 (f) *Indicators of efficiency.* -- In accordance with the provisions of article three-b, chapter  
126 twenty-nine-a of this code, the state board shall adopt by rule and periodically review and update  
127 indicators of efficiency for use by the appropriate divisions within the department to ensure  
128 efficient management and use of resources in the public schools in the following areas:

129 (1) Curriculum delivery including, but not limited to, the use of distance learning;

130 (2) Transportation;

131 (3) Facilities;

132 (4) Administrative practices;

133 (5) Personnel;

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

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

138 (g) *Assessment and accountability of school and school system performance and*  
139 *processes.* -- In accordance with the provisions of article three-b, chapter twenty-nine-a of this  
140 code, the state board shall establish by rule a system of education performance audits which  
141 measures the quality of education and the preparation of students based on the annual measures  
142 of student, school and school system performance and progress. The system of education  
143 performance audits shall provide information to the state board, the Legislature and the Governor,  
144 upon which they may determine whether a thorough and efficient system of schools is being  
145 provided. The system of education performance audits shall include:

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

148 (2) The evaluation of records, reports and other information collected by the Office of

149 Education Performance Audits upon which the quality of education and compliance with statutes,  
150 policies and standards may be determined;

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

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

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

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

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

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

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

167 (i) *Early detection and intervention programs.* -- Based on the assessment of student,  
168 school and school system performance and progress, the state board shall establish early  
169 detection and intervention programs using the available resources of the Department of  
170 Education, the regional educational service agencies, the Center for Professional Development  
171 and the Principals Academy, or other resources as appropriate, to assist underachieving schools  
172 and school systems to improve performance before conditions become so grave as to warrant  
173 more substantive state intervention. Assistance shall include, but is not limited to, providing

174 additional technical assistance and programmatic, professional staff development, providing  
175 monetary, staffing and other resources where appropriate.

176 (j) *Office of Education Performance Audits.* --

177 (1) To assist the state board in the operation of a system of education performance audits,  
178 the state board shall establish an Office of Education Performance Audits consistent with the  
179 provisions of this section. The Office of Education Performance Audits shall be operated under  
180 the direction of the state board independently of the functions and supervision of the State  
181 Department of Education and state superintendent. The Office of Education Performance Audits  
182 shall report directly to and be responsible to the state board in carrying out its duties under the  
183 provisions of this section.

184 (2) The office shall be headed by a director who shall be appointed by the state board and  
185 who serves at the will and pleasure of the state board. The annual salary of the director shall be  
186 set by the state board and may not exceed eighty percent of the salary of the State Superintendent  
187 of Schools.

188 (3) The state board shall organize and sufficiently staff the office to fulfill the duties  
189 assigned to it by law and by the state board. Employees of the State Department of Education  
190 who are transferred to the Office of Education Performance Audits shall retain their benefits and  
191 seniority status with the Department of Education.

192 (4) Under the direction of the state board, the Office of Education Performance Audits shall  
193 receive from the West Virginia education information system staff research and analysis data on  
194 the performance and progress of students, schools and school systems, and shall receive  
195 assistance, as determined by the state board, from staff at the State Department of Education,  
196 the regional education service agencies, the Center for Professional Development, the Principals  
197 Academy and the School Building Authority to carry out the duties assigned to the office.

198 (5) In addition to other duties which may be assigned to it by the state board or by statute,

199 the Office of Education Performance Audits also shall:

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

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

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

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

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

210 (D) Determine, in conjunction with the assessment and accountability processes, whether  
211 statewide system deficiencies exist in the capacity of schools and school systems to meet the  
212 standards established by the state board, including the identification of trends and the need for  
213 continuing improvements in education, and report those deficiencies and trends to the state  
214 board;

215 (E) Determine, in conjunction with the assessment and accountability processes, staff  
216 development needs of schools and school systems to meet the standards established by the state  
217 board and make recommendations to the state board, the Center for Professional Development,  
218 the regional educational service agencies, the Higher Education Policy Commission and the  
219 county boards;

220 (F) Identify, in conjunction with the assessment and accountability processes, school  
221 systems and best practices that improve student, school and school system performance and  
222 communicate those to the state board for promoting the use of best practices. The state board  
223 shall provide information on best practices to county school systems; and

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

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

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

233 (iii) The appropriate licensure of school personnel; and

234 (iv) The appropriate provision of multicultural activities.

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

238 (k) *On-site reviews.* --

239 (1) The system of education performance audits shall include on-site reviews of schools  
240 and school systems which shall be conducted only at the specific direction of the state board upon  
241 its determination that circumstances exist that warrant an on-site review. Any discussion by the  
242 state board of schools to be subject to an on-site review or dates for which on-site reviews will be  
243 conducted may be held in executive session and is not subject to the provisions of article nine-a,  
244 chapter six of this code relating to open governmental proceedings. An on-site review shall be  
245 conducted by the Office of Education Performance Audits of a school or school system for the  
246 purpose of making recommendations to the school and school system, as appropriate, and to the  
247 state board on such measures as it considers necessary. The investigation may include, but is  
248 not limited to, the following:

- 249 (A) Verifying data reported by the school or county board;
- 250 (B) Examining compliance with the laws and policies affecting student, school and school  
251 system performance and progress;
- 252 (C) Evaluating the effectiveness and implementation status of school and school system  
253 electronic strategic improvement plans;
- 254 (D) Investigating official complaints submitted to the state board that allege serious  
255 impairments in the quality of education in schools or school systems;
- 256 (E) Investigating official complaints submitted to the state board that allege that a school  
257 or county board is in violation of policies or laws under which schools and county boards operate;  
258 and
- 259 (F) Determining and reporting whether required reviews and inspections have been  
260 conducted by the appropriate agencies, including, but not limited to, the State Fire Marshal, the  
261 Health Department, the School Building Authority and the responsible divisions within the  
262 department of education, and whether noted deficiencies have been or are in the process of being  
263 corrected.
- 264 (2) The Director of the Office of Education Performance Audits shall notify the county  
265 superintendent of schools five school days prior to commencing an on-site review of the county  
266 school system and shall notify both the county superintendent and the principal five school days  
267 before commencing an on-site review of an individual school: *Provided*, That the state board may  
268 direct the Office of Education Performance Audits to conduct an unannounced on-site review of  
269 a school or school system if the state board believes circumstances warrant an unannounced on-  
270 site review.
- 271 (3) The Office of Education Performance Audits shall conduct on-site reviews which are  
272 limited in scope to specific areas in which performance and progress are persistently below  
273 standard as determined by the state board unless specifically directed by the state board to

274 conduct a review which covers additional areas.

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

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

285 (6) The Office of Education Performance Audits shall report the findings of an on-site  
286 review to the county superintendent and the principals whose schools were reviewed within thirty  
287 days following the conclusion of the on-site review. The Office of Education Performance Audits  
288 shall report the findings of the on-site review to the state board within forty-five days after the  
289 conclusion of the on-site review. A school or county that believes one or more findings of a review  
290 are clearly inaccurate, incomplete or misleading, misrepresent or fail to reflect the true quality of  
291 education in the school or county or address issues unrelated to the health, safety and welfare of  
292 students and the quality of education, may appeal to the state board for removal of the findings.  
293 The state board shall establish a process for it to receive, review and act upon the appeals. ~~The~~  
294 ~~state board shall report to the Legislative Oversight Commission on Education Accountability~~  
295 ~~during its July interim meetings, or as soon thereafter as practical, on each appeal during the~~  
296 ~~preceding school year.~~

297 (7) The Legislature finds that the accountability and oversight of some activities and  
298 programmatic areas in the public schools are controlled through other mechanisms and agencies



299 and that additional accountability and oversight may be unnecessary, counterproductive and  
300 impair necessary resources for teaching and learning. Therefore, the Office of Education  
301 Performance Audits may rely on other agencies and mechanisms in its review of schools and  
302 school systems.

303 (l) *School accreditation.* --

304 (1) The state board shall establish levels of accreditation to be assigned to schools. The  
305 establishment of levels of accreditation and the levels shall be subject to the following:

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

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

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

314 (2) The state board annually shall review the information from the system of education  
315 performance audits submitted for each school and shall issue to every school a level of  
316 accreditation as designated and determined by the state board.

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

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

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

322 (C) To appoint monitors to work with the principal and staff of a school where extraordinary  
323 circumstances are found to exist, and to appoint monitors to assist the school principal after

324 intervention in the operation of a school is completed;

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

327 (E) To intervene directly in the operation of a school and declare the position of principal  
328 vacant and assign a principal for the school who will serve at the will and pleasure of the state  
329 board. If the principal who was removed elects not to remain an employee of the county board,  
330 then the principal assigned by the state board shall be paid by the county board. If the principal  
331 who was removed elects to remain an employee of the county board, then the following procedure  
332 applies:

333 (i) The principal assigned by the state board shall be paid by the state board until the next  
334 school term, at which time the principal assigned by the state board shall be paid by the county  
335 board;

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

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

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

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

348 (m) *School system approval.* -- The state board annually shall review the information

349 submitted for each school system from the system of education performance audits and issue  
350 one of the following approval levels to each county board: Full approval, temporary approval,  
351 conditional approval or nonapproval.

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

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

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

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

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

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

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

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

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

386 (C) Whenever nonapproval status is given to a school system, the state board shall  
387 declare a state of emergency in the school system and shall appoint a team of improvement  
388 consultants to make recommendations within sixty days of appointment for correcting the  
389 emergency. When the state board approves the recommendations, they shall be communicated  
390 to the county board. If progress in correcting the emergency, as determined by the state board,  
391 is not made within six months from the time the county board receives the recommendations, the  
392 state board shall intervene in the operation of the school system to cause improvements to be  
393 made that will provide assurances that a thorough and efficient system of schools will be provided.  
394 This intervention may include, but is not limited to, the following:

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

399 authority regarding these matters to the state superintendent;

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

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

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

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

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

412 (I) Delegating to the state superintendent the authority to replace administrators and  
413 principals in low performing schools and to transfer them into alternate professional positions  
414 within the county at his or her discretion; and

415 (II) Delegating to the state superintendent the authority to fill positions of administrators  
416 and principals with individuals determined by the state superintendent to be the most qualified for  
417 the positions. Any authority related to intervention in the operation of a county board granted  
418 under this paragraph is not subject to the provisions of article four, chapter eighteen-a of this  
419 code.

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

423 (1) That the conditions precedent to intervention exist as provided in this section; and that

424 delaying intervention for any period of time would not be in the best interests of the students of  
425 the county school system; or

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

429 (o) *Capacity*. -- The process for improving education includes a process for targeting  
430 resources strategically to improve the teaching and learning process. Development of electronic  
431 school and school system strategic improvement plans, pursuant to subsection (b) of this section,  
432 is intended, in part, to provide mechanisms to target resources strategically to the teaching and  
433 learning process to improve student, school and school system performance. When deficiencies  
434 are detected through the assessment and accountability processes, the revision and approval of  
435 school and school system electronic strategic improvement plans shall ensure that schools and  
436 school systems are efficiently using existing resources to correct the deficiencies. When the state  
437 board determines that schools and school systems do not have the capacity to correct  
438 deficiencies, When the state board determines that schools and school systems do not have the  
439 capacity to correct deficiencies, the state board shall take one or more of the following actions:

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

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

448 (A) Examining reports and electronic strategic improvement plans regarding the

449 performance and progress of students, schools and school systems relative to the standards and  
450 identifying the areas in which improvement is needed;

451 (B) Determining the areas of weakness and of ineffectiveness that appear to have  
452 contributed to the substandard performance and progress of students or the deficiencies of the  
453 school or school system and requiring the school or school system to work collaboratively with  
454 the West Virginia Department of Education State System of Support to correct the deficiencies;

455 (C) Determining the areas of strength that appear to have contributed to exceptional  
456 student, school and school system performance and progress and promoting their emulation  
457 throughout the system;

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

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

462 (F) Requesting special staff development programs from the Center for Professional  
463 Development, the Principals Academy, higher education, regional educational service agencies  
464 and county boards based on identified needs;

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

467 (H) Directing county boards to target their funds strategically toward alleviating  
468 deficiencies;

469 (I) Ensuring that the need for facilities in counties with increased enrollment are  
470 appropriately reflected and recommended for funding;

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

473 (K) Ensuring that the needed capacity is available from the state and local level to assist

474 the school or school system in achieving the standards and alleviating the deficiencies.

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

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

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

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

497 At least once each year during the period of intervention, the Office of Education  
498 Performance Audits shall assess the readiness of the county board to accept the return of control



499 of the system or school from the state board and sustain the improvements, and shall make a  
500 report and recommendations to the state board supported by documented evidence of the  
501 progress made on the goals and action plans. The state board may end the intervention or return  
502 any portion of control of the operations of the school system or school that was previously  
503 removed at its sole determination. If the state board determines at the fifth annual assessment  
504 that the county board is still not ready to accept return of control by the state board and sustain  
505 the improvements, the state board shall hold a public hearing in the affected county at which the  
506 attendance by all members of the county board is requested so that the reasons for continued  
507 intervention and the concerns of the citizens of the county may be heard. The state board may  
508 continue the intervention only after it holds the public hearing and may require revision of the  
509 goals and action plans.

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

## **ARTICLE 2I. PROFESSIONAL DEVELOPMENT.**

### **§18-2I-5. Strategic Staff Development Fund.**

1       (a) There is created an account within the state board titled the Strategic Staff  
2 Development Fund. The allocation of balances which accrue in the General School Fund shall be  
3 transferred to the Strategic Staff Development Fund each year when the balances become  
4 available. Any remaining funds transferred to the Strategic Staff Development Fund during the  
5 fiscal year shall be carried over for use in the same manner the next fiscal year and shall be

6 separate and apart from, and in addition to, the transfer of funds from the General School Fund  
7 for the next fiscal year.

8 (b) The money in the Strategic Staff Development Fund shall be used by the state board  
9 to provide staff development in schools, counties or both that the state board determines need  
10 additional resources. ~~The state board is required to report to the Legislative Oversight~~  
11 ~~Commission on Education Accountability before December 1, annually, on the effectiveness of~~  
12 ~~the staff development resulting from expenditures in this fund.~~

### **ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.**

#### **§18-3-12. Special Community Development School Pilot Program.**

1 (a) The state superintendent shall establish a Special Community Development School  
2 Pilot Program to be implemented in a neighborhood of at least five public schools, which shall  
3 include at least one elementary and middle school, for the duration of five years. The  
4 neighborhood of public schools designated by the state superintendent for the pilot shall have  
5 significant enrollments of disadvantaged, minority and underachieving students. The designated  
6 neighborhood of public schools under the direction of the county board and county superintendent  
7 shall work in collaboration with higher education, community organizations, Center for  
8 Professional Development, local community leaders, affected classroom teachers, affected  
9 parents and the state board to develop and implement strategies that could be replicated in other  
10 public schools with significant enrollments of disadvantaged, minority and underachieving  
11 students to improve academic achievement. For purposes of this section "neighborhood" means  
12 an area of no more than seven square miles.

13 ~~(b) Beginning in January, 2014, on or before the first day of the regular session of the~~  
14 ~~Legislature, and each year thereafter, the state superintendent, county superintendent for the~~  
15 ~~county in which the schools are located and lead community-based organizations shall make a~~

16 ~~status report to the Legislative Oversight Commission on Education Accountability and to the~~  
17 ~~state board. The report may include any recommendations based on the progress of the~~  
18 ~~demonstration project that he or she considers either necessary for improving the operations of~~  
19 ~~the demonstration project or prudent for improving student achievement in other public schools~~  
20 ~~through replication of successful demonstration school programs.~~

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

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

1 (a) For the purposes of this section, "early childhood education" means programs for  
2 children who have attained the age of four prior to September 1 of the school year in which the  
3 pupil enters the program created in this section.

4 (b) *Findings.* –

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

7 (A) Improve overall readiness when children enter school;

8 (B) Decrease behavioral problems;

9 (C) Improve student attendance;

10 (D) Increase scores on achievement tests;

11 (E) Decrease the percentage of students repeating a grade; and

12 (F) Decrease the number of students placed in special education programs;

13 (2) Quality early childhood education programs improve school performance and low-  
14 quality early childhood education programs may have negative effects, especially for at-risk  
15 children;

16 (3) West Virginia has the lowest percentage of its adult population twenty-five years of age  
17 or older with a bachelor's degree and the education level of parents is a strong indicator of how

18 their children will perform in school;

19 (4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty  
20 states in the percentage of school children eligible for free and reduced lunches and this  
21 percentage is a strong indicator of how the children will perform in school;

22 (5) For the school year 2008-2009, 13,135 students were enrolled in prekindergarten, a  
23 number equal to approximately sixty-three percent of the number of students enrolled in  
24 kindergarten;

25 (6) Excluding projected increases due to increases in enrollment in the early childhood  
26 education program, projections indicate that total student enrollment in West Virginia will decline  
27 by one percent, or by approximately 2704 students, by the school year 2012-2013;

28 (7) In part, because of the dynamics of the state aid formula, county boards will continue  
29 to enroll four-year old students to offset the declining enrollments;

30 (8) West Virginia has a comprehensive kindergarten program for five-year olds, but the  
31 program was established in a manner that resulted in unequal implementation among the counties  
32 which helped create deficit financial situations for several county boards;

33 (9) Expansion of current efforts to implement a comprehensive early childhood education  
34 program should avoid the problems encountered in kindergarten implementation;

35 (10) Because of the dynamics of the state aid formula, counties experiencing growth are  
36 at a disadvantage in implementing comprehensive early childhood education programs; and

37 (11) West Virginia citizens will benefit from the establishment of quality comprehensive  
38 early childhood education programs.

39 (c) Beginning no later than the school year 2012-2013, and continuing thereafter, county  
40 boards shall provide early childhood education programs for all children who have attained the  
41 age of four prior to September 1 of the school year in which the pupil enters the early childhood  
42 education program. Beginning no later than the school year 2016-2017, and continuing thereafter,

43 early childhood education programs that are full day and five days per week shall be available to  
44 all children meeting the age requirement set forth in the subsection.

45 (d) The program shall meet the following criteria:

46 (1) It shall be voluntary, except, upon enrollment, the provisions of section one, article  
47 eight of this chapter apply to an enrolled student, subject to subdivision (3) of this subsection;

48 (2) All children meeting the age requirement set forth in this section shall have the  
49 opportunity to enroll in a program that is full day and five days per week. The program may be for  
50 fewer than five days per week and may be less than full day based on family need if a sufficient  
51 number of families request such programs and the county board finds that such programs are in  
52 the best interest of the requesting families and students: *Provided*, That the ability of families to  
53 request programs that are fewer than five days a week or less than a full day does not relieve the  
54 county of the obligation to provide all resident children with the opportunity to enroll in a full-day  
55 program; and

56 (3) A parent of a child enrolled in an early education program may withdraw a child from  
57 that program for good cause by notifying the district. Good cause includes, but is not limited to,  
58 enrollment of the child in another program or the immaturity of the child. A child withdrawn under  
59 this section is not subject to the attendance provisions of this chapter until that child again enrolls  
60 in a public school in this state.

61 (e) Enrollment of students in Head Start, in any other program approved by the state  
62 superintendent as provided in subsection (k) of this section may be counted toward satisfying the  
63 requirement of subsection (c) of this section.

64 (f) For the purposes of implementation financing, all counties are encouraged to make use  
65 of funds from existing sources, including:

66 (1) Federal funds provided under the Elementary and Secondary Education Act pursuant  
67 to 20 U. S. C. §6301, *et seq.*;

68 (2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, *et seq.*;

69 (3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601,  
70 *et seq.*;

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

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

75 (6) Any other public or private funds.

76 (g) Each county board shall develop a plan for implementing the program required by this  
77 section. The plan shall include the following elements:

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

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

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

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

86 (5) Specific time lines for implementation; and

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

88 (h) A county board shall submit its plan to the Secretary of the Department of Health and  
89 Human Resources. The secretary shall approve the plan if the following conditions are met:

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

92 (2) The county board has provided for the maximum implementation of Head Start

93 programs and other public and private programs approved by the state superintendent pursuant  
94 to the terms of subsection (k) of this section; and

95 (3) If the Secretary of the Department of Health and Human Resources finds that the  
96 county board has not met one or more of the requirements of this subsection, but that the county  
97 board has acted in good faith and the failure to comply was not the primary fault of the county  
98 board, then the secretary shall approve the plan. Any denial by the secretary may be appealed to  
99 the circuit court of the county in which the county board is located.

100 (i) The county board shall submit its plan for approval to the state board. The state board  
101 shall approve the plan if the county board has complied substantially with the requirements of  
102 subsection (g) of this section and has obtained the approval required in subsection (h) of this  
103 section.

104 (j) Every county board shall submit its plan for reapproval by the Secretary of the  
105 Department of Health and Human Resources and by the state board at least every two years after  
106 the initial approval of the plan and until full implementation of the early childhood education  
107 program in the county. As part of the submission, the county board shall provide a detailed  
108 statement of the progress made in implementing its plan. The standards and procedures provided  
109 for the original approval of the plan apply to any reapproval.

110 (k) A county board may not increase the total number of students enrolled in the county in  
111 an early childhood program until its program is approved by the Secretary of the Department of  
112 Health and Human Resources and the state board.

113 (l) The state board annually may grant a county board a waiver for total or partial  
114 implementation if the state board finds that all of the following conditions exist:

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

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

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

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

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

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

125 (m) The provisions of subsections (b), (c) and (d), section eighteen of this article relating  
126 to kindergarten apply to early childhood education programs in the same manner in which they  
127 apply to kindergarten programs.

128 ~~(n) Annually, the state board shall report to the Legislative Oversight Commission on~~  
129 ~~Education Accountability on the progress of implementation of this section.~~

130 ~~(e)~~ (n) Except as required by federal law or regulation, no county board may enroll students  
131 who will be less than four years of age prior to September 1 for the year they enter school.

132 ~~(p)~~ (o) Neither the state board nor the state department may provide any funds to any  
133 county board for the purpose of implementing this section unless the county board has a plan  
134 approved pursuant to subsections (h), (i) and (j) of this section.

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

139 (1) Standards for curriculum;

140 (2) Standards for preparing students;

141 (3) Attendance requirements;

142 (4) Standards for personnel; and



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

144 ~~(f)~~ (g) The rule shall include the following elements relating to curriculum standards:

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

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

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

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

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

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

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

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

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

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

166 ~~(e) The secretary and the state superintendent shall submit a report to the Legislative  
167 Oversight Commission on Education Accountability and the Joint Committee on Government and~~

168 ~~Finance which addresses, at a minimum, the following issues:~~

169 ~~(1) A summary of the approved county plans for providing the early childhood education~~  
170 ~~programs pursuant to this section;~~

171 ~~(2) An analysis of the total cost to the state and county boards of implementing the plans;~~

172 ~~(3) A separate analysis of the impact of the plans on counties with increasing enrollment;~~

173 ~~and~~

174 ~~(4) An analysis of the effect of the programs on the maximization of the use of federal~~  
175 ~~funds for early childhood programs.~~

176 ~~The intent of this subsection is to enable the Legislature to proceed in a fiscally responsible~~  
177 ~~manner, make any necessary program improvements based on reported information prior to~~  
178 ~~implementation of the early childhood education programs.~~

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

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

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

**ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

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

1 (a) The State Superintendent of Schools shall organize, promote, administer and be

2 responsible for:

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

6 (2) Cooperating with all other public and private agencies engaged in relieving, caring for,  
7 curing, educating and rehabilitating exceptional children, and in helping coordinate the services  
8 of such agencies.

9 (3) (A) Preparing the necessary rules, policies, formula for distribution of available  
10 appropriated funds, reporting forms and procedures necessary to define minimum standards in  
11 providing suitable facilities for education of exceptional children and ensuring the employment,  
12 certification and approval of qualified teachers and therapists subject to approval by the State  
13 Board of Education: *Provided*, That no state rule, policy or standard under this article or any  
14 county board rule, policy or standard governing special education may exceed the requirements  
15 of federal law or regulation.

16 (B) ~~The state superintendent shall annually review the rules, policies and standards of the~~  
17 ~~state and federal law for serving the needs of exceptional children enrolled in the public schools~~  
18 ~~and shall report to the Legislative Oversight commission on education accountability by December~~  
19 ~~1, or as soon thereafter as requested by the commission, 2008, and in each year thereafter, the~~  
20 ~~findings of the review along with an accounting of the services provided and the costs thereof for~~  
21 ~~exceptional children enrolled in the public schools of this state during the latest available school~~  
22 ~~year.~~ An appropriation shall be made to the Department of Education to be distributed to county  
23 boards to support children with high acuity needs that exceed the capacity of county to provide  
24 with funds available. Each county board shall apply to the state superintendent for receipt of this  
25 funding in a manner set forth by the state superintendent that assesses and takes into account  
26 varying acuity levels of the exceptional students. Any remaining funds at the end of a fiscal year

27 from the appropriation shall be carried over to the next fiscal year. When possible, federal funds  
28 shall be distributed to county boards for this purpose before any of the state appropriation is  
29 distributed. The state board shall promulgate a rule in accordance with the provisions of article  
30 three-b, chapter twenty-nine-a of this code that implements the provisions of this subdivision  
31 relating to distributing the funds to the county boards. The rule at least shall include a definition  
32 for "children with high acuity needs".

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

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

41 (6) Performing other duties and assuming other responsibilities in connection with this  
42 program as needed.

43 (7) Receive the county plan for integrated classroom submitted by the county boards of  
44 education and submit a state plan, approved by the State Board of Education, to the Legislative  
45 Oversight commission on education accountability no later than December 1, 1995.

46 (b) Nothing contained in this section shall be construed to prevent any county board of  
47 education from establishing and maintaining special schools, classes, regular class programs,  
48 home-teaching or visiting-teacher services out of funds available from local revenue.

**§18-20-8. Interagency plan for exceptional children; advisory council.**

1 (a) The state departments of health, human services and education shall enter into a  
2 collaborative agreement for the purpose of developing a statewide plan of coordinating

3 comprehensive, multidisciplinary interagency programs providing appropriate early intervention  
4 services to all developmentally delayed and at-risk children, ages birth through five years, and  
5 their families to be phased in by the school year 1990-99.

6 This comprehensive, coordinated statewide plan shall include, at a minimum:

- 7 (1) Specification of the population to be served;
- 8 (2) The development of regulations and procedural safeguards;
- 9 (3) The development of procedures for administration, supervision and monitoring;
- 10 (4) The identification and coordination of all available resources; and
- 11 (5) The development of formal interagency agreements that define the financial  
12 responsibility of each agency and all additional components necessary to ensure meaningful  
13 cooperation and coordination.

14 (b) To assist in the development of such a plan, an advisory council consisting of twelve  
15 members shall be created. The departments of health, human services and education shall each  
16 appoint four members, and each shall include in such appointments one parent of an exceptional  
17 child under the age of six; one public or private provider of early intervention services for  
18 developmentally delayed and at-risk children; one individual involved in the education training of  
19 personnel who work with preschool handicapped; and one other person.

20 The functions of the council shall include the following:

- 21 (1) Meet at least quarterly;
- 22 (2) Solicit information and opinions from concerned agencies, groups and individuals; and
- 23 (3) Advise and assist the departments of health, human services and education in the  
24 development of the statewide plan herein required. ~~and~~

25 ~~(4) Prepare and submit an annual report by December 1, of each year to the Governor,~~  
26 ~~the joint committee on education, the Legislative commission on juvenile law, the Legislative~~  
27 ~~Oversight commission on education accountability, and other agencies, as appropriate, which~~

28 ~~report shall recommend policies, procedures and legislation for effectively providing early~~  
29 ~~intervention services and reports on the status of existing programs.~~

30       Following the submission of the advisory council's first annual report, the joint committee  
31 on education is authorized and empowered to disband the council or alter its functions as it deems  
32 advisable.

33       The members of the council may be reimbursed for actual and necessary expenses  
34 incurred in the performance of their official duties in accordance with state law from appropriations  
35 to the departments of health, human services and education or available federal funds.

## **CHAPTER 18A. SCHOOL PERSONNEL.**

### **ARTICLE 2. SCHOOL PERSONNEL.**

#### **§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.**

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

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

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

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

9       The substitute shall be a duly certified teacher.

10       (b) Notwithstanding any other provision of this code to the contrary, a substitute teacher  
11 who has been assigned as a classroom teacher in the same classroom continuously for more

12 than one half of a grading period and whose assignment remains in effect two weeks prior to the  
13 end of the grading period, shall remain in the assignment until the grading period has ended,  
14 unless the principal of the school certifies that the regularly employed teacher has communicated  
15 with and assisted the substitute with the preparation of lesson plans and monitoring student  
16 progress or has been approved to return to work by his or her physician. For the purposes of this  
17 section, teacher and substitute teacher, in the singular or plural, mean professional educator as  
18 defined in section one, article one of this chapter.

19 (c) (1) The Legislature hereby finds and declares that due to a shortage of qualified  
20 substitute teachers, a compelling state interest exists in expanding the use of retired teachers to  
21 provide service as substitute teachers in areas of critical need and shortage. The Legislature  
22 further finds that diverse circumstances exist among the counties for the expanded use of retired  
23 teachers as substitutes. For the purposes of this subsection, "area of critical need and shortage  
24 for substitute teachers" means an area of certification and training in which the number of  
25 available substitute teachers in the county who hold certification and training in that area and who  
26 are not retired is insufficient to meet the projected need for substitute teachers.

27 (2) A person receiving retirement benefits under article seven-a, chapter eighteen of this  
28 code or who is entitled to retirement benefits during the fiscal year in which that person retired  
29 may accept employment as a critical needs substitute teacher for an unlimited number of days  
30 each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise  
31 entitled if the following conditions are satisfied:

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

34 (B) The policy sets forth the areas of critical need and shortage for substitute teachers in  
35 the county in accordance with the definition of area of critical need and shortage for substitute  
36 teachers set forth in subdivision (1) of this subsection;

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

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

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

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

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

61 (3) Any person who retires and begins work as a critical needs substitute teacher within



62 the same employment term shall lose those retirement benefits attributed to the annuity reserve,  
63 effective from the first day of employment as a retiree substitute in that employment term and  
64 ending with the month following the date the retiree ceases to perform service as a substitute.

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

69 (5) A retired teacher is eligible to be employed as a critical needs substitute to fill a vacant  
70 position only if the retired teacher's retirement became effective at least twenty days before the  
71 beginning of the employment term during which he or she is employed as a substitute;

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

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

78 (8) Until this subsection is expired pursuant to subdivision (9) of this subsection, the state  
79 board, annually, shall report to the Joint Committee on Government and Finance prior to February  
80 1 of each year. Additionally, a copy shall be provided to the Legislative Oversight Commission on  
81 Education Accountability. The report shall contain information indicating the effectiveness of the  
82 provisions of this subsection on reducing the critical need and shortage of substitute teachers  
83 including, but not limited to, the number of retired teachers, by critical need and shortage area  
84 position filled and by county, employed beyond the post-retirement employment limit established  
85 by the Consolidated Public Retirement Board, the date that each person gave notice to the county  
86 board of the person's intent to retire, and the effective date of the person's retirement.

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

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

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

94 (B) The county board posts a notice of the areas of critical need and shortage in the county  
95 in a conspicuous place in each school for at least ten working days; and

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

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

102 (3) Prospective employable professional personnel employed are limited to three full-time  
103 prospective employable professional personnel per one hundred professional personnel  
104 employed in a county or twenty-five full-time prospective employable professional personnel in a  
105 county, whichever is less.

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

108 (5) Regular employment status for prospective employable professional personnel may  
109 be obtained only in accordance with the provisions of section seven-a, article four of this chapter.

110 ~~(e) The state board annually shall review the status of employing personnel under the~~  
111 ~~provisions of subsection (d) of this section and annually shall report to the Legislative Oversight~~

112 ~~Commission on Education Accountability on or before November 1 of each year. The report shall~~  
113 ~~include, but not be limited to, the following:~~

114 ~~(A) The counties that participated in the program;~~

115 ~~(B) The number of personnel hired;~~

116 ~~(C) The teaching fields in which personnel were hired;~~

117 ~~(D) The venue from which personnel were employed;~~

118 ~~(E) The place of residency of the individual hired; and~~

119 ~~(F) The state board's recommendations on the prospective employable professional~~  
120 ~~personnel program.~~

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

##### **§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.**

1 (a) A county board of education shall make decisions affecting the filling of vacancies in  
2 professional positions of employment on the basis of the applicant with the highest qualifications:  
3 *Provided*, That the county superintendent shall be hired under separate criteria pursuant to  
4 section two, article four, chapter eighteen of this code.

5 (b) In judging qualifications for the filling of vacancies of professional positions of  
6 employment, consideration shall be given to each of the following:

7 (1) Appropriate certification, licensure or both;

8 (2) Amount of experience relevant to the position or, in the case of a classroom teaching  
9 position, the amount of teaching experience in the required certification area;

10 (3) The amount of course work, degree level or both in the relevant field and degree level  
11 generally;

12 (4) Academic achievement;

13 (5) In the case of a classroom teaching position or the position of principal, certification by

14 the National Board for Professional Teaching Standards;

15 (6) Specialized training relevant to the performance of the duties of the job;

16 (7) Past performance evaluations conducted pursuant to section twelve, article two of this  
17 chapter and section two, article three-c of this chapter or, in the case of a classroom teacher, past  
18 evaluations of the applicant's performance in the teaching profession;

19 (8) Seniority;

20 (9) Other measures or indicators upon which the relative qualifications of the applicant  
21 may fairly be judged;

22 (10) In the case of a classroom teaching position, the recommendation of the principal of  
23 the school at which the applicant will be performing a majority of his or her duties; and

24 (11) In the case of a classroom teaching position, the recommendation, if any, resulting  
25 from the process established pursuant to the provisions of section five, article five-a, chapter  
26 eighteen of this code by the faculty senate of the school at which the employee will be performing  
27 a majority of his or her duties.

28 (c) In considering the filling of a vacancy pursuant to this section, a county board is entitled  
29 to determine the appropriate weight to apply to each of the criterion when assessing an applicant's  
30 qualifications: *Provided*, That if one or more permanently employed instructional personnel apply  
31 for a classroom teaching position and meet the standards set forth in the job posting, each  
32 criterion under subsection (b) of this section shall be given equal weight except that the criterion  
33 in subdivisions (10) and (11) shall each be double weighted.

34 (d) For a classroom teaching position, if the recommendations resulting from the  
35 operations of subdivisions (10) and (11), subsection (b) of this section are for the same applicant,  
36 and the superintendent concurs with that recommendation, then the other provisions of  
37 subsections (b) and (c) of this section do not apply and the county board shall appoint that  
38 applicant notwithstanding any other provision of this code to the contrary.

39           (e) The state board shall promulgate a rule, including an emergency rule if necessary, in  
40 accordance with the provisions of article three-b, chapter twenty-nine-a of this code to implement  
41 and interpret the provisions of this section, including provisions that may provide for the  
42 compensation based on the appropriate daily rate of a classroom teacher who directly participates  
43 in making recommendations pursuant to this section for periods beyond his or her individual  
44 contract.

45           (f) Recommendations made pursuant to subdivisions (10) and (11), subsection (b) of this  
46 section shall be made based on a determination as to which of the applicants is the highest  
47 qualified for the position: *Provided*, That nothing in this subsection shall require principals or  
48 faculty senates to assign any amount of weight to any factor in making a recommendation.

49           (g) With the exception of guidance counselors, the seniority of classroom teachers, as  
50 defined in section one, article one of this chapter, shall be determined on the basis of the length  
51 of time the employee has been employed as a regular full-time certified and/or licensed  
52 professional educator by the county board of education and shall be granted in all areas that the  
53 employee is certified, licensed or both.

54           (h) Upon completion of one hundred thirty-three days of employment in any one school  
55 year, substitute teachers, except retired teachers and other retired professional educators  
56 employed as substitutes, shall accrue seniority exclusively for the purpose of applying for  
57 employment as a permanent, full-time professional employee. One hundred thirty-three days or  
58 more of said employment shall be prorated and shall vest as a fraction of the school year worked  
59 by the permanent, full-time teacher.

60           (i) Guidance counselors and all other professional employees, as defined in section one,  
61 article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching  
62 area of professional employment on the basis of the length of time the employee has been  
63 employed by the county board of education in that area: *Provided*, That if an employee is certified

64 as a classroom teacher, the employee accrues classroom teaching seniority for the time that that  
65 employee is employed in another professional area. For the purposes of accruing seniority under  
66 this paragraph, employment as principal, supervisor or central office administrator, as defined in  
67 section one, article one of this chapter, shall be considered one area of employment.

68 (j) Employment for a full employment term shall equal one year of seniority, but no  
69 employee may accrue more than one year of seniority during any given fiscal year. Employment  
70 for less than the full employment term shall be prorated. A random selection system established  
71 by the employees and approved by the board shall be used to determine the priority if two or more  
72 employees accumulate identical seniority: *Provided*, That when two or more principals have  
73 accumulated identical seniority, decisions on reductions in force shall be based on qualifications.

74 (k) Whenever a county board is required to reduce the number of professional personnel  
75 in its employment, the employee with the least amount of seniority shall be properly notified and  
76 released from employment pursuant to the provisions of section two, article two of this chapter.  
77 The provisions of this subsection are subject to the following:

78 (1) All persons employed in a certification area to be reduced who are employed under a  
79 temporary permit shall be properly notified and released before a fully certified employee in such  
80 a position is subject to release;

81 (2) Notwithstanding any provision of this code to the contrary, all employees subject to  
82 release shall be considered applicants for any vacancy in an established, existing or newly  
83 created position that, on or before February 15, is known to exist for the ensuing school year, and  
84 for which they are qualified, and, upon recommendation of the superintendent, the board shall  
85 appoint the successful applicant from among them before posting such vacancies for application  
86 by other persons;

87 (3) An employee subject to release shall be employed in any other professional position  
88 where the employee is certified and was previously employed or to any lateral area for which the

89 employee is certified, licensed or both, if the employee's seniority is greater than the seniority of  
90 any other employee in that area of certification, licensure or both;

91 (4) If an employee subject to release holds certification, licensure or both in more than one  
92 lateral area and if the employee's seniority is greater than the seniority of any other employee in  
93 one or more of those areas of certification, licensure or both, the employee subject to release  
94 shall be employed in the professional position held by the employee with the least seniority in any  
95 of those areas of certification, licensure or both; and

96 (5) If, prior to August 1 of the year a reduction in force is approved, the reason for any  
97 particular reduction in force no longer exists as determined by the county board in its sole and  
98 exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the  
99 released employee in writing of his or her right to be restored to his or her position of employment.  
100 Within five days of being so notified, the released employee shall notify the board, in writing, of  
101 his or her intent to resume his or her position of employment or the right to be restored shall  
102 terminate. Notwithstanding any other provision of this subdivision, if there is another employee on  
103 the preferred recall list with proper certification and higher seniority, that person shall be placed  
104 in the position restored as a result of the reduction in force being rescinded.

105 (l) For the purpose of this article, all positions which meet the definition of "classroom  
106 teacher" as defined in section one, article one of this chapter shall be lateral positions. For all  
107 other professional positions, the county board of education shall adopt a policy by October 31,  
108 1993, and may modify the policy thereafter as necessary, which defines which positions shall be  
109 lateral positions. ~~The board shall submit a copy of its policy to the state board within thirty days of~~  
110 ~~adoption or any modification, and the state board shall compile a report and submit the report to~~  
111 ~~the Legislative Oversight Commission on Education Accountability by December 31, 1993, and~~  
112 ~~by that date in any succeeding year in which any county board submits a modification of its policy~~  
113 ~~relating to lateral positions.~~ In adopting the policy, the board shall give consideration to the rank

114 of each position in terms of title; nature of responsibilities; salary level; certification, licensure or  
115 both; and days in the period of employment.

116 (m) After the twentieth day prior to the beginning of the instructional term, no person  
117 employed and assigned to a professional position may transfer to another professional position  
118 in the county during that instructional term unless the person holding that position does not have  
119 valid certification. The provisions of this subsection are subject to the following:

120 (1) The person may apply for any posted, vacant positions with the successful applicant  
121 assuming the position at the beginning of the next instructional term;

122 (2) Professional personnel who have been on an approved leave of absence may fill these  
123 vacancies upon their return from the approved leave of absence;

124 (3) The county board, upon recommendation of the superintendent may fill a position  
125 before the next instructional term when it is determined to be in the best interest of the students.  
126 The county superintendent shall notify the state board of each transfer of a person employed in a  
127 professional position to another professional position after the twentieth day prior to the beginning  
128 of the instructional term;

129 (4) The provisions of this subsection do not apply to the filling of a position vacated  
130 because of resignation or retirement that became effective on or before the twentieth day prior to  
131 the beginning of the instructional term, but not posted until after that date; and

132 (5) The Legislature finds that it is not in the best interest of the students particularly in the  
133 elementary grades to have multiple teachers for any one grade level or course during the  
134 instructional term. It is the intent of the Legislature that the filling of positions through transfers of  
135 personnel from one professional position to another after the twentieth day prior to the beginning  
136 of the instructional term should be kept to a minimum.

137 (n) All professional personnel whose seniority with the county board is insufficient to allow  
138 their retention by the county board during a reduction in work force shall be placed upon a



139 preferred recall list. As to any professional position opening within the area where they had  
140 previously been employed or to any lateral area for which they have certification, licensure or  
141 both, the employee shall be recalled on the basis of seniority if no regular, full-time professional  
142 personnel, or those returning from leaves of absence with greater seniority, are qualified, apply  
143 for and accept the position.

144 (o) Before position openings that are known or expected to extend for twenty consecutive  
145 employment days or longer for professional personnel may be filled by the board, the board shall  
146 be required to notify all qualified professional personnel on the preferred list and give them an  
147 opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall.  
148 The notice shall be sent by certified mail to the last known address of the employee, and it shall  
149 be the duty of each professional personnel to notify the board of continued availability annually,  
150 of any change in address or of any change in certification, licensure or both.

151 (p) Openings in established, existing or newly created positions shall be processed as  
152 follows:

153 (1) Boards shall be required to post and date notices of each opening at least once. At  
154 their discretion, boards may post an opening for a position other than classroom teacher more  
155 than once in order to attract more qualified applicants. At their discretion, boards may post an  
156 opening for a classroom teacher one additional time after the first posting in order to attract more  
157 qualified applicants only if fewer than three individuals apply during the first posting subject to the  
158 following:

159 (A) Each notice shall be posted in conspicuous working places for all professional  
160 personnel to observe for at least five working days;

161 (B) At least one notice shall be posted within twenty working days of the position openings  
162 and shall include the job description;

163 (C) Any special criteria or skills that are required by the position shall be specifically stated

164 in the job description and directly related to the performance of the job;

165 (D) Postings for vacancies made pursuant to this section shall be written so as to ensure  
166 that the largest possible pool of qualified applicants may apply; and

167 (E) Job postings may not require criteria which are not necessary for the successful  
168 performance of the job and may not be written with the intent to favor a specific applicant;

169 (2) No vacancy shall be filled until after the five-day minimum posting period of the most  
170 recent posted notice of the vacancy;

171 (3) If one or more applicants under all the postings for a vacancy meets the qualifications  
172 listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board  
173 within thirty working days of the end of the first posting period;

174 (4) A position held by a teacher who is certified, licensed or both, who has been issued a  
175 permit for full-time employment and is working toward certification in the permit area shall not be  
176 subject to posting if the certificate is awarded within five years; and

177 (5) Nothing provided herein shall prevent the county board of education from eliminating  
178 a position due to lack of need.

179 (q) Notwithstanding any other provision of the code to the contrary, where the total number  
180 of classroom teaching positions in an elementary school does not increase from one school year  
181 to the next, but there exists in that school a need to realign the number of teachers in one or more  
182 grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels  
183 for which they are certified without that position being posted: *Provided*, That the employee and  
184 the county board mutually agree to the reassignment.

185 (r) Reductions in classroom teaching positions in elementary schools shall be processed  
186 as follows:

187 (1) When the total number of classroom teaching positions in an elementary school needs  
188 to be reduced, the reduction shall be made on the basis of seniority with the least senior classroom

189 teacher being recommended for transfer; and

190 (2) When a specified grade level needs to be reduced and the least senior employee in  
191 the school is not in that grade level, the least senior classroom teacher in the grade level that  
192 needs to be reduced shall be reassigned to the position made vacant by the transfer of the least  
193 senior classroom teacher in the school without that position being posted: *Provided*, That the  
194 employee is certified, licensed or both and agrees to the reassignment.

195 (s) Any board failing to comply with the provisions of this article may be compelled to do  
196 so by mandamus and shall be liable to any party prevailing against the board for court costs and  
197 reasonable attorney fees as determined and established by the court. Further, employees denied  
198 promotion or employment in violation of this section shall be awarded the job, pay and any  
199 applicable benefits retroactive to the date of the violation and payable entirely from local funds.  
200 Further, the board shall be liable to any party prevailing against the board for any court reporter  
201 costs including copies of transcripts.

202 (t) The county board shall compile, update annually on July 1 and make available by  
203 electronic or other means to all employees a list of all professional personnel employed by the  
204 county, their areas of certification and their seniority.

205 (u) Notwithstanding any other provision of this code to the contrary, upon recommendation  
206 of the principal and approval by the classroom teacher and county board, a classroom teacher  
207 assigned to the school may at any time be assigned to a new or existing classroom teacher  
208 position at the school without the position being posted.

209 (v) The amendments to this section during the 2013 regular session of the Legislature  
210 shall be effective for school years beginning on or after July 1, 2013, and the provisions of this  
211 section immediately prior to those amendments remain in effect until July 1, 2013.

## **ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

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

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

15 (b) A principal shall suspend a student from school, or from transportation to or from the  
16 school on any school bus, if the student, in the determination of the principal after an informal  
17 hearing pursuant to subsection (d) of this section, has: (i) Committed an act or engaged in conduct  
18 that would constitute a felony under the laws of this state if committed by an adult; or (ii) unlawfully  
19 possessed on the premises of an educational facility or at a school-sponsored function a  
20 controlled substance governed by the uniform controlled substances act as described in chapter

21 sixty-a of this code. If a student has been suspended pursuant to this subsection, the principal  
22 may request that the superintendent recommend to the county board that the student be expelled.  
23 Upon such recommendation by the county superintendent, the county board may hold a hearing  
24 in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the  
25 student committed the alleged violation. If the county board finds that the student did commit the  
26 alleged violation, the county board may expel the student.

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

41 (d) The actions of any student which may be grounds for his or her suspension or  
42 expulsion under the provisions of this section shall be reported immediately to the principal of the  
43 school in which the student is enrolled. If the principal determines that the alleged actions of the  
44 student would be grounds for suspension, he or she shall conduct an informal hearing for the  
45 student immediately after the alleged actions have occurred. The hearing shall be held before the

46 student is suspended unless the principal believes that the continued presence of the student in  
47 the school poses a continuing danger to persons or property or an ongoing threat of disrupting  
48 the academic process, in which case the student shall be suspended immediately and a hearing  
49 held as soon as practicable after the suspension.

50 The student and his or her parent(s), guardian(s) or custodian(s), as the case may be,  
51 shall be given telephonic notice, if possible, of this informal hearing, which notice shall briefly state  
52 the grounds for suspension.

53 At the commencement of the informal hearing, the principal shall inquire of the student as  
54 to whether he or she admits or denies the charges. If the student does not admit the charges, he  
55 or she shall be given an explanation of the evidence possessed by the principal and an opportunity  
56 to present his or her version of the occurrence. At the conclusion of the hearing or upon the failure  
57 of the noticed student to appear, the principal may suspend the student for a maximum of ten  
58 school days, including the time prior to the hearing, if any, for which the student has been excluded  
59 from school.

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

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

71 the ten-day period of suspension imposed by the principal.

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

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

92 A county board that expels a student, and finds that the student is a dangerous student,  
93 may refuse to provide alternative education. However, after a hearing conducted pursuant to this  
94 section for determining whether a student is a dangerous student, when the student is found to  
95 be a dangerous student, is expelled and is denied alternative education, a hearing shall be

96 conducted within three months after the refusal by the board to provide alternative education to  
97 reexamine whether or not the student remains a dangerous student and whether the student shall  
98 be provided alternative education. Thereafter, a hearing for the purpose of reexamining whether  
99 or not the student remains a dangerous student and whether the student shall be provided  
100 alternative education shall be conducted every three months for so long as the student remains  
101 a dangerous student and is denied alternative education. During the initial hearing, or in any  
102 subsequent hearing, the board may consider the history of the student's conduct as well as any  
103 improvements made subsequent to the expulsion. If it is determined during any of the hearings  
104 that the student is no longer a dangerous student or should be provided alternative education, the  
105 student shall be provided alternative education during the remainder of the expulsion period.

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

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



121 in any case where a postponement occurs.

122 ~~The county boards are directed to report the number of students determined to be~~  
123 ~~dangerous students to the state board. The state board will compile the county boards' statistics~~  
124 ~~and shall report its findings to the Legislative Oversight Commission on Education Accountability.~~

125 (i) Students may be expelled pursuant to this section for a period not to exceed one school  
126 year, except that if a student is determined to have violated the provisions of subsection (a) of  
127 this section the student shall be expelled for a period of not less than twelve consecutive months,  
128 subject to the following:

129 (1) The county superintendent may lessen the mandatory period of twelve consecutive  
130 months for the expulsion of the student if the circumstances of the student's case demonstrably  
131 warrant;

132 (2) Upon the reduction of the period of expulsion, the county superintendent shall prepare  
133 a written statement setting forth the circumstances of the student's case which warrant the  
134 reduction of the period of expulsion. The county superintendent shall submit the statement to the  
135 county board, the principal, the faculty senate and the local school improvement council for the  
136 school from which the student was expelled. The county superintendent may use the following  
137 factors as guidelines in determining whether or not to reduce a mandatory twelve-month  
138 expulsion:

139 (A) The extent of the student's malicious intent;

140 (B) The outcome of the student's misconduct;

141 (C) The student's past behavior history;

142 (D) The likelihood of the student's repeated misconduct; and

143 (E) If applicable, successful completion or making satisfactory progress toward successful  
144 completion of Juvenile Drug Court pursuant to section one-d of this section.

145 (j) In all hearings under this section, facts shall be found by a preponderance of the

146 evidence.

147 (k) For purposes of this section, nothing herein may be construed to be in conflict with the  
148 federal provisions of the Individuals with Disabilities Education Act, 20 U. S. C. §1400 *et seq.*

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

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

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

158 (3) The state board shall collect and disseminate data so that any principal of a public  
159 school in West Virginia can review the complete history of disciplinary actions taken by West  
160 Virginia public schools against any student enrolled or seeking to enroll at that principal's school.  
161 The purposes of this provision are to allow every principal to fulfill his or her duty under subsection  
162 (b), section fifteen-f, article five, chapter eighteen of this code to determine whether a student  
163 requesting to enroll at a public school in West Virginia is currently serving a suspension or  
164 expulsion from another public school in West Virginia and to allow principals to obtain general  
165 information about students' disciplinary histories.

166 (m) Principals may exercise any other authority and perform any other duties to discipline  
167 students consistent with state and federal law, including policies of the state board.

168 (n) Each county board is solely responsible for the administration of proper discipline in  
169 the public schools of the county and shall adopt policies consistent with the provisions of this  
170 section to govern disciplinary actions.

171 (o) For the purpose of this section, "principal" means the principal, assistant principal, vice  
172 principal or the administrative head of the school or a professional personnel designee of the  
173 principal or the administrative head of the school.

## **CHAPTER 18B. HIGHER EDUCATION.**

### **ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.**

#### **§18B-1D-8. Institutional and system report cards.**

1 (a) The purpose of the institutional and statewide report cards is to make information  
2 available to parents, students, faculty, staff, state policymakers and the general public on the  
3 quality and performance of public higher education. The focus of the report cards is to determine  
4 annual progress of the commission, the council and institutions under their respective jurisdictions  
5 toward achieving state goals and objectives identified in this article and section one-a, article one  
6 of this chapter and system goals and objective contained in the statewide master plans of the  
7 commission and council created pursuant to section five of this article.

8 (b) The information contained in the report cards shall be consistent and comparable  
9 between and among state institutions of higher education. If applicable, the information shall allow  
10 for easy comparison with higher education-related data collected and disseminated by the  
11 Southern Regional Education Board, the United States Department of Education and other  
12 education data-gathering and data-disseminating organizations upon which state policymakers  
13 frequently rely in setting policy.

14 (c) The rules required by subsection (c), section one of this article shall provide for the  
15 collection, analysis and dissemination of information on the performance of the state institutions  
16 of higher education, including health sciences education, in relation to the findings, goals and  
17 objectives set forth in this article and section one-a, article one of this chapter and those contained  
18 in the statewide master plans of the commission and council developed pursuant to section five

19 of this article.

20 (1) The objective of this portion of the rule is to ensure that the Legislative Oversight  
21 Commission on Education Accountability and others identified in subsection (a) of this section are  
22 provided with full and accurate information while minimizing the institutional burden of  
23 recordkeeping and reporting.

24 (2) This portion of the rule shall identify various indicators of student and institutional  
25 performance that, at a minimum, must be reported annually, set forth general guidelines for the  
26 collection and reporting of data and provide for the preparation, printing and distribution of report  
27 cards under this section.

28 (d) The report cards shall be analysis-driven, rather than simply data-driven, and shall  
29 present information in a format that can inform education policymaking. They shall include an  
30 executive summary which outlines significant trends, identifies major areas of concern and  
31 discusses progress toward meeting state and system goals and objectives. They shall be brief  
32 and concise, reporting required information in nontechnical language. Any technical or supporting  
33 material to be included shall be contained in a separate appendix.

34 (e) The statewide report card shall include the data for each separately listed, applicable  
35 indicator identified in the rule promulgated pursuant to subsection (c) of this section and the  
36 aggregate of the data for all public institutions of higher education.

37 (f) The statewide report card shall be prepared using actual institutional, state, regional  
38 and national data, as applicable and available, indicating the present performance of the individual  
39 institutions, the governing boards and the state systems of higher education. Statewide report  
40 cards shall be based upon information for the current school year or for the most recent school  
41 year for which the information is available, in which case the year shall be clearly noted.

42 (g) The president or chief executive officer of each state institution of higher education  
43 shall prepare and submit annually all requested data to the commission at the times established

44 by the commission.

45 (h) The higher education central office staff, under the direction of the Vice Chancellor for  
46 Administration, shall provide technical assistance to each institution and governing board in data  
47 collection and reporting and is responsible for assembling the statewide report card from  
48 information submitted by each governing board.

49 (i) The statewide report card shall be completed and disseminated with copies to the  
50 Legislative Oversight Commission on Education Accountability prior to January 1, of each year  
51 and the staff of the commission and the council shall prepare a report highlighting specifically the  
52 trends, progress toward meeting goals and objectives and major areas of concern for public  
53 higher education, including medical education, for presentation to the Legislative Oversight  
54 Commission on Education Accountability at the interim meetings in January, 2009, and annually  
55 thereafter.

56 ~~(j) Notwithstanding any other provisions of this code to the contrary, the following~~  
57 ~~statutorily mandated reports are not required to be prepared and submitted annually unless a~~  
58 ~~member of the Legislature makes a specific request for a particular report:~~

59 ~~(1) An annual report, pursuant to subsection (a), section forty-eight, article three, chapter~~  
60 ~~five-a of this code, on vehicle fleets;~~

61 ~~(2) An annual report, pursuant to subsection (e), section ten, article one of this chapter,~~  
62 ~~on plans, accomplishments and recommendations in implementing a cooperative relationship~~  
63 ~~between Potomac State College and Eastern West Virginia Community and Technical College;~~

64 ~~(3) An annual report, pursuant to paragraphs (A) and (B), subdivision (10), subsection (a),~~  
65 ~~section four, article one-b of this chapter, concerning higher education performance and~~  
66 ~~enrollment data;~~

67 ~~(4) An annual report, pursuant to paragraph (A), subdivision (11), subsection (b), section~~  
68 ~~six, article two-b of this chapter, concerning community and technical college performance;~~

69 ~~(5) An annual report, pursuant to subsection (b), section seven, article five of this chapter,~~  
70 ~~on all sales of obsolete, unusable or surplus commodities;~~

71 ~~(6) An annual report, pursuant to section eight, article five of this chapter, on purchases~~  
72 ~~from West Virginia businesses;~~

73 ~~(7) An annual report, pursuant to subsection (j), section one, article ten of this chapter, on~~  
74 ~~the amount of auxiliary fees collected to replace state funds subsidizing auxiliary services;~~

75 ~~(8) An annual report, pursuant to subsection (c), section five, article thirteen of this chapter,~~  
76 ~~on technical assistance provided to qualified businesses within approved research parks,~~  
77 ~~research zones or technology centers;~~

78 ~~(9) An annual report, pursuant to subsection (e), section six, article eighteen of this~~  
79 ~~chapter, on the status of the Eminent Scholars Endowment Trust Fund; and~~

80 ~~(10) An annual report, pursuant to subsection (e), section one, article three, chapter~~  
81 ~~eighteen-c of this code, relevant to the health education loan program.~~

82 ~~(k) For a reasonable fee, the Vice Chancellor for Administration shall make copies of the~~  
83 ~~report cards, including any appendices of supporting material, available to any individual~~  
84 ~~requesting them.~~

**§18B-1D-8a. Modification to Reporting Requirements to the Legislative Oversight**

**Commission on Education Accountability.**

1 (a) Notwithstanding any other provisions of this code to the contrary, the following  
2 statutorily mandated reports are not required to be prepared and submitted annually unless a  
3 member of the Legislature makes a specific request for a particular report:

4 (1) An annual report, pursuant to subsection (a), section forty-eight, article three, chapter  
5 five-a of this code, on vehicle fleets;

6 (2) An annual report, pursuant to subsection (e), section ten, article one of this chapter,  
7 on plans, accomplishments and recommendations in implementing a cooperative relationship

8 between Potomac State College and Eastern West Virginia Community and Technical College;

9 (3) An annual report, pursuant to paragraphs (A) and (B), subdivision (10), subsection (a),  
10 section four, article one-b of this chapter, concerning higher education performance and  
11 enrollment data;

12 (4) An annual report, pursuant to paragraph (A), subdivision (11), subsection (b), section  
13 six, article two-b of this chapter, concerning community and technical college performance;

14 (5) An annual report, pursuant to subsection (b), section seven, article five of this chapter,  
15 on all sales of obsolete, unusable or surplus commodities;

16 (6) An annual report, pursuant to section eight, article five of this chapter, on purchases  
17 from West Virginia businesses;

18 (7) An annual report, pursuant to subsection (j), section one, article ten of this chapter, on  
19 the amount of auxiliary fees collected to replace state funds subsidizing auxiliary services;

20 (8) An annual report, pursuant to subsection (c), section five, article thirteen of this chapter,  
21 on technical assistance provided to qualified businesses within approved research parks,  
22 research zones or technology centers;

23 (9) An annual report, pursuant to subsection (e), section six, article eighteen of this  
24 chapter, on the status of the Eminent Scholars Endowment Trust Fund; and

25 (10) An annual report, pursuant to subsection (e), section one, article three, chapter  
26 eighteen-c of this code, relevant to the health education loan program.

27 (11) An annual report, pursuant to subsection (e), section three, article three of this  
28 chapter, relevant to community and technical college progress toward meeting statutory goals  
29 and objectives and whether statewide independently accredited community and technology  
30 should be created;

31 (12) An annual report, pursuant to section three, article three of this chapter, regarding the  
32 progress of community and technical colleges meeting statutory objectives;

33 (13) An annual report, pursuant to section two, article three-d of this chapter, on workforce  
34 development initiatives;

35 (14) An annual report, pursuant to section six, article two-b of this chapter, relevant to  
36 community and technical college system performance, capital investment priorities, and  
37 recommendations for statutory changes;

38 (15) An annual report, pursuant to section nine, article one-d of this chapter, relevant to  
39 training of commission, council, and BOG members;

40 (16) An annual report, pursuant to section seven, article five, chapter eighteen-c of this  
41 code, relevant to the status of the Higher Education Adult Part-Time Student (HEAPS) Grant  
42 Program;

43 (17) An annual report, pursuant to section four, article three, chapter eighteen-c of this  
44 code, relevant to the number of nursing scholarship recipients; and

45 (18) An annual report, pursuant to section four, article seven, chapter eighteen-c of this  
46 code, relevant to the annual recommendation to encourage recipients to live and work in West  
47 Virginia after graduation.

48 (b) Notwithstanding any other provisions of this code to the contrary, the following  
49 statutorily mandated reports are not required to be prepared and submitted annually to the  
50 Legislature but this information and data previously contained therein shall be combined with  
51 other reports in a manner that reduces the cost and increases the efficacy of those reports. This  
52 includes:

53 (1) All personnel, classification, compensation and human resources reports set out in  
54 section four, article one-b; section six, article two-b, and article nine-a of this chapter;

55 (2) All capital appropriation requests, priorities and campus and state capital development  
56 plans set out in section four, article one-b; section six, article two-b; and article nineteen of this  
57 chapter;



58 (3) All academic related matters and reports including those detailing institutional  
59 reauthorization at section seven, article four of this chapter; training of institutional boards of  
60 Governors set out in section nine, article one-d of this chapter and section one, article ten of this  
61 chapter dealing with institutional compliance with tuition and fee increases;

62 (4) All financial aid reports including PROMISE, HEAPS, the higher education grant  
63 program, the Underwood-Smith Teacher Scholarship Program and others set out in chapter  
64 eighteen c of this code.

65 (c) For a reasonable fee, the Vice Chancellor for Administration shall make copies of the  
66 report cards, including any appendices of supporting material, available to any individual  
67 requesting them.

**ARTICLE 1E. WEST VIRGINIA UNIVERSITY INSTITUTE OF TECHNOLOGY  
REVITALIZATION PROJECT.**

**§18B-1E-3. Revitalization Project and Plan; Plan approval required.**

1 (a) There is hereby created the Revitalization Project for WVU-Tech under the direction of  
2 the commission. The project includes a study and development of a revitalization plan designed  
3 to meet the goals and intent of this article.

4 (b) On the effective date of this section, the commission shall initiate a study and draw  
5 upon the expertise of groups both internal and external to West Virginia to take advantage of the  
6 services of national organizations specializing in institutional renewal. The commission shall bear  
7 the costs of the study. (c) The study shall include, but is not limited to, the following thematic  
8 areas:

9 (1) Exploring new academic programs that meet emerging industry needs in West Virginia;

10 (2) Developing distance education and adult-targeted degree and programmatic offerings,  
11 with particular attention to avoiding costly program duplication;

12 (3) Examining marketing and recruiting strategies at the institution;

13 (4) Reviewing nonacademic programs and auxiliary operations, focused upon efficiencies  
14 and strategic development;

15 (5) Reviewing fiscal and operating procedures, emphasizing initiatives through which the  
16 institution can reduce annual operating costs and maximize all available revenues;

17 (6) Evaluating all institutionally-affiliated groups, including the alumni association, the  
18 WVU-Tech Foundation and all other institutionally-affiliated organizations which are exempt from  
19 taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended,  
20 stressing revitalization of these entities; and

21 (7) Reviewing and assessing the capital infrastructure of the institution.

22 (d) The study also shall include consideration of the following recommendations drawn  
23 from the WV-CURE report:

24 (1) Creating and maintaining a forum for meaningful interaction between and among the  
25 K-12 and professional communities to define better the needs of the STEM stakeholders at each  
26 level of the education and early career process. The forum may help to ensure smoother  
27 transitions for students at each step and thereby increase student retention and graduation rates.  
28 A cooperative approach with the public schools in the institution's service area may serve as  
29 means to increase students' interest and familiarize them with the STEM programs WVU-Tech  
30 offers;

31 (2) Preparing students for the future by enhancing student design/capstone experiences  
32 to include undergraduate research at an earlier point in the baccalaureate curriculum thereby  
33 expanding the focus on opportunities for advanced studies and providing students with enhanced  
34 critical thinking and learning skills to adapt to an environment of rapidly changing technologies;

35 (3) Stimulating interest of young people in training and careers in engineering and related  
36 disciplines by involving the professional and business communities in a more visible and engaged

37 manner;

38 (4) Diversifying the types of students who pursue STEM education and careers by  
39 developing strategic initiatives focused on recruiting and retaining traditionally under-represented  
40 groups;

41 (5) Pursuing the goals set forth in section three, article one-c of this chapter to increase  
42 West Virginia's capacity for high quality engineering instruction and research; increase access to  
43 high quality instruction and research opportunities in STEM disciplines; and stimulate economic  
44 development by increasing the number of professional engineers available to business and  
45 industry;

46 (6) Exploring opportunities for collaborations between institutions to increase the access  
47 to high quality programs while reducing the overall expenditure per student in high cost  
48 disciplines; and

49 (7) Developing more electronic classrooms, online programs, and other technology-driven  
50 teaching/learning facilities in order to pool resources among the engineering institutions, reach  
51 students who are place-bound or who live in rural areas distant from the institution's campus and  
52 avoid expensive program duplication.

53 (e) Based upon the research and findings of the study, the Chancellor shall coordinate the  
54 development of a revitalization plan to implement the purpose and intent of this article. The  
55 revitalization plan shall serve to guide the distribution of all funds appropriated by the Legislature  
56 and targeted to the Revitalization Project. The revitalization plan shall include, but is not limited  
57 to, the following elements:

58 (1) Providing clear and guiding recommendations for the revitalization of WVU-Tech;

59 (2) Recommending a process for establishing WVU-Tech as a center of excellence in  
60 STEM education with particular emphasis on undergraduate engineering and technology, areas  
61 in which the institution has earned a high degree of regional and national recognition for

62 excellence. The purpose of the center of excellence is to enable the institution to concentrate its  
63 resources on providing state-of-the-art post-secondary education opportunities in a limited  
64 number of areas in which the institution excels. The center of excellence approach promotes  
65 effective teaching and learning through education, training, research and information  
66 dissemination. All parties involved in identifying and developing the center of excellence bring to  
67 the partnership their special expertise of strategic importance to the program and, ultimately, to  
68 the citizens of West Virginia;

69 (3) Benchmarks in the following areas:

70 (A) Enrollment;

71 (B) Retention and graduation;

72 (C) Capital improvements and building renovations/demolitions;

73 (D) Athletics, auxiliaries, and other nonacademic units;

74 (E) Fundraising and alumni development;

75 (F) Academic restructure and program development;

76 (G) Marketing and outreach;

77 (H) Remedial and developmental education;

78 (I) Innovative academic initiatives that can be piloted at WVU-Tech with the opportunity  
79 for diffusion across the systems of higher education;

80 (J) Transfer and articulation partnerships with other institutions in the state systems of  
81 higher education; and

82 (K) Grants, contracts, and externally sponsored research; and

83 (4) A process whereby WVU-Tech may request and receive moneys from the pool of  
84 appropriated funds.

85 ~~(f) The findings, conclusions and recommendations of the study, together with the~~  
86 ~~revitalization plan for implementation, shall be reported to the commission and the governing~~

87 ~~board by September 1, 2011. The revitalization plan shall be delivered to LOCEA no later than~~  
88 ~~September 1, 2011, and LOCEA shall consider the proposed plan and approve or disapprove by~~  
89 ~~September 30, 2011.~~

**§18B-1E-4. Plan implementation; legislative intent; oversight; reporting.**

1 (a) The legislative findings set forth in section two of this article demonstrate the unique  
2 historical role that WVU-Tech has played as a vital component of the state's higher education  
3 system. In order for the institution to move forward and realize its full potential, its future must be  
4 supported by a financial commitment from the state. Therefore, as funds are available, it is the  
5 intent of the Legislature to make appropriations to the commission to support the revitalization  
6 project at WVU-Tech.

7 (b) Appropriated funds may be expended under the direction of the Chancellor for the  
8 purposes set forth in this article and in the revitalization plan approved by LOCEA.

9 (c) The purposes for which the moneys may be used include, but are not limited to,  
10 development costs for new programs, student outreach initiatives, demolition of certain facilities,  
11 and renovation of campus infrastructure or other items designed to support existing students and  
12 attract new students.

13 ~~(d) By December 1, 2012, and annually thereafter until all appropriated funds have been~~  
14 ~~expended, the Chancellor shall report to LOCEA on the allocation of funds. Additionally, the~~  
15 ~~Chancellor shall provide regular updates to LOCEA, as necessary or requested, to keep members~~  
16 ~~informed of the progress made in implementing the purposes and intent of this article and the~~  
17 ~~components of the revitalization plan.~~

18 ~~(e) By May 1, 2014, the commission and governing board shall provide to LOCEA a~~  
19 ~~detailed summary of all revitalization project activities undertaken to date. This report also shall~~  
20 ~~include recommendations for alterations to the revitalization plan and the goals of the revitalization~~  
21 ~~project and may include recommended options for governance changes including independent~~

22 ~~status for the institution.~~

NOTE: The purpose of this bill is to reduce legislative education reporting requirements.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.