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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

THIRD EXTRAORDINARY SESSION, 2004



# ENROLLED

## House Bill No. 308

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)



Passed November 16, 2004

In Effect from Passage

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### H. B. 308

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)

[By Request of the Executive]

[Passed November 16, 2004; in effect from passage.]

AN ACT to amend and reenact §18-2E-5 and §18-2E-5c of the code of West Virginia, 1931, as amended; to amend and reenact §18-5-15f of said code; to amend said code by adding thereto a new section, designated §18-5-46; to amend and reenact §18-20-5 of said code; to amend and reenact §18A-2-12 of said code; to amend said code by adding thereto a new section, designated §18A-2-12a; and to amend and reenact §18A-5-1 and §18A-5-1a of said code, all relating to the process for improving education and removing impediments to improving performance and progress; making technical references, grammatical corrections and stylistic changes; refocusing school and county improvement plans; requiring unified school improvement plan boilerplate; adding requirement for standards; revising performance measures and specifying their use; modifying requirements for assessments; adding indicators of exemplary performance and progress; specifying use of efficiency indicators; reorienting system of education performance audits; changing policy for making on-site reviews of schools and school systems; modifying who office of education performance audits reports to; modifying salary cap for

office director; revising and adding items specified for compliance documentation on checklist format; modifying process for selection of schools and school systems for on-site review; open meetings exemption for state board during certain discussions; modifying limitation in scope of on-site review; modifying persons to be included in an on-site review; expanding on-site exit conferences and specifying purpose; modifying time limitations for on-site review reports; making certain findings and excluding certain areas from review by performance audits; further specifying conditions for student transfers from seriously impaired schools; granting certain authority for real estate transactions to state board during state intervention; clarifying rights of principal removed from seriously impaired school; specifying certain notice requirements by state board to process for improving education council; recording suspensions and expulsions on the West Virginia education information system; prohibiting a teacher from being required to change grade; exception; limiting state rules, policies and standards for exceptional children programs to federal requirements and directing report of review and comparison of laws to legislative oversight commission; restricting publication of lesson plans; setting forth general statement on relations between county boards and school personnel; and placing sole responsibility for proper student discipline with county boards and requiring county board policies.

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

That §18-2E-5 and §18-2E-5c of the code of West Virginia, 1931, as amended, be amended and reenacted; that §18-5-15f of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated section §18-5-46; that §18-20-5 of said code be amended and reenacted; that §18A-2-12 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18A-2-12a; and that §18A-5-1 and §18A-5-1 a 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 and accountability measures; office of education performance audits; school accreditation and school system approval; intervention to correct impairments.**

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

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

7       (A) Standards which set forth the things that students  
8       should know and be able to do as the result of a thorough and  
9       efficient education including measurable criteria to evaluate  
10      student performance and progress;

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

13      (C) A system for holding schools and school systems  
14      accountable for student performance and progress toward  
15      obtaining a high quality education which is delivered in an  
16      efficient manner; and

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

20      (2) As the constitutional body charged with the general  
21      supervision of schools as provided by general law, the state  
22      board has the authority and the responsibility to establish the

23 standards, assess the performance and progress of students  
24 against the standards, hold schools and school systems account-  
25 able, and assist schools and school systems to build capacity  
26 and improve efficiency so that the standards are met, including,  
27 when necessary, seeking additional resources in consultation  
28 with the Legislature and the governor.

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

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

48 (5) The intent of the Legislature in enacting this section and  
49 section five-c of this article is to establish a process through  
50 which the Legislature, the governor and the state board can  
51 work in the spirit of cooperation and collaboration intended in  
52 the process for improving education to consult and examine the  
53 performance and progress of students, schools and school  
54 systems and, when necessary, to consider alternative measures  
55 to ensure that all students continue to receive the thorough and

56 efficient education to which they are entitled. However,  
57 nothing in this section requires any specific level of funding by  
58 the Legislature.

59 (b) *Unified county and school improvement plans.* — The  
60 state board shall promulgate a rule consistent with the provi-  
61 sions of this section and in accordance with article three-b,  
62 chapter twenty-nine-a of this code establishing a unified county  
63 improvement plan for each county board and a unified school  
64 improvement plan for each public school in this state. Each  
65 respective plan shall be a five-year plan that includes the  
66 mission and goals of the school or school system to improve  
67 student, school or school system performance and progress, as  
68 applicable. The plan shall be revised annually in each area in  
69 which the school or system is below the standard on the annual  
70 performance measures. The revised annual plan also shall  
71 identify any deficiency which is reported on the check lists  
72 identified in paragraph (G), subdivision (5), subsection (j) of  
73 this section including any deficit more than a casual deficit by  
74 the county board. The plan shall be revised when required  
75 pursuant to this section to include each annual performance  
76 measure upon which the school or school system fails to meet  
77 the standard for performance and progress, the action to be  
78 taken to meet each measure, a separate time line and a date  
79 certain for meeting each measure, a cost estimate and, when  
80 applicable, the assistance to be provided by the department and  
81 other education agencies to improve student, school or school  
82 system performance and progress to meet the annual perfor-  
83 mance measure.

84 The department shall make available to all public schools  
85 through its web site or the West Virginia education information  
86 system an electronic unified school improvement plan  
87 boilerplate designed for use by all schools to develop a unified  
88 school improvement plan which incorporates all required

89 aspects and satisfies all improvement plan requirements of the  
90 No Child Left Behind Act.

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

- 97 (1) Curriculum;
- 98 (2) Workplace readiness skills;
- 99 (3) Finance;
- 100 (4) Transportation;
- 101 (5) Special education;
- 102 (6) Facilities;
- 103 (7) Administrative practices;
- 104 (8) Training of county board members and administrators;
- 105 (9) Personnel qualifications;
- 106 (10) Professional development and evaluation;
- 107 (11) Student performance and progress;
- 108 (12) School and school system performance and progress;
- 109 (13) A code of conduct for students and employees;
- 110 (14) Indicators of efficiency; and
- 111 (15) Any other areas determined by the state board.

112       The standards shall assure that graduates are prepared for  
113 continuing post-secondary education, training and work and  
114 that schools and school systems are making progress toward  
115 achieving the education goals of the state.

116       (d) *Annual performance measures.* — The standards shall  
117 include annual measures of student, school and school system  
118 performance and progress. The following annual measures of  
119 student, school and school system performance and progress  
120 shall be the only measures for determining school accreditation  
121 and school system approval:

122       (1) The acquisition of student proficiencies as indicated by  
123 student performance and progress in grades three through eight,  
124 inclusive, and grade ten shall be measured by a uniform  
125 statewide assessment program. The indicators for student  
126 progress in reading and mathematics in grades kindergarten  
127 through second grade shall be measured by the informal  
128 assessment established by the West Virginia department of  
129 education or other assessments, as determined by the school  
130 curriculum team. If the school fails to meet adequate yearly  
131 progress in reading or mathematics for two consecutive years,  
132 the county superintendent, the school principal and the school  
133 curriculum team shall decide whether a different assessment  
134 should be used to verify that benchmarks are being met. If the  
135 county superintendent, the school principal and the school  
136 curriculum team differ on what assessment is used, then each  
137 entity shall have one vote. Furthermore, the state board may  
138 require that student proficiencies be measured through the West  
139 Virginia writing assessment at any of the grades that are  
140 determined by the state board to be appropriate. It is the intent  
141 of the Legislature that in the future a grade eleven uniform  
142 statewide assessment be administered in lieu of the grade ten  
143 uniform statewide assessment. The state board shall perform an  
144 analysis of the costs and the benefits of administering the grade  
145 eleven uniform statewide assessment in lieu of the grade ten

146 uniform statewide assessment. The analysis shall include a  
147 review of the need for end of course exams in grades nine  
148 through twelve. The state board shall report the results of the  
149 analysis to the legislative oversight commission on education  
150 accountability. The state board may provide other testing or  
151 assessment instruments applicable to grade levels kindergarten  
152 through grade twelve through the statewide assessment program  
153 for optional use by each school as determined by the school  
154 curriculum team to measure student performance and progress;

155 (2) Only for schools that do not include grade twelve, the  
156 school attendance rate which shall be no less than ninety  
157 percent in attendance. The following absences shall be ex-  
158 cluded:

159 (A) Student absences excused in accordance with the state  
160 board rule promulgated pursuant to section four, article eight of  
161 this chapter;

162 (B) Students not in attendance due to disciplinary measures;  
163 and

164 (C) Absent students for whom the attendance director has  
165 pursued judicial remedies compelling attendance to the extent  
166 of his or her authority; and

167 (3) The high school graduation rate which shall be no less  
168 than eighty percent, or if the high school graduation rate is less  
169 than eighty percent, the high school graduation rate shall be  
170 higher than the high school graduation rate of the preceding  
171 year as determined from information on the West Virginia  
172 education information system on the fifteenth day of August.

173 (e) *Indicators of exemplary performance and progress.* —  
174 The standards shall include indicators of exemplary student,  
175 school and school system performance and progress. The  
176 indicators of exemplary student, school and school system

177 performance and progress shall be used only as indicators for  
178 determining whether accredited and approved schools and  
179 school systems should be granted exemplary status. These  
180 indicators shall include, but are not limited to, the following:

181 (1) The percentage of graduates who declare their intent to  
182 enroll in college and other post-secondary education and  
183 training following high school graduation;

184 (2) The percentage of graduates who receive additional  
185 certification of their skills, competence and readiness for  
186 college, other post-secondary education or employment above  
187 the level required for graduation; and

188 (3) The percentage of students who successfully complete  
189 advanced placement, dual credit and honors classes.

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

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

199 (2) Transportation;

200 (3) Facilities;

201 (4) Administrative practices;

202 (5) Personnel;

203 (6) Utilization of regional educational service agency  
204 programs and services, including programs and services that

205 may be established by their assigned regional educational  
206 service agency, or other regional services that may be initiated  
207 between and among participating county boards; and

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

209 (g) *Assessment and accountability of school and school*  
210 *system performance and processes.* — In accordance with the  
211 provisions of article three-b, chapter twenty-nine-a of this code,  
212 the state board shall establish by rule a system of education  
213 performance audits which measures the quality of education  
214 and the preparation of students based on the annual measures of  
215 student, school and school system performance and progress.  
216 The system of education performance audits shall provide  
217 information to the state board, the Legislature and the governor,  
218 individually and collectively as the process for improving  
219 education council, upon which they may determine whether a  
220 thorough and efficient system of schools is being provided.  
221 The system of education performance audits shall include:

222 (1) The assessment of student, school and school system  
223 performance and progress based on the annual measures set  
224 forth in subsection (d) of this section;

225 (2) The evaluation of records, reports and other information  
226 collected by the department upon which the quality of educa-  
227 tion and compliance with statutes, policies and standards may  
228 be determined;

229 (3) The review of school and school system unified  
230 improvement plans; and

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

234 (h) *Uses of school and school system assessment informa-*  
235 *tion.* — The state board and the process for improving educa-

236 tion council established pursuant to section five-c of this article  
237 shall use information from the system of education performance  
238 audits to assist them in ensuring that a thorough and efficient  
239 system of schools is being provided and to improve student,  
240 school and school system performance and progress. Informa-  
241 tion from the system of education performance audits further  
242 shall be used by the state board for these purposes, including,  
243 but not limited to, the following:

244 (1) Determining school accreditation and school system  
245 approval status;

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

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

251 The state board shall make accreditation information  
252 available to the Legislature, the governor, the general public  
253 and to any individual who requests the information, subject to  
254 the provisions of any act or rule restricting the release of  
255 information.

256 (i) *Early detection and intervention programs.* — Based on  
257 the assessment of student, school and school system perfor-  
258 mance and progress, the state board shall establish early  
259 detection and intervention programs using the available  
260 resources of the department of education, the regional educa-  
261 tional service agencies, the center for professional development  
262 and the principals academy, as appropriate, to assist under-  
263 achieving schools and school systems to improve performance  
264 before conditions become so grave as to warrant more substan-  
265 tive state intervention. Assistance shall include, but is not  
266 limited to, providing additional technical assistance and  
267 programmatic, professional staff development, providing

268 monetary, staffing and other resources where appropriate, and,  
269 if necessary, making appropriate recommendations to the  
270 process for improving education council.

271 (j) *Office of education performance audits.* —

272 (1) To assist the state board and the process for improving  
273 education council in the operation of a system of education  
274 performance audits, the state board shall establish an office of  
275 education performance audits consistent with the provisions of  
276 this section. The office of education performance audits shall  
277 be operated under the direction of the state board independently  
278 of the functions and supervision of the state department of  
279 education and state superintendent. The office of education  
280 performance audits shall report directly to and be responsible to  
281 the state board and the process for improving education council  
282 created in section five-c of this article in carrying out its duties  
283 under the provisions of this section.

284 (2) The office shall be headed by a director who shall be  
285 appointed by the state board and who shall serve at the will and  
286 pleasure of the state board. The annual salary of the director  
287 shall be set by the state board and may not exceed eighty  
288 percent of the salary cap of the state superintendent of schools.

289 (3) The state board shall organize and sufficiently staff the  
290 office to fulfill the duties assigned to it by law and by the state  
291 board. Employees of the state department of education who are  
292 transferred to the office of education performance audits shall  
293 retain their benefits and seniority status with the department of  
294 education.

295 (4) Under the direction of the state board, the office of  
296 education performance audits shall receive from the West  
297 Virginia education information system staff research and  
298 analysis data on the performance and progress of students,  
299 schools and school systems, and shall receive assistance, as

300 determined by the state board, from staff at the state department  
301 of education, the regional education service agencies, the center  
302 for professional development, the principals academy and the  
303 state school building authority to carry out the duties assigned  
304 to the office.

305 (5) In addition to other duties which may be assigned to it  
306 by the state board or by statute, the office of education perfor-  
307 mance audits also shall:

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

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

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

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

318 (C) Determine, in conjunction with the assessment and  
319 accountability processes, what capacity may be needed by  
320 schools and school systems to meet the standards established by  
321 the state board, and recommend to the state board and the  
322 process for improving education council, plans to establish  
323 those needed capacities;

324 (D) Determine, in conjunction with the assessment and  
325 accountability processes, whether statewide system deficiencies  
326 exist in the capacity of schools and school systems to meet the  
327 standards established by the state board, including the identifi-  
328 cation of trends and the need for continuing improvements in

329 education, and report those deficiencies and trends to the state  
330 board and the process for improving education council;

331 (E) Determine, in conjunction with the assessment and  
332 accountability processes, staff development needs of schools  
333 and school systems to meet the standards established by the  
334 state board, and make recommendations to the state board, the  
335 process for improving education council, the center for profes-  
336 sional development, the regional educational service agencies,  
337 the higher education policy commission, and the county boards;

338 (F) Identify, in conjunction with the assessment and  
339 accountability processes, exemplary schools and school systems  
340 and best practices that improve student, school and school  
341 system performance, and make recommendations to the state  
342 board and the process for improving education council for  
343 recognizing and rewarding exemplary schools and school  
344 systems and promoting the use of best practices. The state  
345 board shall provide information on best practices to county  
346 school systems and shall use information identified through the  
347 assessment and accountability processes to select schools of  
348 excellence; and

349 (G) Develop reporting formats, such as check lists, which  
350 shall be used by the appropriate administrative personnel in  
351 schools and school systems to document compliance with  
352 various of the applicable laws, policies and process standards  
353 as considered appropriate and approved by the state board,  
354 including, but not limited to, the following:

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

358 (ii) The participation of students in appropriate physical  
359 assessments as determined by the state board, which assessment

360 may not be used as a part of the assessment and accountability  
361 system;

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

363 (iv) The school provides multi-cultural activities.

364 Information contained in the reporting formats is subject to  
365 examination during an on-site review to determine compliance  
366 with laws, policies and standards. Intentional and grossly  
367 negligent reporting of false information are grounds for  
368 dismissal.

369 (k) *On-site reviews.* —

370 (1) The system of education performance audits shall  
371 include on-site reviews of schools and school systems which  
372 shall be conducted only at the specific direction of the state  
373 board upon its determination that the performance and progress  
374 of the school or school system are persistently below standard  
375 or that other circumstances exist that warrant an on-site review.  
376 Any discussion by the state board of schools to be subject to an  
377 on-site review or dates for which on-site reviews will be  
378 conducted may be held in executive session, and is not subject  
379 to the provisions of article nine-a, chapter six of this code,  
380 relating to open governmental proceedings. An on-site review  
381 shall be conducted by the office of education performance  
382 audits of a school or school system for the purpose of investi-  
383 gating the reasons for performance and progress that are  
384 persistently below standard and making recommendations to  
385 the school and school system, as appropriate, and to the state  
386 board on such measures as it considers necessary to improve  
387 performance and progress to meet the standard. The investiga-  
388 tion may include, but is not limited to, the following:

389 (A) Verifying data reported by the school or county board;

390 (B) Examining compliance with the laws and policies  
391 affecting student, school and school system performance and  
392 progress;

393 (C) Evaluating the effectiveness and implementation status  
394 of school and school system unified improvement plans;

395 (D) Investigating official complaints submitted to the state  
396 board that allege serious impairments in the quality of educa-  
397 tion in schools or school systems;

398 (E) Investigating official complaints submitted to the state  
399 board that allege that a school or county board is in violation of  
400 policies or laws under which schools and county boards  
401 operate; and

402 (F) Determining and reporting whether required reviews  
403 and inspections have been conducted by the appropriate  
404 agencies, including, but not limited to, the state fire marshal,  
405 the health department, the school building authority and the  
406 responsible divisions within the department of education, and  
407 whether noted deficiencies have been or are in the process of  
408 being corrected. The office of education performance audits  
409 may not conduct a duplicate review or inspection of any  
410 compliance reviews or inspections conducted by the department  
411 or its agents or other duly authorized agencies of the state, nor  
412 may it mandate more stringent compliance measures.

413 (2) The director of the office of education performance  
414 audits shall notify the county superintendent of schools five  
415 school days prior to commencing an on-site review of the  
416 county school system and shall notify both the county superin-  
417 tendent and the principal five school days prior to commencing  
418 an on-site review of an individual school: *Provided*, That the  
419 state board may direct the office of education performance  
420 audits to conduct an unannounced on-site review of a school or  
421 school system if the state board believes circumstances warrant  
422 an unannounced on-site review.

423 (3) The office of education performance audits shall  
424 conduct on-site reviews which are limited in scope to specific  
425 areas in which performance and progress are persistently below  
426 standard as determined by the state board unless specifically  
427 directed by the state board to conduct a review which covers  
428 additional areas.

429 (4) An on-site review of a school or school system shall  
430 include a person or persons from the department of education  
431 or a public education agency in the state who has expert  
432 knowledge and experience in the area or areas to be reviewed,  
433 and who has been trained and designated by the state board to  
434 perform such functions. If the size of the school or school  
435 system and issues being reviewed necessitate the use of an on-  
436 site review team or teams, the person or persons designated by  
437 the state board shall advise and assist the director to appoint the  
438 team or teams. The person or persons designated by the state  
439 board shall be the team leaders.

440 The persons designated by the state board shall be responsi-  
441 ble for completing the report on the findings and recommenda-  
442 tions of the on-site review in their area of expertise. It is the  
443 intent of the Legislature that the persons designated by the state  
444 board participate in all on-site reviews that involve their area of  
445 expertise, to the extent practicable, so that the on-site review  
446 process will evaluate compliance with the standards in a  
447 uniform, consistent and expert manner.

448 (5) The office of education performance audits shall  
449 reimburse a county board for the costs of substitutes required to  
450 replace county board employees while they are serving on a  
451 review team.

452 (6) At the conclusion of an on-site review of a school  
453 system, the director and team leaders shall hold an exit confer-  
454 ence with the superintendent and shall provide an opportunity

455 for principals to be present for at least the portion of the  
456 conference pertaining to their respective schools. In the case of  
457 an on-site review of a school, the exit conference shall be held  
458 with the principal and curriculum team of the school and the  
459 superintendent shall be provided the opportunity to be present.  
460 The purpose of the exit conference is to review the initial  
461 findings of the on-site review, clarify and correct any inaccura-  
462 cies and allow the opportunity for dialogue between the  
463 reviewers and the school or school system to promote a better  
464 understanding of the findings.

465 (7) The office of education performance audits shall report  
466 the findings of an on-site review to the county superintendent  
467 and the principals whose schools were reviewed within thirty  
468 days following the conclusion of the on-site review. The office  
469 of education performance audits shall report the findings of the  
470 on-site review to the state board within forty-five days after the  
471 conclusion of the on-site review. A copy of the report shall be  
472 provided to the process for improving education council at its  
473 request.

474 (8) The Legislature finds that the accountability and  
475 oversight of the following activities and programmatic areas in  
476 the public schools is controlled through other mechanisms and  
477 that additional accountability and oversight are not only  
478 unnecessary but counter productive in distracting necessary  
479 resources from teaching and learning. Therefore, notwithstand-  
480 ing any other provision of this section to the contrary, the  
481 following activities and programmatic areas are not subject to  
482 review by the office of education performance audits:

483 (A) Work-based learning;

484 (B) Use of advisory councils;

485 (C) Program accreditation and student credentials;

- 486 (D) Student transition plans;
- 487 (E) Graduate assessment form;
- 488 (F) Casual deficit;
- 489 (G) Accounting practices;
- 490 (H) Transportation services;
- 491 (I) Special education services;
- 492 (J) Safe, healthy and accessible facilities;
- 493 (K) Health services;
- 494 (L) Attendance director;
- 495 (M) Business/community partnerships;
- 496 (N) Pupil-teacher ratio/split grade classes;
- 497 (O) Local school improvement council, faculty senate,  
498 student assistance team and curriculum team;
- 499 (P) Planning and lunch periods;
- 500 (Q) Skill improvement program;
- 501 (R) Certificate of proficiency;
- 502 (S) Training of county board members;
- 503 (T) Excellence in job performance;
- 504 (U) Staff development; and
- 505 (V) Preventive discipline, character education and student  
506 and parental involvement.

507       (1) *School accreditation.* — The state board annually shall  
508 review the information from the system of education perfor-  
509 mance audits submitted for each school and shall issue to every  
510 school one of the following approval levels: Exemplary  
511 accreditation status, full accreditation status, temporary  
512 accreditation status, conditional accreditation status, or seri-  
513 ously impaired status.

514       (1) Full accreditation status shall be given to a school when  
515 the school's performance and progress meet or exceed the  
516 standards adopted by the state board pursuant to subsection (d)  
517 of this section and it does not have any deficiencies which  
518 would endanger student health or safety or other extraordinary  
519 circumstances as defined by the state board. A school that  
520 meets or exceeds the performance and progress standards but  
521 has the other deficiencies shall remain on full accreditation  
522 status for the remainder of the accreditation period and shall  
523 have an opportunity to correct those deficiencies, notwithstand-  
524 ing other provisions of this subsection.

525       (2) Temporary accreditation status shall be given to a  
526 school when the school's performance and progress are below  
527 the level required for full accreditation status. Whenever a  
528 school is given temporary accreditation status, the county board  
529 shall ensure that the school's unified improvement plan is  
530 revised in accordance with subsection (b) of this section to  
531 increase the performance and progress of the school to a full  
532 accreditation status level. The revised plan shall be submitted  
533 to the state board for approval.

534       (3) Conditional accreditation status shall be given to a  
535 school when the school's performance and progress are below  
536 the level required for full accreditation, but the school's unified  
537 improvement plan meets the following criteria:

538       (A) The plan has been revised to improve performance and  
539 progress on the standard or standards by a date or dates certain;

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

541 (C) The school is meeting the objectives and time line  
542 specified in the revised plan.

543 (4) Exemplary accreditation status shall be given to a  
544 school when the school's performance and progress meet or  
545 exceed the standards adopted by the state board pursuant to  
546 subsections(d) and (e) of this section. The state board shall  
547 promulgate legislative rules in accordance with the provisions  
548 of article three-b, chapter twenty-nine-a, designated to establish  
549 standards of performance and progress to identify exemplary  
550 schools.

551 (5) Seriously impaired accreditation status shall be given to  
552 a school whenever extraordinary circumstances exist as defined  
553 by the state board.

554 (A) These circumstances shall include, but are not limited  
555 to, the following:

556 (i) The failure of a school on temporary accreditation status  
557 to obtain approval of its revised unified school improvement  
558 plan within a reasonable time period as defined by the state  
559 board;

560 (ii) The failure of a school on conditional accreditation  
561 status to meet the objectives and time line of its revised unified  
562 school improvement plan; or

563 (iii) The failure of a school to meet a standard by the date  
564 specified in the revised plan.

565 (B) Whenever the state board determines that the quality of  
566 education in a school is seriously impaired, the state board shall  
567 appoint a team of improvement consultants to make recommen-  
568 dations within sixty days of appointment for correction of the

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

541 (C) The school is meeting the objectives and time line  
542 specified in the revised plan.

543 (4) Exemplary accreditation status shall be given to a  
544 school when the school's performance and progress meet or  
545 exceed the standards adopted by the state board pursuant to  
546 subsections(d) and (e) of this section. The state board shall  
547 promulgate legislative rules in accordance with the provisions  
548 of article three-b, chapter twenty-nine-a, designated to establish  
549 standards of performance and progress to identify exemplary  
550 schools.

551 (5) Seriously impaired accreditation status shall be given to  
552 a school whenever extraordinary circumstances exist as defined  
553 by the state board.

554 (A) These circumstances shall include, but are not limited  
555 to, the following:

556 (i) The failure of a school on temporary accreditation status  
557 to obtain approval of its revised unified school improvement  
558 plan within a reasonable time period as defined by the state  
559 board;

560 (ii) The failure of a school on conditional accreditation  
561 status to meet the objectives and time line of its revised unified  
562 school improvement plan; or

563 (iii) The failure of a school to meet a standard by the date  
564 specified in the revised plan.

565 (B) Whenever the state board determines that the quality of  
566 education in a school is seriously impaired, the state board shall  
567 appoint a team of improvement consultants to make recommen-  
568 dations within sixty days of appointment for correction of the

569 impairment. When the state board approves the recommenda-  
570 tions, they shall be communicated to the county board. If  
571 progress in correcting the impairment as determined by the state  
572 board is not made within six months from the time the county  
573 board receives the recommendations, the state board shall place  
574 the county board on temporary approval status and provide  
575 consultation and assistance to the county board to assist it in the  
576 following areas:

577 (i) Improving personnel management;

578 (ii) Establishing more efficient financial management  
579 practices;

580 (iii) Improving instructional programs and rules; or

581 (iv) Making any other improvements that are necessary to  
582 correct the impairment.

583 (C) If the impairment is not corrected by a date certain as  
584 set by the state board:

585 (i) The state board shall appoint a monitor who shall be  
586 paid at county expense to cause improvements to be made at the  
587 school to bring it to full accreditation status within a reasonable  
588 time period as determined by the state board. The monitor's  
589 work location shall be at the school and the monitor shall work  
590 collaboratively with the principal. The monitor shall, at a  
591 minimum, report monthly to the state board on the measures  
592 being taken to improve the school's performance and the  
593 progress being made. The reports may include requests for  
594 additional assistance and recommendations required in the  
595 judgment of the monitor to improve the school's performance,  
596 including, but not limited to, the need for targeting resources  
597 strategically to eliminate deficiencies;

598 (ii) The state board may make a determination, in its sole  
599 judgment, that the improvements necessary to provide a

600 thorough and efficient education to the students at the school  
601 cannot be made without additional targeted resources, in which  
602 case, it shall establish a plan in consultation with the county  
603 board that includes targeted resources from sources under the  
604 control of the state board and the county board to accomplish  
605 the needed improvements. Nothing in this subsection shall be  
606 construed to allow a change in personnel at the school to  
607 improve school performance and progress, except as provided  
608 by law;

609 (iii) If the impairment is not corrected within one year after  
610 the appointment of a monitor, the state board may make a  
611 determination, in its sole judgment, that continuing a monitor  
612 arrangement is not sufficient to correct the impairment and may  
613 intervene in the operation of the school to cause improvements  
614 to be made that will provide assurances that a thorough and  
615 efficient system of schools will be provided. This intervention  
616 may include, but is not limited to, establishing instructional  
617 programs, taking such direct action as may be necessary to  
618 correct the impairments, declaring the position of principal is  
619 vacant and assigning a principal for the school who shall serve  
620 at the will and pleasure of and, under the sole supervision of,  
621 the state board: *Provided*, That prior to declaring that the  
622 position of the principal is vacant, the state board must make a  
623 determination that all other resources needed to correct the  
624 impairment are present at the school. If the principal who was  
625 removed elects not to remain an employee of the county board,  
626 then the principal assigned by the state board shall be paid by  
627 the county board. If the principal who was removed elects to  
628 remain an employee of the county board, then the following  
629 procedure applies:

630 (I) The principal assigned by the state board shall be paid  
631 by the state board until the next school term, at which time the  
632 principal assigned by the state board shall be paid by the county  
633 board;

634 (II) The principal who was removed shall be eligible for all  
635 positions in the county, including teaching positions, for which  
636 the principal is certified, by either being placed on the transfer  
637 list in accordance with section seven, article two, chapter  
638 eighteen-a of this code, or by being placed on the preferred  
639 recall list in accordance with section seven-a, article four,  
640 chapter eighteen-a of this code; and

641 (III) The principal who was removed shall be paid by the  
642 county board and may be assigned to administrative duties,  
643 without the county board being required to post that position  
644 until the end of the school term;

645 (6) The county board shall take no action nor refuse any  
646 action if the effect would be to impair further the school in  
647 which the state board has intervened.

648 (7) The state board may appoint a monitor pursuant to the  
649 provisions of this subsection to assist the school principal after  
650 intervention in the operation of a school is completed.

651 (m) *Transfers from seriously impaired schools.* — When  
652 ever a school is determined to be seriously impaired and fails to  
653 improve its status within one year, following state intervention  
654 in the operation of the school to correct the impairment, any  
655 student attending the school may transfer once to the nearest  
656 fully accredited school in the county, subject to approval of the  
657 fully accredited school and at the expense of the school from  
658 which the student transferred.

659 (n) *School system approval.* — The state board annually  
660 shall review the information submitted for each school system  
661 from the system of education performance audits and issue one  
662 of the following approval levels to each county board: Full  
663 approval, temporary approval, conditional approval, or  
664 nonapproval.

665 (1) Full approval shall be given to a county board whose  
666 schools have all been given full, temporary or conditional  
667 accreditation status and which does not have any deficiencies  
668 which would endanger student health or safety or other extraor-  
669 dinary circumstances as defined by the state board. A fully  
670 approved school system in which other deficiencies are  
671 discovered shall remain on full accreditation status for the  
672 remainder of the approval period and shall have an opportunity  
673 to correct those deficiencies, notwithstanding other provisions  
674 of this subsection.

675 (2) Temporary approval shall be given to a county board  
676 whose education system is below the level required for full  
677 approval. Whenever a county board is given temporary  
678 approval status, the county board shall revise its unified county  
679 improvement plan in accordance with subsection (b) of this  
680 section to increase the performance and progress of the school  
681 system to a full approval status level. The revised plan shall be  
682 submitted to the state board for approval.

683 (3) Conditional approval shall be given to a county board  
684 whose education system is below the level required for full  
685 approval, but whose unified county improvement plan meets  
686 the following criteria:

687 (i) The plan has been revised in accordance with subsection  
688 (b) of this section;

689 (ii) The plan has been approved by the state board; and (iii)  
690 The county board is meeting the objectives and time line  
691 specified in the revised plan.

692 (4) Nonapproval status shall be given to a county board  
693 which fails to submit and gain approval for its unified county  
694 improvement plan or revised unified county improvement plan  
695 within a reasonable time period as defined by the state board or  
696 which fails to meet the objectives and time line of its revised

697 unified county improvement plan or fails to achieve full  
698 approval by the date specified in the revised plan.

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

704 (B) Whenever a county board has more than a casual  
705 deficit, as defined in section one, article one of this chapter, the  
706 county board shall submit a plan to the state board specifying  
707 the county board's strategy for eliminating the casual deficit.  
708 The state board either shall approve or reject the plan. If the  
709 plan is rejected, the state board shall communicate to the county  
710 board the reason or reasons for the rejection of the plan. The  
711 county board may resubmit the plan any number of times.  
712 However, any county board that fails to submit a plan and gain  
713 approval for the plan from the state board before the end of the  
714 fiscal year after a deficit greater than a casual deficit occurred  
715 or any county board which, in the opinion of the state board,  
716 fails to comply with an approved plan may be designated as  
717 having nonapproval status.

718 (C) Whenever nonapproval status is given to a school  
719 system, the state board shall declare a state of emergency in the  
720 school system and shall appoint a team of improvement  
721 consultants to make recommendations within sixty days of  
722 appointment for correcting the emergency. When the state  
723 board approves the recommendations, they shall be communi-  
724 cated to the county board. If progress in correcting the emer-  
725 gency, as determined by the state board, is not made within six  
726 months from the time the county board receives the recommen-  
727 dations, the state board shall intervene in the operation of the  
728 school system to cause improvements to be made that will  
729 provide assurances that a thorough and efficient system of

730 schools will be provided. This intervention may include, but is  
731 not limited to, the following:

732 (i) Limiting the authority of the county superintendent and  
733 county board as to the expenditure of funds, the employment  
734 and dismissal of personnel, the establishment and operation of  
735 the school calendar, the establishment of instructional programs  
736 and rules and any other areas designated by the state board by  
737 rule, which may include delegating decision-making authority  
738 regarding these matters to the state superintendent;

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

741 (iii) Delegating to the state superintendent both the author-  
742 ity to conduct hearings on personnel matters and school closure  
743 or consolidation matters and, subsequently, to render the  
744 resulting decisions, and the authority to appoint a designee for  
745 the limited purpose of conducting hearings while reserving to  
746 the state superintendent the authority to render the resulting  
747 decisions;

748 (iv) Functioning in lieu of the county board of education in  
749 a transfer, sale, purchase or other transaction regarding real  
750 property; and

751 (v) Taking any direct action necessary to correct the  
752 emergency including, but not limited to, the following:

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

757 (II) Delegating to the state superintendent the authority to  
758 fill positions of administrators and principals with individuals  
759 determined by the state superintendent to be the most qualified

760 for the positions. Any authority related to intervention in the  
761 operation of a county board granted under this paragraph is not  
762 subject to the provisions of article four, chapter eighteen-a of  
763 this code;

764 (o) Notwithstanding any other provision of this section, the  
765 state board may intervene immediately in the operation of the  
766 county school system with all the powers, duties and responsi-  
767 bilities contained in subsection (n) of this section, if the state  
768 board finds the following:

769 (1) That the conditions precedent to intervention exist as  
770 provided in this section; and that delaying intervention for any  
771 period of time would not be in the best interests of the students  
772 of the county school system; or

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

777 (p) *Capacity*. — The process for improving education  
778 includes a process for targeting resources strategically to  
779 improve the teaching and learning process. Development of  
780 unified school and school system improvement plans, pursuant  
781 to subsection (b) of this section, is intended, in part, to provide  
782 mechanisms to target resources strategically to the teaching and  
783 learning process to improve student, school and school system  
784 performance. When deficiencies are detected through the  
785 assessment and accountability processes, the revision and  
786 approval of school and school system unified improvement  
787 plans shall ensure that schools and school systems are effi-  
788 ciently using existing resources to correct the deficiencies.  
789 When the state board determines that schools and school  
790 systems do not have the capacity to correct deficiencies, the  
791 state board shall work with the county board to develop or  
792 secure the resources necessary to increase the capacity of

793 schools and school systems to meet the standards and, when  
794 necessary, seek additional resources in consultation with the  
795 Legislature and the governor.

796 The state board shall recommend to the appropriate body  
797 including, but not limited to, the process for improving educa-  
798 tion council, the Legislature, county boards, schools and  
799 communities methods for targeting resources strategically to  
800 eliminate deficiencies identified in the assessment and account-  
801 ability processes. When making determinations on recommen-  
802 dations, the state board shall include, but is not limited to, the  
803 following methods:

804 (1) Examining reports and unified improvement plans  
805 regarding the performance and progress of students, schools  
806 and school systems relative to the standards and identifying the  
807 areas in which improvement is needed;

808 (2) Determining the areas of weakness and of ineffective-  
809 ness that appear to have contributed to the substandard perfor-  
810 mance and progress of students or the deficiencies of the school  
811 or school system;

812 (3) Determining the areas of strength that appear to have  
813 contributed to exceptional student, school and school system  
814 performance and progress and promoting their emulation  
815 throughout the system;

816 (4) Requesting technical assistance from the school  
817 building authority in assessing or designing comprehensive  
818 educational facilities plans;

819 (5) Recommending priority funding from the school  
820 building authority based on identified needs;

821 (6) Requesting special staff development programs from the  
822 center for professional development, the principals academy,

823 higher education, regional educational service agencies and  
824 county boards based on identified needs;

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

827 (8) Directing county boards to target their funds strategi-  
828 cally toward alleviating deficiencies;

829 (9) Ensuring that the need for facilities in counties with  
830 increased enrollment are appropriately reflected and recom-  
831 mended for funding;

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

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

**§18-2E-5c. Process for improving education council established;  
membership; expenses; meetings; powers.**

1 (a) *Process for improving education council.* — There is  
2 hereby established the process for improving education council  
3 for the purpose of providing opportunities for consultation  
4 among state policy leaders on the process for improving  
5 education, including, but not limited to, determination of the  
6 things that students should know and be able to do as the result  
7 of a thorough and efficient education, the performance and  
8 progress of students toward meeting the high quality standards  
9 established by the state board, and any further improvements  
10 necessary to increase the capacity of schools and school  
11 systems to deliver a thorough and efficient education.

12 (b) *Council membership.* — The legislative oversight  
13 commission on education accountability, together with the

14 governor, ex officio, or the governor's designee, and the  
15 chancellor of the higher education policy commission, ex  
16 officio, or the chancellor's designee, comprise the process for  
17 improving education council. Ex officio members are entitled  
18 to vote. The governor or the governor's designee shall convene  
19 the council, as appropriate, and shall serve as chair. The  
20 council may meet at any time at the call of the governor or the  
21 governor's designee.

22 (c) *Compensation.* — Members of the council shall serve  
23 without compensation, but shall be reimbursed as provided by  
24 law by their respective agencies for all reasonable and neces-  
25 sary expenses actually incurred in the performance of their  
26 official duties under this section upon presentation of an  
27 itemized sworn statement of their expenses.

28 (d) *Powers of the council.* —

29 The council has the following powers:

30 (1) To meet and consult with the state board, or their  
31 designees, and make recommendations on issues related to  
32 student, school and school system performance. The following  
33 steps are part of the consultation process:

34 (A) The state board shall notify each member of the council  
35 whenever the state board proposes to amend its rules on any of  
36 the following issues:

37 (i) High quality education standards and efficiency stan-  
38 dards established pursuant to section five of this article;

39 (ii) Indicators of efficiency established pursuant to section  
40 five of this article; and

41 (iii) Assessment and accountability of school and school  
42 system performance and processes established pursuant to  
43 section five of this article.

44 (B) The notice to be given pursuant to paragraph (A) of this  
45 subdivision shall contain a summary and explanation of the  
46 proposed changes, including a draft of the proposal when  
47 available, and shall be sent at least fifteen days prior to filing  
48 the proposal with the secretary of state for public comment.

49 (C) If the governor, or the governor's designee, believes it  
50 is necessary for the council to meet and consult with the state  
51 board, or its designees, on changes proposed to any of the issues  
52 outlined in subdivision (1) of this subsection, he or she may  
53 convene a meeting of the council.

54 (D) If both the president of the Senate and the speaker of  
55 the House of Delegates believe it is necessary for the council to  
56 meet and consult with the state board, or its designees, they  
57 shall notify the governor who shall convene a meeting of the  
58 council.

59 (E) If the chancellor, or the chancellor's designee, believes  
60 that it is necessary for the council to meet and consult with the  
61 state board, or its designees, he or she may request the governor  
62 to convene a meeting of the council.

63 (2) To require the state board, or its designees, to meet with  
64 the council to consult on issues that lie within the scope of the  
65 council's jurisdiction;

66 (3) To participate as observers in any on-site review of a  
67 school or school system conducted by the office of education  
68 performance audits; and

69 (4) To authorize any employee of the agencies represented  
70 by council members to participate as observers in any on-site  
71 review of a school or school system conducted by the office of  
72 education performance audits.

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

**§18-5-15f. Affirmation regarding the suspension or expulsion of a pupil from school.**

1 (a) Prior to the admission of a pupil to any public school in  
2 West Virginia, the county superintendent shall require the  
3 pupil's parent(s), guardian(s) or custodian(s) to provide, upon  
4 registration, a sworn statement or affirmation indicating  
5 whether the student is, at the time, under suspension or expul-  
6 sion from attendance at a private or public school in West  
7 Virginia or another state. Any person willfully making a  
8 materially false statement or affirmation shall be guilty of a  
9 misdemeanor and, upon conviction, the penalty shall be the  
10 same as provided for "false swearing" pursuant to section three,  
11 article five, chapter sixty-one of this code.

12 (b) Prior to the admission of a pupil to any public school,  
13 the principal of that school or his or her designee shall consult  
14 the uniform integrated regional computer information system  
15 (commonly known as the West Virginia Education Information  
16 System) described in subsection (f), section twenty-six, article  
17 two, chapter eighteen of this code, to determine whether the  
18 pupil requesting admission is, at the time of the request for  
19 admission, serving a suspension or expulsion from another  
20 public school in West Virginia.

21 (c) The state board of education shall provide for the West  
22 Virginia Education Information System to disallow the record-  
23 ing of the enrollment of any pupil who is, at the time of  
24 attempted enrollment, serving a suspension or expulsion from  
25 another public school in West Virginia, and for that system to  
26 notify the user who has attempted to record the enrollment that  
27 the pupil may not be enrolled, and to notify that user of the  
28 reason therefor.

29 (d) Notwithstanding any other provision of this code to the  
30 contrary, any pupil who has been suspended or expelled from

31 school pursuant to section one-a, article five, chapter eighteen-a  
32 of this code, or who has been suspended or expelled from a  
33 public or private school in another state, due to actions de-  
34 scribed in section one-a, article five, chapter eighteen-a of this  
35 code, may not be admitted to any public school within the state  
36 of West Virginia until the period of suspension or expulsion has  
37 expired.

**§18-5-46. Requiring teacher to change grade prohibited.**

1 No teacher may be required by a principal or any other  
2 person to change a student's grade on either an individual  
3 assignment or a report card unless there is clear and convincing  
4 evidence that there was a mathematical error in calculating the  
5 student's grade.

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

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

1 The state superintendent of schools shall organize, promote,  
2 administer and be responsible for:

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

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

11 (3) Preparing the necessary rules, policies, formula for  
12 distribution of available appropriated funds, reporting forms  
13 and procedures necessary to define minimum standards in  
14 providing suitable facilities for education of exceptional  
15 children and ensuring the employment, certification and

16 approval of qualified teachers and therapists subject to approval  
17 by the state board of education: *Provided*, That no state rule,  
18 policy or standard under this article or any county board rule,  
19 policy or standard governing special education may exceed the  
20 requirements of federal law or regulation. The state superinten-  
21 dent shall conduct a comprehensive review and comparison of  
22 the rules, policies and standards of the state with federal law  
23 and report the findings to the legislative oversight commission  
24 on education accountability at its February, two thousand five  
25 interim meeting or as soon thereafter as requested by the  
26 commission.

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

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

40 (6) Performing other duties and assuming other responsibil-  
41 ities in connection with this program as needed.

42 (7) Receive the county plan for integrated classroom  
43 submitted by the county boards of education and submit a state  
44 plan, approved by the state board of education, to the legislative  
45 oversight commission on education accountability no later than  
46 the first day of December, one thousand nine hundred ninety-  
47 five.

48        Nothing contained in this section shall be construed to  
49 prevent any county board of education from establishing and  
50 maintaining special schools, classes, regular class programs,  
51 home-teaching or visiting-teacher services out of funds avail-  
52 able from local revenue.

**CHAPTER 18A. SCHOOL PERSONNEL.**

**ARTICLE 2. SCHOOL PERSONNEL.**

**§18A-2-12. Performance evaluations of school personnel; profes-  
sional personnel evaluation process.**

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

6        (b) The system adopted by the state board of education for  
7 evaluating the employment performance of professional  
8 personnel shall be in accordance with the provisions of this  
9 section.

10       (c) For purposes of this section, “professional personnel”,  
11 “professional” or “professionals”, means professional personnel  
12 as defined in section one, article one of this chapter.

13       (d) In developing the professional personnel performance  
14 evaluation system, and amendments thereto, the state board  
15 shall consult with the professional development project of the  
16 center for professional development created in section three,  
17 article three-a of this chapter. The center shall participate  
18 actively with the state board in developing written standards for  
19 evaluation which clearly specify satisfactory performance and  
20 the criteria to be used to determine whether the performance of  
21 each professional meets such standards.

22 (e) The performance evaluation system shall contain, but  
23 shall not be limited to, the following information:

24 (1) The professional personnel positions to be evaluated,  
25 whether they be teachers, substitute teachers, administrators,  
26 principals, or others;

27 (2) The frequency and duration of the evaluations, which  
28 shall be on a regular basis and of such frequency and duration  
29 as to insure the collection of a sufficient amount of data from  
30 which reliable conclusions and findings may be drawn:  
31 *Provided*, That for school personnel with five or more years of  
32 experience, who have not received an unsatisfactory rating,  
33 evaluations shall be conducted no more than once every three  
34 years unless the principal determines an evaluation for a  
35 particular school employee is needed more frequently: *Pro-*  
36 *vided, however*, That a classroom teacher may exercise the  
37 option of being evaluated at more frequent intervals;

38 (3) The evaluation shall serve the following purposes:

39 (A) Serve as a basis for the improvement of the perfor-  
40 mance of the personnel in their assigned duties;

41 (B) Provide an indicator of satisfactory performance for  
42 individual professionals;

43 (C) Serve as documentation for a dismissal on the grounds  
44 of unsatisfactory performance; and

45 (D) Serve as a basis for programs to increase the profes-  
46 sional growth and development of professional personnel;

47 (4) The standards for satisfactory performance for profes-  
48 sional personnel and the criteria to be used to determine  
49 whether the performance of each professional meets such  
50 standards and other criteria for evaluation for each professional

51 position evaluated. Effective the first day of July, two thousand  
52 three and thereafter, professional personnel, as appropriate,  
53 shall demonstrate competency in the knowledge and implemen-  
54 tation of the technology standards adopted by the state board.  
55 If a professional fails to demonstrate competency, in the  
56 knowledge and implementation of these standards, he or she  
57 will be subject to an improvement plan to correct the deficien-  
58 cies; and

59 (5) Provisions for a written improvement plan, which shall  
60 be specific as to what improvements, if any, are needed in the  
61 performance of the professional and shall clearly set forth  
62 recommendations for improvements, including recommenda-  
63 tions for additional education and training during the profes-  
64 sional's recertification process.

65 (f) A professional whose performance is considered to be  
66 unsatisfactory shall be given notice of deficiencies. A  
67 remediation plan to correct deficiencies shall be developed by  
68 the employing county board of education and the professional.  
69 The professional shall be given a reasonable period of time for  
70 remediation of the deficiencies and shall receive a statement of  
71 the resources and assistance available for the purposes of  
72 correcting the deficiencies.

73 (g) No person may evaluate professional personnel for the  
74 purposes of this section unless the person has an administrative  
75 certificate issued by the state superintendent and has success-  
76 fully completed education and training in evaluation skills  
77 through the center for professional development, or equivalent  
78 education training approved by the state board, which will  
79 enable the person to make fair, professional, and credible  
80 evaluations of the personnel whom the person is responsible for  
81 evaluating. After the first day of July, one thousand nine  
82 hundred ninety-four, no person may be issued an administrative  
83 certificate or have an administrative certificate renewed unless

84 the state board determines that the person has successfully  
85 completed education and training in evaluation skills through  
86 the center for professional development, or equivalent educa-  
87 tion and training approved by the state board.

88 (h) Any professional whose performance evaluation  
89 includes a written improvement plan shall be given an opportu-  
90 nity to improve his or her performance through the implementa-  
91 tion of the plan. If the next performance evaluation shows that  
92 the professional is now performing satisfactorily, no further  
93 action may be taken concerning the original performance  
94 evaluation. If the evaluation shows that the professional is still  
95 not performing satisfactorily, the evaluator either shall make  
96 additional recommendations for improvement or may recom-  
97 mend the dismissal of the professional in accordance with the  
98 provisions of section eight of this article.

99 (i) Lesson plans are intended to serve as a daily guide for  
100 teachers and substitutes for the orderly presentation of the  
101 curriculum. Lesson plans may not be used as a substitute for  
102 observations by an administrator in the performance evaluation  
103 process. A classroom teacher, as defined in section one, article  
104 one of this chapter, may not be required to post his or her lesson  
105 plans on the internet or otherwise make them available to  
106 students and parents or to include in his or her lesson plans any  
107 of the following:

108 (1) Teach and reteach strategies;

109 (2) Write to learn activities;

110 (3) Cultural diversity;

111 (4) Color coding; or

112 (5) Any other similar items which are not required to serve  
113 as a guide to the teacher or substitute for daily instruction; and

114 (j) The Legislature finds that classroom teachers must be  
115 free of unnecessary paper work so that they can focus their time  
116 on instruction. Therefore, classroom teachers may not be  
117 required to keep records or logs of routine contacts with parents  
118 or guardians.

119 (k) Nothing in this section may be construed to prohibit  
120 classroom teachers from voluntarily posting material on the  
121 internet.

**§18A-2-12a. Statement of policy and practice for the county  
boards and school personnel to minimize  
possible disagreement and misunderstanding.**

1 (a) The Legislature makes the following findings:

2 (1) The effective and efficient operation of the public  
3 schools depends upon the development of harmonious and  
4 cooperative relationships between county boards and school  
5 personnel;

6 (2) Each group has a fundamental role to perform in the  
7 educational program and each has certain separate, distinct and  
8 clearly defined areas of responsibility as provided in chapters  
9 eighteen and eighteen-a of this code; and

10 (3) There are instances, particularly involving questions of  
11 wages, salaries and conditions of work, that are subject to  
12 disagreement and misunderstanding between county boards and  
13 school personnel and may not be so clearly set forth.

14 (b) The purpose of this section is to establish a statement of  
15 policy and practice for the county boards and school personnel,  
16 as follows, in order to minimize possible disagreement and  
17 misunderstanding:

18 (1) County boards, subject to the provisions of this chapter,  
19 chapter eighteen of this code and the policies and rules of the

20 state board, are responsible for the management of the schools  
21 within their respective counties. The powers and responsibili-  
22 ties of county boards in setting policy and in providing manage-  
23 ment are broad, but not absolute;

24 (2) The school personnel shares the responsibility for  
25 putting into effect the policies and practices approved by the  
26 county board that employs them and the school personnel also  
27 have certain rights and responsibilities as provided in statute,  
28 and in their contracts;

29 (3) School personnel are entitled to meet together, form  
30 associations and work in concert to improve their circumstances  
31 and the circumstances of the schools; (4) County boards  
32 and school personnel can most effectively discharge their total  
33 responsibilities to the public and to each other by establishing  
34 clear and open lines of communication. School personnel  
35 should be encouraged to make suggestions, proposals and  
36 recommendations through appropriate channels to the county  
37 board. Decisions of the county board concerning the sugges-  
38 tions, proposals and recommendations should be communicated  
39 to the school personnel clearly and openly;

40 (5) Official meetings of county boards are public meetings.  
41 School personnel are free to attend the meetings without fear of  
42 reprisal and should be encouraged to attend;

43 (6) All school personnel are entitled to know how well they  
44 are fulfilling their responsibilities and should be offered the  
45 opportunity of open and honest evaluations of their perfor-  
46 mance on a regular basis and in accordance with the provisions  
47 of section twelve of this article. All school personnel are  
48 entitled to opportunities to improve their job performance prior  
49 to the termination or transfer of their services. Decisions  
50 concerning the promotion, demotion, transfer or termination of  
51 employment of school personnel, other than those for lack of

52 need or governed by specific statutory provisions unrelated to  
53 performance, should be based upon the evaluations, and not  
54 upon factors extraneous thereto. All school personnel are  
55 entitled to due process in matters affecting their employment,  
56 transfer, demotion or promotion; and

57 (7) All official and enforceable personnel policies of a  
58 county board must be written and made available to its employ-  
59 ees.

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

**§18A-5-1. Authority of teachers and other school personnel;  
exclusion of pupils having infectious diseases;  
suspension or expulsion of disorderly pupils;  
corporal punishment abolished.**

1 (a) The teacher shall stand in the place of the parent(s),  
2 guardian(s) or custodian(s) in exercising authority over the  
3 school and shall have control of all pupils enrolled in the school  
4 from the time they reach the school until they have returned to  
5 their respective homes, except that where transportation of  
6 pupils is provided, the driver in charge of the school bus or  
7 other mode of transportation shall exercise such authority and  
8 control over the children while they are in transit to and from  
9 the school.

10 (b) Subject to the rules of the state board of education, the  
11 teacher shall exclude from the school any pupil or pupils known  
12 to have or suspected of having any infectious disease, or any  
13 pupil or pupils who have been exposed to such disease, and  
14 shall immediately notify the proper health officer or medical  
15 inspector of such exclusion. Any pupil so excluded shall not be  
16 readmitted to the school until such pupil has complied with all  
17 the requirements of the rules governing such cases or has  
18 presented a certificate of health signed by the medical inspector  
19 or other proper health officer.

20 (c) The teacher shall have authority to exclude from his or  
21 her classroom or school bus any pupil who is guilty of disorderly  
22 conduct; who in any manner interferes with an orderly  
23 educational process; who threatens, abuses or otherwise  
24 intimidates or attempts to intimidate a school employee or a  
25 pupil; or who willfully disobeys a school employee; or who  
26 uses abusive or profane language directed at a school employee.  
27 Any pupil excluded shall be placed under the control of the  
28 principal of the school or a designee. The excluded pupil may  
29 be admitted to the classroom or school bus only when the  
30 principal, or a designee, provides written certification to the  
31 teacher that the pupil may be readmitted and specifies the  
32 specific type of disciplinary action, if any, which was taken. If  
33 the principal finds that disciplinary action is warranted, he or  
34 she shall provide written and, if possible, telephonic notice of  
35 such action to the parent(s), guardian(s) or custodian(s). When  
36 a teacher excludes the same pupil from his or her classroom or  
37 from a school bus three times in one school year, and after  
38 exhausting all reasonable methods of classroom discipline  
39 provided in the school discipline plan, the pupil may be  
40 readmitted to the teacher's classroom only after the principal,  
41 teacher and, if possible, the parent(s), guardian(s) or custodian(s)  
42 of the pupil have held a conference to discuss the  
43 pupil's disruptive behavior patterns, and the teacher and the  
44 principal agree on a course of discipline for the pupil and  
45 inform the parent(s), guardian(s) or custodian(s) of the course  
46 of action. Thereafter, if the pupil's disruptive behavior persists,  
47 upon the teacher's request, the principal may, to the extent  
48 feasible, transfer the pupil to another setting.

49 (d) The Legislature finds that suspension from school is not  
50 appropriate solely for a pupil's failure to attend class. Therefore,  
51 no pupil may be suspended from school solely for not  
52 attending class. Other methods of discipline may be used for the  
53 pupil which may include, but are not limited to, detention, extra  
54 class time or alternative class settings.

55       (e) Corporal punishment of any pupil by a school employee  
56 is prohibited.

57       (f) Each county board is solely responsible for the adminis-  
58 tration of proper discipline in the public schools of the county  
59 and shall adopt policies consistent with the provisions of this  
60 section to govern disciplinary actions. These policies shall  
61 encourage the use of alternatives to corporal punishment,  
62 providing for the training of school personnel in alternatives to  
63 corporal punishment and for the involvement of parent(s),  
64 guardian(s) or custodian(s) in the maintenance of school  
65 discipline. The county boards of education shall provide for the  
66 immediate incorporation and implementation in the schools of  
67 a preventive discipline program which may include the respon-  
68 sible student program and a student involvement program  
69 which may include the peer mediation program, devised by the  
70 West Virginia board of education. Each board may modify  
71 such programs to meet the particular needs of the county. The  
72 county boards shall provide in-service training for teachers and  
73 principals relating to assertive discipline procedures and  
74 conflict resolution. The county boards of education may also  
75 establish cooperatives with private entities to provide middle  
76 educational programs which may include programs focusing on  
77 developing individual coping skills, conflict resolution, anger  
78 control, self-esteem issues, stress management and decision  
79 making for students and any other program related to preven-  
80 tive discipline.

81       (g) For the purpose of this section: (1) "Pupil or student"  
82 shall include any child, youth or adult who is enrolled in any  
83 instructional program or activity conducted under board  
84 authorization and within the facilities of or in connection with  
85 any program under public school direction: *Provided*, That, in  
86 the case of adults, the pupil-teacher relationship shall terminate  
87 when the pupil leaves the school or other place of instruction or  
88 activity; and (2) "teacher" shall mean all professional educators

89 as defined in section one, article one of this chapter and shall  
90 include the driver of a school bus or other mode of transporta-  
91 tion.

92 (h) Teachers shall exercise such other authority and  
93 perform such other duties as may be prescribed for them by law  
94 or by the rules of the state board of education not inconsistent  
95 with the provisions of this chapter and chapter eighteen of this  
96 code.

**§18A-5-1a. Possessing deadly weapons on premises of educa-  
tional facilities; possessing a controlled substance  
on premises of educational facilities; assaults and  
batteries committed by pupils 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 pupil from school or from  
2 transportation to or from the school on any school bus if the  
3 pupil, in the determination of the principal after an informal  
4 hearing pursuant to subsection (d) of this section, has: (i)  
5 Violated the provisions of subsection (b), section fifteen, article  
6 two, chapter sixty-one of this code; (ii) violated the provisions  
7 of subsection (b), section eleven-a, article seven of said chapter;  
8 or (iii) sold a narcotic drug, as defined in section one hundred  
9 one, article one, chapter sixty-a of this code, on the premises of  
10 an educational facility, at a school-sponsored function or on a  
11 school bus. If a student has been suspended pursuant to this  
12 subsection, the principal shall, within twenty-four hours,  
13 request that the county superintendent recommend to the county  
14 board that the student be expelled. Upon such a request by a  
15 principal, the county superintendent shall recommend to the  
16 county board that the student be expelled. Upon such recom-  
17 mendation, the county board shall conduct a hearing in accor-

18 dance with subsections (e), (f) and (g) of this section to deter-  
19 mine if the student committed the alleged violation. If the  
20 county board finds that the student did commit the alleged  
21 violation, the county board shall expel the student.

22 (b) A principal shall suspend a pupil from school, or from  
23 transportation to or from the school on any school bus, if the  
24 pupil, in the determination of the principal after an informal  
25 hearing pursuant to subsection (d) of this section, has: (i)  
26 Committed an act or engaged in conduct that would constitute  
27 a felony under the laws of this state if committed by an adult;  
28 or (ii) unlawfully possessed on the premises of an educational  
29 facility or at a school-sponsored function a controlled substance  
30 governed by the uniform controlled substances act as described  
31 in chapter sixty-a of this code. If a student has been suspended  
32 pursuant to this subsection, the principal may request that the  
33 superintendent recommend to the county board that the student  
34 be expelled. Upon such recommendation by the county  
35 superintendent, the county board may hold a hearing in accor-  
36 dance with the provisions of subsections (e), (f) and (g) of this  
37 section to determine if the student committed the alleged  
38 violation. If the county board finds that the student did commit  
39 the alleged violation, the county board may expel the student.

40 (c) A principal may suspend a pupil from school, or  
41 transportation to or from the school on any school bus, if the  
42 pupil, in the determination of the principal after an informal  
43 hearing pursuant to subsection (d) of this section: (i) Threatened  
44 to injure, or in any manner injured, a pupil, teacher, administra-  
45 tor or other school personnel; (ii) willfully disobeyed a teacher;  
46 (iii) possessed alcohol in an educational facility, on school  
47 grounds, a school bus or at any school-sponsored function; (iv)  
48 used profane language directed at a school employee or pupil;  
49 (v) intentionally defaced any school property; (vi) participated  
50 in any physical altercation with another person while under the  
51 authority of school personnel; or (vii) habitually violated school

52 rules or policies. If a student has been suspended pursuant to  
53 this subsection, the principal may request that the superinten-  
54 dent recommend to the county board that the student be  
55 expelled. Upon such recommendation by the county superin-  
56 tendent, the county board may hold a hearing in accordance  
57 with the provisions of subsections (e), (f) and (g) of this section  
58 to determine if the student committed the alleged violation. If  
59 the county board finds that the student did commit the alleged  
60 violation, the county board may expel the student.

61 (d) The actions of any pupil which may be grounds for his  
62 or her suspension or expulsion under the provisions of this  
63 section shall be reported immediately to the principal of the  
64 school in which the pupil is enrolled. If the principal deter-  
65 mines that the alleged actions of the pupil would be grounds for  
66 suspension, he or she shall conduct an informal hearing for the  
67 pupil immediately after the alleged actions have occurred. The  
68 hearing shall be held before the pupil is suspended unless the  
69 principal believes that the continued presence of the pupil in the  
70 school poses a continuing danger to persons or property or an  
71 ongoing threat of disrupting the academic process, in which  
72 case the pupil shall be suspended immediately and a hearing  
73 held as soon as practicable after the suspension.

74 The pupil and his or her parent(s), guardian(s) or custo-  
75 dian(s), as the case may be, shall be given telephonic notice, if  
76 possible, of this informal hearing, which notice shall briefly  
77 state the grounds for suspension.

78 At the commencement of the informal hearing, the principal  
79 shall inquire of the pupil as to whether he or she admits or  
80 denies the charges. If the pupil does not admit the charges, he  
81 or she shall be given an explanation of the evidence possessed  
82 by the principal and an opportunity to present his or her version  
83 of the occurrence. At the conclusion of the hearing or upon the  
84 failure of the noticed student to appear, the principal may

85 suspend the pupil for a maximum of ten school days, including  
86 the time prior to the hearing, if any, for which the pupil has  
87 been excluded from school.

88 The principal shall report any suspension the same day it  
89 has been decided upon, in writing, to the parent(s), guardian(s)  
90 or custodian(s) of the pupil by regular United States mail. The  
91 suspension also shall be reported to the county superintendent  
92 and to the faculty senate of the school at the next meeting after  
93 the suspension.

94 (e) Prior to a hearing before the county board, the county  
95 board shall cause a written notice which states the charges and  
96 the recommended disposition to be served upon the pupil and  
97 his or her parent(s), guardian(s) or custodian(s), as the case may  
98 be. The notice shall state clearly whether the board will attempt  
99 at hearing to establish the student as a dangerous student, as  
100 defined by section one, article one of this chapter. The notice  
101 also shall include any evidence upon which the board will rely  
102 in asserting its claim that the student is a dangerous student.  
103 The notice shall set forth a date and time at which the hearing  
104 shall be held, which date shall be within the ten-day period of  
105 suspension imposed by the principal.

106 (f) The county board shall hold the scheduled hearing to  
107 determine if the pupil should be reinstated or should or, under  
108 the provisions of this section, must be expelled from school. If  
109 the county board determines that the student should or must be  
110 expelled from school, it may also determine whether the student  
111 is a dangerous student pursuant to subsection (g) of this section.  
112 At this, or any hearing before a county board conducted  
113 pursuant to this section, the pupil may be represented by  
114 counsel, may call his or her own witnesses to verify his or her  
115 version of the incident and may confront and cross-examine  
116 witnesses supporting the charge against him or her. Such a  
117 hearing shall be recorded by mechanical means unless recorded

118 by a certified court reporter. Any such hearing may be post-  
119 poned for good cause shown by the pupil but he or she shall  
120 remain under suspension until after the hearing. The state  
121 board may adopt other supplementary rules of procedure to be  
122 followed in these hearings. At the conclusion of the hearing the  
123 county board shall either: (1) Order the pupil reinstated  
124 immediately at the end of his or her initial suspension; (2)  
125 suspend the pupil for a further designated number of days; or  
126 (3) expel the pupil from the public schools of the county.

127 (g) A county board that did not intend prior to a hearing to  
128 assert a dangerous student claim, that did not notify the student  
129 prior to the hearing that such a determination would be consid-  
130 ered and that determines through the course of the hearing that  
131 the student may be a dangerous student shall schedule a second  
132 hearing within ten days to decide the issue. The hearing may be  
133 postponed for good cause shown by the pupil, but he or she  
134 remains under suspension until after the hearing.

135 A county board that expels a student, and finds that the  
136 student is a dangerous student, may refuse to provide alternative  
137 education. However, after a hearing conducted pursuant to this  
138 section for determining whether a student is a dangerous  
139 student, when the student is found to be a dangerous student, is  
140 expelled and is denied alternative education, a hearing shall be  
141 conducted within three months after the refusal by the board to  
142 provide alternative education to reexamine whether or not the  
143 student remains a dangerous student and whether the student  
144 shall be provided alternative education. Thereafter, a hearing  
145 for the purpose of reexamining whether or not the student  
146 remains a dangerous student and whether the student shall be  
147 provided alternative education shall be conducted every three  
148 months for so long as the student remains a dangerous student  
149 and is denied alternative education. During the initial hearing,  
150 or in any subsequent hearing, the board may consider the  
151 history of the pupil's conduct as well as any improvements

152 made subsequent to the expulsion. If it is determined during  
153 any of the hearings that the student is no longer a dangerous  
154 student or should be provided alternative education, the student  
155 shall be provided alternative education during the remainder of  
156 the expulsion period.

157 (h) The superintendent may apply to a circuit judge or  
158 magistrate for authority to subpoena witnesses and documents,  
159 upon his or her own initiative, in a proceeding related to a  
160 recommended student expulsion or dangerous student determi-  
161 nation, before a county board conducted pursuant to the  
162 provisions of this section. Upon the written request of any  
163 other party, the superintendent shall apply to a circuit judge or  
164 magistrate for the authority to subpoena witnesses, documents  
165 or both on behalf of the other party in a proceeding related to a  
166 recommended student expulsion or dangerous student determi-  
167 nation before a county board. If the authority to subpoena is  
168 granted, the superintendent shall subpoena the witnesses,  
169 documents or both requested by the other party. Furthermore,  
170 if the authority to subpoena is granted, it shall be exercised in  
171 accordance with the provisions of section one, article five,  
172 chapter twenty-nine-a of this code.

173 Any hearing conducted pursuant to this subsection may be  
174 postponed: (1) For good cause shown by the pupil; (2) when  
175 proceedings to compel a subpoenaed witness to appear must be  
176 instituted; or (3) when a delay in service of a subpoena hinders  
177 either party's ability to provide sufficient notice to appear to a  
178 witness. A pupil remains under suspension until after the  
179 hearing in any case where a postponement occurs.

180 The county boards are directed to report the number of  
181 pupils determined to be dangerous students to the state board of  
182 education. The state board will compile the county boards'  
183 statistics and shall report its findings to the legislative oversight  
184 commission on education accountability.

185 (i) Pupils may be expelled pursuant to the provisions of this  
186 section for a period not to exceed one school year, except that  
187 if a pupil is determined to have violated the provisions of  
188 subsection (a) of this section the pupil shall be expelled for a  
189 period of not less than twelve consecutive months: *Provided,*  
190 That the county superintendent may lessen the mandatory  
191 period of twelve consecutive months for the expulsion of the  
192 pupil if the circumstances of the pupil's case demonstrably  
193 warrant. Upon the reduction of the period of expulsion, the  
194 county superintendent shall prepare a written statement setting  
195 forth the circumstances of the pupil's case which warrant the  
196 reduction of the period of expulsion. The county superinten-  
197 dent shall submit the statement to the county board, the  
198 principal, the faculty senate and the local school improvement  
199 council for the school from which the pupil was expelled. The  
200 county superintendent may use the following factors as guide-  
201 lines in determining whether or not to reduce a mandatory  
202 twelve-month expulsion:

- 203 (1) The extent of the pupil's malicious intent;
- 204 (2) The outcome of the pupil's misconduct;
- 205 (3) The pupil's past behavior history; and
- 206 (4) The likelihood of the pupil's repeated misconduct.
- 207 (j) In all hearings under this section, facts shall be found by  
208 a preponderance of the evidence.
- 209 (k) For purposes of this section, nothing herein may be  
210 construed to be in conflict with the federal provisions of the  
211 Individuals with Disabilities Education Act of 1990 (PL 101-  
212 476).
- 213 (l) Each suspension or expulsion imposed upon a pupil  
214 under the authority of this section shall be recorded in the

215 uniform integrated regional computer information system  
216 (commonly known as the West Virginia Education Information  
217 System) described in subsection (f), section twenty-six, article  
218 two, chapter eighteen of this code.

219 (1) The principal of the school at which the pupil is enrolled  
220 shall create an electronic record within twenty-four hours of the  
221 imposition of the suspension or expulsion.

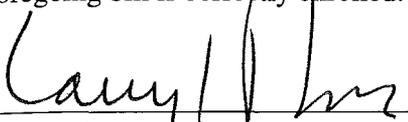
222 (2) Each record of a suspension or expulsion shall include  
223 the pupil's name and identification number, the reason for the  
224 suspension or expulsion, and the beginning and ending dates of  
225 the suspension or expulsion.

226 (3) The state board of education shall collect and dissemi-  
227 nate data so that any principal of a public school in West  
228 Virginia can review the complete history of disciplinary actions  
229 taken by West Virginia public schools against any pupil  
230 enrolled or seeking to enroll at that principal's school. The  
231 purposes of this provision are to allow every principal to fulfill  
232 his or her duty under subsection (b), section fifteen-f, article  
233 five, chapter eighteen of this code to determine whether a pupil  
234 requesting to enroll at a public school in West Virginia is  
235 currently serving a suspension or expulsion from another public  
236 school in West Virginia and to allow principals to obtain  
237 general information about pupils' disciplinary histories.

238 (m) Principals may exercise any other authority and  
239 perform any other duties to discipline pupils consistent with  
240 state and federal law, including policies of the state board of  
241 education.

242 (n) Each county board is solely responsible for the adminis-  
243 tration of proper discipline in the public schools of the county  
244 and shall adopt policies consistent with the provisions of this  
245 section to govern disciplinary actions.

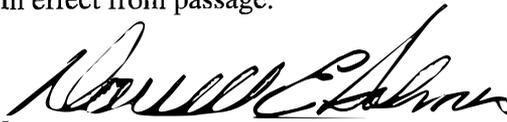
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

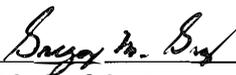
  
\_\_\_\_\_  
Chairman Senate Committee

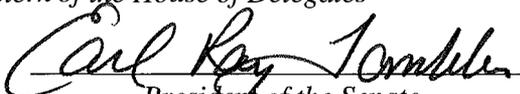
  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

In effect from passage.

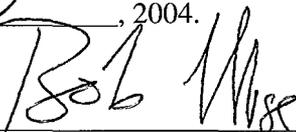
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within ~~is approved~~ this the 3rd  
day of December, 2004.

  
\_\_\_\_\_  
Governor

THE GOVERNOR  
DATE 11/19/04  
TIME 4:20 p