DEPARTMENT OF EDUCATION (EDU)

I. School Financing

State school funding

- Repeals the school funding model known as the "Evidence Based Model" or "EBM."
- To fund school districts for fiscal years 2012 and 2013, requires the Department of Education to compute and pay each city, exempted village, and local school district an amount based on the district's per pupil funding paid for fiscal year 2011, adjusted and indexed by the district's relative tax valuation per pupil.
- Requires the Department to pay a supplement to guarantee all districts, for each of fiscal years 2012 and 2013, at least as much state operating funding as they received for fiscal year 2011 less the federal stimulus amount for fiscal year 2011.
- Requires the Department to pay an additional subsidy of $17 per student to school districts and community schools that are rated "excellent with distinction" or "excellent."
- Sets the formula amount at $5,653 for transfer payments for students attending community schools, STEM schools, other districts through open enrollment, and colleges and universities through the Post-Secondary Enrollment Options Program.
- Discontinues the practice of using the prior year's October student count unless the current year's October count is 2% greater and, instead, requires use of the current-year October count to derive a district's formula ADM.
- Retains the EBM's feature of counting each kindergarten student as one full-time equivalent student.
- Retains and recodifies the special education funding weights and categories from the EBM.
- For fiscal years 2012 and 2013, requires use of the former weights and categories for computing special education transfer payments to community schools, STEM schools, and other school districts for excess special education cost and for state payments for catastrophic costs.
- Repeals the changes to the gifted education maintenance of effort requirements enacted by H.B. 30 of the 129th General Assembly, but establishes a similar

maintenance of effort requirement, based on fiscal year 2009 gifted education funding, in appropriations language for each year of the fiscal biennium.

- Retains and recodifies the transportation funding formula enacted at the same time as the EBM, but suspends its operation for fiscal years 2012 and 2013.

- Retains the fiscal year 2009 per pupil level of payments for community schools and STEM schools for special education, vocational education, poverty-based assistance, and parity aid.

- Eliminates the School Funding Advisory Council.

- Makes other miscellaneous school funding changes.

School expenditure and performance data

- Requires the Department of Education to develop, by January 1, 2012, and the State Board of Education to adopt, by July 1, 2012, standards for determining the amount of operating expenditures for classroom instruction and for nonclassroom purposes spent by a school district, community school, e-school, or STEM school.

- Requires the Department to use the expenditure reporting standards and existing data to rank each district, community school, e-school, and STEM school according to percentage of operating expenditures for classroom instruction.

- Requires the Department to denote, within the classroom expenditure rankings, districts and schools that are (1) among the lowest 20% statewide in total operating expenditures per pupil or (2) among the highest 20% statewide in academic performance index or career-technical performance measures.

- Requires the Department, annually, to report each district's, community school's, e-school's, and STEM school's rank according to (1) performance index score, (2) student performance growth, (3) career-technical performance measures, (4) expenditures per pupil, (5) percentage of expenditures for classroom instruction, and (6) performance of, and opportunities for, identified gifted students.

- Requires the Department, annually, to report each separate school building's rank according to performance index score among all public school buildings.

- Requires the Department to report annually to each school district the ratio of its operating spending for instructional purposes to its spending for administrative purposes, its per pupil amount for each purpose, its percentage of district funds spent for operating purposes, and the statewide average of each of those items.

- Requires each district to post the expenditure information reported to it by the Department on the district's web site and to make it available to parents and taxpayers in some other fashion.

Other school financing provisions

- Permits a fiscal emergency school district, with the approval of the Director of Budget and Management and the state Superintendent, up to ten years to reimburse the state for a payment from the School District Solvency Assistance Fund, in lieu of the standard two-year repayment period.

- Authorizes a school district to enter into a contract without attaching the certificate of adequate resources otherwise required by law, if an alternative certificate is attached certifying that the contract is a multi-year contract for essential non-payroll items and the contract is more cost effective than single-year contracts.

- Specifically permits a school district board to transfer any unencumbered money remaining in the district's textbook and instructional materials fund on July 1, 2011 (when the requirement to have that set-aside fund was repealed) to the district's general fund to be used for any general fund purpose.

- Updates statutory language regarding the kinds of education technology hardware and software and digital content that may be purchased with Auxiliary Services funds for loan to students enrolled in chartered nonpublic schools.

- Allows Auxiliary Services funds to be used to purchase or maintain life-saving medical or other emergency equipment for chartered nonpublic schools.

- Specifically exempts from taxation real property used by a school district, STEM school, community school, educational service center, or chartered nonpublic school for primary or secondary educational purposes.

- Eliminates the Harmon Commission.

II. Community Schools

Moratoriums on opening new community schools

- Eliminates the requirement that a new start-up "brick and mortar" community school, as a condition of opening, must contract with an operator that either manages schools in other states that perform at a level higher than academic watch or, if the operator already manages Ohio schools, manages at least one Ohio school rated higher than academic watch.

- Terminates the moratorium on the establishment of new Internet- or computer-based community schools (e-schools) on January 1, 2013, but limits the number of new e-schools that may open to five per year.

- Specifies that if more than five new e-schools have sponsorship contracts to open in a particular year, the Department of Education must hold a lottery to select the schools that may open.

E-school standards

- Directs the Superintendent of Public Instruction and the Director of the Governor's Office of 21st Century Education, by July 1, 2012, to develop operational standards for e-schools for possible enactment by the General Assembly.

- Requires e-schools to comply with the legislative standards, if they are enacted by January 1, 2013, or the operational standards of the International Association for K-12 Online Learning, if legislative standards are not enacted by that date.

- Requires e-schools established after January 1, 2013, to comply with the applicable standards when they open, and requires existing e-schools to comply by July 1, 2013.

Direct authorization of community schools

- Creates the Ohio School Sponsorship Program, under which the Department of Education may directly authorize the operation of a limited number of both new and existing community schools, rather than those schools being subject to the oversight of other public or private sponsors.

- Requires the Department to establish the Office of School Sponsorship to perform the Department's duties under the Ohio School Sponsorship Program.

- Permits the contract between the Department and a directly authorized community school to provide for an oversight and monitoring fee of up to 3% of the school's state operating funds.

- Permits the Department to take any of the same actions other sponsoring entities may take to enforce a directly authorized community school's compliance with the law and its contract with the Department.

- Requires the Department to issue annual reports about the community schools participating in the Ohio School Sponsorship Program, and requires the fifth report to include a complete evaluation of the program and recommendations about its continuation.

Collective bargaining at Cleveland conversion schools

- Exempts the employees of a conversion community school sponsored by a "municipal school district" (Cleveland) from collective bargaining, after expiration of their current agreement, if the mayor who appoints the district's board submits a statement to the board and the State Employment Relations Board requesting that the employees be removed from collective bargaining.

Conversion community schools opening in 2011-2012

- Waives the adoption (March 15) and signing (May 15) contract deadlines for new conversion community schools that open in the 2011-2012 school year, but requires that a copy of the adopted and signed contract be filed with the Superintendent of Public Instruction prior to the school's opening.

Location of start-up community schools

- Expands school districts where start-up community schools may be located to include school districts that are ranked by performance index score in the lowest 5% of all districts.

Restrictions on sponsoring additional community schools

- Prohibits community school sponsors from sponsoring additional schools if they (1) are not in compliance with sponsor reporting requirements or (2) are ranked in the lowest 20% on an annual ranking of sponsors by their composite performance index scores.

- Increases to 100 schools (from 50 to 75 schools under prior law, depending on the sponsor) the number of community schools that an entity may sponsor.

- Repeals the requirement that the cap on the number of schools an entity may sponsor must be reduced by one for each school sponsored by the entity that permanently closes.

Other provisions regarding community school sponsors

- Revises procedural deadlines for notification, hearing, and appeal associated with a sponsor's decision to terminate or not renew its contract with a community school.

- Requires a community school whose contract is terminated to close at the end of the current school year.

- Grants civil immunity to community school sponsors and their officers, directors, and employees for any action authorized by the Community School Law or the sponsorship contract that is taken to fulfill the sponsor's responsibility to oversee a community school.

- Repeals the requirement that a community school sponsor have a representative located within 50 miles of each school it sponsors.

- Revises the requirement for the sponsor's representative to meet regularly with the community school's governing authority, by (1) requiring the meetings to occur monthly, rather than every two years, (2) allowing the meeting to be with the school's fiscal officer instead of the governing authority, and (3) requiring the representative to review the school's enrollment records in addition to its financial records.

Governing authority membership

- Prohibits a community school governing authority member, or immediate relative, from being an owner, employee, or consultant of a community school sponsor until one year after the conclusion of the member's term.

- Increases the maximum compensation for governing authority members of start-up community schools from $125 per meeting per month to $425 per meeting or a total of $5,000 per year.

Closure of poorly performing community schools

- Beginning July 1, 2011, replaces the performance criteria that trigger automatic closure of a community school with new criteria for schools that do not offer a grade higher than 3 and for schools that offer any of grades 10 to 12, by requiring those schools to close if they have been in academic emergency for two of the three most recent school years.

Community school employees

- Allows layoffs with respect to teachers returning after a leave of absence due to being employed at a conversion community school to occur only in accordance with procedures in the administrative personnel suspension policy.

Taxes

- Repeals the law stating the intent of the General Assembly that no state funds paid to a community school be used to pay taxes owed by the school.

E-school funding and expenditures

- Specifies that, for state funding purposes, an Internet- or computer-based community school (e-school) student is considered automatically re-enrolled the following school year until the student's enrollment in the school is formally terminated or the student fails to participate in the first 105 hours of learning opportunities offered that year.

- Repeals the requirement that e-schools spend a specified minimum amount per pupil on instruction.

Community school facilities

- Allows a community school to be located in multiple facilities under the same sponsorship contract and to assign students of the same grade to different facilities, if (1) the facilities are all located in the same county and (2) the school is managed by an operator.

- Requires the Department of Education, in the case of a community school with multiple facilities, to assign a unique identification number to the school and to each facility, beginning July 1, 2012.

- Permits two or more community schools to be located in the same facility.

Access to school district property

- Applies the law granting community schools a right of first refusal to purchase school district property to *all* real property owned by the district (instead of just real property suitable for use as classroom space).

- Requires school district boards with real property that has been used for classroom operations since July 1, 1998, but has not been in use for two years, to offer to community schools located within the district the opportunity to purchase or lease the property.

Community school participation in joint educational programs

- Permits a community school to enter into an agreement with one or more school districts or other community schools for the joint operation of an educational program, in the same manner as school districts may do under continuing law.

- Prohibits community schools from charging tuition or fees for their students participating in the joint program (unlike school districts under continuing law).

Standards for dropout recovery programs

- Requires the State Board of Education, by July 1, 2012, to review its previous legislative recommendations for performance standards for community schools serving dropouts and to issue new recommendations.

III. Public College-Preparatory Boarding Schools

Creation

- Permits the establishment of public college-preparatory boarding schools operated by private non-profit entities for the benefit of qualifying at-risk middle or high school students, beginning no earlier than the 2013-2014 school year.

- Requires the State Board of Education to issue a request for proposals from nonprofit organizations interested in operating a college-preparatory boarding school and to enter into a contract with each approved operator.

- Declares each college-preparatory boarding school issued a charter by the State Board a public school and a part of the state's program of education.

- Provides for the governance of a college-preparatory boarding school by a board of trustees consisting of up to 25 members, with five members appointed by the Governor, with the advice and consent of the Senate, and the remaining members appointed pursuant to the school's bylaws.

Student enrollment

- Qualifies a student to attend a college-preparatory boarding school if the student is at risk of academic failure, is from a family with income below 200% of the federal poverty guidelines, and meets at least two other criteria involving academic performance, behavior history, disability status, or family status.

- Further limits enrollment to residents of the school district in which the school is located, and residents of any other school district that agrees to be a participating school district.

- Limits a college-preparatory boarding school to admitting up to 80 students in grade 6 in its first year of operation.

- Allows a college-preparatory boarding school to offer additional grades in subsequent years, provided its total enrollment never exceeds 400.

- Requires each participating school district to provide weekly transportation to and from the college-preparatory boarding school for its resident students enrolled in the school.

Operating funding

- Requires that a boarding school receive for each student enrolled in the school both (1) a per-pupil amount deducted from the state aid account of the student's resident school district, as set forth in an agreement between the district and the boarding school, and (2) a "per-pupil boarding amount" paid directly to the school by the Department of Education.

- Requires that the per-pupil amount deducted from a district's account for payment to a boarding school equal 85% of the operating expenditure per pupil of the district for the previous fiscal year (including both state and district revenues).

- Sets the per-pupil boarding amount at $25,000 per pupil during a college-preparatory boarding school's first fiscal year of operation, with adjustments for inflation in following fiscal years.

- Allows for reductions to the per-pupil boarding amount in any fiscal year the college-preparatory boarding school receives funds from the federal government or other outside funding sources.

College-Preparatory Boarding School Facilities Program

- Establishes the College-Preparatory Boarding School Facilities Program, under which the Ohio School Facilities Commission must provide assistance for the acquisition of classroom facilities to the boards of trustees of college-preparatory boarding schools.

- Specifies that, to be eligible for the assistance, a board of trustees must secure at least $20 million of private money to satisfy its share of facilities acquisition, and that the acquisition of residential boarding facilities and any other non-classroom facilities must be funded through private means.

IV. Scholarship programs

Ed Choice

- Increases the number of Educational Choice scholarships from 14,000 to 30,000 for the 2011-2012 school year and 60,000 thereafter.

- Qualifies students who attend, or would otherwise be assigned to, a district-operated school that, for at least two of the three preceding years, ranked in the lowest 10% of all public school buildings by performance index score, and was not rated excellent or effective in the third year.

- Assigns a lower priority to students who qualify for the Educational Choice scholarship because their district school is ranked in the lowest 10% of all school buildings by performance index score.

- Reduces the amount deducted from school districts' state aid accounts for an Educational Choice Scholarship, from $5,200 to the actual amount of the scholarship.

Cleveland Scholarship Program

- Increases the base amounts of the Cleveland scholarship to equal the maximum amounts allowed for Educational Choice Scholarships ($4,250 for grades K-8 and $5,000 for grades 9-12).

- Allows new students to enter the Cleveland Scholarship Program during high school.

Jon Peterson Special Needs Scholarship Program

- Creates the Jon Peterson Special Needs Scholarship Program to provide scholarships for children with disabilities in grades K through 12 to attend alternative public or private special education programs.

- Requires the Department of Education to develop a document that compares rights under state and federal special education law and rights under the Jon Peterson Special Needs Scholarship Program, and requires school districts to distribute that document to the parents of all special education students.

- Requires the Department to conduct a "formative evaluation" of the Jon Peterson Special Needs Scholarship Program by December 31, 2014.

Autism Scholarship Program

- Specifies that the services provided under the Autism Scholarship Program must include an educational component.

V. Educational Service Centers (ESCs)

- Requires every city, exempted village, and local school district with a student count of 16,000 or less to enter into an agreement with an ESC for services.

- Permits, but does not require, every school district with a student count greater than 16,000 to enter into an agreement with an ESC for services.

- Permits a school district to terminate its agreement with its current ESC, effective June 30, by notifying the ESC governing board by January 1, 2012, or by January 1 of an odd-numbered year thereafter.

- Repeals prior law specifying steps a "local" school district had to follow to leave the territory of its current ESC and annex to an adjacent ESC, including approval of the State Board of Education and referendum by petition of the district's voters.

- Provides procedures for dissolving an ESC if all of its "local" school districts have "severed" from the ESC's territory.

- Permits an ESC governing board to delay reorganizing its subdistricts, if its territory is divided into subdistricts, until July 1, 2012.

- Permits an ESC governing board to appoint an executive committee to initially organize the territory into subdistricts, rather than the board doing it, when an ESC is formed by the merger of two or more smaller ESCs.

- Permits an ESC governing board to appoint additional members to the board who are representative of the "city" and "exempted village" school districts having service agreements with the ESC, rather than only those who are voters of "local" school districts of the ESC's territory.

- Generally limits an ESC's payments, in fiscal year 2012, to 90% of the amount it received for fiscal year 2011 and, in fiscal year 2013, to 85% of the amount it received for fiscal year 2012.

- Authorizes ESCs to enter into service contracts with other political subdivisions, besides school districts.

- Eliminates ESCs' roles regarding "local" school districts' textbook selection, age and schooling certificates, and filing and receipt of student membership records.

- Requires the Governor's Director of 21st Century Education to develop plans for (1) the integration and consolidation of the publicly supported regional shared services organizations, and (2) encouraging communities and school districts to create regional P-16 councils, and to submit legislative recommendations to the Governor and the General Assembly by January 1, 2012.

VI. Teachers and School Employees

Teacher and principal evaluations

- Repeals the requirement for the State Board of Education to establish guidelines for the evaluation of teachers and principals for optional use by school districts and educational service centers (ESCs).

- Requires the State Board, by December 31, 2011, to develop a "standards-based" framework for the evaluation of teachers that includes criteria that distinguish between performance levels of "accomplished," "proficient," "developing," and "ineffective."

- Directs each school district and ESC, by July 1, 2013, to adopt a teacher evaluation policy that conforms with the framework, and applies this requirement to each community school and STEM school receiving federal Race to the Top funds.

- Specifies that an employer's evaluation policy must be implemented at the expiration of the teachers' collective bargaining agreement in effect on September 29, 2011 (the provision's effective date).

- Requires employers to evaluate each teacher annually, except that an employer may evaluate teachers who were rated as "accomplished" on their most recent evaluations every two years.

- Requires 50% of each teacher evaluation to be based on student academic growth, as measured by value-added data derived from the state achievement assessments when applicable and by other assessments identified by the State Board when not applicable.

- Requires employers to use teacher evaluations to inform decisions about retention, promotion, and removal of poorly performing teachers.

- Prohibits an employer from considering seniority when deciding whether to retain a teacher, except when deciding between teachers with comparable evaluations.

- Requires each school district's evaluation procedures for principals (required under continuing law) to be based on principles comparable to the teacher evaluation policy, but tailored to the duties and responsibilities of principals.

Teacher salaries

- Requires school districts, community schools, and STEM schools that receive federal Race to the Top funds annually to adopt a performance-based salary schedule for teachers.

- Requires a teacher's performance for salary purposes to be measured by (1) the level of the teacher's license, (2) whether the teacher is "highly qualified" under federal law, and (3) evaluation ratings.

- Requires the salary schedule to provide for annual adjustments based on teacher evaluations.

- Permits payment of additional compensation to teachers who agree to perform duties that the employer determines warrant extra pay, such as teaching in a school that is hard-to-staff, is underperforming, or has a large proportion of low-income or at-risk students.

- Requires school districts not receiving Race to the Top funds and educational service centers (ESCs) to comply either with (1) the act's requirements for a performance-based salary schedule or (2) continuing law requiring teachers to be paid a minimum salary based on years of service and educational training.

- Repeals the requirement that each school district and ESC file a copy of its teacher salary schedule with the Superintendent of Public Instruction.

Teacher layoffs

- Prohibits a school district from giving preference based on seniority in determining the order of layoffs or in rehiring teachers when positions become available again, except when choosing between teachers with comparable evaluations.

- Specifies that the provisions regarding teacher layoffs prevail over collective bargaining agreements entered into on or after September 29, 2011 (the provisions' effective date).

- Repeals the requirement for an educational service center to give preference in retention during layoffs first to tenured teachers and then to teachers with greater seniority.

Retesting teachers

- Requires each teacher of a core subject area in a building that is ranked in the lowest 10% of all public school buildings according to performance index score to retake all exams needed for licensure in the teacher's subject area and grade level.

- Permits a school district, community school, or STEM school to use the exam results in decisions regarding employment and professional development, but prohibits using the results as the sole factor in employment decisions unless the teacher has failed the same exam three consecutive times.

- Specifies that the teacher is not responsible for the cost of retaking an exam.

- Specifies that a teacher who retakes an exam and provides proof of passage to the teacher's employer is not required to retake the exam again for three years.

Alternative and out-of-state licensure

- Expands the alternative resident educator license to cover teaching in grades K to 12 (instead of grades 4 to 12).

- Changes the qualifications for obtaining and holding the alternative resident educator license by (1) prohibiting any requirement that applicants have a college major in the teaching area, (2) permitting applicants to complete a summer training institute provided by a nonprofit teacher preparation program that has been approved by the Chancellor of the Board of Regents (instead of the pedagogical training institute otherwise required), and (3) allowing license holders to satisfy continuing education requirements with professional development provided through the Chancellor-approved program.

- Prohibits the State Board of Education from establishing qualifications for a resident educator license for Teach for America participants beyond those enacted in H.B. 21 of the 129th General Assembly.

- Requires the State Board of Education, by July 1, 2013, to approve a list of states with licensure standards that are inadequate to ensure that a person with five years of licensure and teaching experience in that state is qualified for a professional educator license in Ohio.

- Directs the State Board to automatically issue a five-year professional educator license to a teacher with at least five years of licensure and teaching experience in a state that is not on the list.

- Requires generally that, until the list is approved, the State Board must issue a one-year provisional educator license to a teacher with at least five years of licensure and teaching experience in another state.

- Prohibits the State Board or Department of Education from having a reciprocity agreement with a state on the list requiring the issuance of a professional educator license to a teacher based on licensure and teaching experience in that state.

Other school employee provisions

- Requires the State Board of Education's rules on the issuance and renewal of a professional career-technical teaching license to include requirements relating to life experience, professional certification, and practical ability, and prohibits the State Board from requiring a person who meets those requirements to complete a degree as a condition for the license.

- Requires the Chancellor of the Board of Regents annually to report value-added data for graduates of Ohio teacher preparation programs who teach English language arts or math in grades 4 to 8 in a public school in Ohio.

- Eliminates the requirement for an adult education instructor to undergo a criminal records check prior to hiring by a school district, community school, STEM school, educational service center, or chartered nonpublic school, if the person had a records check within the previous two years as a condition of being hired for short-term employment with that district, school, or service center.

- Requires the State Board of Education to issue a person a certificate to teach foreign language, music, religion, computer technology, or fine arts in a chartered nonpublic school upon receipt of an affidavit from the person's potential employer, stating that the person has previous instructional training or experience or has specialized expertise that qualifies the person to teach.

- Re-enacts a former law that permits local and exempted village school districts (non-Civil Service school districts) to terminate the positions of transportation employees for reasons of economy and efficiency and to contract with an agent to provide student transportation services, if certain conditions are satisfied.

- Exempts substitutes, adult education instructors who are scheduled to work less than the full-time equivalent of 120 days per school year, or persons employed on an as-needed, seasonal, or intermittent basis from the 15 days sick leave with pay provided to each person who is employed by a school district or ESC.

VII. School Restructuring

Restructuring low-performing schools

- Specifies that if a school is ranked in the lowest 5% of all public school buildings according to performance index score for three consecutive years and is in academic watch or academic emergency, the school district must close the school or take one of several other specified actions to restructure the school.

Parent petitions for school reforms

- Establishes a pilot project in the Columbus City School District under which, upon petition from the parents of at least 50% of the students enrolled in a school that is ranked in the lowest 5% of all public school buildings according to performance index score for three or more years, the district must implement the reform requested by the petitioners, except in certain circumstances.

Innovation schools and innovation school zones

- Allows a school district to designate a single school as an "innovation school," or a group of schools as an "innovation school zone," for the purpose of implementing an innovation plan designed to improve student performance.

- Requires the State Board of Education to waive, with certain exceptions, any education laws or administrative rules necessary to implement the innovation plan.

- Allows any provisions of a collective bargaining agreement to be waived to implement an innovation plan, if at least 60% of the members of the bargaining unit working in each participating school approve the waiver.

- Requires a school district to review the performance of each innovation school and innovation school zone every three years, and permits the district to revoke the designation if the participating schools are not making sufficient improvements in student achievement.

- Directs the Department of Education to issue an annual report on school districts implementing innovation plans.

School district operating standards

- Makes permissive, rather than mandatory as in prior law, the State Board of Education's adoption of certain operating standards for school districts.

Governor's recognition program

- Creates the Governor's Effective and Efficient Schools program to annually recognize the top 10% of all public schools (school districts, community schools, and STEM schools) based on student performance and cost effectiveness.

VIII. Other Education Provisions

Statewide academic standards

- Requires the State Board of Education to revise its academic standards in English language arts, math, science, and social studies "periodically" (instead of every five years).

- Repeals the requirement that the State Board's academic standards specify development of skill sets that (1) relate to creativity, innovation, critical thinking and problem solving, and communication and collaboration and (2) promote personal management, productivity and accountability, and leadership and responsibility.

- Removes the senior project from the high school graduation requirements under the college and work-ready assessment system.

- Requires the Superintendent of Public Instruction and the Chancellor of the Board of Regents, when selecting end-of-course exams as part of the new high school graduation assessment system, to choose multiple assessments for each subject area, and that those assessments must include nationally recognized subject area tests.

- Changes the terminology for the nationally standardized test portion of the new high school graduation assessment system from a national test that measures competencies in science, math, and English to a national test that measures "college and career readiness."

- Eliminates development of a composite score system for the college and work-ready assessment system.

Competency-based high school credit

- Exempts chartered nonpublic schools from having to comply with a State Board of Education plan for competency-based high school credit.

Approval to take GED

- Requires a person 16 to 18 years old to obtain approval to take the General Educational Development (GED) tests from the superintendent of the school district

in which the person was last enrolled or, if the person was last enrolled in a community school or STEM school, from the school principal.

- Permits the Department of Education to require a person younger than 18 also to obtain approval to take the GED from the person's parent or a court official.

- Specifies that, for the purpose of calculating graduation rates for the school district and building report cards, a person who obtains approval to take the GED must be counted as a dropout from the district or school in which the person was last enrolled.

Public records status of elementary achievement assessments

- Specifies that the achievement assessments administered in grades 3 to 8 in the 2011-2012 school year and later are not public records.

Testing of students with disabilities

- Requires the individualized education program (IEP) developed for a disabled student to specify the manner in which the student will participate in the state achievement assessments.

Fees for career-technical education materials

- Permits school districts to charge low-income students for tools, equipment, and materials that are necessary for workforce-readiness training and that may be retained by the students after course completion.

Calamity day make-up

- Allows school districts, chartered nonpublic schools, community schools, and STEM schools to make up a maximum of three calamity days either via lessons posted online or "blizzard bags" (paper lesson plans distributed to students that correspond to online lessons).

- Requires a school district to obtain the written consent of its teacher's union to implement the plan.

Miscellaneous

- Requires the Department of Education, by December 31, 2011, to submit to the Governor and General Assembly a plan and legislative recommendations for providing two years of tuition-free education for individuals age 22 or older through dropout prevention and recovery programs.

- Repeals restrictions on the maximum serving size, fat content, and calorie content of milk sold in school districts, community schools, STEM schools, and chartered nonpublic schools.

- Would have repealed the requirement that school districts, community schools, STEM schools, and chartered nonpublic schools conduct body mass index (BMI) and weight status category screenings for students in certain grades (VETOED).

- Specifically permits a school district, under its intra-district open enrollment policy, to grant a student permanent permission to attend a district school outside of the student's attendance area, so that the student does not need to re-apply annually for permission to attend the school.

- Prohibits disqualification of a student from interscholastic athletics solely because the student's parents do not reside in Ohio, if the student attends school in Ohio and lives in Ohio with a grandparent, uncle, aunt, or sibling who has temporary or legal custody or guardianship of the student.

- Allows a school principal or any other school employee to also serve as the school district's gifted education coordinator if qualified to do so.

- Requires the Superintendent of Public Instruction to establish a pilot project in Columbiana County under which one or more school districts must offer a multiple-track high school curriculum for students with differing career plans, but authorizes postponement of the pilot project if sufficient funds are not available.

- Specifically states that school districts may rent or lease facilities to public or nonpublic institutions of higher education for the use in providing evening and summer classes.

- Repeals laws requiring the Department of Education to establish the State Office of Community Schools, the State Office of School Options, and the State Office of Educator Standards, and permitting the Department to establish the Center for Creativity and Innovation.

- Removes an obsolete reference to the Ohio Sailors' and Soldiers' Home in the school district tuition law.

I. School Financing

Repeal of the Evidence-Based Model and related funding provisions

(Repealed R.C. 3306.01 to 3306.11, 3306.13, 3306.19, 3306.191, 3306.192, 3306.21, 3306.22, 3317.011, 3317.016, 3317.017, 3317.0216, 3317.04, 3317.17, 3329.16, and 3349.242; R.C. 319.301, 3301.07, 3301.16, 3301.162, 3302.031, 3302.05, 3302.07, 3307.31, 3307.64, 3309.41, 3309.48, 3309.51, 3310.08, 3310.41, 3311.06, 3311.19, 3311.21, 3311.29, 3311.52, 3311.76, 3313.29, 3313.482, 3313.55, 3313.64, 3313.6410, 3313.981, 3314.08, 3314.087, 3314.088, 3314.091, 3314.10, 3314.13, 3315.01, 3316.041, 3316.06, 3316.20, 3317.01, 3317.013, 3317.014, 3317.018, 3317.02, 3317.021, 3317.022, 3317.023, 3317.024, 3317.025, 3317.0210, 3317.0211, 3317.0212, 3317.03, 3317.031, 3317.05, 3317.051, 3317.053, 3317.06, 3317.061, 3317.07, 3317.08, 3317.081, 3317.082, 3317.09, 3317.11, 3317.12, 3317.16, 3317.18, 3317.19, 3317.20, 3317.201, 3318.051, 3319.17, 3319.57, 3323.091, 3323.14, 3323.142, 3324.05, 3326.33, 3326.39, 3327.02, 3327.04, 3327.05, 3365.01, 3365.08, 5126.05, 5126.24, 5705.211, 5715.26, 5727.84, and 5751.20)

The act repeals the funding system for city, exempted village, and local school districts that was enacted in 2009 in H.B. 1 of the 128th General Assembly, unofficially known as the "Evidence Based Model" or "EBM." In its place, the act creates a temporary provision to provide funding to school districts based on a wealth-adjusted portion of their state operating funds for fiscal year 2011 under the EBM.

Temporary formula

(Sections 267.30.50 and 267.30.53)

The act establishes a temporary formula to fund schools for the biennium in anticipation of a permanent system to replace the EBM. Under that formula, the Department of Education must compute and pay each city, exempted village, and local school district, for fiscal years 2012 and 2013, an amount based on the district's per pupil amount of funding paid for fiscal year 2011, adjusted by its share of a statewide per pupil adjustment amount that is indexed by the district's relative tax valuation per pupil. The statewide per pupil adjustment amount must be determined by the Department so that the state's total formula aid obligation to school districts does not exceed the aggregate appropriated amount.

The act also provides supplemental funding for each of fiscal years 2012 and 2013 to guarantee each district operating funding that is equal to at least the amount of state operating funding, less federal stimulus funding, the district received for fiscal year 2011 under the EBM.

For a more detailed description of the temporary formula, see the LSC Greenbook for the Department of Education, published on the LSC web site at **www.lsc.state.oh.us/fiscal/greenbooks129/default.htm** and the LSC Comparison Document of the bill as enacted, published at **www.lsc.state.oh.us/fiscal/comparedoc129/default.htm**.

Additional subsidy for high performing districts and community schools

(Section 267.30.56)

The act requires the Department to pay an additional subsidy of $17 per student to each school district or community school that is currently rated as "excellent with distinction" or "excellent" on the annual district and school academic performance report cards.

A district is rated "excellent" if it meets at least 94% of the state performance indicators or has a performance index score of 100 to 120. However, a district that is otherwise excellent must be downgraded to "effective" if it does not make "adequate yearly progress," as used under federal law, for two or more of the same student subgroups for three or more consecutive years. A district is rated "excellent with distinction" if it otherwise has an "excellent" rating and demonstrates more than a standard year of academic growth for two consecutive years on the value-added progress dimension (which measures student academic growth from one year to the next). The state academic performance indicators are 75% student proficiency on all applicable state achievement assessments, 93% attendance rate, and 90% graduation rate.[48]

Formula amount

(R.C. 3317.02)

The act establishes a per pupil "formula amount" to compute transfer payments for students attending community schools, STEM schools, other districts through open enrollment, and colleges and universities through the Post-Secondary Enrollment Options Program. The act sets the formula amount at $5,653 for both fiscal years 2012 and 2013. The formula amount for fiscal year 2009, under the Building Blocks Model, and for fiscal years 2010 and 2011, under the EBM, was $5,732. The act continues to use the latter amount for computing additional weighted funding for special education and vocational education transfers to community schools, STEM schools, and other districts.

[48] R.C. 3302.01, 3302.021, and 3302.03 (none in the act) and R.C. 3302.02.

Student count

(R.C. 3317.02 and 3317.03)

The act discontinues the practice of using the prior year's October student count to derive most districts' formula ADM. Instead, it requires use of the current-year October count to derive the formula ADM for all districts. Each district's formula ADM is used to compute its funding under the act's temporary formula. It also is used in computing a district's share and priority for funding under the state classroom assistance programs administered by the School Facilities Commission.

Continuing law requires each school district, in October of each fiscal year, to report the "average daily membership" of students residing in the district and receiving services either from the district or from other specified providers (including community schools, STEM schools, other districts under open enrollment, and colleges and universities under PSEO). Using this data, the Department of Education derives each district's "formula ADM." Under the EBM, a district's formula ADM generally was based on its October report for the *prior* fiscal year, unless its current average daily membership was more than 2% greater than that of the prior year. In the latter case, under the EBM, the Department had to use the district's report for the current fiscal year to derive its formula ADM.

Counting of kindergarten students

The act retains the EBM's feature of counting each kindergarten student as one full-time equivalent (FTE) student regardless of whether the student is in all-day or half-day kindergarten. Prior school funding models had required that kindergarten students be counted as one-half of one FTE student.

Special education categories and weights

(R.C. 3314.088, 3317.013, 3317.018, and 3326.39)

The act retains and recodifies the EBM's categories and weights for counting of students with disabilities and for future use in funding special education. However, for fiscal year 2012 and 2013, the act requires use of the former (fiscal year 2009) Building Blocks weights and disability categories for computing special education transfer payments to community schools, STEM schools, and to other school districts for excess special education cost,[49] and for state payments for catastrophic costs.[50]

[49] School districts sometimes contract with other districts to provide special education and related services for students they are unable to serve. Or a student might receive special education and related

Background

To fund special education, both the EBM and the former Building Blocks Model rely on a set of six disability categories and accompanying weights (or multiples) to applied in funding students based on their respective disabilities. The categories and weights of the Building Blocks Model were based on 2001 recommendations from the special education community. The EBM categories and weights were slightly different and were based on more recent recommendations from the special education community.

The table below indicates the six disability categories and corresponding weights for both the EBM (retained and recodified by the act) and Building Blocks Model (used for transfers and catastrophic cost payments under the act for fiscal year 2012 and 2013).

Category	EBM weight	EBM disabilities	BB weight	BB disabilities
1	0.2906	Speech and language disabled	0.2892	Same as EBM
2	0.7374	Specific learning disabled; developmentally disabled; other health impaired-minor	0.3691	Same as EBM
3	1.7716	Hearing disabled; severe behavior disabled	1.7695	Hearing disabled; severe behavior disabled; vision impaired
4	2.3643	Vision impaired; other health impaired-major	2.3646	Other health impaired – major; orthopedically disabled
5	3.2022	Orthopedically disabled; multiple disabilities	3.1129	Multiple disabilities
6	4.7205	Autistic; traumatic brain	4.7342	Same as EBM

services from the joint vocational district to which the resident district belongs. In either case, the resident district owes the cost of services in excess of what the other district received in state payments.

[50] R.C. 3314.088, 3317.018, and 3326.39. Federal special education law requires that states provide a mechanism to fund "high need children." Accordingly, the state distributes additional funds to school districts, community schools, and STEM schools to pay their costs for children whose special education and related services costs exceed a prescribed "catastrophic" threshold amount. Under continuing law, the threshold amount is $27,375 for a child with a disability in categories two through five, and $32,850 for a child with a category six disability. See R.C. 3314.08(E), 3317.022(C)(3), 3317.16(G), and 3326.34.

Category	EBM weight	EBM disabilities	BB weight	BB disabilities
		injured; both visually and hearing impaired		

Both models also prescribe that each of the weights (indicated above) be multiplied by 90% (that is, reduced by 10%).

Gifted education maintenance of effort

(Repealed R.C. 3306.09; R.C. 3302.05, 3302.07, 3317.018, and 3317.024; Sections 267.30.40 and 267.30.50)

As part of its repeal of the EBM, the act repeals changes enacted earlier in 2011, by H.B. 30 of the 129th General Assembly, that modified school districts' gifted education "maintenance of effort" under the EBM and provided for the reinstatement in fiscal year 2012 of state gifted unit funding. The maintenance of effort changes enacted by H.B. 30: (1) specified that school districts must sustain their fiscal year 2009 level of expenditures on staff providing gifted education services, (2) required districts to account for their maintenance of effort spending to the Department of Education, and (3) directed the Department to monitor and enforce districts' compliance with the maintenance of effort requirements.

However, in the appropriations language for the fiscal biennium, this act (H.B. 153) directs the Department to note on each school district's annual funding statement how much of the district's state funding is allocated for gifted education services. That allocation is to equal the amount the district received, either directly or through funds allocated to educational service centers, in fiscal year 2009 through state gifted education unit funding and supplemental gifted identification funds. The Department must require each district to report data annually so that "the Department may monitor and enforce the district's compliance with the manner in which allocations for . . . gifted education funding may be spent."

Transportation formula

(R.C. 3317.0212; conforming change in R.C. 3317.022(D))

The act retains and recodifies the formula for transportation funding enacted at the same time as the EBM, but suspends its use for fiscal years 2012 and 2013. Instead, a

district's transportation payment is part of the aggregate payment made under the act's temporary funding formula.[51]

That formula bases a district's payments on its transportation costs reported for the prior fiscal year and current year ridership counts. Funding consists of a base payment (adjusted by the district's state share percentage), and additional amounts for districts that transport nontraditional riders (students attending private schools, community schools, or STEM schools), high school students, and students who live between one and two miles from school, and for districts that meet an efficiency target established by the Department of Education. In fiscal years 2010 and 2011, under the EBM, districts were paid only a pro rata portion of the full calculated amount, based on the appropriation. For those years, certain low-wealth, low-rider density districts also could receive an additional payment on top of the pro rata payment. The pro rata payment provision and the additional subsidy are not retained in the formula as it is recodified by the act.

Community school and STEM school payments

(R.C. 3314.08, 3314.13, 3314.088, 3326.33, and 3326.39)

The act continues the practice of counting students who enroll in community schools and STEM schools in the average daily memberships of their resident school districts, crediting those districts with state funds for those students, and deducting from those districts and paying to the respective community school or STEM school a per pupil amount attributable to each individual student. For this purpose, as noted above, for both fiscal years 2012 and 2013, the act sets the per-pupil formula amount for base-cost payments at $5,653, except for deductions and payments for special education and vocational education. Community schools and STEM schools also continue to receive the $50.90 per-pupil base funding supplement as computed for fiscal year 2009 under the Building Blocks Model.

For special education and vocational education payments, the act specifies that deductions and payments be computed by multiplying the respective fiscal year 2009 weight times $5,732.

Additional payments attributable to parity aid and poverty-based assistance, as they would have been determined under the former Building Blocks Model, continue to be paid for students attending community and STEM schools at the fiscal year 2009 per

[51] When the EBM was enacted in H.B. 1 of the 128th General Assembly, the statutory language of the former transportation formula was not eliminated. The act strikes through that language (R.C. 3317.022(D)), which has not been used since fiscal year 2006.

pupil levels for the students' resident school districts. This includes a poverty-based assistance payment for all-day kindergarten students in community schools if their resident districts would have been eligible for that payment in fiscal year 2009.

Abolishment of the School Funding Advisory Council

(Repealed R.C. 3306.29, 3306.291, and 3306.292)

The act repeals the sections of law creating the School Funding Advisory Council and its subcommittees, thereby abolishing them. H.B. 1 of the 128th General Assembly created the 28-member School Funding Advisory Council to recommend biennial updates of the EBM's components. The Council's first report was submitted, as required by law, by December 1, 2010. Thereafter, the Council was required to submit reports by July 1 of each even-numbered year.

Miscellaneous funding provisions

The act makes changes to several other funding provisions, as described below:

(1) Reduces from three to one the number of school funding reports the Department of Education annually must submit to the Controlling Board. The report required under the act is due sometime in each June and must indicate the Department's year-end distributions to each school district. (However, the act retains the prohibition on the distribution of state operating funds to school districts without Controlling Board approval.) (R.C. 3317.01.)

(2) Eliminates a requirement that the Department submit an annual report to the Office of Budget and Management on the amount of local, state, and federal pass-through special education funds allocated for each school district (R.C. 3317.013).

(3) Eliminates a requirement that the Department submit an annual report to the Governor and the General Assembly on the amount of weighted vocational education funding spent by each school district (R.C. 3317.014).

(4) Limits operating payments to an island district to the lesser of its actual cost or 93% of its fiscal year 2011 state payment amount. Specifies that if an island district did not receive any funding in fiscal year 2011, it may not receive funding in either of fiscal years 2012 or 2013. (R.C. 3317.024(A).)

(5) Eliminates a requirement that the Department publish on its web site a spread sheet showing each district's funding for specified "constituent components of the district's 'building blocks' funds" under the former Building Blocks Model (repealed R.C. 3317.016).

(6) Eliminates authority for the state Superintendent to order certain spending requirements under the Building Blocks Model for academic watch or emergency districts (repealed R.C. 3317.017).

(7) Eliminates a provision guaranteeing districts created out of the transfer of territory from one or more other districts, for three successive years, an amount equal to the aggregate paid to the districts prior to the transfer (repealed R.C. 3317.04).

(8) Eliminates the authority of the Department to pay special subsidies for the following:

(a) Operation of special classes for children of migrant workers who are unable to be in attendance in an Ohio school during the entire regular school year (R.C. 3317.024(B));

(b) Guidance, testing, and counseling programs (R.C. 3317.024(C));

(c) Purchase of school buses (R.C. 3317.024(D) and 3317.07);

(d) Purchase of school lunch equipment (R.C. 3317.024(H) and 3317.19); and

(e) Establishment of district mentor teacher programs (R.C. 3317.024(K)).

(9) Eliminates a requirement that the state Superintendent withhold operating funds from a school district that has misspent funds specifically appropriated for textbook purchases (repealed R.C. 3329.16). No such subsidy has been authorized since fiscal year 1999.

(10) Eliminates a prohibition on a school district using state operating funds to pay its share of the operation of a municipal university under agreement with the university (repealed R.C. 3349.242). Currently, there are no municipal universities.

(11) Repeals the statute of the former Building Blocks Model that authorized the payment of "gap aid." Gap aid was a supplement to districts whose effective tax rate was less that the presumed 23-mill charge-off, or less than its share of combined special education, vocational education, and transportation funding. (Repealed R.C. 3317.0216.)

Classroom expenditure data

(R.C. 3302.20)

Expenditure standards

The act requires the Department of Education to develop standards for determining, from the existing data reported under the Education Management Information System (EMIS),[52] the amount of annual operating expenditures for classroom instructional purposes and for nonclassroom purposes for each city, exempted village, local, and joint vocational school district, each community school, and each STEM school. The Department must present the standards to the State Board of Education by January 1, 2012. In developing the standards, the Department must adapt existing standards used by "professional organizations, research organizations, and other state governments."

The State Board must consider the recommended standards and adopt a final set of standards by July 1, 2012.

Ranking of districts and schools based on classroom expenditure

The Department must use the expenditure standards adopted by the State Board and its existing data to rank order districts and schools by classroom and nonclassroom expenditures. However, prior to ranking each district and school, it first must group them into respective categories based primarily on the size of their student populations. There must be not less than three nor more than five groups each of (1) city, exempted village, and local school districts, (2) joint vocational school districts, and (3) brick and mortar community schools. There must be one group each for all Internet- or computer-based community schools (e-schools) and all STEM schools.

Then using the standards, existing data, and these categories of districts and schools, the Department must compute, for fiscal years 2008 through 2012 and annually for each fiscal year thereafter, all of the following:

(1) The percentage of each district's, community school's, e-school's, or STEM school's total operating budget spent for classroom instructional purposes;

(2) The statewide average percentage for all districts, community schools, e-schools, and STEM schools combined spent for classroom instructional purposes;

[52] EMIS is an electronic database of district and school operational, financial, and student data maintained by the Department of Education.

(3) The average percentage for each category of district or school spent for classroom instructional purposes; and

(4) The ranking of each district, community school, e-school, or STEM school within its respective category according to both of the following:

(a) From highest to lowest percentage spent for classroom instructional purposes;

(b) From lowest to highest percentage spent for noninstructional purposes.

Moreover, the act requires the Department, in its display of rankings within each category (4)(a) and (b) above, to note whether a city, exempted village, or local school district, community school, e-school, or STEM school is (1) among the lowest 20% statewide in operating expenditures per pupil or (2) among the highest 20% statewide in performance index score, as determined for district and school report cards. Similarly, in its display of rankings within each category of joint vocational school districts, the Department must note whether a district is (1) among the lowest 20% statewide in operating expenditures per pupil or (2) among the highest 20% statewide in the career-technical education performance measures required under federal law. See also "**Data on student performance tied to expenditures**" below.

The Department must post the pertinent percentages and rankings in a prominent location on its web site and on each district's or school's annual report card.

Data on student performance tied to expenditures

(R.C. 3302.21)

The act requires the Department of Education to develop a system to rank order, for a separate annual report, all city, exempted village, local, and joint vocational school districts, community schools, and STEM schools according to each of the following measures:

(1) **Performance index score** for each school district, community school, and STEM school and for each separate building of a district, community school, or STEM school. The performance index score is a weighted measure of up to 120 points designed to show improvement over time on the state achievement assessments by students scoring at all levels. It applies to all city, exempted village, and local school districts. But it does not apply to some individual schools, because the school does not offer any grades for which an achievement assessment is given (a K-to-2 school, for example), or to joint vocational school districts. For that reason, the act also requires the state Superintendent to develop another measure of student academic performance and

use that measure to include such schools and districts in the ranking so that all districts, schools, and buildings may be reliably compared to each other.

(2) **Student performance growth from year to year**. In measuring student academic growth, the Department must use the "value-added progress dimension," where it is available, and other measures of student performance growth designated by the state Superintendent for subjects and grades not covered by the value-added progress dimension. The value-added progress dimension is available in subjects and grade levels for which there are state assessments for consecutive years. Thus, the value-added progress dimension is available for grades 4 through 8 in reading and math.[53]

(3) **Performance measures required for career-technical education under federal law**. As part of its state plan for career-technical education, the Department must report to the U.S. Secretary of Education how it will measure career-technical student performance.[54] The act also provides that if a school district is a vocational education planning district ("VEPD") or a "lead district," as designated by the Department, the district's ranking must be based on the performance of career-technical students from that district and all other districts served by that district.[55]

(4) **Current operating expenditures per pupil**;

(5) **Percentage of total current operating expenditures spent for classroom instruction**; and

(6) **Performance of, and opportunities provided to, identified gifted students**, using value-added progress dimensions, if applicable, and other relevant measures designated by the state Superintendent.

The Department, by September 1 of each year, must issue a report for each school district, community school, and STEM school, and each separate building showing its rank on each measure. In addition, the report for each separate building must indicate its rank according to performance index score among *all* public school buildings.

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[53] The value-added progress dimension is a statistical measure of academic gain for a student or group of students over a specific period of time. It is also one of the four performance measures used in ranking districts and schools for the annual report cards. See R.C. 3302.01 and 3302.021, neither in the act.

[54] 20 United States Code 2323.

[55] The Department has designated VEPDs and lead districts among city, exempted village, local, and joint vocational school districts in the state career-technical plan to assure that all students that desire career-technical education have that opportunity in accordance with federal law.

Under the act, the performance index score ranking among all public school buildings is used in other provisions affecting districts, schools, and their employees. (See "**Location of start-up community schools**," "**Educational Choice scholarship – New eligibility**," "**Retesting teachers**," and "**VII. School Restructuring**" below.)

Additional reports of district spending

(R.C. 3302.25)

The act requires additional annual reporting to each school district a comparison of its instructional expenditures to its administrative expenditures. The Department must report to each school district all of the following for the previous fiscal year:

(1) The ratio of its instructional expenditures to its administrative expenditures and the per pupil amounts of each;

(2) The percentage of the district's operating expenditures attributable to school district funds; and

(3) The statewide average among all districts for all of the above.

Each school district, upon receipt of the report, must publish the information in a prominent location on the district's web site and in another fashion "so that it is available to all parents of students enrolled in the district and to taxpayers of the district."

School District Solvency Assistance Fund

(R.C. 3316.20)

To assist a school district in fiscal emergency, the state offers interest-free advances on its state operating funding through the School District Solvency Assistance Fund. A district in fiscal emergency may receive payments from the fund to help it "remain solvent." Prior law required every fiscal emergency district to pay back its advances within two years.

The act retains the two-year standard period for a district to repay its advances from the fund, but it also allows a district up to ten years for repayment, if the Director of Budget and Management and the state Superintendent approve the extra time.

School district certificate of adequate resources

(R.C. 5705.412)

The act authorizes a school district to enter into certain multi-year contracts without attaching the certificate of adequate resources otherwise required by law, if an alternative certificate authorized by the act is attached. Under continuing law, school districts are generally required to attach a certificate to every contract the cost of which exceeds the lesser of $500,000 or 1% of the district's total general fund revenue for the current fiscal year. The certificate must indicate that the district has or will have adequate revenue in approved tax levies, state funding, and other resources to cover the cost of the contract for the entire term of the contract. Except as permitted by the act, a contract that lacks the required certificate of available resources is void, and the law provides for a civil action to recover the funds illegally spent and to levy a fine against any district officer who in absence of good faith violated the requirement.

The act authorizes a school district to enter into a contract without attaching the certificate otherwise required by law, if an alternative certificate is attached certifying the following:

(1) The contract is a multi-year contract for materials, equipment, or non-payroll services "essential to the education program of the district"; and

(2) The multi-year contract demonstrates savings over the duration of the contract as compared to costs that otherwise would have been demonstrated in a single year contract and the terms will allow the district to reduce the deficit it is currently facing in future years as demonstrated in its five-year forecast.

Like the certificate otherwise required under continuing law, the alternative certificate must be signed by the treasurer and president of the board of education and the school district's superintendent; or, if the district is in a state of fiscal emergency, the alternative certificate instead must be signed by a member of the district's Financial Planning and Supervision Commission designated by the Commission.

Left-over textbook set-aside money

(Section 267.60.10)

H.B. 30 of the 129th General Assembly, effective July 1, 2011, repealed the requirement that each school district annually set aside a specific amount into a separate fund for textbooks and instructional materials.[56] Money in that fund that was

[56] Former R.C. 3315.17 and 3315.171.

not spent each year carried over to the next year. Thus, districts could have money left over in those funds when the repeal of the set-aside requirement became effective. The act permits a school district board to transfer any unencumbered money remaining in the district's textbook and instructional materials fund on that date, to the district's general fund to be used for any general fund purpose.

Auxiliary Services funds

(R.C. 3317.06)

The act adds the purchase or maintenance of life-saving medical or other emergency equipment for chartered nonpublic schools as an authorized use of Auxiliary Services funds. It also makes several updates to the kinds of education technology hardware and software and digital content that may be purchased with the funds, as follows:

First, it redefines electronic textbook as "any book or book substitute that a student accesses through the use of a computer or other electronic medium or that is available through an Internet-based provider of course content, or any other material that contributes to the learning process through electronic means." Previously, the Auxiliary Services funds statute defined electronic textbook as "computer software, interactive videodisc, magnetic media, CD-ROM, computer courseware, local and remote computer assisted instruction, on-line service, electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means."

Second, it adds to the list of authorized items computer application software designed to assist students in performing single or multiple related tasks, device management software, and learning management software.

Third, it specifies that computer hardware and related equipment includes desktop computers and workstations; laptops, tablets, and other mobile devices; and related operating systems and accessories.

Finally, it removes references to several outdated forms of technology, such as compact disks and video cassette cartridges.

Background

School districts receive state Auxiliary Services funds to purchase goods and services for students who attend chartered nonpublic schools located within their territories. Those moneys may be used to purchase, for loan to students of chartered nonpublic schools, such things as textbooks, electronic textbooks, workbooks,

instructional equipment including computers, and library materials, or to provide health or special education services.

Schoolhouse tax exemption

(R.C. 5709.07(A)(1); Section 757.80)

The act specifically exempts from taxation real property used by a school district, STEM school, community school, educational service center, or a nonpublic school for primary or secondary educational purposes. The exemption includes all land as is necessary for the proper occupancy, use, and enjoyment of the real property by the school for primary and secondary school purposes. The exemption does not apply to any portion of the real property not used for primary or secondary educational purposes.

For purposes of the exemption, the act defines a "nonpublic school" as a nonpublic school that has received a charter from the State Board of Education *and* one for which the State Board prescribes minimum education standards. The plain meaning of this language seems to limit the exemption to schools that meet both criteria; that is; it seems to be limited to *chartered* nonpublic schools. On the other hand, that may not be what is intended. It may be that the exemption is intended to apply to both chartered and nonchartered nonpublic schools.[57]

Prior law exempted "public schoolhouses," which, under Ohio Supreme Court rulings, means any publicly or privately owned facility used for educational purposes for the benefit of the public. *Anderson/Maltbie Partnership v. Levin*, 127 Ohio St.3d 178, 2010-Ohio-4904, 937 N.E.2d 547, at paragraph 22. To qualify for the exemption, prior law required that the property not be "leased or otherwise used with a view to profit." Under that language, a facility used for public educational purposes leased pursuant to a for-profit lease did not qualify for the exemption. *Id.*, at paragraph 23. The act removes this limiting language, effective for tax year 2011 and thereafter.

[57] A chartered nonpublic school agrees to comply with specified operating standards in return for (1) goods and services for its students purchased with state Auxiliary Services funds and (2) state reimbursement of some of its clerical expenses (see Ohio Administrative Code (O.A.C.) 3301-35-12). A nonchartered nonpublic school does not seek a charter but still must comply with the minimum education standards, which are not as prescriptive as the operating standards applied to chartered nonpublic schools (O.A.C. 3301-35-08).

Abolishment of the Harmon Commission

(Repealed R.C. 3306.50 to 3306.58)

The act abolishes the Harmon Commission, which was established by H.B. 1 of the 128th General Assembly to approve applications for designation of classrooms as "creative learning environments" and to award grants to school districts and community schools that operate such classrooms, if sufficient funds are available for those grants. The Commission was never funded.

II. Community Schools

Moratoriums on opening new community schools

"Brick and mortar" schools

(Repealed R.C. 3314.014, 3314.016, and 3314.017; conforming changes in R.C. 3314.02, 3314.021, 3314.03, and 3314.05)

The act repeals the requirement that a new start-up "brick and mortar" community school may be established only if the school contracts with an operator whose other schools meet certain performance standards. Repealing the operator requirement allows a new "brick and mortar" community school to open without hiring an operator at all or, if the school chooses to have an operator, to hire an operator that does not meet the performance standards specified by prior law. (But see "**Restriction on sponsoring additional community schools**" below.)

Under prior law, to qualify for the exception to the moratorium, the community school had to contract with an operator that manages other schools in the United States that perform at a level higher than academic watch, as determined by the Department of Education. If the operator already manages other schools in Ohio, at least one of the Ohio schools had to be rated higher than academic watch.

E-schools

(R.C. 3314.013; conforming change in R.C. 3314.03)

Effective January 1, 2013, the act ends the outright moratorium on establishing new Internet- or computer-based community schools (e-schools), but it also limits, to five per year, the number of new e-schools that may open once the moratorium is lifted. Under prior law, the moratorium, which has been in place since May 1, 2005, was in effect until the General Assembly enacted standards governing the operation of e-schools.

Under the act, when the moratorium ends, if more than five new e-schools notify the Department of Education that they have signed a contract with a sponsor to open in a particular school year, the Department must conduct a lottery to select the five schools that will be allowed to open that year. This lottery must be held within 30 days after a deadline set by the Department for new e-schools to provide notification of the signing of their sponsorship contract. Under continuing law, each new community school has until May 15 prior to the school year in which it intends to open to sign the sponsorship contract, so presumably the notification deadline will be set shortly after that date.[58] The sponsorship contract of each e-school that is not chosen in the lottery is void, but the school may enter into another sponsorship contract to qualify it for selection to open in a future school year.

Standards for e-schools

(R.C. 3314.013(D) and 3314.23)

Under the act, all e-schools must comply with the operational standards developed by the International Association for K-12 Online Learning.[59] However, if the General Assembly enacts alternative standards for the operation of e-schools by January 1, 2013, e-schools must comply with those standards instead. For this purpose, the act directs the Superintendent of Public Instruction and the Director of the Governor's Office of 21st Century Education, by July 1, 2012, to develop operational standards for e-schools and to submit them to the General Assembly for possible enactment.

Regardless of which standards apply, existing e-schools must comply with them by July 1, 2013. E-schools established after the moratorium on new e-schools ends (see "**E-schools**" above) must comply with the standards when they open.

Direct authorization of community schools

(R.C. 3314.029)

Under continuing law, a community school ordinarily is sponsored by a public or private, tax exempt entity that exercises oversight of the school's operations. The act permits the Department of Education to directly authorize the establishment and operation of a limited number of community schools, rather than those schools being

[58] R.C. 3314.02(D).

[59] The standards may be accessed at www.inacol.org/research/nationalstandards/index.php, visited July 6, 2011.

under the oversight of other public or private sponsors.[60] The act names this initiative the "Ohio School Sponsorship Program," and it requires the Department to establish the Office of School Sponsorship to perform the Department's duties under the program. Presumably, that new office will function like a sponsor of the schools authorized under the program.[61] Under the program, each school still must comply with all applicable provisions of the Community School Law. The Department also is authorized to take any action that any other sponsoring entity may take to enforce the school's compliance with the law and its contract, including termination, suspension, or nonrenewal of the contract.

Any individual, group, or entity may apply directly to the Department for authorization to establish a new community school. In addition, the governing authority of an existing community school may apply to the Department, upon the expiration or termination of the current contract with its sponsor, for direct authorization to continue operating the school. For the first five years of the program, the act limits the number of direct authorization applications that the Department may approve each year to no more than 20 total applications. Of those 20, only up to five each year may be for new schools.

If the Department approves an application, the Department and school's governing authority must enter into a contract like the one required between a school and any of the other sponsoring entities. In the case of an existing school, the direct contract with the Department may take effect any time during the year. It appears that the direct contract of a new school must begin as otherwise provided by the Community School Law (that is, contract signing by May 15 and opening of the school by September 30). Like other sponsor contracts, however, all direct contracts, for both new and existing schools, are limited to an initial term of just five years. Thereafter, they may be renewed for any term agreeable to the school's governing authority and the Department. Also like other sponsorship contracts, a direct authorization contract may provide for the school's governing authority to pay a fee to the Department for oversight and monitoring of the school that does not exceed 3% of the school's state operating funds.

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[60] Prior to 2003, the State Board of Education was a statutory sponsor of start-up community schools and, in fact, sponsored most of the start-up schools then in operation. Amendments effective in 2003 removed the State Board's authority to sponsor community schools. H.B. 364 of the 124th General Assembly.

[61] The act specifies that the program is subject to R.C. 3314.20. That section, as it was proposed for re-enactment in the Senate-passed version of H.B. 153, prescribed academic performance prerequisites for new Internet- or computer-based community schools (e-schools). But the enacted version of H.B. 153 does not contain that section or its items of law. Thus, the act's reference to that section in authorizing the Ohio School Sponsorship Program appears to be an error.

Application procedures

Subject to the limit on the number of schools that may be directly authorized each year, the Department must approve each application unless it determines, within 30 days after receipt of the application, that the application does not contain the information required under the act. If the Department denies an application, it must provide the applicant with a written explanation of the reasons for the denial and give the applicant 30 days to correct the problems with the application. If the applicant fails to correct the problems, the Department again must deny the application and provide a written explanation of its reasons. An applicant may appeal the denial of its application to the appropriate common pleas court under the Administrative Procedure Act.

Application content

Each new or existing school's application for direct authorization must include all of the following:

(1) A statement attesting that no unresolved finding of recovery has been issued by the Auditor of State against any party to the application, and that no person who is party to the application has been a member of the governing authority of any community school that has closed and against which an unresolved finding of recovery has been issued;

(2) A description of the school's mission, educational program, governing authority, admission and dismissal policies, business plan, academic goals, facilities and their locations, learning opportunities that will be offered to students, and, in the case of a new school, the applicant's resources and capacity to run the school;

(3) Specific statements that the school will be nonsectarian as required by law, comply with provisions of the Community School Law regarding teacher licensure and qualifications and curriculum and graduation requirements, and comply with other enumerated provisions of the Revised Code;

(4) A statement of whether the school is a conversion or start-up school; and

(5) Evidence that the school will be able to comply with the bond or guarantee provision, if required by the Department (see below).

Bond or guarantee may be required

Under the act, the Department may require that a directly authorized community school either post and file with the state Superintendent a bond or file with the state Superintendent a guarantee. The stated purpose of the bond or guarantee, if required,

is to pay the state any moneys owed by the community school in the event the school closes.

Program report

The Department, by December 31, 2012, and annually thereafter, must issue a report to the Governor and the General Assembly on the program. Each report must include information about the number of community schools participating in the program and their compliance with the Community School Law. The fifth report must include a complete evaluation of the program and recommendations regarding its continuation.

Collective bargaining at Cleveland conversion schools

(R.C. 3314.102)

The act gives the mayor who appoints a municipal school district board the authority to exempt employees of conversion community schools sponsored by the district from future collective bargaining. Under the act, the mayor may submit to the district board and the State Employment Relations Board a statement requesting that the employees be removed from their collective bargaining units. If the mayor submits such a request, the employees remain subject to their current collective bargaining agreements until the agreements expire on their own terms. But once the agreements expire, the employees are no longer covered by the state collective bargaining law.

A municipal school district is one that is or has ever been under a federal court order requiring supervision and operational, fiscal, and personnel management of the district by the state Superintendent of Public Instruction. The mayor of the municipal corporation containing the greatest portion of a municipal school district's territory appoints the members to the district's board of education, rather than those members being elected.[62] Currently, Cleveland is the state's only municipal school district.

Conversion community schools opening in 2011-2012

(Section 267.60.20)

The act exempts new conversion community schools that open in the 2011-2012 school year from statutory deadlines for the adoption and signing of the school's contract with its sponsor, but requires the contract to be signed and filed with the Superintendent of Public Instruction prior to the school's opening. Under continuing

[62] R.C. 3311.71 and 3311.72, neither in the act.

law, the sponsor and the school's governing authority must adopt the contract by March 15, and sign it by May 15, prior to the school year in which the school will open.

Location of start-up community schools

(R.C. 3314.02(A)(3) and (C)(3))

The act expands the definition of "challenged school district," where start-up community schools may be located, to include school districts ranked in the lowest 5% of districts based on their performance index scores. For this purpose, the act relies on the annual permanent performance ranking of districts, schools, and buildings (see "**Data on student performance tied to expenditures**" above).

The act's change could enable the establishment of start-up schools in some districts where they were prohibited from locating under prior law. Under that prior law, a challenged school district was limited to the following: (1) a "Big-Eight" school district (Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown), (2) a school district in academic watch or academic emergency, or (3) a school district in the original community school pilot project area (Lucas County). The act retains these classes of districts as "challenged school districts" and adds the new class.

Under the act, once a start-up community school is established in a school district with a low performance index score ranking, the school may continue to operate there even if the district later raises its ranking and is no longer considered "challenged."

Restrictions on sponsoring additional community schools

(New R.C. 3314.016)

The act prohibits a community school sponsor from sponsoring any additional schools, if it (1) is not in compliance with statutory requirements to report data or other information to the Department of Education or (2) is ranked in the lowest 20% of all sponsors on an annual ranking of sponsors by their composite performance index scores. The composite performance index score, which must be developed by the Department, is a measure of the academic performance of students enrolled in community schools sponsored by the same entity. Presumably, if a sponsor is subject to the prohibition due only to its ranking, it may sponsor additional schools if it later raises its ranking above the lowest 20%.

The act's prohibition applies to all sponsors, including those that are exempt from the requirement to be approved for sponsorship by the Department of Education. Under continuing law, sponsors that are not subject to approval are (1) "grandfathered"

entities that were already sponsoring community schools as of April 8, 2003, when the approval requirement became law,[63] and (2) the successor of the University of Toledo board of trustees (or its designee) as a sponsor of community schools.[64]

If a community school enters into a sponsorship contract with a sponsor and, before the school opens, the sponsor becomes subject to the act's prohibition on sponsoring additional schools, the contract is void. The school may still open, but only after contracting with another sponsor.

Compiling the sponsor ranking

When compiling the sponsor ranking, the Department of Education must exclude a sponsor's schools that are exempt from closure for poor academic performance. Under continuing law, a community school is covered by the exemption if a majority of its students either (1) are enrolled in a dropout prevention and recovery program that has a waiver from the Department or (2) are disabled students receiving special education.[65] However, the exclusion of these two types of schools from the ranking ends January 1, 2013, unless the General Assembly enacts separate performance standards for each type of school by that date. In other words, if the General Assembly does not enact performance standards for these schools by January 1, 2013, they will be included in the sponsor ranking in the same manner as a sponsor's other community schools. (Under a separate provision of the act, the State Board of Education must make legislative recommendations for performance standards for community schools serving dropouts – see "**Recommendations on community schools serving dropouts**" below).

Caps on community school sponsors

(R.C. 3314.015)

The act permits a community school sponsor to sponsor up to 100 schools, unless it is subject to the act's prohibition on sponsoring additional schools (see "**Restrictions on sponsoring additional community schools**" above). This maximum is an increase from prior law, which limited sponsors to 50 to 75 schools, depending on how many schools the sponsor had that were open as of May 1, 2005. The act also repeals the requirement that a sponsor's cap must be decreased by one for each school sponsored

[63] See R.C. 3314.027, not in the act.

[64] See R.C. 3314.021.

[65] See R.C. 3314.35.

by the entity that permanently closes. The previous caps on sponsors are shown in the table below.

Previous Caps on Community School Sponsors	
Number of schools sponsored by entity as of May 1, 2005	**Maximum number of schools entity may sponsor**
50 or fewer schools	50 schools
51 – 75 schools	Number of schools sponsored by the entity that were open as of May 1, 2005
More than 75 schools	75 schools

Termination or nonrenewal of school's contract with its sponsor

(R.C. 3314.07(B))

Under continuing law, if the sponsor of a community school intends to terminate the school's contract prior to its expiration or to not renew the contract upon expiration, the sponsor must provide the school with notice of its intent and offer the school an opportunity for a hearing on the matter. The school may appeal the sponsor's decision to terminate the contract to the State Board of Education, whose decision is final.

The act retains these procedures, but it revises the deadlines for various actions, as follows:

(1) It requires the sponsor to provide notice of the intent to terminate or not renew the contract by February 1 of the year in which it intends to take the proposed action, rather than 90 days prior to the termination or nonrenewal as formerly required.

(2) It shortens from 70 days to 14 days the period for the sponsor to hold a hearing at the school's request.

(3) It requires the sponsor to issue its decision whether or not to affirm the termination or nonrenewal within 14 days after the hearing, instead of "promptly following" the hearing as in prior law.

(4) If the school appeals the sponsor's decision to terminate the contract, the act requires the appeal to be filed with the State Board within 14 days of that decision. The State Board must conduct a hearing and issue a written decision, including reasons for upholding or annulling the termination, within 60 days after the filing of the appeal.

Prior law did not prescribe a deadline for filing the appeal or for the State Board to hold its hearing.

(5) The act specifies that the contract termination is effective on the date the sponsor originally notifies the school of its intent to terminate or, upon appeal, the date designated by the State Board. Under former law, the termination took effect 90 days after the sponsor's notification or the date set by the State Board, whichever was later.

(6) If the contract is terminated, the act requires the school to close at the end of the current school year or on another date specified in the sponsor's notification of its intent to terminate.

Background

Under continuing law, a sponsor may terminate or not renew its contract with a community school for (1) failure to meet student performance requirements specified in the contract, (2) fiscal mismanagement, (3) a violation of the contract or state or federal law, or (4) other good cause. If the contract is terminated, the school may not contract with another sponsor and must permanently close.

Sponsor liability

(R.C. 3314.07(E))

The act grants civil immunity to a community school sponsor and its officers, directors, and employees for any action taken to fulfill the sponsor's responsibility to oversee and monitor a community school, if the action is authorized by the Community School Law or the school's sponsorship contract.

Location of sponsor representative

(R.C. 3314.023)

The act repeals a provision requiring the sponsor of a community school to have a representative located near the school to provide monitoring and technical assistance. Under former law, the representative had to be located within 50 miles of the school or, in the case of an Internet- or computer-based community school (e-school), within 50 miles of the school's central base of operation.

Sponsor meetings with school

(R.C. 3314.023)

The act makes several changes to the requirement that a representative of a community school's sponsor meet with the school's governing authority and review the school's financial records. First, the act mandates more frequent reviews by requiring the meetings to occur monthly, rather than at least once every two months. Second, it provides the sponsor's representative the option of meeting either with the school's governing authority or its fiscal officer. Third, it requires the representative to review the school's enrollment records, in addition to financial records.

Governing authority membership

(R.C. 3314.02(E)(3))

The act prohibits a community school governing authority member, or immediate relative, from being an owner, employee, or consultant of a community school sponsor until one year after the end of the member's term. This change expands continuing law, which similarly imposes a one-year waiting period for governing authority members and their immediate relatives with respect to community school operators.

Compensation of governing authority members

(R.C. 3314.02(E)(4); repealed R.C. 3314.025)

The act repeals former law that (1) limited the amount of compensation for governing authority members of start-up community schools to $125 per meeting per month, (2) required the compensation to be paid from state funds paid to the operator, if the school had an operator, and (3) provided for allocation of the compensation among community schools if a member served on the governing authority of more than one community school and the different governing authorities met at the same location on the same day. Instead, the act authorizes start-up school governing authorities to provide by resolution for compensation of their members, provided that an individual is compensated no more than $425 per meeting or a total of $5,000 per year for all of the governing authorities on which the individual serves.

Closure of poorly performing community schools

(R.C. 3314.35)

Beginning July 1, 2011, the act replaces the academic performance criteria that trigger permanent closure of community schools with new, more stringent criteria for

those schools that serve the early elementary grades and for high schools. It does not change the criteria for schools that offer any of grades 4 to 8. Community schools that meet the existing criteria before July 1, 2011, still must close at the end of the 2010-2011 school year, in accordance with continuing law. The first schools subject to the new performance criteria will close following the 2011-2012 school year. The table below compares the prior closure criteria with the act's new criteria.

Community School Closure Criteria		
Type of school	**Prior law**	**The act**
A school that does not offer a grade higher than 3	Has been in academic emergency for three of the four most recent school years	Has been in academic emergency for *two of the three most recent school years*
A school that offers any of grades 4 to 8 but no grade higher than 9	(1) Has been in academic emergency for two of the three most recent school years and (2) showed less than one standard year of academic growth in reading or math for at least two of the three most recent school years	Same
A school that offers any of grades 10 to 12	Has been in academic emergency for three of the four most recent school years	Has been in academic emergency for *two of the three most recent school years*

The act retains the law exempting a community school from the closure requirement if a majority of the school's students (1) are enrolled in a dropout prevention and recovery program that has a waiver from the Department of Education[66] or (2) are disabled students receiving special education. The act also retains the stipulation that the performance ratings assigned to a community school for its first two years of operation do not count toward whether the school meets the closure criteria.[67]

Layoffs involving teachers returning from conversion community schools

(R.C. 3314.10(B) and 3319.17(B)(1))

The act permits reductions in force with respect to teachers returning after a leave of absence due to being employed at a conversion community school to occur only in accordance with procedures in the administrative personnel suspension policy

[66] See R.C. 3314.36.

[67] R.C. 3314.012.

adopted by the employing board of education. Previously, those reductions in force could occur either in accordance with that policy or in accordance with the statutory teacher restoration policy.

Use of state funding to pay taxes

(Repealed R.C. 3314.082)

The act repeals the law stating the General Assembly's intent that no state funds paid to a community school be used by the school to pay any taxes the school might owe on its own behalf, including local, state, and federal income taxes, sales taxes, and property taxes. (This intent language did not apply to money withheld from a community school employee that was payable by the school to a government entity as taxes on behalf of the employee.)

Counting e-school students for funding purposes

(R.C. 3314.08(L)(2))

Under the act, beginning in the 2011-2012 school year, a student who finishes the prior school year in an Internet- or computer-based community school (e-school) is considered automatically re-enrolled in the same school for the following school year until the student's enrollment is formally terminated. The Department of Education must continue to pay the school so that there is no interruption in state funding for the student from one school year to the next. But if the student fails to participate in the first 105 consecutive hours of learning opportunities offered by the school in that next school year and has no legitimate excuse, the student is presumed not to have re-enrolled in the school for that year and the Department must recalculate the school's payments to reflect the student's failure to enroll.

Otherwise, under continuing law, the student's enrollment is considered terminated, and state funding for the student will end, on the date (1) the community school receives documentation from the student's parent terminating the student's enrollment, (2) the school receives documentation of the student's enrollment in another public or private school, or (3) the school ceases to offer learning opportunities to the student in accordance with the school's contract with its sponsor or the Community School Law.

E-school expenditures for instruction

(Repealed R.C. 3314.085; conforming changes in R.C. 3314.08 and 3314.088)

The act repeals the statute that (1) established a minimum amount that Internet- or computer-based community schools (e-schools) must spend on instruction and (2) prescribed fines for failure to comply.

The repealed law required each e-school to spend for instructional purposes at least the per pupil amount designated for base classroom teachers under the former Building Blocks Model. That amount for fiscal year 2009 was $2,931. That was the last year for which an amount for that factor was specified. Qualifying e-school expenditures included (1) teachers, (2) curriculum, (3) academic materials, (4) computers, (5) software (including filtering software), and (6) other purposes designated by the state Superintendent. E-schools annually had to report their expenditures for instruction to the Department of Education. If the Department determined that an e-school had failed to comply with the expenditure or reporting requirements, the e-school had to pay a fine equal to 5% of the total state payments to the school in the fiscal year of noncompliance or the amount the school underspent on instruction, whichever was greater.

Community school facilities

Exception allowing school to have multiple facilities

(R.C. 3314.05(A) and (B)(1) and (4))

The act allows a community school, under certain conditions, to be located in multiple facilities under the same sponsorship contract and to assign students in the same grade to different facilities, both of which are generally prohibited. A community school qualifies for the act's exception to the prohibitions, if (1) all of the school's facilities are located in the same county and (2) the school has entered into, and maintains, a contract with an operator to manage the school. Under continuing law, a community school otherwise may be located in multiple facilities only if space limitations make it impossible to serve all students in the same building.

Since the act permits a qualifying school to have multiple facilities within the same county, it also creates an exception from the general prohibition against establishing a community school in more than one school district under the same sponsorship contract. If a qualifying school maintains facilities in more than one school district under the act, at least one of those districts be a "challenged" school district.[68]

[68] R.C. 3314.02(A)(3) and (C)(1).

Also, the school's governing authority must designate one of those districts as the school's primary location and notify the Department of Education of that decision.

The school's primary location will affect which students may enroll in the school. Under continuing law, each community school must adopt a policy regarding admission of students who live outside the district where the school is located, which would be the school's primary location under the act. This policy must either (1) prohibit the enrollment of students who live outside the district, (2) permit the enrollment of students who live in adjacent districts, or (3) permit the enrollment of students who live anywhere in the state.[69] If applicants for admission exceed the number of openings, students must be admitted by lottery from among all applicants, except that preference must be given to those students who reside in the district where the school is located.[70]

Assignment of identification numbers

(R.C. 3314.05(E))

For each community school that has multiple facilities, the act requires the Department of Education to assign a unique identification number to the school and to each facility maintained by the school, beginning July 1, 2012. This number is to be used for identification purposes only. The act specifies that the Department must calculate state funding and data for the annual report cards for the school as a whole, and not for each separate facility.

Sharing facilities

(R.C. 3314.05(D))

The act expressly permits two or more community schools to be located in the same facility.

Access to school district property

Real property a district seeks to dispose of

(R.C. 3313.41(G))

The act amends the law requiring a school district to offer community schools located within the district a right of first refusal to purchase real property that the

[69] R.C. 3314.03(A)(19).

[70] R.C. 3314.06(H).

district seeks to dispose of, by eliminating the stipulation that the property must be "suitable for use as classroom space." This change has the effect of extending the law to any real property that a district seeks to dispose of.

Right to purchase or lease unused district property

(R.C. 3313.41(G) and 3313.411; conforming change to R.C. 3314.051)

The act requires school districts with real property that has been used for classroom operations since July 1, 1998, but has not been in use for two years, to offer to community schools located within the district an opportunity to buy or lease the property. If one community school notifies the district treasurer, in writing within 60 days after the district board makes the offer, of its intention to purchase the property, the district board must sell that property to the community school for the appraised fair market value of the property. However, if more than one community school notifies the district treasurer, in writing within the 60-day period, of their intention to purchase, the district board must conduct a public auction to sell the property. All community schools within the school district, regardless of whether they accepted the offer, may bid on the property at auction. The district board is not required to accept any bid for the property that is lower than the appraised fair market value of the property.

If two or more community schools located within the district notify the district treasurer, in writing, of their intention to lease the property, the district board must conduct a lottery to select the community school to which the district board must lease the property. The lease price offered by a district board cannot be higher than the fair market value of the leasehold. If no community school governing authority accepts the offer to purchase or lease the property within 60 days after the offer is made, the district board may offer the property to any other entity.

Because it would have conflicted with the new provisions of the act, the act also repeals the provision of law that required a district to offer to sell to community schools real property that is suitable for use as classroom space, if (1) the district had not used the property for academic instruction, administration, storage, or any other education purpose for one full school year, and (2) the district board had not adopted a resolution outlining a plan for using the property for any of those purposes within the next three years.

The act specifies that a district board may renew any agreement already in existence with a non-community school entity, and that nothing in the act is meant to affect leasehold arrangements already entered into between the district board and the other entity.

Community school participation in joint educational programs

(R.C. 3313.842)

The act permits a community school to enter into an agreement with one or more school districts or other community schools to operate a joint educational program, including any class in the graded course of study or a professional development program, in the same manner as districts may do with each other under continuing law. But, whereas continuing law allows a school district participating in the joint educational program to charge fees or tuition to its students who enroll in the program, the act explicitly prohibits community schools from charging their students for the program. The only exception is for an all-day kindergarten program, for which certain community schools may charge fees under separate law.[71]

Recommendations on community schools serving dropouts

(Section 267.60.23)

The act requires the State Board of Education, by July 1, 2012, to review its legislative recommendations for performance standards for community schools that operate dropout prevention and recovery programs, which were previously issued in March 2008, and to issue new recommendations regarding performance standards for those schools.

III. Public College-Preparatory Boarding Schools

The act permits the establishment of at least one college-preparatory boarding school serving at-risk middle and high school students beginning with the 2013-2014 school year. The boarding school may be operated only by a nonprofit organization approved by the State Board of Education. Once a boarding school receives a charter from the State Board, the school is considered a public school and a part of the state's program of education. In its initial year of operation, the school may offer only grade 6, but it may add higher grades, through grade 12, in subsequent years. The act limits enrollment in the boarding school to students who belong to a family with an income at or below 200% of the federal poverty guidelines and who are at risk of academic failure.

[71] R.C. 3314.03(A)(11)(d) and 3321.01(H) (the latter section not in the act).

Creation of college-preparatory boarding schools

School operator selection

(R.C. 3328.11)

A boarding school established under the act must be operated by a private nonprofit entity selected by the State Board. For this purpose, within 60 days after September 29, 2011 (the act's 90-day effective date), the State Board must issue a request for proposals from nonprofit corporations interested in operating the school. Each proposal must include (1) the proposed location of the school, which may differ from any location recommended by the State Board, (2) a plan for offering grade 6 in the school's first year of operation and a plan for increasing the grade levels over time, and (3) any other information about the proposed educational program, facilities, or operations of the school considered necessary by the State Board.

The State Board must choose the school's operator from among the qualified responders. To be considered qualified, a private nonprofit corporation must (1) have experience operating a similar school or program, (2) demonstrate to the State Board's satisfaction that the existing school or program has been successful in improving students' academic performance, and (3) demonstrate to the State Board's satisfaction that the corporation has the capacity to secure private funds for the school's development.

If there are no responders with the required qualifications, the State Board may issue another request for proposals. Selection of a qualified operator must occur within 180 days after the issuance of the most recent request.

Contract with operator

(R.C. 3328.12)

After selecting an operator for the boarding school, the State Board must enter into a contract with that entity prescribing the terms of the school's operation. The contract must stipulate the following:

(1) That the school may operate only if and to the extent it holds a valid charter issued by the State Board.

(2) That the operator will oversee the acquisition of a facility for the school (see also "**College-Preparatory Boarding School Facilities Program**" below).

(3) That the operator will manage the school in accordance with the terms of the proposal accepted by the State Board during the selection process, including the plan for increasing the grade levels offered by the school.

(4) That the school will comply with the act's provisions, any other provisions of law specified in the contract, State Board rules pertaining to the school,[72] the school's charter, and the school's bylaws (see "**Adoption of bylaws**" below).

(5) That the school will meet the academic goals and other performance standards outlined in the contract.

(6) That the State Board or the operator may terminate the contract in accordance with procedures described in the contract. Those procedures must include a requirement that the party seeking termination give prior notice of the intent to terminate the contract. The other party must also be given an opportunity to redress any grievances cited in the notice prior to the termination.

(7) That, if the school closes for any reason, the school's board of trustees will execute the closing in the manner specified in the contract.

Termination of contract

(R.C. 3328.45)

The act authorizes the State Board to terminate a contract with a boarding school's operator for failure of the school to comply with the act's provisions or the terms of the contract, or for failure to meet the academic goals or performance standards specified in the contract. Upon termination of the contract, the school must close at the end of the school year.

Option for additional boarding schools

(R.C. 3328.11(B)(1))

The act permits the State Board to authorize one or more additional public boarding schools after the establishment of the first boarding school. If the State Board determines that additional schools are advisable, it must select and contract with qualified operators for those schools by following the same process used for selecting the first school's operator (see "**School operator selection**" above). Presumably, the operator of the first school could submit a proposal to run any additional school

[72] The act requires the State Board to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to implement the act provisions (R.C. 3328.50).

authorized in the future, but the act does not grant that operator preference in the selection process.

Public boarding school governance

Adoption of bylaws

(R.C. 3328.13)

The operator of a boarding school must adopt bylaws for the oversight and operation of the school. The bylaws, which are subject to the approval of the State Board, must include standards for the admission and dismissal of students and procedures for the appointment of members of the school's board of trustees. The bylaws must conform to all applicable statutes and administrative rules, contract terms, and the school's charter.

Board of trustees

(R.C. 3328.15)

A board of trustees consisting of up to 25 members must govern each boarding school established under the act. The Governor must appoint five of the trustees, with the advice and consent of the Senate. The Superintendent of Public Instruction may recommend appointees to the Governor, but those recommendations are not binding. All other trustees must be appointed in accordance with the school's bylaws.

The trustees serve staggered three-year terms of office. They may be reappointed, but no trustee may serve for more than three consecutive three-year terms. If the school's bylaws provide for compensation, trustees may be paid for their service on the board.

Student enrollment

Eligibility requirements

(R.C. 3328.01(B) and (E), 3328.04, and 3328.14)

A student is eligible to attend a boarding school if the student (1) is entitled to attend school in a "participating school district," which is the district where the school is located or any other district that has agreed to allow its resident students to enroll in the school, (2) is at risk of academic failure, (3) is from a family with an income below 200% of the federal poverty guidelines, and (4) meets at least two of the following other risk indicators:

(a) The student has a record of in-school disciplinary actions, suspensions, expulsions, or truancy;

(b) The student failed to attain a proficient score on a state achievement assessment in English language arts, reading, or math at least once, or failed to attain a minimum score designated by the boarding school's board of trustees on an end-of-course exam in English language arts or math administered under the new high school assessment system that will eventually replace the Ohio Graduation Tests (OGT);

(c) The student has a disability;

(d) The student has been referred for academic intervention services;

(e) The student's head of household is a single parent;

(f) The student's head of household is not the student's custodial parent; or

(g) The student has a family member who has been imprisoned.

A student also must meet any additional criteria specified in the agreement between the State Board and the boarding school's operator.

The act requires the State Board to adopt procedures for school districts to follow in becoming participating school districts. In addition, the boarding school's operator must create an outreach program to inform school districts about the school, its admission procedures, and the process for becoming a participating district.

Maximum enrollment

(R.C. 3328.21)

In its first year of operation, a boarding school established under the act may offer only grade 6 and may enroll up to 80 students. In subsequent years, the school may offer additional grade levels as specified in its contract with the State Board, but at no time may the school enroll more than 400 students. If the number of applicants exceeds the school's capacity, admission must be by lottery.

School operations

Compliance with certain education laws

(R.C. 3328.18, 3328.19, 3328.191, 3328.192, 3328.193, 3328.20, 3328.24, 3328.25, 3328.26(C), and 3328.99; conforming changes in R.C. 109.57 and 3313.61)

A boarding school established under the act, its operator, and its board of trustees are subject to the following education laws in the same manner as a school district:

- Administration of the state achievement assessments and the new high school assessment system that will replace the OGTs; provision of intervention services to students who do not attain a proficient score on an achievement assessment (R.C. 3301.0710, 3301.0711, and 3301.0712);

- High school diploma requirements (R.C. 3313.61 and 3328.25);

- Sanctions for failure to meet the federal standard of "adequate yearly progress" (AYP) for two or more consecutive school years (R.C. 3302.04 and 3302.041);

- Reporting requirements for the Education Management Information System (EMIS), which is a database of fiscal, personnel, enrollment, and academic performance information about school districts and buildings (R.C. 3301.0714);

- Requirement to conduct criminal records checks of applicants for employment and to periodically update those checks for nonlicensed employees; prohibition on employing a person with a disqualifying criminal offense (R.C. 3319.39 and 3319.391);

- Suspension of employees from duties involving the care, custody, or control of a child upon arrest or indictment for a disqualifying offense (R.C. 3328.18(B));

- Reporting of misconduct by licensed educators to the Department of Education; immunity from civil liability for good-faith reports; and penalties for failure to make required reports or for making false reports (R.C. 3319.31, 3319.311, 3328.18(C), 3328.19, 3328.191, 3328.192, 3328.193, and 3328.99); and

- Requirement that private contractor employees that provide "essential school services" and work in a school in a position that requires routine

interaction with a child must be supervised by a school employee or provide a recent criminal records check with no disqualifying offenses (R.C. 109.57 and 3328.20).

Special education

(R.C. 3328.23)

Similarly, each boarding school and its operator must comply with state and federal law regarding the provision of special education and related services to students with disabilities.[73] The act specifies that a disabled student's resident school district is not obligated to provide the student with a "free appropriate public education" for as long as the student attends the boarding school. Therefore, the boarding school must assume the responsibility of providing the student with all necessary special education and related services. For each disabled student enrolled in the school, the school and its operator must verify to the Department of Education that the school is providing the services required by the individualized education program (IEP) developed for the student.

Curriculum requirements

(R.C. 3328.22)

The school's educational program must include a remedial curriculum for all grades it offers below grade 9, and a college-preparatory curriculum for grades 9 to 12 that complies with the Ohio Core curriculum, which is the 20-unit state minimum high school curriculum.[74] The school's educational program also must provide (1) extracurricular activities, including athletic and cultural activities, (2) college admission counseling, (3) physical and mental health services, (4) tutoring, (5) community service opportunities, and (6) a residential student life program.

Employee collective bargaining rights

(R.C. 3328.17 and 4117.01)

The act explicitly grants teaching and nonteaching employees of a boarding school the right to collectively bargain under the Public Employees Collective Bargaining Law.[75] Although that law prohibits the State Employment Relations Board

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[73] See R.C. Chapter 3323. and 20 United States Code 1400 *et seq*.

[74] See R.C. 3313.603(C).

[75] See R.C. Chapter 4117.

from placing professional and nonprofessional employees in the same bargaining unit without approval by a majority vote of both groups,[76] the act specifies that a bargaining unit containing both teaching and nonteaching boarding school employees may be considered an appropriate unit, presumably without a vote.

Student transportation

(R.C. 3328.41)

The act provides that a boarding school student's resident school district is responsible for the student's weekly transportation to and from the boarding school.

Annual report card

(R.C. 3328.26(A) and (B))

Under the act, the Department of Education must issue an annual report card and performance rating for each boarding school in the same manner as required in continuing law for other public schools and school districts.[77] The act also requires that the academic performance data of each boarding school student be used in calculating both the performance of the boarding school *and* the performance of the student's resident school district. For this purpose, the Department must include the student's achievement assessment scores in the resident district's data when determining the district's report card rating.

Time limit on state funding obligation

(R.C. 3328.03)

Under the Ohio Constitution, the maximum length of time for which a General Assembly may make an appropriation is two years.[78] In accordance with this constitutional provision, the act prohibits any agreement or contract entered into under the act's provisions, such as a contract between the State Board and the operator of a boarding school, from creating a state funding obligation for more than two years. However, a financial obligation may be reauthorized every two years by a new General Assembly.

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[76] R.C. 4117.06(D)(1), not in the act.

[77] R.C. 3302.03, not in the act.

[78] Article II, Section 22.

Operating funding

(R.C. 3328.31 to 3328.34)

The act provides that a boarding school receive for each student enrolled in the school both (1) a per-pupil amount deducted from the state aid account of the student's resident participating school district and (2) a per-pupil boarding amount paid directly to the school by the Department of Education.

Student count

(R.C. 3328.31 and 3328.32)

To facilitate these payments, the act requires each boarding school to report to the Department of Education (1) the total number of students enrolled, (2) the number of students enrolled in the school who are receiving special education and related services under an IEP, (3) the school district that students enrolled in the boarding school are entitled to attend, and (4) any additional information the Department determines necessary to make payments to the school. Moreover, to be credited with state funding for the student prior to deductions from its account, a student's resident district must include the student in its average daily membership and special education ADM.

Deducted per-pupil amount

(R.C. 3328.33)

Each participating school district and the boarding school must (1) determine the per-pupil amount to be deducted from the district's account according to a formula prescribed in the act, (2) set forth that amount in a written agreement, and (3) file the agreement with the Department. The Department, then, must deduct that amount for each of the district's students enrolled in the boarding school and pay it to the school. The act stipulates that the per-pupil amount must be equal to 85% of the "operating expenditure per pupil" of the student's resident school district, which the act defines as total amount of state payments and other nonfederal revenue spent by the district for operating expenses during the previous fiscal year, divided by the district's average daily membership for that fiscal year. In other words, it is the per-pupil amount of state and district funds (and, probably, private funds, if any) spent for district operations in the prior fiscal year.

State per-pupil boarding amount

(R.C. 3328.34)

The act prescribes a separate "per-pupil boarding amount," which is set at $25,000 for the school's first year (fiscal year 2014 is the first year a boarding school may be established under the act) and must be adjusted for inflation each subsequent fiscal year. This amount is not deducted from the resident district's state aid account but, instead, is to be paid directly from the Department's appropriations.

Use of federal funds to offset boarding amount

(R.C. 3328.34(D))

In any fiscal year in which the boarding school's operator receives federal funds to support the school's operations, the amount of those federal funds must be deducted from the total per-pupil boarding amount paid to the school by the Department of Education. Similarly, if the Department receives federal funds to support the school's operations, the Department must use those funds first to cover the total per-pupil boarding amount owed to the school in the applicable fiscal year. In both cases, any remaining boarding amount owed to the school after accounting for the federal funds must be paid from the Department's state appropriations. These provisions essentially lower the state's funding obligation in fiscal years when the Department or the school's operator acquires federal funds for support of the school.

If federal funds received by the operator or the Department are used to offset the state funds paid to cover the total per-pupil boarding amount, the act directs the Department to comply with all requirements upon which acceptance of the federal funds is conditioned, including any requirements set forth in the funding application and, to the extent sufficient state funds are appropriated to the Department, any requirements related to "maintenance of effort" in expenditures. If the Department applies for the federal funds, it would already be subject to any requirements tied to the funds' acceptance under the federal law authorizing the grant. If the operator applies for the federal funds on its own behalf, it is likely that the related requirements would apply to the operator, as the recipient, rather than to the Department. Therefore, it is not clear whether the act's language would impose any additional requirements on the Department.[79]

[79] Some federal grant programs require that the federal funds be used to supplement, rather than supplant, state funding. Since the state's obligation to pay the boarding amount must be met wholly from state funds in any fiscal year that federal funds are not available, the use of federal funds to offset that

Statements associated with boarding payment

(R.C. 3328.34(C))

Within its provisions prescribing the state per-pupil boarding payment, the act contains a series of statements:

(a) Authorizing the State Board to "accept funds from federal and state noneducation support services programs for the purpose of funding" the payment;

(b) Directing the State Board, "notwithstanding any other provision of the Revised Code . . . [to] coordinate and streamline any noneducation program requirements in order to eliminate redundant or conflicting requirements, licensing provisions, and oversight by government programs or agencies"; and

(c) Directing "applicable regulatory entities . . . to the maximum extent possible, [to] use independent reports and financial audits provided by the operator and coordinated by the Department of Education to eliminate or reduce contract and administrative reviews."

The meaning and effect of these statements are not clear. A possible interpretation might be that the act is directing state agencies to streamline noneducation programs and regulations in order to generate state savings that could be used to finance the state per-pupil boarding payment. A narrower interpretation might be that the act is empowering the State Board to coordinate the activities of other regulatory agencies that would have authority over the boarding school in order to facilitate the school's efficiency. But neither interpretation may be certain.

Title I funds

(R.C. 3328.35)

To the extent permitted by federal law, the Department of Education must include a boarding school established under the act in its annual allocation of federal Title I funds. Title I, which is the central program of the Elementary and Secondary Education Act of 1965, provides funds for the educational needs of low-income and other at-risk students.

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amount in other fiscal years might violate a prohibition on supplanting state funds, if such a prohibition were part of the terms of the federal grant.

Other funds

(R.C. 3328.36)

The act specifies that a boarding school established under the act is considered a school district for the purpose of applying for state or federal grants available to districts or public schools. The school or its operator also may apply to private entities for funding.

College-Preparatory Boarding School Facilities Program

(R.C. 3318.60)

The act creates the College-Preparatory Boarding School Facilities Program, under which the Ohio School Facilities Commission must provide assistance for the acquisition of classroom facilities to boarding schools authorized under the act. To be eligible for the assistance, a school's board of trustees must secure at least $20 million of private money to satisfy its share of facilities acquisition. Acquisition of residential facilities and any other facilities *other than* classroom facilities must be funded by the board of trustees through private means.

The Commission must adopt rules necessary for the implementation and administration of the program not later than 90 days after September 29, 2011 (the act's 90-day effective date).

IV. Scholarship Programs

Educational Choice scholarship

(R.C. 3310.02 and 3310.03; Section 733.10)

The act increases the number of Educational Choice ("Ed Choice") scholarships that may be awarded annually from 14,000 to 30,000 for the 2011-2012 school year and 60,000 thereafter. Since the application period for Ed Choice scholarships for the 2011-2012 school year ended April 15, 2011, the act directs the Department of Education to hold a second, 45-day application period for 2011-2012 to award the 16,000 new scholarships authorized for that year. The second application period begins June 30, 2011 (the act's immediate effective date) and ends August 15, 2011.

The act requires the Department to mail a notice to each person who applied for a scholarship during the first application period but did not receive a scholarship, announcing the second application period, the opportunity to reapply, and the application deadline. The Department must also post prominently on its web site a list

of school district-operated buildings whose students newly qualify for Ed Choice scholarships under the act (see "**New eligibility**" below).

Students who are already admitted to a chartered nonpublic school for the 2011-2012 school year may receive an Ed Choice scholarship for that year if (1) a timely application was submitted on the student's behalf during the first application period for 2011-2012, (2) the student was denied a scholarship solely because the number of applications exceeded the number of available scholarships, and (3) the student was either enrolled through the last day of classes for the 2010-2011 school year in the district school or community school indicated on the student's first application or is eligible to enroll in kindergarten for the 2011-2012 school year and was not enrolled in kindergarten in a nonpublic school in 2010-2011.

New eligibility

The act newly qualifies students whose resident district school buildings were ranked in the lowest 10% of all public school buildings according to performance index score, in two of the three most recent rankings published prior to the school year for which they first seek a scholarship. The school building cannot have been declared excellent or effective in the most recent published ratings. To be eligible to apply, a student must be either (1) enrolled in a qualifying school building, (2) enrolled in a community school but would otherwise be assigned to a qualifying school building, (3) enrolled in a school building operated by the student's resident district or in a community school and otherwise would be assigned to a qualifying school building in the school year for which the scholarship is sought ("look ahead" eligibility), or (4) eligible to enroll in kindergarten in the school year for which the scholarship is sought in a qualifying school building.

For determining building eligibility, the act relies on the annual permanent performance ranking of districts, schools, and buildings (see "**Data on student performance tied to expenditures**" above). But since that ranking system is yet to be developed and implemented by the Department of Education, the act also requires the Department to create a separate three-year ranking according to the performance index scores of all public school buildings for each of the 2012-2013, 2013-2014, and 2014-2015 school years to use to determine building eligibility for Ed Choice scholarships. And for the second round of applications for the 2011-2012 school year, the Department must create a three-year ranking of just district-operated buildings, notwithstanding the act's other provisions basing eligibility on a comparison of performance index scores of all public school buildings (school districts, community schools, and STEM schools).

Priority

Students who meet the original eligibility standards under pre-existing law (see "**Background**" below), which the act retains, have priority for available scholarships over students newly qualified under the act. Thus, in years when applications exceed the number of available scholarships, priority for awarding scholarships is as follows:

First, to eligible students who received them in the previous school year;

Second, to students eligible because their district school building has been in academic watch or emergency for at least two out of three years and whose family incomes are at or below 200% of the federal poverty guidelines;

Third, to all other students eligible because their district school building has been in academic watch or emergency for at least two out of three years;

Fourth, to students made eligible under the act whose district school has been ranked in the lowest 10% of school buildings based on performance index score for at least two out of three years and whose family incomes are at or below 200% of the federal poverty guidelines; and

Finally, to all other students made eligible under the act whose district school has been ranked in the lowest 10% of school buildings based on performance index score for at least two out of three years.

If the number of applicants in any of the categories listed above exceeds the amount of available scholarships, scholarships must be awarded on the basis of a lottery.

Deductions

(R.C. 3310.08)

Under continuing law, the amount of an Ed Choice scholarship is the lesser of the tuition charged by the chartered nonpublic school the student attends or $4,250, for a student in grades K to 8, or $5,000, for a student in grades 9 to 12. Formerly, for each scholarship awarded, the Department of Education deducted $5,200 from the state aid account of the student's resident school district. The remainder over the scholarship amount went to defray some of the state's cost for scholarships under the Cleveland Scholarship Program. The act reduces the amount of each Ed Choice deduction to just the amount of the scholarship.

Background

Under continuing law, the Educational Choice Scholarship Pilot Program provides scholarships each year to students in lower performing public schools to pay tuition at chartered nonpublic schools. The Ed Choice program is separate from the scholarship program that serves students in the Cleveland Municipal School District. To finance Ed Choice scholarships, Ed Choice recipients are counted in the enrollments of their resident school districts, and state funds are then deducted from the districts' state funding accounts.

To be eligible for an Ed Choice scholarship, a student must meet one of the following conditions when the student applies for a scholarship:

(1) The student is enrolled in the student's resident school district in a school that (a) has been declared in at least two of the three most recent ratings to be in academic watch or academic emergency and (b) has not been declared excellent or effective in the most recent published ratings;

(2) The student is eligible to enroll in kindergarten in the school year for which a scholarship is sought and otherwise would be assigned to a school described in (1) above;

(3) The student is enrolled in a community school but otherwise would be assigned to a school described in (1) above;

(4) The student is enrolled in a school operated by the student's resident district or in a community school and otherwise would be assigned to an eligible school building in the year for which the scholarship is sought. This "look-ahead" provision addresses a situation in which the school a student currently attends does not qualify for scholarships, but the student will be assigned to a different school in the next school year.

(5) The student is eligible to enroll in kindergarten in the school year for which a scholarship is sought, or is enrolled in a community school, and the student's resident school district (a) has an intradistrict open enrollment policy that does not assign students in kindergarten or the community school student's grade level to a particular school, (b) has been declared in at least two of the three most recent ratings to be in academic emergency, and (c) was not declared excellent or effective in the most recent published ratings. The act does not affect these qualifications and gives students who qualify under them priority over those who qualify under the new category of students created by the act.

Cleveland Scholarship Program

(R.C. 3313.975 and 3313.978; conforming change in R.C. 3310.05)

The act allows students to receive the Cleveland scholarship for the first time as a high school student. Under prior law, *initial* scholarships could be awarded only to students in grades K through 8; that is, students must have received a scholarship in elementary school to receive one in high school.

The act also increases the base amounts of the Cleveland scholarship to equal the maximum amounts allowed for Educational Choice scholarships. For grades K through 8, the base amount is $4,250, up from $3,450. For grades 9 through 12, the base amount is $5,000, up from $3,450. However, the act retains the stipulation that the maximum Cleveland scholarship cannot exceed 90% (for low-income families) or 75% (for other families) of the base amount. The following table compares the act's new base amounts with the actual maximum scholarship amounts after applying the 90% and 75% standards:

Grades	Base Amount	90% Amount	75% Amount
K to 8	$4,250	$3,825	$3,188
9 to 12	$5,000	$4,500	$3,750

The new base amounts apply beginning in fiscal year 2012.

Background

The Cleveland Scholarship Pilot Program provides scholarships to attend alternative schools, including private schools, and tutorial assistance grants to certain students who reside in any school district that is or has been under a federal court order requiring supervision and operational management of the district by the Superintendent of Public Instruction. Currently, only the Cleveland Municipal School District meets this criterion. The program has been authorized since 1995. It is financed partially with state funds and partially with an earmark of Cleveland's state payments.

Jon Peterson Special Needs Scholarship Program

(R.C. 3310.51 to 3310.64 and 3323.052; Sections 269.60.30 and 269.60.31)

Background on the Individuals with Disabilities Act (IDEA)

Under the federal Individuals with Disabilities Education Act (IDEA), children identified as disabled are entitled to a "free appropriate public education" that provides special education and related services to enable them to benefit from educational

instruction.[80] Related services include transportation and support services such as speech-language pathology and audiology services, psychological services, physical and occupational therapy, counseling services, and diagnostic medical services. Under both the IDEA and state law, an "individualized education program" (IEP) must be developed for each child identified as disabled. The IEP specifies the services to which the child is entitled and are therefore guaranteed by law. It is developed by a team including representatives of the child's resident school district (or community school or STEM school) and the child's parent or the parent's counsel.[81] A child's school district or school may provide the services specified in the IEP, or it may enter into an agreement with another public or private entity to provide those services.

The act

The act establishes the Jon Peterson Special Needs Scholarship Program to provide scholarships for children with disabilities to attend special education programs other than those offered by their school districts. The program applies to any identified disabled child in grades K through 12. It is to begin operating in the 2012-2013 school year. A scholarship may be used to pay the expenses of a public or private provider of special education programs for implementation of the child's IEP and other services that are not in the IEP but are associated with educating the child. The act also permits the "eligible applicant" (generally the child's parent, see below) and the provider to agree to alter the services provided to the child.[82]

While a child is using a scholarship, the school district in which the child would otherwise be enrolled has no obligation to provide the child with a free appropriate public education. But the act also specifies that if that district has agreed to provide some services for the child, or if the district is required by separate law to provide some services, including transportation services, the district may not discontinue them pending completion of any administrative proceedings regarding those services. (See "**Continuation of some school district services**" below.) The district also has a continuing obligation to develop the child's IEP.[83]

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[80] See 20 United States Code (U.S.C.) 1400 *et seq.*

[81] See 20 U.S.C. 1414 and R.C. 3323.011, not in the act.

[82] R.C. 3310.52.

[83] R.C. 3310.53 and 3310.62(C).

Eligibility

(R.C. 3310.51(C), (F), and (I), 3310.61, and 3310.62)

"Qualified special education child"

Under the act, a child is eligible, or "qualified," for a scholarship if the child is from 5 to 21 years old and the child's resident school district has identified the child as disabled and developed an IEP for the child. In addition, the child must either (1) have been enrolled in the district in which the child is entitled to attend school in any grade from K through 12 in the school year prior to the year in which the scholarship would first be used or (2) be eligible to enroll for services from that district in the school year in which the scholarship would first be used. The act explicitly specifies that a child attending a public special education program under an agreement between the child's school district and the program provider, or a child attending a community school, may apply for a scholarship.

But, under the act, a community school is not considered a child's school district of residence. Therefore, any IEP developed by the community school would not qualify the child to receive a scholarship. It is not clear under the act whether a community school student would need to enroll in a district school to receive a new district-developed IEP prior to receiving a scholarship.

Moreover, a child is not eligible for a scholarship in any school year in which the child has been awarded a scholarship under the Autism Scholarship Program, the Ed Choice Scholarship program, or the Cleveland Scholarship Program. (See "**Comparison with Autism Scholarship Program**" below.)

The act also specifies that a child must remain in compliance with the state's Compulsory Attendance Law. Under that law, the parent of a child who resides in the state who is between 6 and 18 years of age must attend a public or private school that meets the minimum education standards of the State Board of Education unless the student is excused from attendance for home instruction. A child can face juvenile sanctions and a child's parent can face criminal sanctions violations of that law.[84]

A child is not eligible for a scholarship for the first time while the child's IEP is being developed or while any administrative or judicial proceedings regarding the content of that IEP are pending. On the other hand, the act also specifies that, in the case of a child for whom a scholarship already has been awarded, development of subsequent IEPs and the prosecuting of administrative or judicial mediation or

[84] See R.C. Chapter 3321.

proceedings with respect to any of those subsequent IEPs do not affect continued eligibility for scholarship payments. In other words, a scholarship will not be awarded and paid until the child's IEP is in place and it is clear that there are no challenges to that IEP. But *future* challenges to *subsequent* IEPs will not disqualify the child for a scholarship.

"Eligible applicant"

The act permits the following individuals to apply for and accept a scholarship for a qualified special education child:

(1) The child's custodial natural or adoptive parent or parents. The act specifically excludes a parent whose custodial rights have been terminated.

(2) The child's guardian;

(3) The child's custodian other than the parent;

(4) The child's grandparent if the grandparent is an attorney-in-fact under a power of attorney or if the grandparent has executed a caregiver affidavit (both under continuing law);

(5) The child's "surrogate parent" appointed under state and federal special education law; or

(6) The child, if the child does not have a custodian or guardian and is at least 18 years old.

Annual limit on the number of scholarships

(R.C. 3310.52(B))

The act limits the number of scholarships that may be awarded each year under the Jon Peterson Special Needs Scholarship Program to not more than 5% of the number of identified disabled students residing in the state during the previous fiscal year.

Alternative providers of special education programs

(R.C. 3310.51(A), 3310.58, and 3310.59)

Scholarships may be used to pay for special education programs provided by alternative public providers or by private entities registered with the Superintendent of Public Instruction.

Alternative public providers

An alternative public provider must be either (1) a school district other than the district obligated to educate the disabled child (or the child's resident school district, if different) or (2) another public entity that agrees to enroll the child and implement the child's IEP. In addition, the alternative public provider must be an entity to which the eligible applicant, rather than a school district or other public entity, owes fees for the services provided to the child. In other words, an eligible applicant cannot use a scholarship to enroll a child in a school district or other public entity to which the child's school district would send the child for special education services because, in that case, the child's district would be required to pay the receiving district or entity for the services provided to the child. Nor may an eligible applicant use a scholarship to enroll the child in a community school because the community school, as a public school, would receive state funds to educate the child even without the scholarship. The eligible applicant must use the scholarship to pay for special education and related services provided by a school district or public entity from which the eligible applicant otherwise would not receive those services for the child free of charge.

Registered private providers

Nonpublic schools and other private entities may accept scholarship children under the act, but first they must register with the Superintendent of Public Instruction. To be registered by the Superintendent, the private school or entity must meet the following requirements:

(1) It must comply with the antidiscrimination provisions of the federal Civil Rights Act of 1964,[85] which prohibits discrimination on the basis of *race, color, or national origin* in the administration of benefits assisted with federal funds. The act specifies that this antidiscrimination statement applies to a registered private provider regardless of whether the provider receives federal financial assistance. A student's scholarship under the program is not funded with federal money.

(2) It agrees to conduct criminal records checks of applicants for employment and contractors, if it is not already required to do so pursuant to law;[86]

(3) Its educational program is approved by the Department of Education;

[85] 42 United States Code 2000d.

[86] R.C. 109.57, 109.572, 3319.39, 3319.391, and 3319.392 (last two not in the act).

(4) Its teaching and nonteaching staff, including those employed by a subcontractor, must hold credentials determined by the State Board of Education to be appropriate for the qualified special education children enrolled in its program;

(5) It meets applicable health and safety standards;

(6) It agrees to retain any documentation required by the Department;

(7) It agrees to provide to each child's resident school district a record of the implementation of the child's IEP, including evaluation of the child's progress; and

(8) It agrees that if it declines to enroll a particular child under the program, it will notify the eligible applicant in writing of its reasons for declining to enroll that child.

If the Superintendent of Public Instruction determines that a private school or entity no longer meets these criteria, the Superintendent must revoke its registration. The school or entity must be allowed a hearing prior to revocation.

Scholarship amount

(R.C. 3310.51(E) and 3310.56)

Each Special Needs scholarship is worth the *smallest* of:

(1) $20,000;

(2) The total fees charged by the provider; or

(3) A maximum amount based on the per pupil amount that would have been computed for payment to a school district for the student under the former Building Blocks Model school funding system. That amount is the sum of:

(a) The "formula amount," which for FY 2012 and 2013 under the act is $5,653; plus

(b) The per pupil base funding supplements as they were calculated for FY 2009 ($50.90); plus

(c) A weighted special education amount, equal to $5,732[87] multiplied by one of the following weights:

[87] $5,732 is the amount that was designated as the "formula amount" for fiscal years 2009, 2010, and 2011.

- 0.2892, for a student with a category one disability (speech and language disabled only);

- 0.3691, for a student with a category two disability (specific learning disabled, developmentally disabled, or other health impaired-minor);

- 1.7695, for a student with a category three disability (vision impaired, hearing disabled, or severe behavior disabled);

- 2.3646, for a student with a category four disability (orthopedically disabled or other health impaired-major);

- 3.1129, for a student with a category five disability (multiple disabilities); or

- 4.7342, for a student with a category six disability (autism, traumatic brain injuries, or both visually and hearing impaired).

Before applying these multiples, the act specifies that they must be adjusted by multiplying them by 0.90 (in other words, 90% of the prescribed weight).

The prescribed weights and categories are the same ones used under the former Building Blocks Model. Elsewhere, the act specifies that special education payments for community school and STEM school students for fiscal years 2012 and 2013 also be based on the former categories and weights. (See "**Special education categories and weights**" and "**Community school and STEM school payments**" above.)

Payment of scholarships

(R.C. 3310.54, 3310.55, 3310.57, and 3317.03(A), (B), and (F)(5))

Like other current scholarship programs, the Department of Education must make periodic payments throughout the school year to the eligible applicant for services provided to a qualified special education child, until the full amount of the scholarship has been paid. The amount of the scholarship is deducted from the state aid account of the school district in which the child is entitled to attend school. That district is authorized to count the child in its formula ADM and special education ADM. If the child is not included in the formula ADM of that district, the Department must adjust the district's ADM to include the child and recalculate the district's state aid payments for the entire fiscal year accordingly.

The scholarship may be used only to pay fees charged by the alternative special education program for implementation of the child's IEP and other services agreed to by the provider and the eligible applicant that are not in the IEP but are associated with

educating the child. The Department must prorate a child's scholarship amount if the child withdraws from the alternative program before the end of the school year.

Application deadlines

(R.C. 3310.52(C))

In order to qualify for a scholarship, either for the first time or to renew a scholarship, an eligible applicant must submit an application in the manner prescribed by the Department of Education and notify the child's school district. The act prescribes April 15 as the application deadline for academic terms that begin between July 1 and December 31 (the first half of a school year), and November 15 for academic terms that begin between January 1 and June 30 (the second half of a school year).

Administration of state achievement assessments

(R.C. 3310.522 and 3310.59)

In order to maintain eligibility under the program, each scholarship student must take the state achievement assessment prescribed for the student's grade level, unless the student is excused from that assessment under the student's IEP or federal law. Accordingly, as under the Ed Choice and Cleveland scholarship programs, registered private providers must administer the appropriate assessments to their scholarship students and report the results to the Department of Education. Also as under the other scholarship programs, a chartered nonpublic school that participates in the Jon Peterson Special Needs Scholarship Program may not be required to administer state assessments to its other, nonscholarship students, except for the Ohio Graduation Test, which is required for a diploma from both public and chartered nonpublic high schools. The Department must revoke the registration of a private provider that fails to administer the assessments.

Background

A student whose disability affects the student's capacity to take a state assessment may be excused from that assessment, as long as an alternative assessment, approved by the Department as conforming to requirements of federal law for receipt of federal funds under IDEA, is specified instead. A student also may receive special accommodations in the administration of a state assessment in order to compensate for the student's disability. Thus, continuing state law also provides that, "to the extent

possible," a student's IEP may not excuse the student from taking a state assessment unless reasonable accommodations cannot be made for the student.[88]

Continuation of some school district services

(R.C. 3310.60 and 3310.62(C))

The act provides that, if the resident school district of a child awarded a scholarship has agreed to provide some services for the child or, if the district is required by law to provide some services for the child, including transportation services, the district may not discontinue the services pending completion of any administrative proceedings regarding those services. It also specifies that the prosecuting, by the eligible applicant on behalf of the child, of administrative proceedings regarding those services does not affect the applicant's and the child's continued eligibility for scholarship payments.

Written notice of rights and informed consent

(R.C. 3310.53(C) and 3323.052)

The act requires the Department of Education to develop, within 60 days after September 29, 2011 (the act's 90-day effective date), and subsequently to revise as necessary, a document that compares a parent's and child's rights under state and federal special education law with their rights under the Jon Peterson Special Needs Scholarship Program, including the scholarship program's statutory application deadlines (see above). It also requires the Department and each school district to distribute the document to parents of disabled children as a part of, appended to, or in conjunction with the procedural safeguards notice required under federal law. It then specifies that an eligible applicant's receipt of the comparison document, as acknowledged in a format prescribed by the Department, constitutes notice that the eligible applicant has been informed of those rights. It further provides that acceptance of a scholarship constitutes the eligible applicant's informed consent to the provisions of the scholarship program.

Background

Federal special education law requires that the parents of disabled children be given notice of the procedural safeguards available to them regarding their children's special education and related services. Specifically, both the state and each school district are obligated to provide a "full explanation" of those safeguards written in the native language of the parents (unless it clearly is not feasible to do so) and written in

[88] See R.C. 3301.0711(C)(1).

an understandable manner.[89] That document must be provided once each year and upon referral or request for the child's evaluation, upon the first filing of an administrative complaint, or upon parental request. The federal statute and rules provide an extensive list of items that must be included in the document.

Provider profile

(R.C. 3310.521)

Each alternative public provider and each registered private provider that enrolls a child under the program must submit a written "profile" of the provider's services to the eligible applicant. The profile must be in a form prescribed by the Department of Education and must contain a description of the methods of instruction that will be used in providing services to the child and the qualifications of teachers, instructors, and other persons who will provide those services. As a condition of receiving scholarship payments under the program, an eligible applicant must attest, in a form and manner prescribed by the Department, to having received the profile.

Transportation for scholarship students

(R.C. 3310.60)

Under the act, scholarship students are entitled to transportation to and from the alternative special education programs as otherwise provided by law.

Continuing law requires school districts to provide transportation to nonpublic school students in grades K to 8 who reside in the district and who live more than two miles from the school they attend. Districts may, but are not required to, transport high school students to and from their nonpublic schools. A district, however, is not required to transport students of any age to and from a nonpublic school if the direct travel time by school bus, from the district school the student would otherwise attend to the nonpublic school, is more than 30 minutes. When transportation by the district is impractical, the district may offer payment to a student's parent instead of providing the transportation. On the other hand, in the case of some special education students, transportation might be mandated by their IEPs.[90]

[89] 20 United States Code 1415(d) and 34 Code of Federal Regulations 300.503 and 300.504.

[90] See R.C. 3327.01, not in the act.

Access to data verification codes; privacy of records

(R.C. 3301.0714(D) and 3310.63)

As is the case with the Ed Choice, Cleveland, and Autism scholarship programs, the act permits the Department of Education to request the data verification codes of students applying for Jon Peterson Special Needs scholarships from (1) those students' resident school districts, (2) a community school in which a student is enrolled, or (3) the independent contractor hired by the Department to create and maintain the codes. This authority, which is an exception to the general prohibition against the Department's having access to data verification codes when they could be matched with personally identifiable student data, is limited solely to administering the scholarship programs. School districts and community schools must provide a student's data verification code to the Department or the student's parent, upon request, in a manner specified by the Department. If a student will be entering kindergarten and has not yet been assigned a data verification code, the resident school district must assign a code to the student prior to submission. If the district does not assign the code by a date specified by the Department, the Department must assign the code. Each year, the Department must provide school districts with the name and data verification code of each scholarship student living in the district who has been assigned a code by the Department.

Neither the Department nor a provider may release a student's data verification code to any person, unless such release is otherwise authorized by law. The act specifies that materials containing both a student's name or other personally identifiable data and the student's data verification code are not public records. Other documents relative to the scholarship program that are held by the Department are public records, but may be released only in accordance with state and federal privacy laws.

State Board rules

(R.C. 3310.64; Section 267.60.30)

The State Board of Education must adopt rules for the Jon Peterson Special Needs Scholarship Program in accordance with the Administrative Procedure Act so that they are in effect not later than 120 days after June 30, 2011 (the act's immediate effective date). Those rules must include application procedures and standards and procedures for the registration of private providers of special education programs.

Formative evaluation

(Section 267.60.31)

The act requires the Department of Education to conduct a "formative evaluation" of the Jon Peterson Special Needs Scholarship Program and to report its findings to the General Assembly by December 31, 2014. In doing so, the Department to the extent possible must gather comments from parents who have been awarded scholarships, school district officials, representatives of registered private providers, educators, and representatives of educational organizations. The Department must use quantitative and qualitative analyses in conducting its evaluation. The study must include an assessment of the level of the participating student's and parent's satisfaction with the program and the fiscal impact to the state and resident school districts. The act also authorizes the Department to contract with one or more qualified researchers who have previous experience evaluating school choice programs to conduct the study and to accept grants to assist in funding the study.

Comparison with Autism Scholarship Program

The Autism Scholarship Program, under continuing law, pays scholarships to the parents of certain autistic children in grades *pre-kindergarten* to 12. The act's new Jon Peterson Special Needs Scholarship Program contains many of the same concepts of the smaller Autism Scholarship Program and applies those concepts to children of all categories of disability. The act's larger program does not apply to pre-kindergarten students.

The act does not affect the Autism Scholarship Program. In fact, neither program changes or conflicts with the provisions of the other, and it appears that the two programs will coexist. However, the act excludes a student from simultaneously participating in both programs. Nevertheless, children with autism who are in grades K through 12 may be eligible for and their parents may choose either of the two programs. For example, if a parent of a child with autism cannot participate in the new program because its 5% cap has been reached, the parent likely could turn to the Autism Scholarship Program, which has no cap. On the other hand, the due process provisions between the two programs are somewhat different. Under the Autism Scholarship Program, a parent may not be awarded a scholarship if there is any pending dispute over the child's IEP. Under the Jon Peterson Special Needs Scholarship Program, the prohibition on award and payment of a scholarship applies only until the child's first IEP is developed.

Autism Scholarship Program

(R.C. 3310.41)

The Autism Scholarship Program pays scholarships of up to $20,000 to the parents of children with autism in grades pre-kindergarten to 12 to use to pay tuition at alternative public or private providers. The scholarship must be used to implement a child's individualized education program in lieu of receiving those services from the child's resident school district. Those services for a child with autism may frequently include "related services," such as motor skill therapy or other developmental services. The act requires that the services provided under the Autism Scholarship Program "include an educational component."

V. Educational Service Centers (ESCs)

ESC agreements

(R.C. 3311.05, 3313.843, 3313.845, and 3319.19; repealed R.C. 3311.059)

Background

Educational service centers (ESCs) are regional public entities that offer a broad spectrum of services, including curriculum development, professional development, purchasing, publishing, human resources, special education services, and counseling services, to school districts and community schools in their regions. Formerly known as "county school districts," ESCs are statutorily required to provide some administrative oversight and other services to all "local" school districts within their service areas. In addition, ESCs provide services to "city" and "exempted village" school districts that enter into agreements for those services. Under prior law, that authorization was generally limited to city and exempted village districts with total student populations of less than 13,000 students. For these services, ESCs are eligible to receive per pupil state and school district payments. ESCs also may provide other services to all school districts and community schools on a fee-for-service basis. (See also "**ESC payments**" below.)

Each ESC is under the oversight of its own elected governing board. The territory from which the members of an ESC's governing board are elected is the combined territory of the "local" school districts in the county or counties of the ESC's service area. It does not include the territory of other districts the ESC might serve.

Currently, there are 56 ESCs each serving districts in one or more counties.

Required agreements

The act requires every school district with a student count of 16,000 or less to enter into an agreement for services with an ESC for which it may receive the statutory per pupil payments. This requirement applies to all city, exempted village, and local school districts. Under continuing law, not affected by the act, local school districts, regardless of size, are already entitled to ESC services, and as noted above, prior law permitted, but did not require, city and exempted village districts with less than 13,000 students to arrange for those services. Thus, the act likely will significantly increase the number of students served by an ESC and for whom it may receive state and district payments.

For purposes of determining whether a district must enter into an agreement, the act specifies that a district's student count is the average daily student enrollment reported on the district's academic performance report card for the previous school year.

Permissive agreements

The act also permits all school districts with student counts greater than 16,000 to enter into agreements for services. Generally, these are large urban "city" school districts, but there are a few "local" school districts in fast-growing, unincorporated areas that have student counts approaching or exceeding 16,000. Since the act permits, rather than requires, districts with such student counts to arrange for ESC services, it is not clear whether a qualifying "local" school district is free to not receive and not pay for ESC services. Nor does the act specify whether the supervision of such a "local" school district by an ESC is still required. That is, it is not clear whether the act is intended to have the effect of allowing larger "local" school districts to "opt out" of ESC services altogether, or to transfer their territory to another ESC.

Termination of agreements

The act permits any district to terminate its agreement with its current ESC by notifying the ESC governing board by January 1, 2012, or by January 1 of any odd-numbered year thereafter. The termination is effective on the following June 30. If a district board fails to notify an ESC of its intent to terminate an agreement by January 1 of an odd-numbered year, the district's agreement is renewed for the next two school years.

Repeal of law on "local" district severance from one ESC and annexation to another

Law enacted in 2003 permitted a "local" school district to sever its territory from its current ESC and annex its territory to an *adjacent* ESC. The act repeals that provision apparently in favor of biennial ESC agreements.

This repealed law specified that a severance and annexation action was subject to both approval of the State Board of Education and referendum by petition of the district's voters. That action could not be effective sooner than one year after the first day of July after the later of (1) the date the State Board approved the action or (2) the date voters approved the action at a referendum election, if one was held. If a district severed from its ESC and annexed to another, it could not do so again for at least five years after the effective date of the prior action.[91]

Impact of "local" school district changes on an ESC's electoral territory

As noted above, the electoral territory of an ESC is the combined territory of the "local" school districts in the county or counties of the ESC's service area.[92] The act does not alter that law. Moreover, election of ESC board members, just like that of school district board members, is held only in odd-numbered years.[93] If the act is intended to allow "local" districts greater leeway to switch ESCs, their biennial decisions to terminate their agreements could frequently impact the electoral territory of ESCs. That is, as an ESC loses or gains local districts, its territory will change. Thus, one or more of its governing board members, who live in a local district that no longer is served by the ESC, will no longer be qualified to hold that office. Also, the act places no geographical limitation on the selection of an ESC by a local district. It may be possible, therefore, that an ESC's territory could become noncontiguous, with its segments separated by some distance. It is also possible that the limits on an ESC's territory prescribed in continuing law and the act's repeal of a local district's specific authority to change its ESC creates an ambiguity as to whether a district has the authority to actually leave its current ESC even if it exercises the act's authority to enter into an agreement with another one.

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[91] Former R.C. 3311.059.

[92] R.C. 3311.05.

[93] R.C. 3501.02(D), not in the act.

Dissolution procedures for ESCs

(R.C. 3311.0510)

Even though the act eliminates the formal severance and annexation procedures of prior law, as discussed above, it appears to assume that "local" districts may leave their current ESCs through the act's biennial agreement provisions. As under prior law, this would make it possible for an ESC to lose all of its local districts and be left without any electoral territory. In that situation, it appears that an ESC is forced to dissolve.

The act provides some procedures for dissolving an ESC. First, the act expressly states that if all of its "local" school districts sever from an ESC, the ESC's governing board is abolished and the ESC is dissolved. Next, the act requires the Superintendent of Public Instruction to order an equitable distribution of the assets and liabilities of the ESC among the "local" school districts that made up the ESC and the "city" and "exempted village" school districts with which the ESC had service agreements during the ESC's last fiscal year of operation. The Superintendent's order "is final and not appealable."[94] Third, the act specifies that the costs incurred by the Department of Education in dissolving the ESC may be charged against the assets of the ESC. Any amount of those costs in excess of the ESC's assets may be charged equitably against each of the local school districts that made up the ESC and the city and exempted village school districts that it last served. Fourth, a final audit of the ESC must be performed in accordance with procedures established by the Auditor of State. Finally, the ESC's public records must be transferred to the school districts that received services from the ESC and, in the case of records that do not relate to services to a particular school district, to the Ohio Historical Society.

ESC governing board subdistricts

(R.C. 3311.054; Section 733.30)

When an ESC is formed by the merger of two or more smaller ESCs, the governing board of the new ESC may divide its electoral territory into subdistricts with each member elected from one of those subdistricts, instead of being elected at large from the ESC's entire territory. However, in order to comply with the constitutional one-person, one-vote principle for popular elections, continuing law requires each ESC that has subdistricts to reconfigure them every ten years so that each member fairly represents about the same number of people. Generally, this redistricting must be completed within 90 days after the official announcement of the results of each federal

[94] The state Superintendent must appoint "a qualified individual" to implement the Superintendent's order.

decennial census. If a governing board fails to redistrict its territory by that date, the state Superintendent must redistrict it within 30 days thereafter.

The act temporarily permits an ESC board to delay its next redistricting until July 1, 2012. The state Superintendent, then, has until August 1, 2012, to redistrict an ESC, if a board fails to do so. This provision also delays the first election for board members under the new organization until November 2013.

The act also permanently permits the governing board of an ESC newly formed by a merger of two or more smaller ESCs to appoint an "executive committee" to initially organize the ESC's territory into subdistricts, rather than the board itself organizing the subdistricts.

Appointed ESC board members

(R.C. 3311.056)

Continuing law permits the governing board of an ESC formed by a merger of two or more smaller ESCs, after at least one election for the board of the new ESC has been held, to adopt a plan under which it may "appoint" additional members to the board. The plan may permit the board to appoint a number of members up to one less than the number of elected members on the board, so long as the total number of elected and appointed members is an odd number. Prior to the act, the appointed members, like the elected members, had to be voters (electors) of the electoral territory of the ESC. In other words, an appointed member had to be a voter of one of the "local" school districts that make up the ESC's territory.

The act, on the other hand, permits the ESC board to appoint additional members who are representative of the "city" and "exempted village" school districts having service agreements with the ESC.

ESC payments

(Section 267.40.70)

ESCs receive payments from the state and from each school district they serve to pay the cost of providing those services. Payments owed by a school district are deducted from the district's state aid account and paid to the ESC by the Department of Education. Permanent law provides a framework for these payments. While that statutory framework sets specific amounts for state and district payments, biennial budget acts usually limit the state payments to the amount specifically appropriated for those payments and instruct the Department of Education to adjust the state per pupil amounts in some manner.

The act limits an ESC's state payments, for fiscal year 2012, to 90% of the aggregate amount it received in fiscal year 2011. For fiscal year 2013, it limits an ESC's payment to 85% of the amount received in fiscal year 2012. However, the act also provides that, if an ESC ceases operation, the Department must redistribute that ESC's funding to the remaining ESCs in proportion to each ESC's student count. And, if two or more ESCs merge, the Department must distribute the sum of the original ESCs' funding to the new ESC.

ESC contracts with local entities

(R.C. 307.86, 505.101, and 3313.846)

The act specifically authorizes ESCs to enter into service contracts with any other political subdivision of the state. It specifies that ESCs may enter into contracts with a board of county commissioners and a board of township trustees without competitively bidding. Because municipal corporations are governed by home rule, the act is silent on competitive bidding for service contracts with municipal corporations, leaving it, instead, up to each individual municipal corporation's charter or ordinance.

Services provided by the ESC and the amount to be paid for such services must be mutually agreed to by the parties and specified in the contract. Local entities must pay ESCs directly for services, and the board of an ESC must file a copy of each contract entered into with a local entity with the Department of Education by the first day the contract is in effect.

ESC oversight of local school districts

Textbook selection

(R.C. 3329.08)

The act eliminates a requirement that boards of "local" school districts choose textbooks and electronic textbooks to be used in their schools from a list furnished by their ESCs. Therefore, under the act, boards of local school districts, like city and exempted village districts, may decide on their own which textbooks and electronic textbooks its schools will use.

Age and schooling certificates

(R.C. 3331.01)

The act eliminates a provision of law that allowed the superintendent of an ESC to issue age and schooling certificates on behalf of the superintendent of a local school district.

Under the state minor labor law, an employer generally must require that a person who is under 18 and has not received a high school diploma or its equivalent present an age and schooling certificate before hiring that person.[95] These certificates are issued by the superintendent of the school district in which the student resides or the chief administrative officer of the nonpublic school or community school the student attends. Prior law permitted the superintendent of a local school district to designate the superintendent of the ESC to which the school district belongs as the person authorized to issue the certificates for that local district.

Filing of membership records

(R.C. 3317.031)

Under continuing law, not changed by the act, school districts and ESCs are required to keep a membership record for each pupil served. The record must include personal information, attendance records, and information on the pupil's use of school transportation. Prior law also required each local school district to file its membership records with its ESC at the end of each school year. The act eliminates this requirement to file membership records with ESCs.

Educational shared services model/P-16 councils

(Section 267.50.90)

The act requires the Governor's Director of 21st Century Education to develop plans for (1) the integration and consolidation of the publicly supported regional shared services organizations, and (2) encouraging communities and school districts to create regional P-16 councils. The Director is required to submit legislative recommendations to the Governor and the General Assembly by January 1, 2012. The act's stated goal is to have the plans ready for implementation beginning on July 1, 2012.

In preparing the shared services plan, the Director must recommend organizations to be integrated into a regional shared service center system. Those organizations include ESCs, education technology centers, information technology centers, area media centers, the education regional service system, regional advisory boards, and regional staff of the Department of Education providing direct support to school districts. Further, the Director must include "an examination of services offered to public and chartered nonpublic schools and recommendations for integration of services into a shared services model." The services to consider for integration include general instruction, special education, gifted education, academic leadership,

[95] R.C. Chapter 4109.

technology, fiscal management, transportation, food services, human resources, employee benefits, pooled purchasing, professional development, and noninstructional support.

In support of the shared services study, by October 15, 2011, the Director must survey school districts, community schools, STEM schools, chartered nonpublic schools, and other educational service providers and local political subdivisions "to gather baseline data on the current status of shared services and to determine where opportunities for additional shared services exist."

In preparing the P-16 plan, the Director must develop a set of model criteria that encourages and permits communities and school districts to create local P-16 councils. Each council must include, but are not limited to, local community leaders in primary and secondary education, higher education, and early childhood education, and representatives of business, nonprofit, and social service agencies. In developing these recommendations, the Director must examine existing P-16 councils in Ohio and identify their successes "in setting short and long-term student achievement and growth targets in their communities, leading cross-sector strategies to improve student-level outcomes, effectively using data to inform decisions around funding, providing intervention strategies for students, and achieving greater systems alignment."

VI. Teachers and School Employees

Teacher and principal evaluations

(R.C. 3314.03(A)(11)(i), 3319.02, 3319.111, and 3326.111; new R.C. 3319.112; and repealed R.C. 3319.112; conforming changes in R.C. 3302.04 and 3319.11)

Under the act, all school districts and educational service centers (ESCs) must evaluate each teacher they employ at least annually, in accordance with an evaluation framework developed by the State Board of Education. Employers must use the evaluations to inform decisions about retention, promotion, and removal of poorly performing teachers. Under prior law, a school district or ESC had to evaluate a teacher only if it was considering not rehiring the teacher for the next school year.

The act repeals the requirement for the State Board, in consultation with the Chancellor of the Board of Regents, to establish guidelines for the evaluation of teachers and principals for optional use by school districts and ESCs.

Teacher evaluation framework

(New R.C. 3319.112)

By December 31, 2011, the State Board of Education must develop a "standards-based" framework for the evaluation of teachers. The framework must require 50% of each evaluation to be based on student academic growth. It also must establish an evaluation system that:

(1) Provides for multiple evaluation factors;

(2) Is aligned with the Educator Standards Board's standards for teachers, as adopted by the State Board;

(3) Requires observation of the teacher being evaluated, including at least two formal observations by the evaluator for a minimum of 30 minutes each time and classroom walkthroughs;

(4) Requires each teacher to be given a written report of the evaluation results;

(5) Implements a classroom-level, value-added data program developed by a nonprofit organization led by the Ohio business community;

(6) Provides for professional development to accelerate and continue teacher growth and to support poorly performing teachers; and

(7) Allocates financial resources to support the professional development.

The evaluation framework must enable teachers to be rated as "accomplished," "proficient," "developing," or "ineffective." For this purpose, the State Board must develop standards and criteria that distinguish between the four levels of performance. In developing the performance standards and criteria, the State Board must consult with experts, public school teachers and principals, and stakeholder groups.

Value-added data, which measures the amount of a student's learning that is attributable to a particular teacher or school, is currently only available for reading and math in grades 4 to 8, when achievement assessments in those subjects are administered each year. Since half of each evaluation must be based on student academic growth, the act requires the State Board to establish a list of assessments to measure student mastery of course content for grades and subjects for which value-added data or other achievement assessment data is not available. These assessments may include nationally normed standardized assessments, industry certification exams, or end-of-course exams.

Finally, similar to prior law, the act directs the Department of Education to serve as a clearinghouse of promising evaluation procedures and models and to provide technical assistance to districts and schools in developing evaluation policies.

District and ESC evaluation policies

(R.C. 3319.111)

By July 1, 2013, every school district and ESC must adopt a "standards-based" policy for annual teacher evaluations that conforms with the framework developed by the State Board of Education, including the requirement for 50% of each evaluation to be based on student academic growth. This policy must be adopted in consultation with the employer's teachers.

The act specifies that the employer's evaluation policy becomes operative at the expiration of the teachers' collective bargaining agreement in effect on September 29, 2011 (the provision's 90-day effective date), and that the policy must be included in any renewal or extension of that agreement. Under continuing law, a collective bargaining agreement has a maximum term of three years.[96]

Measuring student growth

For the 50% of each teacher evaluation that must be based on student academic growth, the act requires employers to use value-added data from the state achievement assessments. For teachers of grades and subjects that do not have value-added data, the employer must measure student growth using tests selected from the list compiled by the State Board of Education.

Timing and conduct of evaluations

Teachers must be evaluated annually under the act. The employer must complete the evaluation by April 1 and provide the teacher with the results by April 10. However, there are two exceptions to the requirement for once-a-year evaluations. First, the act allows an employer, by adoption of a resolution, to elect to evaluate teachers who received a rating of "accomplished" on their most recent evaluations every two years, instead of annually. The biennial evaluation must be completed by the same April 1 deadline applicable for teachers who are evaluated each year.

Second, under continuing law, the employer must evaluate a teacher at least twice during the school year, if the teacher does not have a continuing contract (tenure) and the employer is considering not rehiring the teacher for the next school year. In

[96] R.C. 4117.09(E), not in the act.

that case, the employer must conduct the first evaluation by January 15, with results provided to the teacher by January 25, and the second evaluation between February 10 and April 1, with results provided to the teacher by April 10.

Under continuing law, each evaluation must be conducted by (1) a school district superintendent or assistant superintendent, (2) a school principal, (3) a person licensed by the State Board of Education to be a supervisor or a vocational director, or (4) a person designated to conduct evaluations under a peer review agreement entered into by the employer and the teachers' union.

Use of evaluations

Each employer's evaluation policy must include procedures for using evaluation results for retention and promotion decisions and for removal of poorly performing teachers. The act prohibits an employer from considering seniority when deciding whether to retain a teacher, except when deciding between teachers with comparable evaluations.

Applicability to community schools and STEM schools

(R.C. 3314.03(A)(11)(i) and 3326.111)

Under the act, community schools and STEM schools that receive federal Race to the Top grant funds must conduct teacher evaluations in the same manner as school districts. Other community schools and STEM schools are not required to evaluate their teachers.

Principal evaluations

(R.C. 3319.02 and 3319.112(B)(1))

Although pre-existing law requires each school district to evaluate principals annually in accordance with evaluation procedures adopted by the district, the act further requires those evaluation procedures to be based on principles comparable to the district's teacher evaluation policy. While the evaluation procedures for principals must be similar to those for teachers, they must be tailored to the duties and responsibilities of principals and the environment in which principals work. As with teachers, the State Board of Education must establish standards and criteria for rating principals on evaluations. Under continuing law, evaluations must be a factor in deciding whether to renew a principal's contract.

Teacher salaries

(R.C. 3314.03(A)(11)(i), 3317.01(C), 3317.14, 3317.141, and 3326.111; conforming changes in R.C. 3302.061 and 3319.08)

The act requires each school district that receives federal Race to the Top grant funds to adopt an annual performance-based salary schedule for teachers. The timeline for the district to adopt the schedule and begin using it are outlined in its scope of work, which was previously approved by the Superintendent of Public Instruction as a condition for receipt of the grant money. Each school district that is *not* a recipient of Race to the Top funding and each educational service center (ESC) must either (1) adopt a performance-based salary schedule in accordance with the act's provisions or (2) comply with continuing law, which requires teachers to be paid a minimum salary based on years of service and educational training (see "**Background – minimum salary schedule**" below).

Employers who are required, or elect, to implement a performance-based salary schedule must measure a teacher's performance by:

(1) The level of educator license that the teacher holds. Under continuing law, the four levels of standard teacher licensure are (a) the resident educator license, which is for entry-level teachers, (b) the professional educator license, which a teacher may teach under throughout the teacher's career, (c) the senior professional educator license, and (d) the lead professional educator license.

(2) Whether the teacher is "highly qualified" under the federal No Child Left Behind Act (NCLB). To be highly qualified within the meaning of NCLB, a teacher generally must have a bachelor's degree, be fully certified by the state, and demonstrate competency in the teaching subject.[97]

(3) The ratings received by the teacher on evaluations conducted under the act (see "**Teacher and principal evaluations**" above).

Additionally, the salary schedule must provide for annual adjustments based on evaluation ratings. While the act does not designate the amount of these adjustments, it specifies that the annual performance-based adjustment for an "accomplished" teacher must be more than the adjustment for a "proficient" teacher.

Finally, the employer may provide in the salary schedule for additional compensation for teachers who assume duties that the employer determines warrant

[97] 34 Code of Federal Regulations 200.56.

extra pay, but for which the teacher does not have a supplemental contract. These duties may include, among others determined by the employer, (1) assignment to a school that is eligible for federal funding for low-income or other at-risk students or that has failed to meet the NCLB standard of "adequate yearly progress" for two or more consecutive years, (2) teaching in a grade or subject area for which the employer has a shortage of teachers, or (3) assignment to a hard-to-staff school. Under continuing law, a teacher may receive extra compensation for duties in addition to regular teaching duties, such as coaching or directing an extracurricular activity, under a supplemental contract. However, the pay for the duties covered by a supplemental contract is not provided for in the main salary schedule.

Applicability to community schools and STEM schools

(R.C. 3314.03(A)(11)(i) and 3326.111)

The act requires community schools and STEM schools that receive Race to the Top funds to adopt an annual performance-based salary schedule that complies with the act's requirements for the teachers they employ. Unlike school districts, those schools are not subject to the requirements of continuing law to pay teachers based on years of service and training or to pay a minimum salary. Consequently, community schools and STEM schools that do *not* receive Race to the Top funds may set teacher salaries in accordance with their own procedures.

Filing of salary schedule

(R.C. 3317.01(C) and 3317.14)

The act repeals a requirement for school districts and ESCs annually to file a copy of their teacher salary schedule with the Superintendent of Public Instruction. It also eliminates a provision making payment of state funding to the district or ESC contingent upon the filing of the schedule.

Background – minimum salary schedule

(R.C. 3317.14)

The act retains law regarding the adoption of a teacher salary schedule that contains provisions for increments based on training and years of service, but it only permits school districts and ESCs that are not receiving Race to the Top funds to use this type of schedule. While a district or ESC may establish its own service requirements and system for granting credit for service in schools not under its control, the law also prescribes a minimum schedule with which the district or ESC must

comply. In other words, there is a statutory minimum that must be paid to teachers based on years of service and education.

Under the statutory schedule, the base salary is $20,000 for a teacher with zero years of service and a bachelor's degree. All other salaries on the schedule are increments upward (or downward in some cases, if a teacher does not have a bachelor's degree) as a teacher gains experience and education.

Also, under this schedule, a district or ESC must grant credit for a teacher's years of service not only to the district or ESC itself, but also to another public school, to a chartered nonpublic school in Ohio (if the teacher was licensed in the same manner as a school district teacher), and to a chartered school operated by the state or a subdivision or other local government of the state. In addition, a district or ESC must give credit for all of a teacher's years of active military service in the U.S. armed forces up to five years. However, the total service credit a district or ESC grants for service to a school other than one under its control and for military service may not exceed ten years.

Teacher reductions in force

(R.C. 3319.17(C); conforming change in R.C. 3319.18)

The act retains the requirement that a school district, when reducing the number of teachers it employs, give preference in retention first to teachers with continuing contracts (tenure). However, it eliminates the requirement that second preference be given to teachers with greater seniority, and instead explicitly prohibits a district from giving preference in layoffs based on seniority at all, except when deciding between teachers with comparable evaluations. Under the act, a district also may not use seniority as the basis for rehiring teachers when positions become available again, unless the teachers under consideration have similar evaluations. These provisions regarding the use of seniority prevail over collective bargaining agreements entered into on or after September 29, 2011 (the provisions' 90-day effective date). Also, unless a school district has a separate layoff policy for administrators, the prohibition on considering seniority will apply to reductions in force affecting those employees.[98]

With respect to teacher layoffs by educational service centers (ESCs), the act repeals the requirement that an ESC give preference in retention first to tenured teachers and then to teachers with greater seniority. It does not specify an alternative method for an ESC to determine the order of layoffs.

[98] See R.C. 3319.171, not in the act.

Retesting teachers

(R.C. 3319.58)

Under the act, in any year in which a building of a school district, community school, or STEM school is ranked in the lowest 10% of all public school buildings based on its performance index score, the building's classroom teachers must retake all exams required by the State Board of Education for licensure to teach the subject area and grade level taught by the teacher. This requirement applies to all teachers of reading and English language arts, math, science, foreign language, government, economics, fine arts, history, or geography. While the act states that the teacher is not responsible for the cost of retaking an exam, it does not specify who is. Presumably, that cost must be paid by the employer.

The school district, community school, or STEM school may use the exam results in deciding whether to continue to employ a teacher and in creating professional development plans for the teacher. However, the act prohibits an employer from using the results as the sole factor in employment decisions, unless the teacher has failed to pass the same licensure exam three consecutive times. Once a teacher provides proof of passing an exam to the teacher's employer, the teacher is exempt from having to take the test again for three years, regardless of the ranking of the building to which the teacher is assigned.

Alternative resident educator license

(R.C. 3319.26)

The act makes several changes regarding the alternative resident educator license, as shown in the table below. This four-year license is intended to give individuals who have not graduated from a traditional teacher preparation program the opportunity to work toward standard licensure while employed full-time as a teacher.

	Prior law	The act
Grade levels	Valid for teaching in grades 4 to 12 in a designated subject area, except that the license in the area of intervention specialist is valid for teaching in grades K to 12. (An intervention specialist works with disabled, gifted, and other students with individualized instructional needs that require use of particularized teaching practices.)	Valid for teaching in grades K to 12 in a designated subject area or in the area of intervention specialist.

	Prior law	The act
Qualifications for obtaining license	Under former statute and State Board of Education licensure rules,[99] the qualifications for an alternative resident license were: (1) A bachelor's degree; (2) A major with a grade point average (GPA) of at least 2.5 in the subject area to be taught, extensive work experience related to that subject area, or a master's degree with a GPA of at least 2.5 in that subject area; (3) Completion of the intensive pedagogical training institute developed by the Superintendent of Public Instruction and the Chancellor of the Board of Regents under continuing law. The instruction covers such topics as student development and learning, assessment procedures, curriculum development, classroom management, and teaching methodology. (4) Passage of the Praxis II subject area assessment.	Under the act, the minimum qualifications for the alternative resident license are: (1) A bachelor's degree; (2) Completion of either (a) the intensive pedagogical training institute or (b) a summer training institute provided to participants of a teacher preparation program that is operated by a nonprofit organization and has been approved by the Chancellor. The act directs the Chancellor to approve any program that requires participants to (i) have a bachelor's degree, (ii) have an undergraduate GPA of 2.5 or better, and (iii) complete a summer training institute. (3) Passage of the Praxis II subject area assessment. The State Board may adopt additional qualifications for the license, but the act prohibits requiring applicants to have completed a college major in the subject area to be taught.
Conditions of holding license	(1) Participate in the Ohio Teacher Residency Program, which is a four-year, entry-level mentoring program for classroom teachers;[100] (2) Show satisfactory progress in taking and completing at least 12 additional semester hours of college coursework in the principles and practices of teaching; and (3) Take the Praxis II assessment of professional knowledge in the	(1) Participate in the Ohio Teacher Residency Program; (2) Show satisfactory progress in taking and completing one of the following: (a) At least 12 additional semester hours of college coursework in the principles and practices of teaching; or (b) Professional development provided by a nonprofit teacher

[99] See Ohio Administrative Code 3301-24-19 and 3301-24-21.

[100] See R.C. 3319.223, not in the act.

	Prior law	The act
	second year of teaching under the license.	preparation program that has been approved by the Chancellor above. (3) Take the Praxis II assessment of professional knowledge in the second year of teaching under the license.

Licensure of Teach for America participants

(R.C. 3319.227 and 3319.26(G))

The act prohibits the State Board of Education from adopting rules establishing any additional licensure qualifications for participants in the Teach for America program beyond those enacted in H.B. 21 of the 129th General Assembly (effective July 29, 2011). Under H.B. 21, the State Board must issue a resident educator license to a person who is assigned to teach in Ohio as a participant in the Teach for America program, or who has completed two years of teaching in another state through that program, and (1) has a bachelor's degree, (2) has an undergraduate grade point average of at least 2.5 out of 4.0, (3) has passed the Praxis II subject area assessment in the teaching area, and (4) has successfully completed Teach for America's summer training institute. Since H.B. 21 qualifies Teach for America participants for a standard teaching license, this act makes them ineligible for an alternative resident educator license.

Licensure of out-of-state teachers

(R.C. 3319.228)

The act creates a process for the State Board of Education to establish a list of states with inadequate teacher licensure standards, for the purpose of enabling certain veteran teachers from states *not* on the list (and, therefore, have satisfactory licensure standards) to obtain automatic licensure in Ohio. To qualify for the automatic licensure, an out-of-state teacher, in addition to being from a state with acceptable licensure standards, must:

(1) Have a bachelor's degree;

(2) Have been licensed and employed as a teacher in the other state for each of the preceding five years;

(3) Have been initially licensed as a teacher within the prior 15 years; and

(4) Have not had a teacher's license suspended or revoked in any state.

The act does not prohibit a teacher from a state on the State Board's list from ever obtaining a teaching license in Ohio, but presumably the teacher would need to meet additional qualifications.

Establishing the list

(R.C. 3319.228(B))

By July 1, 2012, the Superintendent of Public Instruction must develop a list of states that the Superintendent considers to have teacher licensure standards that are inadequate to ensure that a person who meets the criteria in (1) to (4) above and who was most recently licensed to teach in that state is qualified for a professional educator license, which is the standard teaching license in Ohio. The Superintendent then must convene a panel of experts, each of whom must be approved by the State Board of Education, to evaluate the adequacy of the teacher licensure standards of the states on the list. In evaluating the list, the panel must provide an opportunity for representatives of the Education department of each state on the list to refute the state's inclusion.

By April 1, 2013, the panel must recommend to the State Board either that the list be approved without changes or that specified states be removed from the list prior to approval. The State Board must approve a final list by July 1, 2013.

Licensure of teachers until list is approved

(R.C. 3319.228(C) to (E))

Until the final list is approved, the State Board must issue a one-year provisional educator license to any out-of-state teacher who meets the criteria described in (1) to (4) above. However, between July 1, 2012, when the Superintendent of Public Instruction's preliminary list is completed, and the date of the final list's approval, the State Board must issue the teacher a five-year professional educator license, if the teacher is from a state *not* on the preliminary list. Upon approval of the final list, the State Board must issue a professional educator license to any teacher who meets the specified criteria and is from a state not on the list.

In the case of a teacher who is issued a provisional license prior to the final list's approval, under certain conditions, the teacher may obtain a professional license when the provisional license expires. To qualify for the professional license, the teacher must have been issued the provisional license before the completion of the preliminary list by the state Superintendent and, prior to teaching in Ohio, have been most recently

licensed to teach by a state not on the preliminary list or, if the final list has been approved, not on that list. However, if the teacher was most recently licensed by a state that is on the list, the teacher can still obtain a professional license if (1) the teacher was employed under the provisional license by a public school in Ohio or an entity contracted by the school to provide online instruction and (2) the school certifies to the State Board that the teaching was satisfactory.

Reciprocity agreements

(R.C. 3319.228(C))

Once the State Board has approved a final list of states with inadequate licensure standards, neither the State Board nor the Department of Education may be party to any reciprocity agreement with a state on the list that requires the issuance of any type of professional educator license to a teacher based on licensure and teaching experience in that state.

Career-technical educator licenses

(R.C. 3319.229)

The act requires the State Board of Education's rules for the issuance and renewal of professional educator licenses for teaching career-technical education to include requirements relating to life experience, professional certification, and practical ability. Moreover, it prohibits the State Board from requiring an applicant for a professional career-technical license who meets those requirements to complete a degree as a condition of obtaining or renewing the license. This provision restricts a State Board rule requiring a career-technical teacher who did not have an associate's or bachelor's degree at the time of initial licensure to complete a degree applicable to the career field, classroom teaching, or an area of licensure before the second renewal of the professional license.[101] This rule applied to all career-technical teachers initially licensed after 2004.

Data on graduates of teacher preparation programs

(R.C. 3333.0411)

Under the act, the Chancellor of the Board of Regents annually must report aggregate value-added data for graduates of Ohio teacher preparation programs. Value-added data shows the amount of student academic growth attributable to a particular teacher or school. Since value-added data is only available for public school teachers who teach English language arts or math in grades 4 to 8, when annual state

[101] Ohio Administrative Code 3301-24-08(B).

achievement assessments are given in those subjects, the reports will be limited to those teachers. The Chancellor must report the data for each program by graduating class. If a class has ten or fewer graduates included in the report, however, the Chancellor must report the data for a three-year group of classes to protect the identity of individual graduates. The Chancellor must issue the first report by December 31, 2012. The act directs the Department of Education to share any data necessary for the report with the Chancellor.

Criminal records checks of adult education instructors

(R.C. 3319.39)

The act eliminates the requirement for an adult education instructor to undergo a criminal records check prior to hiring by a school district, community school, STEM school, educational service center, or chartered nonpublic school, if the person had a records check within the previous two years as a condition of being hired for short-term employment with that same district, school, or service center.[102] The exemption from the records check applies only if the duties of the position for which the person is applying do not involve routine interaction with a child or, during any period of time in which the position does involve routine interaction, another employee will be present in the same room with the child or, if outdoors, will be within a 30-yard radius of the child or have visual contact with the child.

Certification of chartered nonpublic school teachers

(R.C. 3301.071)

The act creates an alternative pathway to certification for individuals to teach foreign language, music, religion, computer technology, or fine arts in a chartered nonpublic school. It requires the State Board of Education to certify a person to teach one of these subjects upon receipt of a signed affidavit from the chief administrative officer of the chartered nonpublic school that wishes to employ the person, stating that the person (1) has specialized knowledge, skills, or expertise that qualifies the person to provide instruction or (2) has provided the chief administrative officer with evidence of either (a) at least three years of teaching experience in another school or (b) completion of a teacher training program named in the affidavit.

Under prior law, to be certified to teach any subject in a chartered nonpublic school, the only option was for a person to have a bachelor's degree from an accredited institution of higher education or, at the State Board's discretion, an equivalent degree

[102] See also R.C. 3314.03(A)(11)(d) and 3326.11.

from a foreign college or university of comparable standing. The act's change enables individuals who do not have a bachelor's degree, but who have subject area proficiency or instructional training or experience, to receive teaching certification.

Termination of school district transportation staff

(R.C. 3319.0810; conforming change in R.C. 3319.081)

In provisions that are identical to prior law repealed in 2009 by H.B. 1 of the 128th General Assembly, the act authorizes the termination of transportation staff positions for "reasons of economy and efficiency" by the boards of non-Civil Service school districts (local and exempted village school districts and some city school districts). In that case, rather than employ its own staff to transport students, the board must contract with an independent agent to provide transportation services. This provision does not appear to permit the lay off of any board-employed transportation personnel for economic reasons unless the district intends to contract for at least some nonpublic personnel.

Conditions

The act prescribes conditions for laying off transportation employees and contracting with an independent agent for transportation services. First, any collective bargaining agreement between the district board and the labor organization representing the terminated employees must have expired or be scheduled to expire within 60 days after the termination notice, or must contain provisions permitting the termination of positions while the agreement is in force.

Second, the board must permit any employee whose position is terminated to fill any vacancy within the district's organization for which the employee is qualified. In doing so, the board must follow procedures for filling the vacancies established in the collective bargaining agreement with the labor organization representing the terminated employees, if it is still in force and contains such provisions. If the agreement is not in force or does not contain provisions for reemployment of the terminated employees in new positions, the board must offer reemployment on the basis of seniority.

Third, the board must permit any terminated employee to fill the employee's former position in the event the board reinstates that position within one year after the position is terminated. The act specifically states that the board need not reinstate an employee under this condition if the collective bargaining agreement with the labor organization representing the terminated employees, if one is in force at the time of the terminations, provides otherwise.

Fourth, the board must permit a terminated employee to appeal, pursuant to the Administrative Procedure Act (R.C. Chapter 119.), the board's decision to terminate the employee, not to reemploy the employee, or not to reinstate the employee.

Fifth, the contract between the board and an independent agent for the provision of transportation services must contain a stipulation requiring the agent to consider hiring the terminated district employees for similar positions.

Sixth, the contract between the board and the independent agent also must require the agent to recognize for purposes of collective bargaining between the former district employees and the agent any labor organization that represented those employees at the time of the terminations, as long as the following additional conditions are satisfied:

(1) A majority of the employees in the former school district bargaining unit agree to representation by that labor organization;

(2) Federal law does not prohibit the representation; and

(3) The labor organization is not prohibited from representing nonpublic employees either by law or its own governing instruments.

No employee may be compelled to be included in the bargaining unit represented by that labor organization if there is another one within the agent's organization that is applicable to the employee.

Recourse if district board does not comply with conditions

If the school district board fails to comply with any of the prescribed lay-off conditions, including enforcement of the required contractual obligations, the terminations of transportation staff positions are void. In such instances, the board must reinstate the positions and fill them with the employees who filled those positions just prior to the terminations. The employees must be compensated at their rate of compensation in those positions just prior to the terminations, plus any increases paid to other nonteaching employees since the terminations. In addition, the employees must receive back pay from the date of the terminations to the date of reinstatement, minus any pay the employees received while the board was in compliance with the act's provisions.

The act grants any employee aggrieved by the board's failure to comply with any of the act's provisions the specific right to sue the board for reinstatement of the employee's former position or for damages in lieu of reinstatement. Suit may be brought in the common pleas court for the county in which the school district is located

or, if the district is located in more than one county, in the common pleas court for the county in which the majority of the district's territory is located.

School district employees sick leave

(R.C. 3319.141)

The act exempts substitutes, adult education instructors who are scheduled to work the full-time equivalent of less than 120 days per school year, and persons who are employed on an as-needed, seasonal, or intermittent basis from the law that provides 15 days sick leave with pay for each year under contract to each person who is employed by a school district or ESC, which is credited at the rate of 1.25 days per month.

Continuing law requires that part-time, seasonal, intermittent, per diem, or hourly service employees be entitled to sick leave for the time actually worked at the same rate as that granted like full-time employees. The act requires this time to be calculated at a rate of 4.6 hours of sick leave for each completed 80 hours of service, and removes seasonal and intermittent employees from those employees who are eligible for this sick leave.

VII. School Restructuring

Restructuring low-performing schools

(R.C. 3302.12)

If a school district school is ranked for three consecutive years in the lowest 5% of all public school buildings according to performance index score, and the school also has a performance rating of academic watch or academic emergency, the act requires the school district to restructure the school. The district must choose one of the following restructuring actions:

(1) Close the school and reassign the school's students to other schools with higher academic achievement;

(2) Contract with another school district or a nonprofit or for-profit entity with a record of effectiveness to operate the school;

(3) Replace the school's principal and teaching staff, exempt the school from any specified district regulations regarding curriculum and instruction at the request of the new principal, and allocate at least the per-pupil amount of state and local (that is, nonfederal) revenues to the school for each of its students; or

(4) Reopen the school as a conversion community school.

Since the performance index scores and performance ratings are issued each August for the previous school year, a school may have already opened for the next school year before finding out it is subject to the act's provisions. Rather than requiring restructuring of the school immediately, the act grants the school an additional year of operation before it must be restructured. It is not clear under the act whether there must be a "look back" at a school's performance index scores prior to the 2011-2012 school year to determine if the school must be restructured. If there is a "look back" period, underperforming schools could face restructuring at the end of the 2011-2012 school year.

Continuing law requires all school districts to maintain grades K to 12.[103] A district's restructuring action, such as closing a school or reopening a school as a community school, may cause the district to be out of compliance with this requirement. In that case, the district must enter into a contract with another school district to enroll resident students of the missing grades in the other district. The terms of the contract must be agreed to by the respective boards of education and the resident district must pay tuition to the district of attendance for the students' enrollment.[104] If the resident district fails to enter into or maintain the contract, the State Board of Education must proceed to dissolve the entire district.

Pilot project for parent petitions for school reforms

(R.C. 3302.042)

The act establishes a pilot project in the Columbus City School District, under which parents may petition the district to make reforms in certain poorly performing schools. Parents may petition for reforms in a school building that, for three or more consecutive years, has been ranked in the lowest 5% of all public school buildings statewide based on its performance index score. The pilot project must commence after the Department of Education, in consultation with the District, establishes implementation guidelines.

Under the pilot project, parents may file a petition requesting the district to do one of the following: (1) reopen the failing school as a community school, (2) replace at least 70% of the school's personnel who are related to the school's poor academic performance, or retain no more than 30% of the staff members, (3) contract with another school district or a nonprofit or for-profit entity with a record of effectiveness to operate

[103] R.C. 3311.29.

[104] R.C. 3317.08, 3327.04, and 3327.06 (last section not in the act).

the school, (4) turn operation of the school over to the Department of Education, or (5) any other major restructuring that makes fundamental reforms in the school's staffing or governance.

To compel the district to make the requested reform, the parents of at least 50% of the school's students must sign the petition. Alternatively, a petition may be submitted by the parents of at least 50% of the total number of students enrolled in the underperforming school and the feeder schools whose students typically matriculate into that school.

The district must implement the requested reform in the next school year, except in certain circumstances (see below). However, if parents submit a petition to reform a school that is also subject to restructuring by the school district (see "**Restructuring low-performing schools**" above), and the district chooses a different restructuring reform than requested in the petition, it is not clear which reform would prevail.

When implementation of reform is prohibited

(R.C. 3302.042(D))

The act explicitly prohibits the district from implementing the reform requested by the petitioners if:

(1) The Columbus Board of Education determines that the petitioners' request is for reasons other than improving student achievement or safety;

(2) The Superintendent of Public Instruction determines that the reform would not comply with the Department of Education's Model of Differentiated Accountability, which establishes sanctions for chronically underperforming districts and schools as required by the federal No Child Left Behind Act;

(3) The requested reform is to have the Department take over the school's operation and the Department has not agreed to do so; or

(4) The school board has (a) held a public hearing on the matter and issued a statement explaining why it cannot implement the reform and agreeing to implement another of the reforms described above, (b) submitted evidence to the state showing how the alternative reform will improve the school's performance, and (c) had the alternative reform approved by the Superintendent of Public Instruction and the State Board of Education.

Petition validation

(R.C. 3302.042(C))

Parent petitions must be filed with the school district treasurer. Within 30 days after receipt of a petition, the treasurer must verify that the signatures are valid and sufficient in number to require implementation of the requested reform. If the treasurer finds that there are not enough valid signatures, any person who signed the petition, within ten days, may appeal the treasurer's finding to the county auditor. The county auditor then has 30 days to conduct an independent verification of the signatures.

Evaluation of pilot project

(R.C. 3302.042(E))

The Department of Education must annually evaluate the pilot project and submit a report to the General Assembly, beginning no later than six months after the first petition has been resolved. Each report must contain recommendations regarding the continuation of the pilot project, its expansion to other school districts, or enactment of further legislation establishing the program statewide.

Innovation schools and innovation school zones

(R.C. 3302.06 to 3302.068)

Under the act, a school district may designate a single school as an "innovation school," or a group of similar schools as an "innovation school zone," for the purpose of implementing an innovation plan designed to improve student academic performance. Schools must apply to the district board of education for the designation. A majority of the teachers and a majority of the administrators in each applicant school must consent to seeking the designation. If the district approves the application, the district then must apply to the State Board of Education for designation as a "school district of innovation." Upon receipt of the designation from the State Board, the participating schools may proceed to implement their innovation plans.

The State Board, with certain exceptions, must waive education laws and administrative rules that prevent implementation of an innovation plan. Furthermore, a participating school may be exempt from specific provisions of a collective bargaining agreement, upon approval of the members of the bargaining unit working in the school.

Applying for designation as an innovation school or innovation school zone

(R.C. 3302.06)

When a school applies to the school board to be designated as an innovation school, the application must include an innovation plan that contains the following:

(1) A statement of the school's mission and an explanation of how the designation would enhance the school's ability to fulfill that mission;

(2) A description of the innovations the school would implement;

(3) An explanation of how those innovations would affect the school's programs and policies, including (a) the school's educational program, (b) the length of the school day and school year, (c) the student promotion policy, (d) the assessment of students, (e) the school's budget, and (f) the school's staffing levels;

(4) A description of the improvements in student academic performance that the school expects to achieve with the innovations;

(5) An estimate of the cost savings and increased efficiencies, if any, that the school expects to achieve with the innovations;

(6) A description of any education laws, State Board of Education rules, district requirements, or provisions of a collective bargaining agreement that would need to be waived to implement the innovations; and

(7) Evidence that a majority of the teachers and a majority of the administrators assigned to the school consent to seeking the designation and a statement of the level of support for seeking the designation from other school personnel, students, parents, and members of the community in which the school is located.

Two or more schools in the same district may apply for designation as an innovation school zone, if the schools share common interests, such as geographical proximity or similar educational programs, or if the schools serve the same students as they progress to higher grades (an elementary school and the middle school into which it feeds, for example, could jointly apply). The application must contain the same information as above for each participating school, plus (1) a description of how innovations in the participating schools would be integrated to achieve results that would be less likely to be achieved by each school alone and (2) an estimate of economies of scale that would be realized by joint implementation of the innovations.

Review of applications by district

(R.C. 3302.061)

The school board must approve or disapprove an application for designation as an innovation school or an innovation school zone within 60 days. If the board disapproves an application, it must provide a written explanation for its decision. The applicants may reapply for the designation at any time.

In evaluating applications, the school board must give preference to those that propose innovations in one or more of the following areas:

(1) Curriculum;

(2) Student assessments, other than the state achievement assessments;

(3) Class scheduling;

(4) Accountability measures, including innovations that expand the measures used in order to collect more complete data about student performance. For this purpose, schools may consider use of such measures as end-of-course exams, portfolios of student work, nationally or internationally normed assessments, the percentage of students enrolling in higher education, or the percentage of students simultaneously obtaining a diploma and an associate's degree or industry certification.

(5) Provision of student services, including services for students who are disabled, gifted, limited English proficient, at risk of academic failure or dropping out, or at risk of suspension or expulsion;

(6) Provision of health, counseling, or other social services to students;

(7) Preparation of students for higher education or the workforce;

(8) Teacher recruitment, employment, and evaluation;

(9) Compensation for school personnel;

(10) Professional development;

(11) School governance and the roles and responsibilities of principals; or

(12) Use of financial or other resources.

The act explicitly authorizes a school board to approve an application that allows a participating school to determine the compensation of school employees. In that case,

the school is not required to comply with the salary schedule for teachers adopted by the board. However, the school must set salaries so that the total compensation for all school employees does not exceed the funds allocated to the school by the district. Similarly, the school board may approve an application that permits a participating school to remove employees from the school, but the board retains the ultimate responsibility for terminating an employee's contract.

Finally, the school board, of its own accord and in the absence of an application from a school, may designate an innovation school or an innovation school zone. If it exercises this authority, the board must create an innovation plan and offer the schools it has designated an opportunity to participate in the plan's development.

Designation as district of innovation

(R.C. 3302.062, 3302.066, and 3302.067)

Once a school board has designated an innovation school or innovation school zone within the district, it must submit the innovation plan of the participating schools to the State Board of Education. Within 60 days after receipt of the plan, the State Board must designate the district as a school district of innovation. However, the State Board must deny the designation if it determines the plan is not financially feasible or will likely result in decreased academic achievement.

A school board may request the State Board to make a preliminary assessment of an innovation plan prior to formally applying for designation as a school district of innovation. The State Board must review the plan and, within 60 days, recommend changes that would improve the plan.

Designation as a school district of innovation grants the participating schools permission to implement the innovation plan. The school board or a participating school may accept donations to support the plan's implementation. At any time, the school board, in collaboration with the participating schools, may revise the innovation plan to further improve student performance. A majority of the teachers and a majority of the administrators in each participating school must consent to the revisions.

Waiver of education laws and rules

(R.C. 3302.063)

The act requires the State Board of Education, in most cases, to waive education laws or administrative rules necessary to implement an innovation plan. A waiver applies only to the schools participating in the innovation plan. But the act prohibits the State Board from waiving any law or rule regarding:

(1) School district funding;

(2) Provision of services to students with disabilities and gifted students;

(3) Requirements related to career-technical education that are necessary to comply with federal law;

(4) Administration of the state achievement assessments and diagnostic assessments (and end-of-course exams and a nationally standardized test required as part of the new high school assessment system to be developed by the State Board and the Chancellor of the Board of Regents[105]);

(5) Issuance of the annual school district and building report cards;

(6) Implementation of the Department of Education's Model of Differentiated Accountability, which specifies sanctions for underperforming schools as required by the federal No Child Left Behind Act;

(7) Reporting of education data to the Department;

(8) Criminal records checks of school employees; and

(9) State retirement systems for teachers and other school employees.

Waiver of collective bargaining agreement

(R.C. 3302.064)

The act also permits the waiver of specific provisions of a collective bargaining agreement to implement an innovation plan. To obtain a waiver, at least 60% of the members of the bargaining unit covered by the agreement who work in a participating school must vote, by secret ballot, to approve the waiver. In the case of an innovation school zone, this 60% threshold applies to each participating school individually. If a participating school does not meet this threshold, the school board may remove the school from the innovation school zone.

A member of the bargaining unit who works at a participating school (and presumably did not vote for the waiver) may request a transfer to another district school. The school board must make every reasonable effort to accommodate the request.

[105] See R.C. 3301.0712.

Once a waiver is approved, it remains in effect relative to any substantially similar provision in future collective bargaining agreements. Each collective bargaining agreement entered into by a school district on or after September 29, 2011 (the act's 90-day effective date) must allow for the waiver of its provisions in order to implement an innovation plan.

Regular performance reviews

(R.C. 3302.065; conforming provisions in R.C. 3302.063 and 3302.064(D))

Every three years, the school district board must review the performance of each innovation school and innovation school zone to determine if it is achieving, or making sufficient progress toward achieving, the improvements in student performance described in its innovation plan. If the board finds that a school has not demonstrated sufficient progress, it may revoke the school's designation as an innovation school or remove the school from the innovation school zone. The board also may revoke the designation of all participating schools as an innovation school zone. If a school's designation is revoked or the school is removed from an innovation school zone, the school again becomes subject to all laws, rules, and provisions of a collective bargaining agreement that had been waived to implement the innovation plan.

Annual report

(R.C. 3302.068)

By July 1 each year, the Department of Education must issue a report on school districts of innovation. This report must include data on the number of innovation schools and innovation school zones and how many students are served by them. In addition, it must contain (1) an overview of the innovations implemented in districts of innovation, (2) data on student performance, including a comparison of performance before and after a district's designation, and (3) legislative recommendations.

School district operating standards

(R.C. 3301.07(D)(3) and 3301.16)

H.B. 1 of the 128th General Assembly required the State Board of Education to adopt additional operating standards for school districts in relation to that act's establishment of the "Evidence Based Model" (EBM) and other reforms. This act makes adoption of those new standards optional and conforms some of the statutory language to the act's repeal of the EBM. The new standards, if adopted, would cover the following:

(1) Effective and efficient organization, administration, and supervision of each district and building;

(2) Establishment of business advisory councils;

(3) "Job-embedded professional development and professional mentoring and coaching," release time for planning and professional development, and reasonable access to classrooms by administrators for observation and professional development experiences; and

(4) Creation of a school leadership team for each building.

Governor's Effective and Efficient Schools Recognition Program

(R.C. 3302.22)

The act creates the Governor's Effective and Efficient Schools Recognition Program, under which the Governor must annually recognize the top 10% of public schools in the state. The manner by which such schools are to be recognized is at the discretion of the Governor. Schools to be recognized include schools of school districts, community schools, and STEM schools.

The act directs the Department of Education to establish standards by which to determine the top 10% of schools. These standards must include at least (1) student performance, measured by factors including performance indicators required under continuing law, report cards issued by the Department, performance index score rankings, and any other statewide or national assessment or student performance recognition program the Department selects to use and (2) fiscal performance, including cost-effective measures taken by the school.

VIII. Other Education Provisions

Statewide academic standards

(R.C. 3301.079 and 3301.0710)

Continuing law requires the State Board of Education to adopt statewide academic standards that specify core academic content and skills. The act repeals the requirement that the standards for English language arts, math, science, and social studies be revised every five years, and instead requires the State Board to update the standards "periodically." These standards were last updated in 2010.

The act also repeals the requirement that the State Board's standards specify skill sets that relate to the following: (1) creativity and innovation, critical thinking and

problem solving, and communication and collaboration, and (2) personal management, productivity and accountability, and leadership and responsibility. Under prior law, these skills had to be included in the standards for the core subject areas, financial literacy and entrepreneurship, fine arts, foreign language, and computer literacy (which the act renames "technology").

Finally, the act removes language that the statewide achievement assessments be designed to ensure that students demonstrate "skills necessary in the twenty-first century," but retains the requirement that the assessments ensure that students demonstrate high school levels of achievement in English language arts, math, science, and social studies.

College and work-ready assessments (new diploma requirements)

(R.C. 3301.0712; conforming changes in R.C. 3301.0711, 3302.02, 3313.603, 3313.61, 3316.611, 3313.612, 3313.614, 3314.36, and 3325.08)

The act revises the standards for the development of the new "college and work-ready assessments," which the State Board of Education, the Superintendent of Public Instruction, and the Chancellor of the Board of Regents are charged, by pre-existing law, with designing. Once developed, the new regimen is to replace the Ohio Graduation Test as a requirement for a high school diploma from a public or chartered nonpublic high school. The following table compares the standards of prior law with the act's changes:

Components of the College and Work-Ready Assessments		
	Prior Law	**The Act**
1.	A nationally standardized assessment, selected jointly by the state Superintendent and the Chancellor, that measures "competencies in science, mathematics, and English language arts."	A nationally standardized assessment, selected jointly by the state Superintendent and the Chancellor, that measures "college and career readiness."
2.	A series of end-of-course examinations in science, math, English language arts, and social studies, selected jointly by the state Superintendent and the Chancellor in consultation with faculty in the appropriate subject areas at state institutions of higher education.	Same, but further specifies that, for each subject area, the Superintendent and Chancellor must choose multiple assessments that schools may use, and these must include nationally recognized subject area assessments, such as Advanced Placement exams, SAT subject tests, International Baccalaureate exams, and other assessments of college and work readiness.

Components of the College and Work-Ready Assessments		
	Prior Law	**The Act**
3.	A senior project, completed by the student individually or as a member of the group, to be scored by the student's high school according to rubrics designed by the state Superintendent and Chancellor.	No provision. The act eliminates the senior project as a state requirement for a diploma.

The act also eliminates the requirement that the Superintendent and Chancellor create a composite scoring system to assess a student's college and work-readiness, instead relying on requirements as set by the State Board for receiving a high school diploma based on a student's performance on the nationally standardized assessment and end-of-course exams.

Competency-based high school credit

(R.C. 3313.603(J))

The act exempts chartered nonpublic schools from having to comply with, and award high school credit under, the State Board of Education's plan for awarding high school credit based on a student's demonstration of subject area competency, rather than classroom instruction.

Background

Pre-existing law requires the State Board to have adopted, by March 31, 2009, and phase in a statewide plan for students to earn units of high school credit based on a demonstration of subject area competency, instead of or in combination with completing hours of classroom instruction. The plan must include a standard method for recording demonstrated proficiency on high school transcripts. Under continuing law, all public schools (school district, community or "charter," and STEM schools) must comply with the plan and award high school credit in accordance with the plan.

Approval to take GED

(R.C. 3313.617)

The act requires a person who is 16 to 18 years old to obtain written approval from school officials to take the General Educational Development (GED) tests, passage of which qualifies a person for a high school equivalence diploma. In the case of a person who was last enrolled in a school district, the district superintendent (or a designee) must give the approval. If the person was last enrolled in a community

school or STEM school, the approval must be provided by the school principal (or a designee). The act supersedes an administrative rule of the State Board of Education, which requires the person to obtain the approval of the superintendent of the school district in which the person was last enrolled or in which the person currently resides.[106] As under the State Board rule, the act permits the Department of Education to require a person younger than 18 also to obtain the written approval of the person's parent or a court official in order to take the GED.

When calculating graduation rates for the school district and building report cards, the act requires the Department to count a person who receives approval to take the GED as a dropout from the school district, community school, or STEM school in which the person was last enrolled. This counting method applies regardless of how long the person was enrolled there before electing to take the GED.

Public records status of elementary achievement assessments

(R.C. 3301.0711(N))

Under the act, the state achievement assessments for grades 3 to 8 that are administered in the 2011-2012 school year and later are not public records. Previously, at least 40% of the questions on each assessment that were used to compute a student's score were public records, but questions needed for reuse on a future assessment were not public records and had to be redacted from the tests prior to their release. The act does not affect the Ohio Graduation Tests, which are already prohibited from public release.

Testing of students with disabilities

(R.C. 3301.0711(C))

The act requires the individualized education program (IEP) developed for a disabled student by a school district, community school, or STEM school to specify the manner in which the student will participate in the state achievement assessments. The act retains the stipulation of law that the IEP may excuse the student from taking a particular assessment, if no reasonable accommodation can be made to enable the student to take the test and the IEP specifies an alternate assessment method.

[106] Ohio Administrative Code 3301-41-01.

Fees for career-technical education materials

(R.C. 3313.642)

The act authorizes school districts to charge low-income students eligible for free lunches for certain career-technical education materials. This authority is an exemption from the general prohibition in law against charging those students for any materials needed to participate fully in a course of instruction. The course materials for which districts may charge under the act are tools, equipment, and materials that are necessary for workforce-readiness training *and* that may be retained by the students after completion of the course.

Calamity day make-up

(R.C. 3313.88 and 3326.11)

Online make-up lessons

The act permits school districts, STEM schools, community schools, and chartered nonpublic schools to use online lessons to make up some calamity days their schools are closed. To make up days in this fashion, a district or school must submit a plan to the Department of Education by August 1 each year. The plan may specify up to three days (or in the case of a community school a number of hours up to the equivalent of three days) that may be made up using lessons posted to the district's or school's web portal or web site. In the case of a school district or STEM school, the plan must include the written consent of the union that represents the district's or STEM school's teachers.

A plan must require that each classroom teacher, by November 1, develop a sufficient number of lessons for each course taught by the teacher that school year to cover the number of make-up days or hours specified in the plan. The teacher must designate the order in which the lessons are to be posted in the event of a school closure. Teachers may receive up to one professional development day to create lesson plans for the lessons. "To the extent possible and necessary," teachers must update or replace one or more developed lesson plans based on current instructional progress.

As soon as practicable after a school closure, the designated lessons for each course that was scheduled to meet on the day of the closure must be available to students on the district's or school's web portal or web site. If a student does not have access to a computer at home, the student must be permitted to work on the posted lessons at school after school reopens.

Each student must have two weeks to complete an online lesson. The two-week period generally runs from the time the particular lesson is posted. But in the case of a student who does not have computer access at home and who, therefore, is using the school's computers after the school reopens, the two-week period runs from the time the school reopens, if the lessons were actually posted prior to the school's reopening. Lessons must be graded in the same manner as other lessons. The act specifies that a student "may" receive an incomplete or failing grade if the lesson is not completed on time.

Blizzard bags

The act also gives school districts, STEM schools, community schools, and chartered nonpublic schools the option of distributing "blizzard bags," paper copies of the lessons posted online, to students in addition to posting lessons online. If a school opts to use blizzard bags, teachers must prepare paper copies in conjunction with the lessons to be posted online and update the paper copies whenever the teacher updates online lesson plans.

The district or school must specify in its plan submitted to the Department the method of distributing lessons. The method may require distribution of blizzard bags by a specific deadline or prior to any anticipated school closure as directed by the superintendent of a school district, or the principal, director, chief administrative officer, or equivalent, of a school. Blizzard bag assignments must be turned in within the same two-week period granted for online lessons. Students may receive an incomplete or failing grade for lessons not completed on time.

Schools may offer the online lesson make-up day plan in conjunction with or independent of blizzard bags. Regardless of the combination of methods used, a school may only use them to make up a total of three calamity days.

Plan for tuition-free services to adults

(Section 267.60.33)

The act requires the Department of Education, by December 31, 2011, to develop and submit to the Governor and General Assembly a plan and legislative recommendations for providing, free of tuition, two additional years of education for individuals age 22 or older toward their high school diplomas. The plan must recommend that the services be provided through dropout prevention and recovery programs operated by school districts and community schools. In developing the plan and recommendations, the Department must consult with the U.S. Department of Education to ensure that creation of the program will not expand the requirement of the

state or local education agencies to provide a free appropriate public education under the federal Individuals with Disabilities Education Act to all individuals beyond age 21.

Sale of milk in schools

(R.C. 3313.816)

Federal regulations promulgated under the National School Lunch Act prohibit a school participating in the federal school lunch program from "directly or indirectly" restricting the sale of milk "at any time or in any place on school premises or at any school-sponsored event."[107] The act repeals provisions of Ohio law, which were scheduled to take effect July 1, 2011, and that might have been construed to violate this prohibition. The repealed provisions would have placed limits on the serving size, fat content, and calorie content of milk available for sale to public and chartered nonpublic school students during the school day. The repealed limits are shown in the table below.

Grades	Time period	A la carte milk restrictions
Schools composed primarily of grades K-4 or grades 5-8	Before January 1, 2014	May sell only 8 ounces or less of low-fat or fat-free milk, including flavored milk, that contains no more than 170 calories per 8 ounces
	Starting January 1, 2014	Same as above, except the milk may contain no more than 150 calories per 8 ounces
Schools composed primarily of grades 9-12	Before January 1, 2014	May sell only 16 ounces or less of low-fat or fat-free milk, including flavored milk, that contains no more than 170 calories per 8 ounces
	Starting January 1, 2014	Same as above, except the milk may contain no more than 150 calories per 8 ounces

However, the act retains the Ohio law that requires at least 50% of the beverage items available for sale through the school food service program, a vending machine (except for one that sells only milk or federally subsidized complete meals), or a school store to be water or other beverages that contain no more than 10 calories per 8 ounces.

[107] 7 Code of Federal Regulations 210.10(m)(4).

Repeal of BMI screening requirement (VETOED)

(Repealed R.C. 3313.674 and 3301.922; R.C. 3301.921, 3302.032, 3314.03(A)(11)(h), and 3326.11)

The Governor vetoed an item that would have repealed the law requiring school districts, community schools, STEM schools, and chartered nonpublic schools to conduct body mass index (BMI) and weight status category screenings for students in grades K, 3, 5, and 9. The Governor also vetoed related provisions that would have eliminated the requirement for an annual report on public and chartered nonpublic school compliance with the BMI screening law.

Background

Continuing law, as a result of the Governor's veto, generally requires each school district, community school (other than an e-school), STEM school, and chartered nonpublic school annually to administer a screening for BMI and weight status category for each student enrolled in grades K, 3, 5, and 9. The parent of a student may opt out of the requirement by submitting a signed statement indicating that the parent does not wish to have the student undergo the screening. A district or school also may obtain a waiver of the screening requirements from the Superintendent of Public Instruction. To obtain the waiver, the district or school must submit an affidavit stating that it is unable to comply with the requirements. The state Superintendent must grant the waiver upon receipt of the affidavit.

Intra-district open enrollment

(R.C. 3313.97)

Each city, exempted village, and local school district is required to have in place an intra-district open enrollment policy permitting resident students to enroll in district schools other than the ones of their attendance areas. Each district's policy must provide for application procedures, capacity limits, and preference for students living in an attendance area, and procedures to ensure maintenance of racial balancing in the district schools.

The act specifically permits a school district to grant a student permanent permission to attend a school outside of the student's attendance area, so that the student does not need to re-apply annually for permission to attend the school. Prior law neither permitted nor prohibited a district to grant a permanent intra-district transfer.

Interscholastic athletics participation

(R.C. 3313.538)

Under Ohio High School Athletic Association (OHSAA) bylaw 4-6-3, "a student whose parents reside outside the state of Ohio but within the United States will be ineligible for interscholastic athletics in a member school." The bylaw emphasizes that the student's biological or adoptive parent must reside in Ohio. There are several exceptions to this rule, however, including one that allows the OHSAA Commissioner's office to declare a student eligible if custody is conferred by "a court of proper jurisdiction" upon a grandparent, aunt, uncle, or sibling who resides in Ohio. In order to declare such a student eligible, the Commissioner must determine that the change in custody "was not for athletic reasons, but purely for the best interest of the student in terms of the student's mental, physical, and educational well being."[108]

The act places a similar, and possibly broader, provision into law. It prohibits disqualification of a student from interscholastic athletics, solely because the parents do not reside in Ohio, if the student attends school in Ohio and lives in Ohio with a grandparent, uncle, aunt, or sibling who has legal or temporary custody of the student, or is the student's guardian. The student would remain subject to other eligibility requirements of the school and OHSAA.

Unlike the OHSAA bylaw exception, the act is silent on reasons behind the transfer of custody and relocation of the student. It might be unclear whether this silence permits OHSAA to continue to enforce its stipulation that the change in custody cannot have been for athletic reasons. The act specifically prohibits any school district, school, interscholastic conference, or organization that regulates interscholastic conferences or events, which would include OHSAA, from having a rule that conflicts with the act's provision.

The act applies definitions from R.C. 2151.011 for the terms "legal custody," "temporary custody," and "guardian." A "guardian" is a person with authority granted by a probate court to exercise parental rights over a child subject to the court's order and the residual parental rights of the child's parents. "Legal custody" is "a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities." "Temporary custody" is legal custody that can be terminated at any time by the court or the person who executed the custody agreement.

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[108] OHSAA bylaw 4-6-3, Exception 1.

Gifted education coordinator

(R.C. 3324.08)

The act specifically permits any person employed by a school district and assigned to a school as a principal or any other position also to serve as the district's gifted education coordinator, if the principal or person is qualified to do so under rules adopted by the State Board of Education. Under those rules, coordinators of gifted education must have at least three years of "successful" teaching experience, a master's degree, an Ohio administrative specialist license, if the coordinator is to supervise teachers, and an intervention specialist license for gifted education.[109]

Pilot project for multiple-track curriculum

(R.C. 3302.30)

The act requires the Superintendent of Public Instruction to establish a pilot project in Columbiana County under which one or more school districts offer a multiple-track high school curriculum for students with differing career plans. The Superintendent must solicit and select districts to participate in the pilot project, but no district can be required to participate. The selected districts must begin offering their career track curricula no later than the 2012-2013 school year. However, if nonstate funds cannot be obtained, or the state Superintendent determines that sufficient funds cannot be obtained to support the pilot project, the Superintendent may postpone implementation until the Superintendent determines that sufficient funds are available.

The curricula at each participating district must offer at least three distinct career tracks, including a college preparatory track and a career-technical track. Each track must comply with statutory curriculum requirements. The different tracks may be offered at different campuses. Two or more participating districts may offer some or all of their curriculum tracks through a cooperative agreement.

The Department of Education must provide technical assistance to participating districts in developing curriculum tracks. The act also authorizes part or all of selected curriculum materials or services to be purchased from other public or private sources. Additionally, the act requires the state Superintendent to apply for private and other nonstate funds, and authorizes the state Superintendent to use other available state funds to support the pilot project.

[109] Ohio Administrative Code 3301-51-15(E)(6).

Each participating school district must report data about the operation and results of the pilot project to the state Superintendent. No later than December 31 of the third school year in which the pilot project is operating, the state Superintendent must submit a report to the General Assembly containing the Superintendent's evaluation of the results of the pilot project and legislative recommendations whether to continue, expand, or make changes to the pilot project.

School district lease to higher education institutions

(R.C. 3313.75)

The act adds a statement to law that districts may rent or lease facilities to public or nonpublic institutions of higher education for their use in providing evening and summer classes.

Pre-existing law authorizes a school district board to allow the use of the district's facilities by others, as long as that use does not interfere with the districts' operation of its schools. The law also states that a district board must have a policy on that use and may charge a reasonable fee. It specifies that this authority applies to the use of school facilities for such purposes as educational programs; religious, civic, social, or recreational meetings; library reading rooms; and polling places.[110]

Department of Education organization

(Repealed R.C. 3301.82, 3314.11, 3314.111, and 3319.62; conforming changes in R.C. 3314.012, 3314.19, and 3314.22)

The act repeals permanent law that requires the Department of Education to establish (1) the State Office of Community Schools, (2) the State Office of School Options, and (3) the State Office of Educator Standards. The repeal of these sections removes the requirement that the Department have these offices; however, it does not necessarily require the Department to eliminate them.

The act also repeals the permanent law, enacted by H.B. 1 of the 128th General Assembly, that allows the Department to establish the Center for Creativity and Innovation. Again, the repeal does not necessarily mean that the Department may not have such a unit.

[110] See also R.C. 3313.77, not in the act.

Obsolete reference in school district tuition law

(R.C. 3313.65)

The act removes an obsolete reference to the Ohio Sailors' and Soldiers' Home, in the school district tuition law, and replaces it with a reference to residential facilities operated by the Ohio Veterans' Home. Under continuing law, a child who does not reside in the school district in which the child's parent resides must be admitted to the schools of the district in which the child resides if at least one of the child's parents is in a residential facility and the other parent, if living and not in such a facility or placement, is not known to reside in Ohio. The definition of "residential facility" applying to this law includes the Ohio Sailors' and Soldiers' Home.