



John Rau

Bill Analysis

Legislative Service Commission

H.B. 590

123rd General Assembly
(As Introduced)

Rep. Gardner

BILL SUMMARY

- Specifies that the "fourth grade reading guarantee" provision of law does not create a new cause of action or substantive legal right for any person.

CONTENT AND OPERATION

Background

(R.C. 3313.608(A) to (E))

In 1997, the 122nd General Assembly enacted Am. Sub. S.B. 55 concerning the academic accountability of school districts. One of the provisions of that act is the "fourth grade guarantee," which prohibits school districts, beginning in the 2001-2002 school year, from promoting to fifth grade any student who does not pass the state's fourth grade reading proficiency test. Beginning that year, the fourth grade reading proficiency test is to be administered twice during the school year, and once in the following summer, thus giving fourth graders up to three chances to pass. Fourth graders who do not pass during the school year must be offered "intense" summer remediation services and a third opportunity to take the test during that summer. A student's participation in summer remediation is optional and not a condition for promotion to fifth grade, as long as the student passes the test that summer or is otherwise eligible to be promoted under an exception.

There are two exceptions that allow a fourth grader to be promoted without passing the reading test. First, a student need not even take the test if the student has a disability and the student's individualized education program ("IEP") excuses the student from the test. Second, a student who is not excused from the test but does not pass it after three tries may be promoted if the student's principal and reading teacher agree that the student is academically prepared for the fifth grade. What constitutes being "academically prepared" is left to each school district to decide through its promotion and retention policy. The law does not expressly

require principals and teachers to wait for the student to take the test a third time before agreeing to promote the student.

The bill

(R.C. 3313.608(F))

The bill does not change the operational provisions of the "fourth grade reading guarantee." It does, however, provide that the section of law codifying the guarantee "does not create a new cause of action or substantive legal right for any person." School districts, and their officers and employees acting within the scope of their employment, generally have immunity from tort liability in the performance of governmental functions through the Sovereign Immunity Law (Revised Code Chapter 2744.). Under that law, which the bill does not change, the provision of a system of public education is explicitly *included* as a governmental function and, accordingly, school districts generally have immunity from tort liability while providing "public education."¹ Presumably that immunity applies to the administration of the fourth grade reading guarantee by school districts and their employees. The bill appears to supplement the sovereign immunity provisions by explicitly stating that no cause of action or claim of right *specifically related to* the fourth grade reading guarantee can be brought in a court. Thus, any such claim if filed likely would be dismissed.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-29-00	p. 1634

H0590-I.123/jc

¹ R.C. 2744.01(C)(2)(c).