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Sens. Robert Gardner, Randy Gardner, Harris, Prentiss, Mumper, Carnes, White, Espy, Spada, Brady, Armbruster

Reps. Callender, Clancy, Cates, Hoops

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ACT SUMMARY

- Eliminates the requirement that school districts implement competency-based education programs.
- Directs the State Board of Education to adopt statewide academic standards for each of grades kindergarten through twelve in reading, writing, and math by December 31, 2001, and in science and social studies by December 31, 2002.
- Requires the State Board to adopt a model curriculum aligned with the academic standards which school districts *may* (but are not required to) use for instruction.
- Requires the State Board to adopt standards and model curricula in computer literacy for grades three through twelve and in fine arts and foreign languages for grades kindergarten through twelve.
- Directs the Superintendent of Public Instruction to present the academic standards and model curricula in the five core subject areas to a joint meeting of the House of Representatives and Senate education committees.
- Requires the General Assembly to approve any academic standards or model curriculum in health or physical education prior to adoption by the State Board.

- Specifically prohibits the State Board from adopting diagnostic assessments or achievement tests in any subject areas other than reading, writing, math, science, and social studies.
- Directs the State Board to adopt diagnostic assessments aligned with the academic standards and model curriculum for each of grades kindergarten through two in reading, writing, and math and for each of grades three through eight in all five subject areas covered by the standards by July 1, 2007.
- Prohibits the State Board from adopting a diagnostic assessment for any grade and subject area for which an achievement test is developed.
- Requires all school districts that are not "excellent" and all public community schools to administer the state diagnostic assessments at least once annually to all students in the appropriate grade levels and requires excellent districts to administer locally selected assessments.
- Requires school districts, but not public community schools, to provide intervention services to students whose scores on the diagnostic assessments show that they are unlikely to meet the academic standards.
- Specifies that school districts and public community schools cannot be required to report the results of any diagnostic assessment, except for kindergarten diagnostic assessments, to the Department of Education or to the public.
- Permits parents to examine the results of any tests administered to their own children and to view all instructional materials and surveys or questionnaires given to their children.
- Phases in the development of 15 achievement tests (total) in third, fourth, fifth, seventh, eighth, and tenth grades to replace 20 proficiency tests formerly administered in fourth, sixth, ninth, and twelfth grades.
- Eliminates the twelfth grade proficiency test and the accompanying \$500 scholarship at the end of the 2000-2001 school year.
- Names the five tenth grade achievement tests the Ohio Graduation Tests (OGT).

- Requires the State Board to align the new achievement tests with the academic standards and model curricula.
- Requires the State Board to prescribe four ranges of scores--advanced, proficient, basic, and below basic--for the third, fourth, fifth, seventh, and eighth grade achievement tests.
- Maintains the requirement for school districts and public community schools to provide intervention services to students who fail to attain a proficient score on any fourth grade proficiency test and creates an intervention requirement for those students who score below the proficient level on any sixth or ninth grade proficiency test or below the "basic" level on the third, fourth, fifth, seventh, or eighth grade achievement tests.
- Permits school districts and public community schools to use a "below basic" score on a fourth, fifth, seventh, or eighth grade achievement test "as a factor in any decision to deny promotion" to the next grade level.
- Whenever a proficiency or achievement test is given, requires special education students to be assessed in one of the following ways: (1) by taking the test without accommodations, (2) by taking the test with accommodations, or (3) by an alternate assessment method.
- Allows for a temporary one-year waiver (renewable for two additional years) from any proficiency or achievement test for English-limited students.
- Requires the State Board to establish four ranges of scores--advanced, proficient, basic, and below basic--on the fourth grade reading proficiency test.
- Changes the fourth grade reading guarantee to provide school districts with three specific options for students who receive a *below basic* score on the fourth grade reading proficiency test: (1) promotion to fifth grade if the principal and reading teacher agree that other evaluations of the student's work indicate the student is academically prepared for fifth grade, (2) promotion to fifth grade with "intensive intervention" in that grade, or (3) retention in fourth grade.

- Replaces the fourth grade reading guarantee with a third grade reading guarantee beginning July 1, 2003.
- Provides school districts with three options for students who receive a *below basic* score on the third grade reading achievement test in the third or fourth grade: (1) promotion to the next grade if the principal and reading teacher agree that other evaluations of the student's work indicate the student is academically prepared for the next grade, (2) promotion to the next grade with "intensive intervention" in that grade, or (3) retention in the current grade.
- Requires the intervention services provided to students reading below grade level in first, second, or third grade to include instruction in phonetics.
- Specifies that the third grade reading guarantee and the fourth grade reading guarantee provisions of law do not create a new cause of action or substantive legal right for any person.
- Allows the achievement tests (except for the OGT) to be administered a week earlier than proficiency tests were generally administered under prior law.
- Specifies that in any year in which fourth or sixth graders must take more than three proficiency tests and achievement tests, the State Board may designate dates so that the tests are not administered in the same week.
- Requires the Department of Education to give preference to Ohio companies that employ Ohio residents when awarding contracts to grade the achievement tests.
- Requires joint vocational school districts to administer the OGT to their students who have not yet passed one or more of the tests.
- Allows school districts to choose whether to participate in early administrations of the ninth grade proficiency tests.
- Provides for the temporary administration of the tenth grade proficiency tests in reading and math in the 2002-2003 and 2003-2004 school years for purposes of compliance with federal law.

- Delays the requirement for students to pass all five of the OGT to receive a high school diploma from the class of 2005 to the class of 2007.
- Provides an alternative to the requirement that a student pass all five of the OGT to be eligible for a high school diploma for certain students who have not received a passing score on only one of the required tests.
- Specifies which proficiency or achievement test and curriculum requirements a student must meet to be eligible for a diploma if the student has fulfilled curriculum requirements (but not all proficiency test requirements) prior to the enactment of new test or curriculum requirements.
- Requires school districts to adopt a policy governing the conduct of intervention/prevention services throughout the district.
- Prohibits the insertion of components to identify gifted students in assessments otherwise designed as diagnostic instruments for students in grades kindergarten through eight.
- Directs the Department's Fairness Sensitivity Review Committee to ensure that the questions on diagnostic assessments, proficiency tests, and achievement tests are value-neutral.
- Prohibits school districts from requesting the social security numbers of students for the purpose of reporting data to the Education Management Information System (EMIS).
- Repeals all former school district performance indicators and requires the State Board of Education to establish at least 17 new indicators annually through 2006, and every six years thereafter.
- Adds the new category of "excellent" to the school district performance ratings and permits excellent districts (in addition to effective districts) to be free of certain mandates.
- Requires school district performance ratings to be issued annually rather than triennially as under prior law.
- Requires the Department of Education to issue report cards for individual buildings in addition to school districts.

- Requires the Department to include on the district report cards information on any change from the previous year's performance.
- Requires the Department to compile additional reports and data about school districts and display all such information on a web site.
- Requires the disaggregation of data on the report cards according to age, race, ethnicity, gender, mobility, vocational educational status, and economic status.
- Requires the State Board to establish a standard unit of improvement for buildings and requires school districts that are not excellent or effective to develop district-wide continuous improvement plans and to develop continuous improvement plans for buildings within the district that are not excellent or effective.
- Requires districts in academic emergency to choose and implement at least one option from a specified list aimed at improving performance with regard to certain failing buildings within the districts.
- Requires the Department to identify research on the effective use of instructional time and on certain intervention strategies and to disseminate such studies through the Ohio SchoolNet Commission.
- Mandates that the State Board recommend a plan to the General Assembly for implementation of end-of-course exams as an alternative to passage of the OGT for high school graduation.
- Directs the State Board to appoint a committee to make recommendations for incorporation of end-of-program assessments into career-technical education programs.
- Establishes the Governor's Commission on Successful Teachers to recommend policies for the preparation, recruiting, hiring, and retention of teachers, recommend pilot programs to address teacher shortages, and issue a written report to the General Assembly by December 31, 2002.
- Requires instruction in energy and resource conservation to be in accordance with recommendations by leading businesspersons involved in the field.

- Clarifies that students away from school on an approved field trip must be counted as present at school for that day.

TABLE OF CONTENTS

Overview.....	8
Elimination of competency-based education programs	9
Alignment of academic standards, curriculum, and diagnostic assessments.....	10
Development of statewide academic standards	10
Development of a model curriculum aligned with the academic standards.....	11
Development of diagnostic assessments aligned with the academic standards and model curriculum.....	12
Replacing proficiency tests with achievement tests.....	14
Background on prior proficiency test law	14
Development and phase-in of new achievement tests	15
Scoring of achievement tests	17
District responses to lower than proficient scores on proficiency or achievement tests.....	17
Administration of achievement tests.....	19
Community schools must continue to administer all achievement tests.....	20
Chartered nonpublic schools may voluntarily administer achievement tests to elementary students.....	20
Testing requirements for high school diploma.....	20
Prior law.....	20
The act.....	21
Grandfathering provisions for former students.....	22
Exemptions from achievement tests	24
Alternative graduation test requirement	27
Temporary administration of tenth grade proficiency tests for purposes of Title I compliance.....	28
Elimination of twelfth grade proficiency test and scholarship.....	28
Optional early administration of ninth grade proficiency tests	29
Establishment of third grade reading guarantee	29
Background: fourth grade reading guarantee.....	29
Phasing out of the fourth grade guarantee.....	30
Third grade reading guarantee	31
Immunity from liability for administering reading guarantee provisions	32
Continuing provisions of prior law.....	33
School district policy on intervention services	33
Administration of intelligence test by a school psychologist	34
Parental examination of instructional materials and other documents	34
Use of social security numbers by school districts	34

Repeal of former performance indicators and creation of new indicators	35
Report cards issued for buildings as well as districts	36
Disaggregation of student performance data on report cards.....	37
Additional reports of school district data.....	37
Establishment of standard unit of improvement for buildings and requirement that school districts create continuous improvement plans when the district or buildings within the district are not excellent or effective	38
Options for improving buildings in academic emergency	39
Exemption for excellent and effective school districts from certain state mandates	40
Research on instructional time and intervention strategies	40
Plan for implementation of end-of-course exams.....	41
Incorporation of end-of-program assessments for career-technical education programs	41
Governor's Commission on Successful Teachers.....	42
Instruction in energy conservation.....	44
Clarification regarding student attendance.....	44

CONTENT AND OPERATION

Overview

Based upon recommendations of the Governor's Commission for Student Success, the act creates a system of instruction and assessment around a core set of academic standards and model curricula in reading, writing, math, science, and social studies. Diagnostic assessments and achievement tests are to be aligned with the academic standards and model curricula so that expectations of what students need to learn, recommended classroom teaching, and student evaluations are consistent. In developing the new standards, curricula, and diagnostic or achievement tests, the State Board of Education and Department of Education must first consult with parents and with active Ohio classroom teachers, administrators, and other school personnel with expertise in the relevant subject area, particularly those teachers recognized as outstanding in their fields.

The act repeals all aspects of the former local competency-based education programs, although some similar elements are included under the new system.

As part of the new system, a battery of 15 achievement tests eventually will replace the 20 proficiency tests formerly administered. All of the achievement tests, except for the Ohio Graduation Tests (OGT) given in the tenth grade, will have multiple ranges of scores for assessing student performance rather than the one "proficiency" score formerly used to indicate passage of the proficiency tests. Students who do not attain a "basic" score on any of the achievement tests

administered through the eighth grade (or who demonstrate difficulty in a subject area on a diagnostic assessment) must receive some intervention to improve their skills. The act also changes the fourth grade reading guarantee to a third grade reading guarantee beginning in the 2003-2004 school year and, beginning July 1, 2001, expressly expands the options available to school districts for students who perform poorly on the reading tests.

To judge how well schools are performing under the new educational requirements, the act extends Ohio's accountability system of academic ratings to individual buildings and requires them to be classified according to their performance on specific indicators just as entire districts are under continuing law. The act also adds a new rating of "excellent" for the highest-performing districts and buildings, resulting in five rating categories instead of the former four.

Elimination of competency-based education programs

(secs. 3301.0715 and 3301.0716)

Prior law required every school district to implement a competency-based education program for composition, math, science, citizenship, and reading for all of grades one through twelve. Each model competency-based education program had to include all of the following:

- (1) Student performance objectives;
- (2) Curricula and instructional methods designed to ensure students attained the performance objectives;
- (3) Periodic assessments (which could involve methods other than written testing) to measure student progress toward achieving the performance objectives;
- (4) Intervention services for students in grades one through eleven who were not making adequate progress.

Upon request from the State Board of Education, school districts had to furnish the State Board with data on the number and percentage of students, by grade level and school building, who were not making satisfactory progress toward the performance objectives based upon the assessments administered.

To aid school districts in developing their local competency-based education programs, the State Board was required to establish model competency-based education programs for each of grades pre-kindergarten through twelve in

composition, math, science, citizenship, and reading.¹ Each model program consisted of performance objectives, a model curriculum for instruction, recommended assessment methods for measuring student performance, and recommended intervention services for helping students who were not attaining the performance objectives.

Under prior law, school districts could use the model competency-based education programs developed by the State Board in their entirety or solely as a resource in designing their local programs. They were not required to implement any part of the model programs.

The act repeals immediately all requirements that school districts implement competency-based education programs and that the State Board develop model competency-based education programs.

Alignment of academic standards, curriculum, and diagnostic assessments

Development of statewide academic standards

(secs. 3301.079(A) and (F) and 3301.0718(A))

The act directs the State Board of Education to adopt statewide academic standards for each of grades kindergarten through twelve in reading, writing, math, science, and social studies. Each set of standards must describe the academic content and skills that students are expected to learn and display at a particular grade level. Once the State Board has developed any set of standards, it must inform each school district of the content of those standards. The State Board must complete its academic standards for reading, writing, and math by December 31, 2001.² Standards for science and social studies must be completed by December 31, 2002. At least 45 days prior to each deadline, the Superintendent of Public Instruction must present the standards before a joint meeting of the education committees of the House of Representatives and the Senate. After completing all standards in the five core areas, the act requires the State Board to adopt standards for instruction in computer literacy for grades three through

¹ *The State Board could also establish a model competency-based education program for any other subject area at any grade level, except that any such program in health or physical education had to be approved by the General Assembly through adoption of a concurrent resolution after at least one public committee hearing in each chamber.*

² *According to the report of the Governor's Commission for Student Success (December 14, 2000), the Joint Council, a group composed of members of the State Board of Education and the Ohio Board of Regents, has already explored the development of academic standards in reading, writing, and math.*

twelve and in both fine arts and foreign languages for grades kindergarten through twelve.

As was the case under prior law, if the State Board develops any standards in health or physical education (or revises previously adopted standards in those subjects), the State Board must submit the standards to the General Assembly for approval prior to adoption.

Development of a model curriculum aligned with the academic standards

(secs. 3301.079(B) and (F) and 3301.0718(A))

Under the act, within 18 months after the completion of academic standards in reading, writing, math, science, or social studies, the State Board must adopt a model curriculum for that subject in each of grades kindergarten through twelve that is "sufficient to meet the needs of students in every community" and make it available for use as an instructional tool for school districts. The model curriculum must be aligned with the academic standards so that use of the model curriculum ensures that students are taught the academic content and skills expected for their grade level. No later than 45 days prior to the deadline for completion of a model curriculum, the Superintendent of Public Instruction must present the curriculum before a joint meeting of the House of Representatives and Senate education committees. The State Board must notify school districts of the content of each model curriculum upon its completion.

The act also requires the State Board to adopt model curricula in computer literacy for grades three through twelve and in both fine arts and foreign languages for grades kindergarten through twelve. Presumably, the model curriculum for each of these areas is required 18 months after the standards are adopted.

As with any health or physical education standards, a *model curriculum* (or revisions to a previously adopted curriculum) in those subjects must receive legislative approval through a concurrent resolution of the General Assembly. Neither chamber of the General Assembly can vote on a concurrent resolution for health or physical education standards or curricula until its education committee holds at least one public hearing.

As under prior law (see "**Elimination of competency-based education programs**" above), school districts are not required to utilize any part of a model curriculum adopted by the State Board. Districts may, however, incorporate all or any part of the academic standards or a model curriculum into their own curriculum along with other resources, examples, or models. If requested by a school district, the Department of Education must provide technical assistance to the district in implementing a model curriculum.

Development of diagnostic assessments aligned with the academic standards and model curriculum

(secs. 3301.079(D) and (G), 3301.0718(B), and 3314.03(A)(11)(d); new sec. 3301.0715)

Background. Diagnostic assessments are tools designed to provide feedback on a student's academic strengths and weaknesses. As opposed to tests used to indicate how much knowledge a student has relative to how much knowledge he or she *should* have at a certain point (like the proficiency tests), diagnostic assessments are used to alter instruction to focus on elements of study that a student has not yet mastered. For instance, a diagnostic assessment in math may indicate that a student performs well with decimals but struggles with fractions. This type of information enables a teacher to concentrate on those areas where a student needs longer or more intense instruction.

Development of diagnostic assessments (secs. 3301.079(D) and (G) and 3301.0718(B)). To gauge student progress toward reaching the statewide academic standards and to assist school districts in targeting intervention, the act requires the State Board to adopt a diagnostic assessment for each of grades kindergarten through two in reading, writing, and math and grades three through eight for those subjects as well as science and social studies. However, the act prohibits the adoption of a diagnostic assessment in any other subject or grade or for any grade and subject in which an achievement test is given. No diagnostic assessments are required for the high school grades. Prior law regarding competency-based education programs mandated assessments each year through eleventh grade as well as assessments in science and citizenship for grades one and two (see "**Elimination of competency-based education programs**" above).

Each diagnostic assessment must be developed by July 1, 2007. All diagnostic assessments must be aligned with the academic standards and model curricula and be designed to measure student comprehension and mastery of the content of the standards.³ When the development of any diagnostic assessment has been completed, the Department of Education must make it available at no cost to all school districts, which must begin administering the assessment in the next school year.

Under the act, the content of the questions on the diagnostic assessments cannot "include, be written to promote, or inquire as to individual moral or social

³ *Although a diagnostic assessment need not be a written test, and is not required to be under the act, the assessments developed by the State Board may take this form in most cases for the purpose of standardization.*

values or beliefs." The act charges the Fairness Sensitivity Review Committee with monitoring the diagnostic assessments to ensure the neutrality of their content. Established by rule of the Department, the Committee's membership consists of education practitioners from each academic content area and representatives from educational and social organizations, such as the Parent-Teacher Organization (PTO). The Committee analyzes test questions for evidence of bias, particularly with respect to gender, race, or socioeconomic status. The act makes all decisions of the Committee with regard to the diagnostic assessments final and not subject to any private cause of action.

Administration of diagnostic assessments (new sec. 3301.0715(A), (B), (E) and (F); sec. 3314.03(A)(11)(d)). With one exception, every school district must administer the diagnostic assessments adopted by the State Board at least once annually to all students in the appropriate grade levels to evaluate their progress in attaining the academic standards. In addition, whenever a student transfers into a district or into a new school within the same district, the district must administer the appropriate diagnostic assessment to that student within 30 days after the date of transfer. The exception is that "excellent" school districts (see "**Repeal of former performance indicators and creation of new indicators**" below) are exempt from the requirement to administer the state diagnostic assessments, although they still must measure student progress using any assessment they prefer. Community schools, which are exempt from many state laws and rules pertaining to public schools, are specifically required to administer all state diagnostic assessments.

The act grants districts considerable flexibility in the administration of the diagnostic assessments, leaving it to each district to decide the number and dates of administrations throughout the year. As indicated in the act, for example, a district may administer a diagnostic assessment in both the fall and spring of a school year to measure the "value added" effect of the instruction, or the amount of individual learning that has taken place over the course of the year. In addition, a district may administer a diagnostic assessment to a student in a grade other than the grade for which the assessment was developed in order to ascertain where the student stands academically.

Scoring of diagnostic assessments (secs. 3301.079(D)(1) and 3301.0714(B)(1)(o) and (P); new sec. 3301.0715(C)). School districts are responsible under the act for the scoring of all diagnostic assessments. The Department of Education, however, must establish rules for districts to follow regarding the proper use and scoring of the assessments to ensure that the scoring method does not vary across districts. Whereas prior law required results from the assessments conducted under the local competency-based education programs to be reported to the State Board upon request (see "**Elimination of competency-**

based education programs" above), the act, with one exception, explicitly prohibits the State Board or the Department from requiring districts to report any scores or other data derived from the diagnostic assessments to the Department or to the public. Blank copies of any diagnostic assessment, however, are public records. Also, any parent may see a completed test and examine the results of any test taken by his or her child.

Under the act's one exception, the results of diagnostic assessments given in kindergarten must be reported to the Department, unless a parent requests the district not to report his or her child's results. The Department must disaggregate the results by race and socioeconomic status and use them to compare the academic readiness of kindergarten students. The Department is prohibited, however, from including the results of diagnostic assessments administered to kindergartners on the report cards.

Provision of intervention services (new sec. 3301.0715(D)). Based upon the results of the diagnostic assessments, districts (but not community schools) must provide intervention services to students who are not making satisfactory progress toward the attainment of the statewide academic standards for their grade level. This is the same broad requirement for the provision of intervention services to students who were not reaching the performance objectives as under the prior competency-based education law (see "Elimination of competency-based education programs" above). The act does not specify the types of intervention services that districts must offer or establish any guidelines for their implementation, but does require each district to adopt a local policy containing certain elements (see "School district policy on intervention services" below).

Prohibition against use of diagnostic assessments for identifying gifted students (sec. 3301.079(D)(1)). The act explicitly prohibits the inclusion of components designed to identify students who are academically gifted on the diagnostic assessments. School districts must rely on other assessment instruments approved by the Department for the identification of such students.

Replacing proficiency tests with achievement tests

Background on prior proficiency test law

Prior law required each school district and each public community school (popularly called "charter schools") to annually administer five proficiency tests in each of four grades: fourth grade, sixth grade, ninth (or eventually tenth) grade, and twelfth grade. The tenth grade testing was scheduled to begin in the 2002-2003 school year to replace ninth grade testing. The five subject areas tested in each of these grades were reading, writing, math, science, and citizenship.

Chartered *nonpublic* schools also had to administer the ninth grade proficiency tests, because the law required a student to pass them in order to receive a diploma from a chartered nonpublic school. But chartered nonpublic schools voluntarily could also administer proficiency tests in fourth, sixth, and twelfth grades. Nonpublic schools that were not chartered by the state could not administer tests, and passing the tests was not required for their graduates to receive diplomas.

Development and phase-in of new achievement tests

(secs. 3301.079(C) and (G), 3301.0710(A)(1) and (B), 3301.0712(A), and 3301.0718(B))

The act eliminates the twelfth grade proficiency tests and phases in new "achievement tests" to replace proficiency tests in the fourth, sixth, and ninth grades. The five areas to be tested remain the same, but the act changes the "citizenship" category to the seemingly broader "social studies." The State Board of Education is explicitly prohibited by the act from adopting an achievement test in any other subject area. In addition, the act spreads the fourth and sixth grade tests across more grade levels to avoid all five areas being tested in one year. All five tenth grade achievement tests, however, are given in the same timeframe as the ninth grade proficiency tests they replace. The five tenth grade achievement tests are referred to collectively as the Ohio Graduation Tests (OGT) in the act.

Alignment with state standards. The State Board of Education must align each achievement test with the academic standards and model curriculum it develops for the corresponding subject area and grade level. As with the diagnostic assessments, questions on the achievement tests (and the proficiency tests until they are phased out) must be value-neutral, as determined by the Fairness Sensitivity Review Committee (see "**Development of diagnostic assessments**" above).

Phase-in of achievement tests. The act directs that the proficiency tests continue to be administered while the achievement tests are being developed. When an achievement test is completed, the State Board must inform school districts of that fact and the Department of Education must make the new test available to the districts. The school districts must begin administering each new achievement test in the year indicated below.

The following tables compare the former proficiency test framework with the achievement test design established by the act.

Former Proficiency Tests					New Achievement Tests				
Reading	Writing	Math	Science	Citizen-ship	Reading	Writing	Math	Science	Social Studies
4th	4th	4th	4th	4th	3rd	4th	4th	5th	5th
6th	6th	6th	6th	6th	7th	7th	7th	8th	8th
9th/ 10th [†]	10th	10th	10th	10th	10th				
12th	12th	12th	12th	12th	None	None	None	None	None

† Former law required passage of the ninth grade proficiency tests to receive a diploma prior to September 15, 2004. Beginning on that date, a student had to pass tenth grade proficiency tests to receive a diploma.

<u>FORMER</u>	<u>REPLACED WITH</u>	<u>IN SCHOOL YEAR BEGINNING JULY 1 OF</u>
4th grade reading proficiency test	3rd grade reading achievement test	2003
4th grade writing proficiency test	4th grade writing achievement test	2004
4th grade math proficiency test	4th grade math achievement test	2004
4th grade science proficiency test	5th grade science achievement test	2005
4th grade citizenship proficiency test	5th grade social studies achievement test	2005
6th grade reading proficiency test	7th grade reading achievement test	2006
6th grade writing proficiency test	7th grade writing achievement test	2006
6th grade math proficiency test	7th grade math achievement test	2006
6th grade science proficiency test	8th grade science achievement test	2006
6th grade citizenship proficiency test	8th grade social studies achievement test	2006
9th/10th grade reading proficiency test	OGT in reading	2004
9th/10th grade writing proficiency test	OGT in writing	2004
9th/10th grade math proficiency test	OGT in math	2004
9th/10th grade science proficiency test	OGT in science	2004
9th/10th grade citizenship proficiency test	OGT in social studies	2004



FORMER

REPLACED WITH

12th grade reading proficiency test	(12th grade tests eliminated)
12th grade writing proficiency test	(12th grade tests eliminated)
12th grade math proficiency test	(12th grade tests eliminated)
12th grade science proficiency test	(12th grade tests eliminated)
12th grade citizenship proficiency test	(12th grade tests eliminated)

Scoring of achievement tests

(secs. 3301.0710(A)(2) and (B) and 3301.0711(A)(1))

Prior law required the State Board of Education to designate a score on each proficiency test that demonstrated "proficiency" in the subject area for that grade level. The act explicitly directs the State Board to prescribe, for all achievement tests except the OGT, at least four ranges of scores demonstrating:

- (1) An advanced level of skill;
- (2) A proficient level of skill;
- (3) A basic level of skill;
- (4) A below basic level of skill.

For the OGT, the act maintains the prior law directing only a "proficient" score.

When awarding contracts for the grading of the tests, the Department of Education must give preference to companies that are based in Ohio and employ Ohio residents.

District responses to lower than proficient scores on proficiency or achievement tests

(secs. 3301.0711(D), (E), and (M), 3301.0712(A), 3313.608, and 3314.03(A)(11)(d))

Intervention services (secs. 3301.0711(D), 3301.0712(A), and 3314.03(A)(11)(d)). Continuing law requires school districts and public community schools to provide "intervention services" in fifth grade to any student

who does not attain a score demonstrating proficiency on a fourth grade proficiency test. These services must address the subject area or areas in which the student scored lower than proficient as a fourth grader.

The act adapts this requirement for its phase-in of the achievement tests, requiring intervention services in the next school year for any subject area in which the student scores below the "basic" range on any third, fourth, fifth, seventh, or eighth grade achievement test. The act clarifies that the intervention requirement continues to apply to students who do not attain the proficient score on the old fourth grade proficiency tests and adds an intervention requirement for students who score below the proficient level on the sixth and ninth grade proficiency tests that continue to be administered while the achievement tests are being developed. All such intervention services must be "commensurate with the student's test performance."⁴ (See **COMMENT 2**.)

Retention in grade (secs. 3301.0711(E) and (M), 3313.608, and 3314.03(A)(11)(d)). The act retains prior law that generally prohibited most school districts and community schools from using scores on proficiency tests when deciding whether to deny a student promotion to the next grade level. The exceptions to this policy under *prior law* were:

(1) The fourth grade reading guarantee, which required school districts (but not community schools) to retain a fourth grader who scored below proficient on the fourth grade reading proficiency test (beginning with students entering fourth grade after July 1, 2001), unless the student's reading teacher and principal agreed that the student was academically prepared for fifth grade;

(2) An option that allowed, but did not require, school districts to retain a fourth or sixth grader who did not attain proficiency scores on three out of five proficiency tests; and

(3) An option that allowed, but did not require, school districts to retain a student who failed to take a proficiency test, if the student had not been exempted because of a disability or other reason stated in the law.

The act retains this last exception and revises the two others. First, it revises the fourth grade reading guarantee, and the new third grade reading guarantee that will replace it, to make retention one of *several options* a district may take with respect to third or fourth graders scoring at a low level on the

⁴ Presumably, this means that intervention services are to be more extensive for students who score at the low end of the below basic range than for students who barely miss the basic score.

reading test (see "Changes to fourth grade guarantee" and "Third grade reading guarantee" below). Second, it changes the three-out-of-five standard of prior law to allow districts the option of using a *below basic* score on any one achievement test "as a factor in any decision to deny . . . promotion" of fourth, fifth, seventh, and eighth graders.

Administration of achievement tests

(secs. 3301.0710(C) and 3301.0711(B) and (G); Section 8)

As with most proficiency tests formerly, the new achievement tests generally are to be administered at least once a year, in mid-March. Under prior law, the test date could not be earlier than Monday of the week in which March 15 fell. The act, however, moves the testing date up by one week to allow the tests to be spread out over a two-week period. Specifically, the elementary achievement tests can be given a week earlier (but no earlier than Monday of the week in which March 8 falls). In addition, the act specifies that in any year in which the total number of proficiency tests and achievement tests in fourth or sixth grade exceeds three, the State Board must select the test dates "in accordance with the best interests of students," and may consider designating the dates so tests are not all administered in the same week. As was the case with the former proficiency tests, though, exceptions to the rules respecting administration dates exist for the third grade reading test and all five of the OGT.

To provide more opportunities for third grade students to meet the "third grade reading guarantee," the act directs that the third grade reading achievement test be administered three times: (1) once before December 31, (2) once no earlier than Monday of the week in which March 8 falls, and (3) once during the summer for students receiving summer remediation services. But no student need retake the test once he or she has attained the "proficient" score (see "Scoring of achievement tests" above). This is generally the same testing frequency and schedule mandated by prior law for the fourth grade reading proficiency test beginning in the 2001-2002 school year.⁵

Also similar to the prior law, the OGT must be administered more frequently because passing them is a prerequisite to receiving a diploma. For tenth graders, they must be administered at least once no earlier than Monday of the week in which March 15 falls. For eleventh and twelfth graders, tests they have not yet passed must be administered at least twice a year: (1) once prior to December 31 and (2) once prior to March 31. Joint vocational school districts

⁵ Beginning in 2003, the third grade test must also be given twice in the fourth grade and once in the fifth grade to students who have not yet attained the "proficient" score.

(JVSD), rather than the home districts, are responsible for administering the OGT to their eleventh and twelfth grade students who must retake one or more of the tests. The Department of Education must report the students' test scores to both the JVSD and the home district.

School districts also must continue (as they had to under prior law for the proficiency tests) to administer the OGT to any person who has completed the high school curriculum but has not received a diploma because he or she has not yet passed all of the required tests. In that case, a JVSD may also administer the OGT.

Community schools must continue to administer all achievement tests

(sec. 3314.03(A)(3) and (A)(11)(d))

As under prior law for proficiency tests, public community schools must administer all of the act's achievement tests if they serve a grade level for which a test is developed.

Chartered nonpublic schools may voluntarily administer achievement tests to elementary students

(sec. 3301.0711(K))

Also as under prior law for proficiency tests, the act permits chartered nonpublic schools to voluntarily administer achievement tests to their third, fourth, fifth, seventh, and eighth grade students. The Department of Education must furnish the tests to any chartered nonpublic school electing to do so. (They *must* administer the OGT because passing those tests is required for a diploma from a chartered nonpublic school.)

Testing requirements for high school diploma

(secs. 3301.0712(B), 3313.61, 3313.611, 3313.612, 3313.614, 3313.615, 3314.03(A)(11)(f), and 3325.08)

Prior law

Ohio law formerly required that students pass five ninth grade or tenth grade proficiency tests as a condition of receiving a high school diploma from a school district, public community school, or a chartered nonpublic school, unless excused from a particular test because of a disability. Students who entered tenth grade before July 1, 2002, needed to pass ninth grade proficiency tests to receive a diploma, but had to pass them before September 15, 2004. Passage of the tenth grade proficiency tests was required of students who entered tenth grade after July

1, 2002, as well as of students who entered tenth grade before then but failed to pass all of the ninth grade tests by September 15, 2004. Tenth grade proficiency tests were scheduled to be administered to tenth graders for the first time in March 2003.

The act

The act alters this general framework to conform with the act's scheduled phase-in of the new OGT. Specifically, it postpones for two years the requirement to pass tenth grade tests to graduate from high school. Under the act, the class of 2007 will be the first group of students that must pass all five of the OGT to receive a high school diploma. Those students will begin taking the OGT in the spring of 2005 when they are in the tenth grade. Any students who enter tenth grade prior to July 1, 2004, need to pass the five ninth grade proficiency tests for graduation.

Due to the administration of the tenth grade reading and math proficiency tests for two interim years (see "Temporary administration of tenth grade proficiency tests for purposes of Title I compliance" below), certain students may take both ninth and tenth grade proficiency tests in the tenth grade. This would be the case for students who must pass the ninth grade proficiency tests to graduate, but who fail one or more of those tests in the ninth grade. In the tenth grade, those students would take any of the five ninth grade tests they have not passed as well as the tenth grade reading and math proficiency tests given to meet federal requirements. Such students could take up to seven proficiency tests in the tenth grade.

The Act's Testing Requirements for a High School Diploma

High School Class of	Reading	Writing	Math	Science	Citizenship	Social Studies
2001 through 2006	9th grade Proficiency Test					
2007 and after	Ohio Graduation Test	Ohio Graduation Test	Ohio Graduation Test	Ohio Graduation Test		Ohio Graduation Test

Graduates of community schools and chartered nonpublic schools remain subject to testing (secs. 3313.612 and 3314.03(A)(11)(f)). High school students of public community schools and chartered nonpublic schools remain subject under the act to the high school testing requirements to receive their diplomas.

Grandfathering provisions for former students

(secs. 3301.0712(B), 3313.61, 3313.611, 3313.612, 3313.614, 3314.03(A)(11)(f), and 3325.08)

Background. Under the act, a student is eligible for a high school diploma from a public school (including a community school, the State School for the Deaf, and the State School for the Blind) or a chartered nonpublic school if the student completes the required curriculum and attains the scores designated by the State Board of Education on the ninth grade proficiency tests or OGT, depending upon which set of tests is required the year of the student's expected graduation.⁶ A disabled student for whom an "individualized education program" (IEP) has been developed must complete that program instead of the regular high school curriculum. A disabled student might also be excused from passing one or more of the proficiency tests or OGT through provisions of the student's IEP (see "**Exemptions from achievement tests**" below). Any student might be eligible for an honors diploma in lieu of a regular high school diploma if besides satisfying the curriculum and testing requirements, the student satisfies additional criteria established by the State Board.

Prior law provided that any student who had completed the curriculum requirement for a diploma but who failed to attain the designated score on one or more of the required proficiency tests could request to take the test at any time the test was administered in future years. If the student at some time in the future passed the test, the student was entitled to receive a diploma at that time from the school at which the student completed the curriculum. The act retains this opportunity to retake failed tests in the future for students who must pass the OGT to obtain a diploma.

Specific testing requirements that must be met in order to receive a diploma (sec. 3313.614). Prior law did not totally address, however, whether

⁶ Also, a school district may award a "diploma of adult education" to any resident person who is over 21 years old and has not received a high school diploma if the person completes the high school curriculum and attains the designated score on all of the required proficiency tests or OGT. In place of high school curriculum credits, however, the district may accept certain work or volunteer experiences, vocational or academic training, or "other life experiences" according to standards adopted by the State Board of Education. (Sec. 3313.611.)

students who had completed the curriculum but had not yet received a diploma must satisfy proficiency test or curriculum requirements that went into effect *after* the student initially fulfilled the curriculum requirements. For example, if a student passed the reading, writing, and citizenship tests by the time of completing the high school curriculum in 1997 but failed the math proficiency test, under prior law that student could return to his or her school district in 2001 and pass the math test at that time. However, the requirements for a diploma after September 15, 2000, required passing a *science* proficiency test. This raised the question of whether the student also had to pass the science test in order to receive a diploma. The act clarifies that, with one exception, students essentially only have to meet the testing and curriculum requirements in effect at the time they completed the high school curriculum.

First, the act states that once a student fulfills the curriculum requirement for a diploma, that student is never required to meet any different curriculum requirements that take effect pending the student's passage of proficiency or achievement tests.⁷

Second, under the act, students who fulfilled their curriculum requirements before September 15, 2000, need not pass the science proficiency test or the OGT in science in order to receive a diploma. In addition, a student who has passed any ninth grade proficiency test required for a diploma at the time the student fulfilled all curriculum requirements does not ever have to pass an OGT in that subject area, regardless of when the student may eventually qualify for a diploma. Finally, a student who is required to pass ninth grade tests for graduation (*i.e.*, a student who was in tenth grade *prior* to the July 1, 2004, date specified for the beginning of the OGT requirement) may still continue to qualify for a diploma by passing ninth grade tests in the previously failed subjects until September 15, 2008.

For example, if a student fulfills the curriculum requirements and passes all the ninth grade proficiency tests except for the math test in 2004, so long as the student passes the ninth grade math test before September 15, 2008, the student need not take the *OGT* in math to receive a diploma.

⁷ For example, as a result of the passage of Am. Sub. H.B. 94 of the 124th General Assembly, beginning with students graduating after September 15, 2001, all students must have 20 credit hours to graduate, an increase of two hours over the credit hour requirements in 2000. Under the act, students who fulfill the curriculum requirement prior to September 15, 2001, never need to complete two extra credit hours to graduate even if they do not pass all of the required proficiency tests until some time after that date.

The exception to the general rule that a student only has to meet the requirements in effect at the time of fulfilling all curriculum requirements is that a student who does not pass a ninth grade proficiency test in a subject area before September 15, 2008, must pass the OGT in that area as a condition of receiving a diploma.

Exemptions from achievement tests

School districts formerly were required by law to administer proficiency tests to every student in each grade level for which the tests were developed, unless the student was excused for a reason specified in statute. The act modifies this policy for its achievement tests. As under prior law, the consequence if a student misses a test without a statutorily prescribed excuse is that the school district may not count that student in its enrollment the following school year for purposes of calculating state funding. That is, the school district loses state funding for that student in the next year. However, the state Superintendent of Public Instruction may waive this requirement on a student-by-student basis, thereby allowing the continued flow of state funds for the student to the district, but "only for good cause in accordance with rules adopted by the State Board of Education."⁸

There formerly were three groups of students who could be excused from taking one or more proficiency tests: (1) special education students with IEPs, (2) foreign students, and (3) students with limited English skills. Although the act maintains qualified exemptions for these groups from taking the new achievement tests, it makes several changes to the former procedures for exempting special education and English-limited students to comply with federal law.

(1) Special education students with IEPs (secs. 3301.0711(C)(1) and (L), 3302.03(E), 3313.608(B), 3313.61(A)(2), (C), and (L), 3313.611(B)(3), 3313.612(B)(1), and 3325.08(A)(2)).⁹ Under prior law, a special education student for whom an individualized education program (IEP) had been prepared was not required to take any proficiency test from which the IEP excused him or her. An IEP might excuse a student from one or more (or all) of the tests at any grade level. If a student's IEP excused him or her from the fourth grade reading proficiency test, the student was not subject to the provisions of the "fourth grade reading guarantee." If the IEP excused the student from any of the ninth grade proficiency tests, then passage of those particular tests was not required for a diploma. No school district, however, could prevent a student who had been

⁸ *Sec. 3317.03(E), not in the act.*

⁹ *See also sec. 3313.532.*

excused from a test by his or her IEP from taking the test if he or she so requested. But voluntarily taking a test from which he or she was excused still did not subject the student to the fourth grade reading guarantee or make a diploma contingent on taking that test.

This exemption for special education students did not comply with Title I of the federal Elementary and Secondary Education Act (ESEA) (see **COMMENT 1**). The federal statute mandates that *all* public school students must be tested at specified points in their educational careers to provide a more accurate reflection of overall student performance. The ESEA, however, does permit special education students to be assessed differently from other students if necessary accommodations, such as taking the test untimed or orally, cannot be made to enable them to take the regular test.

The act alters the testing requirements for special education students in public schools (including community schools) to comply with Title I of the ESEA. Specifically, *all* special education students must be assessed in one of the following ways: (1) by taking a proficiency or achievement test in the same manner as it is administered to other students, (2) by taking the test with accommodations tailored to the student's special needs, or (3) by an alternate assessment method approved by the Department of Education. Under the act, a special education student may still be excused from taking a proficiency or achievement test, but only if no "reasonable accommodation" can be made to enable the student to take the test *and* the student's IEP specifies an alternate assessment method. Special education students enrolled in chartered nonpublic schools may continue to be excused from taking any proficiency or achievement test as under prior law.

As under prior law, if a special education student is excused from taking the third grade reading achievement test (and is instead assessed by an alternate method), that student is not subject to the third grade reading guarantee. If a student's IEP excuses the student from attaining a proficient score on an OGT, then that student does not need to pass that particular test to graduate from high school. The student, however, is not excused from *taking* the test (or an approved alternate assessment). The act maintains prior law by permitting special education students to voluntarily take any achievement test from which they are excused without penalizing the student for not passing the test.

Any alternate assessments approved by the Department must produce results that are both measurable and comparable to those produced by the proficiency or achievement tests. This similarity of data allows the Department to include the results of alternate assessments on the school district report cards.

(2) Foreign high school students exempted from passing social studies test (secs. 3313.61(H), 3313.611(B)(3), and 3313.612(B)). Under prior law, a high school student who was not a U.S. citizen did not need to pass the ninth grade citizenship proficiency test to receive a diploma, so long as the student (1) was not a permanent resident of the United States and (2) indicated no intention to reside in the United States after completing high school. The act authorizes this same exemption in the case of the OGT in social studies.

(3) English-limited students (secs. 3301.0711(C)(3), 3313.61(K), 3313.611(E), and 3313.612(C)). Formerly, a student was excused from taking any proficiency test if (1) the student's primary language was not English and (2) the student had been enrolled in U.S. schools for less than two full school years. That is, once a student whose language was not English had been enrolled in U.S. schools for two school years, he or she became subject to proficiency testing.

The act changes the criteria for exempting English-limited students from a test in order to comply with federal requirements under the ESEA (see **COMMENT 1**). First, the act stipulates that a student whose primary language is not English is considered English-limited if (1) the student has been enrolled in U.S. schools for less than *three* full school years *and* (2) it has been determined in the current school year that the student lacks sufficient English skills for a proficiency or achievement test to produce valid information concerning that student's academic knowledge. School districts must make the latter determination based on criteria provided by the Department of Education.

Second, the act permits an English-limited student to be excused from taking any proficiency or achievement test. However, the act removes the blanket two-year exemption granted to such students under prior law, and instead requires an English-limited student to obtain a temporary, one-year exemption from any test from the district board of education or the governing authority of a chartered nonpublic school. This exemption can be renewed for two additional years. For any year in which an English-limited student receives an exemption, the district must assess the student's progress in learning English. Presumably, any information derived from such an assessment would be used to determine the student's eligibility for a renewal of the exemption. Any student who does not receive an exemption is required to take the proficiency or achievement tests.

As under prior law, the English-limited exemption can never be used to excuse a high school student from the requirement to pass proficiency tests or the OGT to earn a diploma.

Alternative graduation test requirement

(secs. 3313.61, 3313.611, 3313.612, 3313.615, and 3325.08)

Beginning with the class of students first required to pass all of the OGT, the act provides an alternative to attaining a passing score on all five tests as a requirement for receiving a high school diploma (see "The act" above). Any student who has passed all but one of the required tests may receive a diploma if the student meets all of the following conditions:¹⁰

(1) On the one test for which the student failed to attain a passing score, the student missed that score by ten points or less;

(2) The student has a 97% attendance rate in each of the last four school years, excluding any excused absences;

(3) The student has not been expelled in any of the last four school years;

(4) The student has a grade point average of at least 2.5 out of 4.0, or its equivalent as designated in rules adopted by the State Board of Education, in the subject area of the test for which the student failed to attain a passing score;

(5) The student has completed the high school curriculum requirements in the subject area of the test for which the student failed to attain a passing score;

(6) The student has taken advantage of intervention programs in the subject area of the test for which the student failed to attain a passing score and has a 97% attendance rate (excluding excused absences) in any of those programs that have been provided at times beyond the normal school day, school week, or school year *or* the student has received comparable intervention services from another source such as a commercial education service or a private tutor;

(7) The student holds a letter recommending graduation from each of the student's high school teachers in the subject area of the test for which the student failed to attain a passing score and from the student's high school principal.

¹⁰ *Sec. 3313.615(A).*

Temporary administration of tenth grade proficiency tests for purposes of Title I compliance

(Section 7)

Title I of the federal Elementary and Secondary Education Act of 1965 requires states to test all students in reading and math at least once during each of the following bands of grades: (1) grades kindergarten through 5, (2) grades 6 through 9, and (3) grades 10 through 12. Under prior law, Ohio did not have a mandatory test beyond the ninth grade because the tenth grade proficiency test had not yet been phased in. Ohio, therefore, was formerly not in compliance with this provision of federal law (see **COMMENT 1**).

To gain compliance, temporary law in the act requires the administration of the tenth grade reading and math proficiency tests to students in the tenth grade in the 2002-2003 and 2003-2004 school years. This maintains the schedule in prior law for the transition from ninth to tenth grade proficiency tests, which mandated that the tenth grade proficiency tests be given for the first time in the spring of 2003. The act explains that the tests will be given to comply with federal law and for the purposes of the school district report cards. The act eliminates the "high stakes" contemplated for the tenth grade tests by the prior law, however, by specifying that scores on the tests in those two years cannot be used to determine the eligibility of a student to receive a high school diploma. In the following school year, the new OGT will be administered for the first time which will both satisfy the Title I requirement and provide a graduation requirement in the future.

Elimination of twelfth grade proficiency test and scholarship

(secs. 3301.0710, 3301.0711, and 3365.15)

Prior law required all twelfth graders who had passed the ninth grade proficiency tests in all five subjects to take twelfth grade level tests in those five subjects. Twelfth graders did not need to receive a passing score on any or all of the exams in order to graduate. If, however, a twelfth grader passed all five proficiency tests and decided to enroll in a two or four-year college or university in Ohio, the student received a \$500 scholarship from the Board of Regents.

The act abolishes the twelfth grade proficiency test requirement and the scholarship for all students who enroll in the twelfth grade after July 1, 2001.

Optional early administration of ninth grade proficiency tests

(Section 14)

Formerly, some students took the ninth grade proficiency tests as early as the eighth grade. The act specifies that, during the phase-out of the proficiency tests, school districts are not required to administer the ninth grade proficiency tests prior to March of the year a student is enrolled in ninth grade. If the Department of Education permits an early administration of the ninth grade proficiency tests to eighth grade students or in the fall of ninth grade, each district may choose whether to participate in giving the tests at that time.

Establishment of third grade reading guarantee

(secs. 3301.0710(A)(1)(a) and (C)(1), 3301.0711(B)(1) and (D), 3301.0712(A), and 3313.608; Sections 3, 4, 5, 9, and 13)

Background: fourth grade reading guarantee

(sec. 3313.608)

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, commonly known as the "fourth grade guarantee," aimed at ensuring that students read at a fourth grade level before being promoted to fifth grade. Under that act, beginning July 1, 2001, school districts (but not community schools) were prohibited from promoting to fifth grade any student who did not pass the fourth grade reading proficiency test. There were, however, two exceptions that allowed a fourth grader to be promoted without passing that test. First, if the student's principal and reading teacher agreed that the student was academically prepared for the fifth grade, the student could be promoted. The definition of "academically prepared" was determined by each district in its promotion and retention policy. Second, a student with a disability could be promoted if the student's individualized education program (IEP) excused the student from taking the test.

To give students multiple opportunities to pass the fourth grade reading test, it was to be administered three times a year beginning in the 2001-2002 school year: (1) once before December 31, (2) once in mid-March, and (3) once during the summer before fifth grade. Students who did not pass the test during the school year had to be offered intense summer remediation services before taking the test for the third time.

School districts were also required to assess each student's reading skills at the end of first, second, and third grade to identify students who might have

difficulty passing the fourth grade reading test. Those students who were reading below their grade level had to be offered intervention services, including intense summer remediation after third grade. The students' classroom teachers were required to be involved in the assessment and identification of students with weak reading skills. Districts had to involve a student's parent, as well as the classroom teacher, in developing an intervention strategy for improving a student's reading ability.

Phasing out of the fourth grade guarantee

(Sections 3, 4, 5, and 9)

Under the act, the fourth grade reading guarantee will be replaced with a third grade reading guarantee beginning in 2003 when the new third grade reading achievement test is available. The purpose of the new guarantee, as with the previous fourth grade one, is to ensure that students have developed sufficient reading skills relatively early in their academic careers. The act provides for a transition from the fourth grade to the third grade guarantee by continuing the administration of the fourth grade proficiency test in the 2001-2002 and 2002-2003 school years. Temporary law also creates one transition year (2003-2004) during which the fourth grade reading proficiency test will be administered to fourth graders and the third grade reading achievement test will be administered to third graders (Section 9). The one-year overlap is necessary to avoid a class of fourth graders who would not take any reading test at all. Fourth graders who take the reading proficiency test in the transition year are still subject to the fourth grade reading guarantee.

The act modifies the provisions for intervention for students who are not reading at grade level, whether they are subject to the fourth grade guarantee or the new third grade one.

Changes to fourth grade guarantee (sec. 3313.608; Section 13). As is the case for all the new elementary school achievement tests (including the new third grade reading achievement test), the act requires the State Board of Education to establish at least four ranges of scores to reflect student reading levels on the fourth grade proficiency test during the phase-in period. The specified ranges (advanced, proficient, basic, and below basic) replace the prior requirement for the State Board to simply establish one score that reflected reading proficiency at a fourth grade level. During the phase-in period, in lieu of the prior requirement for districts to retain fourth graders who did not attain the *proficient* score on the fourth grade reading proficiency test (unless the principal and reading teacher agreed a student was capable of fifth grade work), the act requires school districts to exercise one of three options with respect to fourth graders who attain a score in the *below basic* range on that test. These options are:

(1) Promotion to fifth grade if the principal and reading teacher agree, based upon other evaluations of the student's reading skill, that the student is academically prepared for fifth grade work;

(2) Promotion to fifth grade, but only with "intensive" intervention services in that grade;

(3) Retention in fourth grade.

During the phase-in period, the intervention requirements of prior law continue to apply to students in first, second, and third grade who are reading below grade level. However, the act requires that the intervention include instruction in intensive, systematic phonetics. The State Board must adopt rules by July 1, 2002, regarding phonetics instruction.

Third grade reading guarantee

(Section 3)

As was the case under prior law (and is the case during the phase-in) for fourth graders, third graders who do not attain a score in the *proficient* range on the new achievement test (this includes scores in either the basic or below basic range) must receive intense remediation services and another opportunity to take the test in the summer following third grade. Third graders who score in the *below basic* range on the summer administration of the test will be subject to one of the same three school district options listed above for fourth graders during the phase-in period. That is, with respect to these third graders, districts must choose one of the following:

(1) Promotion to the fourth grade if the principal and reading teacher agree, based upon other evaluations of the student's reading skill, that the student is academically prepared for fourth grade work;

(2) Promotion to the fourth grade, but only with "intensive" intervention services in that grade;

(3) Retention in third grade.

As was required under prior law for the fourth grade guarantee, school districts must continue to annually assess students subject to the third grade guarantee at the end of first and second grade and provide them with intervention services if they are reading below grade level. Instead of the locally selected assessment instruments allowed formerly, however, the act specifies that when the reading diagnostic assessments for first and second grades become available, all districts (except "excellent" ones, which may still choose their own assessments)

must use the appropriate assessment to identify students in need of intervention (see "*Development of diagnostic assessments aligned with the academic standards and model curriculum*" above). The intervention provided to the students must include intensive, systematic instruction in phonetics.

For students who are promoted to fourth grade without attaining the proficient score on the third grade reading achievement test, the act provides several opportunities to retake the third grade test in the fourth and fifth grades. The test is administered to fourth graders three times a year according to time guidelines similar to prior law for the administration of the fourth grade reading proficiency test: (1) once before December 31, (2) once no earlier than the Monday of the week containing March 8, and (3) once during the summer before fifth grade. Students must continue to retake the test until they receive a score in the proficient range. Students who do not attain a proficient score in the fourth grade have a final chance to take the third grade reading achievement test during the spring of fifth grade.

For *fourth* graders who attain a score in the *below basic* range on the third grade reading test administered during the summer following fourth grade, school districts must choose from among the same three options for promotion or retention available for third graders who attain a below basic score on the reading test: (1) promotion to fifth grade if the principal and reading teacher agree other evaluations of the student's work demonstrate the student is academically prepared for fifth grade, (2) promotion to fifth grade with "intensive" intervention services, or (3) retention in fourth grade. The act does not establish any consequences for a fifth grader who attains a below basic score on the third grade reading achievement test.

Immunity from liability for administering reading guarantee provisions

(sec. 3313.608(G); Section 3)

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 act 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."¹¹ Presumably, that immunity applies to the administration of the third or fourth grade reading guarantee by school districts and their employees. However, the act appears to supplement the sovereign

¹¹ *Sec. 2744.01(C)(2)(c), not in the act.*

immunity provisions by explicitly stating that no cause of action or claim of right *specifically related to* the third or fourth grade reading guarantee can be brought in a court.

Continuing provisions of prior law

The act retains the provision of prior law exempting a special education student from passing a test in order to be promoted, including the third grade reading achievement test, if an IEP excuses the student from taking it.

In addition, districts must continue to involve classroom teachers and parents in determining any intervention strategies for students.

School district policy on intervention services

(sec. 3313.6012)

The act requires each school district to adopt a policy governing the conduct of academic "prevention/intervention" services for all grades and school buildings throughout the district. Each school district must update its policy annually. The policy must cover the services offered by the district to students who fail to attain at least a proficient score on a fourth, sixth, or ninth grade proficiency test (until such tests are phased out) or who fail to attain at least a basic score on a third, fourth, fifth, seventh, or eighth grade achievement test or who perform poorly on a diagnostic assessment.

With respect to the provision of prevention/intervention services based on the results of diagnostic assessments, the policy must include all of the following:

(1) Procedures for using the diagnostic assessments to measure student progress toward the attainment of academic standards and to identify students who may not attain the academic standards;

(2) A plan for the design of classroom-based intervention services to meet the instructional needs of individual students;

(3) Procedures for the regular collection of student performance data;

(4) Procedures for using student performance data to evaluate the effectiveness of intervention services and, if necessary, to modify such services.

Administration of intelligence test by a school psychologist

(sec. 3324.03(A)(1))

One of the assessment tools used to identify gifted students is an individual standardized intelligence test. Under continuing law, student performance on an intelligence test can be used for the identification of gifted students if the test is administered by a licensed psychologist. The act adds language to allow such tests to be given by licensed *school* psychologists as well.

Parental examination of instructional materials and other documents

(sec. 3313.60(G))

Under the act, the board of education of a school district must allow the parent or guardian of a student, upon request, to promptly examine the following documents relating to the student:

- (1) Any survey or questionnaire, both prior to its administration to the student and upon completion by the student;
- (2) Any textbook, workbook, software, video, or other instructional materials used by the district in connection with the instruction of the student;
- (3) Any completed and graded test taken by the student.¹²

Copies of the statewide academic standards and model curricula adopted by the State Board of Education must also be available in each school building during regular school hours for parents or guardians who request them.

Use of social security numbers by school districts

(sec. 3301.0714(D)(1))

Under continuing law, the Department of Education maintains the Education Information Management System (EMIS), which serves as a database of information on school districts and schools. The data compiled by EMIS

¹² Presumably, this requirement includes proficiency or achievement tests administered to the student. According to the Department of Education, current practice allows a parent or legal guardian to obtain a copy of his or her child's completed proficiency test by filling out a mandatory form available from the school district's office and paying a fee. The Department collects the forms and sends them to the company responsible for scoring the tests as verification that the tests may be released to the parents or guardians. The tests may only be obtained after July 1 of the year in which they were administered.

includes information on student academic performance, personnel, classroom enrollment, discipline, and fiscal expenditures. Data acquisition sites around Ohio provide centralized computer services for their member districts, which may include reporting data required by EMIS.

The nature of the data compiled by EMIS sometimes requires districts to collect personal information about individual students. Formerly, districts could be authorized to request the social security numbers of students to ensure accuracy in collecting the necessary data. Districts, however, could not report a student's social security number to the Department, the State Board of Education, or any person who was not employed by the district or data acquisition site and authorized to have access to such information.

The act prohibits allowing school districts to ask for the social security numbers of individual students for the purpose of reporting data to EMIS.

Repeal of former performance indicators and creation of new indicators

(secs. 3302.02 and 3302.03)

The Department of Education issues *annual* "report cards" for school districts based upon education and fiscal performance data of its choosing. Under prior law, the Department also had to issue an academic rating for each school district every *three years* based upon the percentage of specific performance indicators met by the district. School districts received a rating of effective, continuous improvement, academic watch, or academic emergency depending upon the percentage of performance indicators met. These performance indicators consisted of the district's graduation and attendance rates, and passage rates on the fourth, sixth, ninth (tenth), and twelfth grade proficiency tests. School districts that met 94% of the indicators were deemed effective, districts that met between 50% and 94% were declared to be in need of continuous improvement, districts that met between 33% and 50% were declared to be under an academic watch, and districts that met less than 33% were declared to be in a state of academic emergency.

The act repeals the former performance indicators and mandates the State Board of Education to create at least 17 new ones on an annual basis through 2006. Thereafter, the State Board must establish new indicators every six years. Although the State Board can generally establish any indicators it chooses, the act directs the State Board to consider student performance on proficiency and achievement tests, rates of student improvement on such tests, attendance rates, and the breadth of coursework offered in a district as possible performance indicators. The act, however, retains the portion of prior law prohibiting the establishment of any indicator that is solely based on the autumn administration of

the third or fourth grade reading test for the fourth grade (and soon-to-be third grade) reading guarantee. The State Board must notify all school districts of the selected performance indicators at least two years before they are included in the district's rating. Ratings based upon these indicators must be issued *annually*.

The act maintains the former ratings of effective, continuous improvement, academic watch, and academic emergency, but it adds a fifth category of "excellent" as the highest rating a district can receive. Since the number of performance indicators may vary as the State Board adds new ones or discards previous ones, the act specifies the number of indicators a district must meet to achieve each possible rating if the State Board establishes the required minimum of 17 such indicators. For any year in which the number of performance indicators exceeds 17, the State Board must establish the number of indicators a district must meet for each rating in a way that produces a ratio of indicators met to the total number of indicators similar to the ratio produced when the number of indicators is 17. The following chart shows the number of indicators districts must meet to attain each rating if the total number of indicators is 17.

Rating	Number of indicators district must meet
Excellent	16-17
Effective	13-15
Continuous improvement	9-12
Academic watch	6-8
Academic emergency	0-5

Report cards issued for buildings as well as districts

(sec. 3302.03)

The Department of Education formerly had to issue report cards and ratings for school districts only. Under the act, the Department must issue report cards for individual buildings in addition to report cards for entire school districts. The Department must also use the act's expanded rating system of excellent, effective, continuous improvement, academic watch, and academic emergency for buildings. For example, a school district itself might be effective, but one building within the district could be rated as a continuous improvement building.

Whenever a school district or building within the district makes any change from the previous year on a performance indicator, the Department must include that information on the district report card.

Disaggregation of student performance data on report cards

(sec. 3302.03(D)(3))

Prior law prohibited the report cards from containing any information on proficiency test passage rates disaggregated by race, ethnicity, or gender. The act removes this prohibition, and instead requires the Department of Education to disaggregate student performance data and to include such data on school district and building report cards. All data must be disaggregated based on age, race, ethnicity, gender, vocational education status, and mobility. Mobility data must be broken down into three categories according to the length of time students have been enrolled in a district or school: (1) for three or more years, (2) for more than one year but less than three years, and (3) for one year or less. In addition, to the extent students who are economically disadvantaged can be identified through EMIS, the performance data for such students must also be disaggregated. The Department may also disaggregate student performance data according to any other categories it deems appropriate. However, data that is statistically unreliable or that could personally identify any student cannot be included on the report cards. This provision avoids a situation in which the size of a particular group in a district or building is too small either to generate valid data or to protect the confidentiality of individual test scores.

Additional reports of school district data

(secs. 3302.03(D)(5) and 3302.031)

The act requires the Department of Education to maintain a site on the World Wide Web. The web address must be listed on each report card along with a list of information regarding the school district or building that is available to the public at that site. The web site must include, when available, student mobility data (disaggregated by race and socioeconomic status) and college enrollment data.¹³ The Department must also prepare (and include on the web site) the following annual reports for each school district:

(1) A funding and expenditure accountability report including the amount of state aid payments the district receives for the year;

(2) A safety and discipline report including statistical information about suspensions and expulsions, disaggregated by race and gender;

¹³ *The act requires the Department to adjust the data collection requirements of the Education Management Information System (EMIS) to ensure the collection of this data within a reasonable timeframe.*

(3) An equity report that includes a compilation of the qualifications of teachers, library and media resources, instructional materials, and technology resources available to students, disaggregated to the extent possible according to grade level, race, gender, disability, and achievement test scores of the students;

(4) An enrollment report containing information about the composition of classes within each district by grade and subject, disaggregated by race, gender, and achievement test scores;

(5) A student retention report consisting of the number of students retained in each grade level disaggregated by grade level, subject area, race, gender, and disability.

A copy of each of these reports must also be made available directly to the school district superintendent.

Establishment of standard unit of improvement for buildings and requirement that school districts create continuous improvement plans when the district or buildings within the district are not excellent or effective

(sec. 3302.04)

Continuing law requires the State Board of Education to establish a standard unit of improvement for school districts and to specify the percentage of performance indicators that a district did not meet on which it would need to achieve the standard unit of improvement to make progress toward becoming a better district. Prior law also required school districts to develop a continuous improvement plan if the district received any rating other than "effective." The inclusion of individual buildings and the addition of the "excellent" rating change both of these mandates in the act. Under the act, the State Board must create a standard unit of improvement for buildings as well as districts. In addition, the State Board must designate the percentage of indicators on which a building must achieve the standard unit of improvement to make progress toward becoming an excellent building. School districts must develop continuous improvement plans for any buildings within the district that do not receive an "excellent" or "effective" rating. School districts that are "excellent" or "effective" are not required to have a district-wide continuous improvement plan.

Under continuing law, school districts are subject to intervention if the district in its entirety is under an academic watch or in a state of academic emergency. The act also subjects districts to intervention in the event that a building within the district is deemed to be under an academic watch or in a state of academic emergency.

Options for improving buildings in academic emergency

(sec. 3302.04(E))

To help consistently struggling buildings, the act requires school districts to choose among certain options aimed at improving the overall performance of the buildings. Specifically, if after three years under a continuous improvement plan, an academic emergency district has a building within the district that is in academic emergency *and* that fails to show improvement on the performance indicators that the building did not meet, then the district must undertake at least one of the following actions to attempt to improve the building's performance:

- (1) Replace the building's principal;
- (2) Examine the factors impeding student achievement in the building and redesign the building to address those factors, including transferring or reassigning teachers, administrators, or other school personnel;
- (3) Institute a new schoolwide curriculum or educational model consistent with the statewide academic standards and change the structure of the school day or year;
- (4) Contract with a college or university education department, an educational service center (ESC), or the Ohio Department of Education to operate the building, including the provision of personnel, supplies, and equipment;
- (5) Grant priority over all other applicants to students from the building who wish to transfer to another building within the district under the district's open enrollment policy;
- (6) Close the building and reassign its students to other buildings within the district;
- (7) With approval of the Department of Education, develop and implement a comprehensive alternative plan to improve the building's overall performance.

After a district has taken one of these actions, the building has two years to improve on the performance indicators it did not meet to demonstrate progress. If the building fails to do so, the district must select another of the intervention options to improve the building. The act does not specify what action the district must take if the building continues to fail despite repeated attempts to improve its performance.

Not all of the options listed above may be immediately feasible for a district to implement. A district, for example, may not be able to close a building

if it does not have sufficient space available in other buildings to reassign the students. Similarly, there may not be a college or ESC willing to assume the daily operations of the building. Presumably, however, a district must choose an option that it is capable of implementing given its current circumstances or it may develop an alternative for submission to the Department for approval.

Under the act, one such alternative may be to request a state intervention team, comprised of outstanding teachers and administrators appointed by the Department of Education, to visit the building and evaluate all aspects of its operations. The act provides for this type of evaluation to include the building's management, curriculum, instructional methods, resource allocation, and scheduling. Upon completion of the evaluation, the intervention team must make recommendations to the district regarding methods for improving the building's performance. The Department may only approve a district's request for an intervention team, however, if the Department can adequately fund the team's work or if the district agrees to pay for the team's expenses.

Exemption for excellent and effective school districts from certain state mandates

(secs. 3302.05 and 3314.20)

Prior law allowed the Department of Education, upon approval by the General Assembly, to free effective or continuous improvement school districts from some state education statutes or rules. The act changes the classifications of districts that may be released from state mandates to those declared "excellent" or "effective." Districts in continuous improvement can no longer be exempted from such mandates under the act.

Also, continuing law largely retained by the act requires districts that are rated lower than "effective" and have more than 5,000 students to designate one school to be operated by a school-level site-based management council. The act exempts both "excellent" and "effective" districts from this requirement.

Research on instructional time and intervention strategies

(sec. 3301.801)

The act requires the Department of Education to identify research-based practices concerned with scheduling and use of instructional time. After

identifying such practices, the Department must submit them to the Ohio SchoolNet Commission for inclusion in the Commission's clearinghouse.¹⁴

The act also requires the Department within one year of the act's effective date to develop a bibliography of academic intervention practices and practices aimed at prevention of future academic failure that have been successful in improving the performance of students from different ethnic and socioeconomic backgrounds. As with the instructional time research, the bibliography must be submitted to the SchoolNet Commission for inclusion in its clearinghouse.

Plan for implementation of end-of-course exams

(sec. 3301.0713(A))

The act mandates the State Board of Education to recommend a plan to the General Assembly for developing and implementing "end-of-course exams." These exams would be aligned with the academic standards for specified courses (such as algebra, geometry, or American history) and could eventually serve as an alternative to passing the OGT to receive a high school diploma.

Incorporation of end-of-program assessments for career-technical education programs

(sec. 3301.0713(B) and (C))

Under the act, the State Board must appoint a committee to develop recommendations for the incorporation of end-of-program assessments into career-technical education programs in a manner similar to the end-of-course examinations contemplated for students who follow the standard high school curriculum. Committee members must include representatives from each of the following groups:

- (1) Business;
- (2) Labor;
- (3) Career-technical education workforce development teachers;
- (4) Career-technical education administrators represented by a superintendent of a joint vocational school district;

¹⁴ Continuing law requires the Commission to maintain a clearinghouse for teachers to obtain lesson plans, materials, and practical resources.

(5) Career-technical education administrators represented by a director of an urban career-technical education school;

(6) Parents;

(7) Career-technical education student organizations;

(8) Alumni of career-technical education workforce development programs.

In developing its recommendations, the committee must consider the feasibility of substituting industry, state, or national certification examinations, when available, for end-of-program assessments for career-technical education programs. The committee must also discuss appropriate measures of student performance for career-technical education programs and methods of reporting such data to the public. All committee recommendations must be presented to the State Board.

The act specifies that the Department of Education is responsible for funding the development costs of end-of-program assessments. If such assessments are adopted as an alternative to passage of the OGT for career-technical education students, the Department must also pay for the implementation and administration of the end-of-program assessments.

Governor's Commission on Successful Teachers

(Sections 11 and 12)

The act establishes a temporary Governor's Commission on Successful Teachers that must recommend policies for the preparation, recruiting, hiring, and retention of teachers and recommend pilot programs to address teacher shortages. The Commission must issue a written report containing its recommendations to the General Assembly by December 31, 2002. The Commission will cease to exist upon issuance of its report.

Although additional members may be appointed at the Governor's discretion, the Commission must have at least the following 17 members:

(1) Nine classroom teachers appointed by the Governor, at least three of whom are certified by the National Board for Professional Teaching Standards, at least two of whom are high school teachers, at least two of whom teach in grades six through eight, at least two of whom teach in grades kindergarten through six, and at least one of whom teaches special education;

(2) Three school administrators, appointed by the Governor;

- (3) One person representing higher education, appointed by the Governor;
- (4) The Superintendent of Public Instruction, or the Superintendent's designee;
- (5) The President of the State Board of Education, or the President's designee;
- (6) The chairpersons of the House of Representatives and Senate education committees, or their designees.

The act also prescribes certain issues that the Commission must study. These issues are the following:

- (1) How to develop college and university teacher preparation programs that ensure that teachers are qualified to teach the courses that are required by law;
- (2) How to develop and operate incentive programs to encourage teachers to work in underserved school districts and in underserved subject areas;
- (3) How to best implement professional development activities for all teachers, particularly how to design those activities so that teachers understand how to administer and interpret the diagnostic assessments and achievement tests developed by the State Board of Education, and so that teachers understand how to develop effective intervention tools for students who are in need of assistance;
- (4) How best to implement professional development programs in terms of the amount of time allotted for such programs and their configuration;
- (5) How to provide the most effective regional delivery of professional development services;
- (6) How to create building-level mentoring or advisory programs under which experienced teachers assist others to increase their effectiveness; and
- (7) How to increase Ohio's participation in certification activities conducted by the National Board for Professional Teaching Standards.

The act also states that it is the intent of the General Assembly that upon its review of the Commission's report, the General Assembly will consider reallocating any funding for professional development, mentoring, teacher recruitment, and teacher training to reflect the Commission's recommendations.

Instruction in energy conservation

(sec. 3301.07(L))

Continuing law grants the State Board of Education the authority to require public schools, beginning in the elementary grades, to emphasize the teaching of energy and resource conservation within existing units of study. The act clarifies that the content of the instruction must be in accordance with recommendations made to school district boards of education by leading businesspersons involved in energy production and conservation.

Clarification regarding student attendance

(sec. 3301.0714(B)(1)(g))

The act clarifies that when calculating attendance rates and the average daily attendance for the year under the Education Management Information System (EMIS), students who are away from school on a field trip approved by the school administration must be counted as present at school that day.

COMMENT

1. Title I of the federal Elementary and Secondary Education Act of 1965 (ESEA) provides funds for the educational needs of poor and at-risk students.¹⁵ According to the Ohio Department of Education (ODE), Ohio currently receives approximately \$380 million in Title I funds from the federal government. The U.S. Department of Education, however, has notified ODE that Ohio is not in compliance with several provisions of the Title I law, which could cause Ohio to lose its eligibility for those funds. The violations mainly involve the lack of a state-developed test for students in tenth through twelfth grades, exemptions for certain students from the requirement to take state-developed tests, and the prohibition against the disaggregation of data regarding student performance on those tests. ODE has asked the U.S. Department of Education for a three-year waiver to give the state time to implement the changes necessary to gain full compliance.

2. Under prior law, each school district was required to implement a competency-based education program that included the "availability... of intervention services in grades one through eleven for pupils who [were] failing to make satisfactory progress toward achieving the performance objectives" specified by the district for the pupils' grade level. Districts had to use local assessments

¹⁵ *Elementary and Secondary Education Act of 1965, 20 U.S.C. 6301 et seq.*

(which did not need to be written tests) to determine which students were not making adequate progress. The law did not stipulate the types of intervention services districts must provide nor did it require that districts provide the services to each individual student whose assessment showed that additional help might be necessary. Prior law, however, did require districts to provide intervention services in the fifth grade to *each* student who failed to achieve a proficient score on a fourth grade proficiency test. For the purpose of the fourth grade reading guarantee, districts also had to provide intervention services to students who were reading below grade level at the end of first, second, or third grade.

The intervention services required by the act are somewhat different. First, districts must provide intervention services based on student performance on *state-*developed diagnostic assessments and tests rather than *locally* developed assessments (and the fourth grade proficiency test). Second, districts must provide intervention services for *each* student who does not attain a proficient score on a fourth, sixth, or ninth grade proficiency test or a basic score on any achievement test administered through the eighth grade or who is not performing at grade level based on the results of a state diagnostic assessment. Finally, although (like prior law) the act does not prescribe the kinds of intervention services districts must offer, the act does require such services to be "commensurate with the student's test performance."

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-25-01	p. 88
Reported, S. Education	03-28-01	p. 252
Passed Senate (29-3)	03-28-01	pp. 254-255
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Passed House (70-28)	05-24-01	pp. 469-479
Senate concurred in House amendments (30-3)	05-30-01	pp. 465-466

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