



Bill Analysis

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Legislative Service Commission

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**Sens. R.A. Gardner, R.L. Gardner, Harris, Prentiss, Mumper, Carnes,
White, Espy, Spada, Brady, Armbruster**

BILL 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.
- Permits the State Board to adopt academic standards and a model curriculum in other subject areas *after completion of standards* in the five tested subject areas and in computer literacy, fine arts, and foreign language.
- 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 diagnostic tests administered to their own children.
- Phases in the development of 15 achievement tests (total) in third, fourth, fifth, seventh, eighth, and tenth grades to replace 20 proficiency tests currently 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.
- 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.
- Expands the current 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 to require districts and community schools to provide intervention services to students who fail to attain a proficient score on any fourth or ninth grade proficiency test or who score below the "proficient" range on a third, fourth, fifth, seventh, eighth, or tenth grade achievement test.

- 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.

- 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 tenth grade tests) to be administered a week earlier than proficiency tests are generally administered under current 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.
- 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 tenth grade achievement tests 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 achievement tests 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.
- Provides that if a school district requires that certain specified students attend after-hours or summer intervention services, those students are truant if they do not attend the services.
- Permits the insertion of components to identify gifted students in assessments otherwise designed as diagnostic instruments for students in grades kindergarten through eight.

- Repeals all current school district performance indicators and requires the Department of Education to establish at least 17 new indicators.
- 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 current law.
- Requires the Department to issue report cards for individual school buildings in addition to school districts.
- Requires the Department to compile additional reports and data about school districts and display all such information on a web site.
- Repeals the prohibition against the disaggregation of data on the report cards according to race, ethnicity, or gender.
- Requires the State Board to establish a standard unit of improvement for individual school 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.
- Mandates that the State Board recommend an intervention plan to the General Assembly for consistently failing districts and schools.
- 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 tenth grade achievement tests for high school graduation.
- 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, 2001.

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CONTENT AND OPERATION

Overview

Based upon recommendations of the Governor's Commission for Student Success, the bill 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 and Department of Education must first consult with active Ohio classroom teachers and administrators, with expertise in the relevant subject area, particularly those teachers recognized as outstanding in their fields or certified by the National Board for Professional Teaching Standards.

The bill repeals all aspects of the current local competency-based education programs, although some similar elements are proposed under the new system.

As part of the new system, a battery of 15 achievement tests eventually will replace the 20 proficiency tests currently administered. All of the achievement tests, except for the tenth grade tests required for graduation, will have multiple ranges of scores for assessing student performance rather than the one "proficiency" score currently used to indicate passage of the proficiency tests. Students who do not attain a "proficient" score on any of the achievement tests (or who demonstrate difficulty in a subject area on a diagnostic assessment) must receive some intervention to improve their skills. The bill also changes the current fourth grade reading guarantee to a third grade reading guarantee beginning in the

2003-2004 school year and, beginning next year, expressly expands the options available to school districts for students who perform poorly on the tests.

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

Elimination of competency-based education programs

(secs. 3301.0715 and 3301.0716)

Current law requires 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 must include all of the following:

- (1) Student performance objectives;
- (2) Curricula and instructional methods designed to ensure students attain the performance objectives;
- (3) Periodic assessments (which may 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 are not making adequate progress.

Upon request from the State Board of Education, school districts must furnish the State Board with data on the number and percentage of students, by grade level and school building, who are 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 is 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

¹ *The State Board may 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 must be approved by the General Assembly through adoption of a concurrent resolution after at least one public committee hearing in each chamber.*

consists of performance objectives, a model curriculum for instruction, recommended assessment methods for measuring student performance, and recommended intervention services for helping students who are not attaining the performance objectives.

Under current law, school districts may 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 are not required to implement any part of the model programs.

The bill 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 3301.0718(A))

The bill 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. After completing all standards in these five areas, the bill requires the State Board to adopt standards for instruction in computer literacy for grades three through twelve and in both fine arts and foreign languages for grades kindergarten through twelve.

The bill permits the State Board to adopt academic standards for any other subject area and grade level *after the completion of standards in the five core subject areas* and in computer literacy, fine arts, and foreign language. As is the case under current law, however, prior to adopting standards in health or physical education (or revising previously adopted standards in those subjects), the State Board must submit the standards to the General Assembly for approval.

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.

Development of a model curriculum aligned with the academic standards

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

Under the bill, 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 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. The State Board must notify school districts of the content of each model curriculum upon its completion.

The bill 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 would be required 18 months after the standards are adopted.

The State Board may adopt a model curriculum for any grade in other subject areas to accompany any academic standards it adopts in those subjects. As with any health or physical education standards, however, 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 current 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 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), 3301.0718(B), 3314.03(A)(11)(d), 3324.02(A) and (D), and 3324.03(A) and (B); 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 they *should* have at a certain point (like the current 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 (sec. 3301.079(D)). To gauge student progress toward reaching the statewide academic standards and to assist school districts in targeting intervention, the bill 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 bill prohibits the adoption of a diagnostic assessment in any other subject or for any grade and subject in which an achievement test is given. No diagnostic assessments are required for the high school grades. Current law regarding competency-based education programs mandates 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.

Administration of diagnostic assessments (new sec. 3301.0715(A), (B), 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 district, the district must administer the appropriate diagnostic assessment to that student within 30 days after the date of transfer so that the student's academic abilities can be identified. The exception is that "excellent" school districts (see "**Repeal of current performance indicators and creation of new indicators**" below) are exempt from the requirement to administer the state diagnostic assessments, although they still must measure

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

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 bill 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 bill, 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 at any time 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 bill 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 assessment to ensure that the scoring method does not vary across districts. Whereas current law requires 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 bill, 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 bill'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 are not reaching the performance objectives as under the current competency-based education law (see "**Elimination of competency-based**

education programs" above). The bill does not specify the types of intervention services that districts must offer or establish any guidelines for their implementation (see COMMENT 2).

Use of diagnostic assessments for identifying gifted students (secs. 3301.079(D)(1), 3324.02(A) and (D), and 3324.03(A) and (B)). The bill permits all diagnostic assessments to include components designed to identify students who are academically gifted. School districts may rely on any such diagnostic assessments, in accordance with guidelines set by the Department of Education, or may use them in conjunction with other assessment instruments approved by the Department for the identification of such students. (See "Identifying gifted students" below.)

Replacing proficiency tests with achievement tests

Background on current proficiency test law

Current law requires 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 is scheduled to begin in the 2002-2003 school year to replace ninth grade testing. The five subject areas tested in each of these grades are reading, writing, math, science, and citizenship.

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

Development and phase-in of new achievement tests

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

The bill 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 bill changes the "citizenship" category to the seemingly broader "social studies." The State Board of Education is explicitly prohibited by the bill from adopting an achievement test in any other subject area. In addition, the bill 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 to be given in the same timeframe as the current ninth grade proficiency tests.

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.

Phase-in of achievement tests. The bill directs that the current proficiency tests continue to be administered while the achievement tests are being developed. When an achievement test is completed, the State Board must inform the 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 current proficiency test framework with the achievement test design proposed by the bill.

Current Proficiency Tests					Proposed 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

[†] Current law requires passage of the ninth grade proficiency tests to receive a diploma prior to September 15, 2004. Beginning on that date, a student must pass tenth grade proficiency tests to receive a diploma.

<u>CURRENT</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

<u>CURRENT</u>	<u>REPLACED WITH</u>	<u>IN SCHOOL YEAR BEGINNING JULY 1 OF</u>
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	10th grade reading achievement test	2004
9th/10th grade writing proficiency test	10th grade writing achievement test	2004
9th/10th grade math proficiency test	10th grade math achievement test	2004
9th/10th grade science proficiency test	10th grade science achievement test	2004
9th/10th grade citizenship proficiency test	10th grade social studies achievement test	2004
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

(sec. 3301.0710(A)(2) and (B))

Current law requires the State Board of Education to designate a score on each proficiency test that demonstrates "proficiency" in the subject area for that grade level. The bill explicitly directs the State Board to prescribe, for all achievement tests except the tenth grade tests, 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 tenth grade tests, the bill maintains the current law directing only a "proficient" score.

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

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

Intervention services (secs. 3301.0711(D) and 3314.03(A)(11)(d)). Current 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 bill expands 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 proficient range on any third, fourth, fifth, seventh, eighth, or tenth grade achievement test. It clarifies that the requirement continues to apply to the old fourth grade proficiency tests that continue to be administered while the achievement tests are being developed. Moreover, the bill requires districts to provide intervention services to students who do not attain a proficient score on any ninth grade proficiency test. All such intervention services must be "commensurate with the student's test performance" (see **COMMENT 2**).⁴

Retention in grade (secs. 3301.0711(E) and (M), 3313.608, and 3314.03(A)(11)(d)). The bill retains current law that generally prohibits 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 *current law* are:

(1) The fourth grade reading guarantee, which requires school districts (but not community schools) to retain a fourth grader who scores 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 agree that the student is academically prepared for fifth grade;

⁴ Presumably, this means that intervention services would be more extensive for students who score at the below basic level than for students who barely miss the proficient score.

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

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

The bill 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 reading test (see "Changes to fourth grade guarantee" and "Third grade reading guarantee" below). Second, it changes the three-out-of-five standard of current 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); Section 8)

As with most proficiency tests currently, the new achievement tests generally are to be administered at least once a year, in mid-March. Under current law, the test date cannot be earlier than Monday of the week in which March 15 falls. The bill, 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 bill 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 is the case with the current proficiency tests, though, exceptions to the rules respecting administration dates exist for the third grade reading test and all five of the tenth grade tests.

To provide more opportunities for third grade students to meet the "third grade reading guarantee," the bill directs that the third grade reading achievement test be administered three times: once before December 31, once no earlier than Monday of the week in which March 8 falls, and once during the summer for students receiving summer remediation services. But no student need re-take 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 current law for the fourth grade reading proficiency test beginning in the 2001-2002 school year.⁵

Also similar to the current law, the tenth grade achievement tests 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: once prior to December 31 and once prior to March 31. School districts also must continue (as they must under current law for the proficiency tests) to administer the tenth grade achievement tests 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 tenth grade tests.

Community schools must continue to administer all achievement tests

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

As under current law for proficiency tests, public community schools must administer all of the bill'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 current law for proficiency tests, the bill 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 tenth grade tests because passing those tests is required for a diploma from a chartered nonpublic school.)

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.

Testing requirements for high school diploma

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

Current law

Ohio law currently requires 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 enter tenth grade before July 1, 2002, need to pass ninth grade proficiency tests to receive a diploma, but must pass them before September 15, 2004. Passage of the tenth grade proficiency tests is required of students who enter tenth grade after July 1, 2002, as well as of students who entered tenth grade before then but fail to pass all of the ninth grade tests by September 15, 2004. Tenth grade proficiency tests are scheduled to be administered to tenth graders for the first time in March 2003.

The bill

The bill alters this general framework to conform with the bill's scheduled phase-in of the new tenth grade achievement tests. Specifically, it postpones for two years the requirement to pass tenth grade tests to graduate from high school. Under the bill, the class of 2007 would be the first group of students that must pass all five of the tenth grade achievement tests to receive a high school diploma. Those students would begin taking the tenth grade tests 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**" above), 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 Bill'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	9th grade Proficiency Test				
2007 and after	10th grade Achievement Test		10th grade Achievement 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 bill to the high school testing requirements to receive their diplomas.

Grandfathering provisions for former students

(secs. 3313.61, 3313.611, 3313.612, 3313.614, 3314.03(A)(11)(d), and 3325.08)

Background. 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 has attained the scores designated by the State Board of Education on the ninth grade proficiency tests in the areas of reading, writing, math, science, and citizenship.⁶ Currently, the ninth grade tests are being phased out in favor of tenth grade tests in all five areas. 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 taking one or more of the proficiency tests through provisions of the student's IEP. Any student might be eligible for an honors diploma in lieu of a regular high school diploma if besides satisfying the

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. 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.)

curriculum and testing requirements, the student satisfies additional criteria established by the State Board.

Current law also provides that any student who has completed the curriculum requirement for a diploma but who has failed to attain the designated score on one or more of the required proficiency tests may request to take the test at any time the test is administered in future years. If the student at some time in the future passes the test, the student is entitled to receive a diploma at that time from the school at which the student completed the curriculum.

Specific testing requirements that must be met in order to receive a diploma (sec. 3313.614). Current law does not totally address, however, whether students who have completed the curriculum but have 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 current law that student could return to his school district in 2001 and pass the math test at that time. However, the requirements for a diploma after September 15, 2000 require passing a *science* proficiency test. This raises the question of whether the student must also pass the science test in order to receive a diploma. The bill 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 bill 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 bill, students who fulfill their curriculum requirements before September 15, 2000, need not pass the science proficiency or achievement test 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 a tenth grade test in that subject area, regardless of when the student may eventually qualify for a diploma.

⁷ For example, as a result of the passage of S.B. 55 of the 122nd General Assembly, beginning with students graduating after September 15, 2001, all students must have 21 credit hours to graduate, an increase of three hours over the credit hour requirements in 2000. Under the bill, students who fulfill the curriculum requirement prior to September 15, 2001, never need to complete three extra credit hours to graduate even if they do not pass all of the required proficiency tests until some time after that date.

Finally, a student who was 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 tenth grade achievement test 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 fulfilled the curriculum requirements and passed 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 *tenth* grade math test to receive a diploma.

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 tenth grade proficiency test in that area as a condition of receiving a diploma.

Exemptions from achievement tests

School districts currently are required by law to administer proficiency tests to every student in each grade level for which the tests are developed, unless the student is excused for a reason specified in statute. The bill modifies this policy for its achievement tests. As under current 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 and in accordance with rules adopted by the State Board of Education."⁸

There currently are three groups of students who may 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 bill maintains qualified exemptions for these groups from taking the new achievement tests, it makes several changes to the current 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),

⁸ *Sec. 3317.03(E), not in the bill.*

3313.612(A), and 3325.08(A)(2)).⁹ Under current law, a special education student for whom an individualized education program (IEP) has been prepared is not required to take any proficiency test from which the IEP excuses 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 excuses him or her from the fourth grade reading proficiency test, the student is not subject to the provisions of the "fourth grade reading guarantee." If the IEP excuses the student from any of the ninth grade proficiency tests, then passage of those particular tests is not required for a diploma. No school district, however, may prevent a student who has been excused from a test by his or her IEP from taking the test if he or she so requests. But voluntarily taking a test from which he or she was excused still does 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 does 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 bill 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 bill, 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 current law.

As under current 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 a tenth grade

⁹ See also sec. 3313.532.

achievement test, 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 bill maintains current 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 current law, a high school student who is not a U.S. citizen need not pass the ninth grade citizenship proficiency test to receive a diploma, so long as the student (1) is not a permanent resident of the United States and (2) indicates no intention to reside in the United States after completing high school. The bill authorizes this same exemption in the case of the tenth grade social studies achievement test.

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

The bill 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 bill 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 bill permits an English-limited student to be excused from taking any proficiency or achievement test. However, the bill removes the blanket two-year exemption granted to such students under current 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 current law, the English-limited exemption can never be used to excuse a high school student from the requirement to pass proficiency or achievement tests 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 tenth grade achievement tests, the bill provides an alternative to attaining a passing score on all five tests as a requirement for receiving a high school diploma (see "**Testing requirements for high school diploma**" 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 suspended or expelled, including any in-school suspensions, 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 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;

¹⁰ Sec. 3313.615(A).

(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.

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: grades kindergarten through 5, grades 6 through 9, and grades 10 through 12. Under current law, Ohio does not have a mandatory test beyond the ninth grade because the tenth grade proficiency test has not yet been phased in. Ohio, therefore, is currently not in compliance with this provision of federal law (see **COMMENT 1**).

To regain compliance, temporary law in the bill 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 current law for the transition from ninth to tenth grade proficiency tests, which mandates that the tenth grade proficiency tests be given for the first time in the spring of 2003. The bill explains that the tests will be given to comply with federal law and for the purposes of the school district report cards. The bill eliminates the "high stakes" contemplated for the tenth grade tests by the current 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 tenth grade achievement tests 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)

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

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

Establishment of third grade reading guarantee

(secs. 3301.0710(A)(1)(a) and (C)(1), 3301.0711(B)(1) and (D), 3301.0712(A), 3313.608, and 3321.041; Sections 3, 4, 5, and 9)

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," aims 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) are prohibited from promoting to fifth grade any student who does not pass the fourth grade reading proficiency test. There are, however, two exceptions that allow a fourth grader to be promoted without passing that test. First, if the student's principal and reading teacher agree that the student is academically prepared for the fifth grade, the student may be promoted. The definition of "academically prepared" is determined by each district in its promotion and retention policy. Second, a student with a disability may be promoted if the student's individualized education program (IEP) excuses the student from taking the test.

To give students multiple opportunities to pass the fourth grade reading test, it is administered three times a year beginning in the 2001-2002 school year: once before December 31, once in mid-March, and once during the summer before fifth grade. Students who do not pass the test during the school year must be offered intense summer remediation services before taking the test for the third time. Currently, a student's participation in summer remediation is optional.

School districts are 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 are reading below their grade level must be offered intervention services, including intense summer remediation after third grade. The students' classroom teachers must be involved in the assessment and identification of students with weak reading skills. Districts must 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 bill, 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 current fourth grade one, is to ensure that students have developed sufficient reading skills relatively early in their academic careers. The bill 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 bill 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). As is the case for all the new elementary school achievement tests (including the new third grade reading achievement test), the bill 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 current requirement for the State Board to simply establish one score that reflects reading proficiency at a fourth grade level. During the phase-in period, in lieu of the current requirement for districts to retain fourth graders who do not attain the *proficient* score on the fourth grade reading proficiency test (unless the principal and reading teacher agree a student is capable of fifth grade work), the bill 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 current law continue to apply to students in first, second, and third grade who are reading below grade level.

Third grade reading guarantee

(Section 3)

As is the case under current law (and 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 is required under current 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 currently, however, the bill specifies that when the reading diagnostic assessments for first and second grades become available, all districts 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).

For students who are promoted to fourth grade without attaining the proficient score on the third grade reading achievement test, the bill 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 current law for the administration of the fourth grade reading proficiency test: once before December 31, once no earlier than the Monday of the week containing March 8, and 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 bill does not establish any consequences for a fifth grader who attains a below basic score on the third grade reading achievement test.

The bill permits school districts to require student participation in any intervention services required under the third or fourth grade guarantee. The bill extends the compulsory attendance law to cover any remediation a district *chooses* to make mandatory (see "*Students may be compelled to attend after-hours intervention services*" below).¹¹

Immunity from liability for administering reading guarantee provisions

School districts, and their officers and employees acting within the scope of their employment, generally have immunity from tort liability in the performance of governmental functions through the Sovereign Immunity Law (Revised Code Chapter 2744.). Under that law, which the bill does not change, the provision of a system of public education is explicitly *included* as a governmental function and, accordingly, school districts generally have immunity from tort liability while providing "public education."¹² Presumably that immunity applies to the administration of the third or fourth grade reading guarantee by school districts and their employees. However, the bill appears to supplement the sovereign immunity provisions by explicitly stating that no cause of action or claim of right *specifically related to* the third or fourth grade reading guarantee can be brought in a court.

Continuing provisions of current law

The bill retains the provision of current 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.

¹¹ *Sec. 3321.041.*

¹² *Sec. 2744.01(C)(2)(c), not in the bill.*

School district policy on intervention services

(sec. 3313.6012)

The bill 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. The policy must cover the services offered by the district to students who fail to attain at least a proficient score on a third, fourth, fifth, seventh, eighth, ninth, or tenth grade proficiency or achievement test or who perform poorly on a diagnostic assessment. Each school district must update its policy annually.

Students may be compelled to attend after-hours intervention services

(secs. 3321.041 and 3321.38)

Background

Under continuing law, every child between 6 and 18 years old residing in the state is "of compulsory school age" and must attend school unless excused under statutorily specified conditions. A child of compulsory school age who is not excused from attendance must attend school for "the full time the school attended is in session."¹³ (See **COMMENT 3**.) Any child who does not attend school as required by law is truant.

The law places the bulk of the responsibility on the child's parent to see that the child attends school. Several possible sanctions are provided. A school district may require the parent of a truant child to attend an educational program designed to encourage parental involvement in compelling the child's attendance at school. Failure to attend such a program without good cause is grounds for prosecution and a fine of up to \$500 or ordered community service of up to 70 hours.¹⁴ In addition, a child who is habitually or chronically truant may be adjudicated an unruly or delinquent child and the parent may be prosecuted for contributing to the unruliness or delinquency of the child.¹⁵

¹³ Secs. 3321.01 and 3321.04, neither section in the bill.

¹⁴ Secs. 3321.19 (not in the bill), 3321.38, and 3321.99 (not in the bill).

¹⁵ See R.C. Chapter 2151., not in the bill. A "chronic truant" is a child of compulsory school age who is absent from school without legitimate excuse for seven or more consecutive days, ten or more days in a month, or 15 or more days in a school year (secs. 2151.011(B)(9)). A "habitual truant" is a child of compulsory school age who is absent from school without legitimate excuse for five or more consecutive days, seven or more

The law also stipulates in another provision that school districts may establish policies requiring parents of suspended and expelled students or of truant students to attend parental education programs. Failure to attend these programs is "parental education neglect" and is a fourth degree misdemeanor.¹⁶

The bill

Under the bill, as under current law, school districts are required to *offer* intervention services to students who fail to attain prescribed scores on certain proficiency tests, diagnostic assessments, and achievement tests (see "**Development of diagnostic assessments aligned with the academic standards and model curriculum**" and "**District responses to lower than proficient scores on proficiency or achievement tests**" above). The bill, however, further provides that, *if* a school district *requires* as part of its education program that specified students attend intervention services after hours, the student *must* attend those services at those times. A school district is free to not make attendance at after-hours services mandatory. But if the district *does* make such attendance mandatory, those additional times, whether at night, on weekends, or in the summer, are considered part of the student's obligation to attend school under the compulsory attendance law. (See **COMMENT 4**.) Accordingly, the student's parent is also obligated to see that the student attends the after-hours services. Any failure to comply with this provision is grounds for applicable sanctions under the continuing truancy laws.

Any district that makes attendance at after-hours intervention services mandatory must also adopt a policy for exempting a parent from sanctions if the parent can demonstrate that his or her child is not attending the intervention services offered by the school district because the child is receiving comparable services from another source. Such comparable services might include, for

days in a month, or 12 or more days in a school year (sec. 2151.011(B)(18)). The juvenile justice law provides different levels of sanctions for chronically truant and habitually truant students. Depending upon circumstances, either might be adjudicated an unruly child or a delinquent child. If so adjudicated, the child may be subject to (among other sanctions) protective supervision, loss of driver's license or instruction permit, commitment to a foster home or children's services agency, or commitment to the Department of Youth Services. Contributing to the unruliness or delinquency of a minor is a first degree misdemeanor, which is punishable by up to one year in jail and up to a \$1,000 fine (secs. 2919.24 (not in the bill)).

¹⁶ Secs. 2919.22 and 3313.663, neither section in the bill. A fourth degree misdemeanor is punishable by up to 30 days in jail and up to a \$250 fine. It is unclear whether there is a relationship between the parental programs specified in these sections and the one established by sec. 3321.19.

example, a private tutor or enrollment in a special remedial class paid for by the parent.

Identifying gifted students

(secs. 3324.02 and 3324.03)

Background

The education appropriations act of the 123rd General Assembly required each school district to develop a plan for identifying gifted students and to identify all gifted students enrolled by November 15, 2000. As part of its plan, each district had to select assessment and identification instruments from a list identified by the Department of Education as suitable for identifying students who meet the law's criteria for being "gifted." The Department also had to approve rules for the administration of any approved tests or assessment instruments and establish the scores or performance levels indicating "gifted" status for each test or assessment. To the extent possible, the Department was required to approve only tests or assessment instruments that utilized nationally recognized standards for scoring or were nationally normed.

Under the current law, students may be designated as gifted for any of the following reasons: (1) the possession of certain levels of general superior cognitive ability, (2) the demonstration of specific academic ability at a certain level in math, science, language arts, or social sciences, (3) possession of certain levels of creative thinking skills, or (4) demonstration of visual or performing artistic ability.¹⁷

Use of diagnostic assessments

The bill permits the Department of Education in developing the diagnostic assessments required by the bill (see "**Development of diagnostic assessments aligned with the academic standards and model curriculum**" above) to include components to identify gifted students.¹⁸ School districts would have the option of

¹⁷ *School districts must annually report to the Department of Education the number of students identified as gifted in each category in grades kindergarten through eleven. They also must develop "service plans" for providing services to students identified as gifted. However, the law specifically states that school districts do not have to actually implement any service plan until further action by the General Assembly or the state Superintendent of Public Instruction.*

¹⁸ *The intent of the bill appears to be to permit diagnostic assessments to consist of instruments other than "tests." Presumably, the intent also is to allow the inclusion of some type of methodology for identifying gifted students in diagnostic assessments,*

using these diagnostic assessments to identify gifted students in lieu of one of the other specific instruments approved by the Department under the current gifted identification statutes.

Potential limitations on usage of diagnostic assessments for identifying gifted students. The bill only requires the development of diagnostic assessments for reading, writing, and math in kindergarten through second grade and for those subjects plus science and social studies in third through eighth grade. In addition, diagnostic assessments are prohibited if an achievement test exists for that subject and grade level. School districts would presumably continue to use the Department's approved "gifted" instruments for subject areas and grade levels not covered by the diagnostic assessments.

Students who are gifted in the area of the visual or performing arts or in the area of creative thinking would probably continue to be identified using instruments other than the diagnostic assessments envisioned by the bill in the specific subject areas. However, it is possible that some combination of performances on the various diagnostic assessments would be viewed by the Department as indicative of being gifted due to a "general superior cognitive ability."

Phase-in. All of the diagnostic assessments required by the bill must be developed by July 1, 2007. Presumably, school districts would continue to use the gifted identification instruments on the Department's list until then and would have the option to use the diagnostic assessments as they become available.

Administration of intelligence test by a school psychologist

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

Repeal of current performance indicators and creation of new indicators

(secs. 3302.02 and 3302.03)

Under current law, the Department of Education issues an academic rating for each school district every *three years* based upon the percentage of specific performance indicators met by the district. The Department also issues *annual*

whether they involve test questions or some other assessment method, assuming that the current "state of the art" in student testing enables this to be done.

"report cards" for school districts based upon education and fiscal performance data of its choosing. School districts receive a rating of effective, continuous improvement, academic watch, or academic emergency depending upon the percentage of performance indicators met. These performance indicators consist 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 meet 94% of the indicators are deemed effective, districts that meet between 50% and 94% are declared to be in need of continuous improvement, districts that meet between 33% and 50% are declared to be under an academic watch, and districts that meet less than 33% are declared to be in a state of academic emergency.

The bill repeals the current performance indicators and mandates the State Board of Education to create at least 17 new ones on an annual basis. Although the State Board can generally establish any indicators it chooses, the bill 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 bill, however, retains the portion of current 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 current 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 one year before they are included in the district's rating. Ratings based upon these indicators must be issued *annually*.

The bill maintains the current 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 bill 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 individual school buildings as well as districts

(sec. 3302.03)

The Department of Education currently has to issue report cards and ratings for school districts only. Under the bill, the Department must issue report cards for individual school buildings in addition to report cards for entire school districts. The Department must also use the bill's expanded rating system of excellent, effective, continuous improvement, academic watch, and academic emergency for individual 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 significant improvement 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))

Current law prohibits the report cards from containing any information on proficiency test passage rates disaggregated by race, ethnicity, or gender. The bill removes this prohibition entirely, permitting the Department of Education to disaggregate student performance data according to any classification and to include such data on school district and building report cards. 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 to either generate valid data or to protect the confidentiality of individual test scores.

Additional reports of school district data

(sec. 3302.031)

The bill requires the Department of Education to maintain a site on the World Wide Web. The web address must be listed on each school district report card along with a list of information regarding the district that is available to the public at that site. The web site must include for each school district, when available, student mobility data (disaggregated by race and socioeconomic status) and college enrollment data.¹⁹ The Department must also prepare (and include on the web site) the following annual reports for each school district:

--a funding and expenditure accountability report including the amount of state aid payments the district receives for the year;

--a safety and discipline report including statistical information about suspensions and expulsions, disaggregated by race and gender;

--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 proficiency test scores of the students;

--an enrollment report containing information about the composition of classes within each district by grade and subject, disaggregated by race, gender, and proficiency test scores;

--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.

¹⁹ *The bill 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.*

Establishment of standard unit of improvement for school 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)

Current law requires the State Board of Education to establish a standard unit of improvement for school districts and requires school districts to develop a continuous improvement plan if the district receives any rating other than "effective." The inclusion of individual school buildings and the addition of the "excellent" rating change both of these mandates in the bill. Under the bill, the State Board must create a standard unit of improvement for individual buildings as well as districts. School districts must develop continuous improvement plans for any individual school within the district that does not receive an "excellent" or "effective" rating. Similarly, school districts that are "excellent" or "effective" are not required to have a district-wide continuous improvement plan.

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

Exemption for excellent and effective school districts from certain state mandates

(secs. 3302.05 and 3314.20)

Current law allows 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 bill 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 bill.

Also, current law requires districts that are not "effective" and have more than 5,000 students to designate one school to be operated by a school-level site-based management council. The bill exempts both "excellent" and "effective" districts from this requirement.

Intervention plan for consistently failing schools

(sec. 3302.04(E))

The bill requires the State Board of Education to recommend to the General Assembly a plan for intervening in and assisting failing school districts. The recommended plan must suggest appropriate interventions if the district itself or any school within the district continues to decline despite implementation of a school improvement plan.

Research on instructional time and intervention strategies

(sec. 3301.801)

The bill 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.²⁰

The bill also requires the Department within one year of the bill'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)

The bill 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 would serve as an alternative to passing the tenth grade achievement tests to receive a high school diploma.

Incorporation of ACT WorkKeys tests into end-of-course examinations

(sec. 3301.0713)

The bill requires the State Board of Education to recommend to the General Assembly methods to incorporate the ACT WorkKeys tests into the plan for end-

²⁰ Current law requires the Commission to maintain a clearinghouse for teachers to obtain lesson plans, materials, and practical resources.

of-course examinations so that vocational students might be tested in grades nine and ten in end-of-course examinations and in grades eleven and twelve in WorkKeys tests. The WorkKeys tests measure such things as reading for information or shop mathematics and are generally given to vocational students to test their application of skills in the workshop.

Governor's Commission on Successful Teachers

(Sections 11 and 12)

The bill 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, whose membership and organization is to be determined by the Governor, must issue a written report containing its recommendations to the General Assembly by December 31, 2001. The Commission will cease to exist upon issuance of its report.

The bill 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 that will be 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 how they should be configured;
- (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 bill also states that it is the intent of the General Assembly that upon its review of the Commission's report, the General Assembly will reallocate any funding for professional development, mentoring, teacher recruitment, and teacher training to reflect the Commission's recommendations.

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.²¹ 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 presently 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 current law, each school district must implement a competency-based education program that includes the "availability. . . of intervention services in grades one through eleven for pupils who are failing to make satisfactory progress toward achieving the performance objectives" specified by the district for the pupils' grade level. Districts must use local assessments (which need not be written tests) to determine which students are not making adequate progress. The law does not stipulate the types of intervention services districts must provide nor does it require that districts provide the services to each individual student whose assessment shows that additional help might be necessary. Current law, however, does require districts to provide intervention services in the fifth grade to *each* student who fails to achieve a proficient score on a fourth grade proficiency test. For the purpose of the fourth grade reading guarantee, districts must also provide intervention services to students who are reading below grade level at the end of first, second, or third grade.

The intervention services required by the bill 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

²¹ *Elementary and Secondary Education Act of 1965, 20 U.S.C. 6301 et seq.*

intervention services for *each* student who does not attain a proficient score on a fourth or ninth grade proficiency test or on any achievement test or who is not performing at grade level based on the results of a state diagnostic assessment. Finally, although (like current law) the bill does not prescribe the kinds of intervention services districts must offer, the bill does require such services to be "commensurate with the student's test performance."

3. Under state law, the minimum school year essentially consists of 182 days (including four days for teacher preparation and reporting and parent conferences), of which 173 days must be spent in classroom instruction. The minimum school day is five hours for public school students in grades one through six and five and one-half hours for public school students in grades seven through twelve. A school district board may shorten its day by up to two hours in the event of hazardous weather conditions. A school district board also may adopt a staggered attendance schedule under which it must provide instruction to each student for at least 910 hours per school year. Generally, a school week is five days per week.²²

4. Under continuing law, each school district is required to provide transportation for any student in grades kindergarten through eight residing in the district who lives more than two miles from the school to which the student is assigned. However, a district may make payments to a student's parent in lieu of transportation if it can show that it is impractical for the district to provide transportation. The state provides a subsidy to each school district for transporting students.²³ Since the bill permits school districts to require students in grades kindergarten through eight to attend after-hours intervention services, it also appears that such districts would also be required to provide transportation to and from those services for such students who live more than two miles from school. This is particularly salient since under the bill the additional time a student is required to attend school is part of a student's obligation under the compulsory attendance law.

²² See secs. 3313.48, 3313.481, 3313.482, and 3317.01 (none in the bill) and Ohio Admin. Code § 3301-35-02.

²³ Sec. 3327.01, not in the bill. Although not required to do so, a district may provide transportation to students in grades nine through twelve or for lower grade students who live between one and two miles from school and may receive a state subsidy for providing such transportation.

HISTORY

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