Jennifer Stump *Legislative Service Commission*

Am. Sub. H.B. 3

125th General Assembly
(As Passed by the General Assembly)

Reps. **Schlichter, Setzer, Callender, Carano, Chandler, DeBose, DeWine, Distel, C. Evans, Hartnett, Hoops, Reidelbach, Reinhard, Taylor, Webster, Williams, Yates, Cates, Collier, Hagan, Hughes, Jolivette, Key, McGregor, Otterman, Peterson, Seitz, Ujvagi, Widener, Widowfield**

Sens. **Robert Gardner, Mumper, Spada, Stivers, Prentiss, Miller**

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ACT SUMMARY

- Adds the following achievement tests to the system of achievement testing in former law: (1) third grade math, (2) fourth grade reading, and (3) fifth, sixth, and eighth grade reading and math.
- Modifies the timeline for the phase-in of the achievement tests.
- Requires the State Board of Education to designate five levels of scores for all achievement tests, including the Ohio Graduation Tests (OGT), and renames the *below basic* level the *limited* level.
- Prohibits exempting a limited English proficient (LEP) student from a proficiency or achievement test but allows LEP students to take a test with "appropriate accommodations."
- Requires school districts to annually assess the progress of LEP students in learning English.
- Requires students who score below the *proficient* range on an achievement test to receive intervention services.
- Requires special education students to receive intervention services based upon proficiency or achievement test results.

- Specifies that the options available to school districts under the third grade reading guarantee for students who receive a *limited* score on the third grade reading achievement test apply to special education students: (1) promotion to fourth grade if the principal and reading teacher agree that other evaluations of the student's work indicate that the student is academically prepared for fourth grade, (2) promotion to fourth grade with "intensive intervention" in that grade, or (3) retention in third grade.

- Requires school districts and community schools to administer diagnostic assessments to students in grades kindergarten through two, to students enrolled in a school building that fails to make adequate yearly progress (AYP) for two or more consecutive school years, and to transfer students.

- Requires the Education Management Information System (EMIS) to collect any data mandated by federal law.

- Includes AYP and a performance index score in the determination of performance ratings for districts and buildings.

- Requires the Department to make recommendations for lowering the performance ratings of districts and buildings that, although demonstrating AYP, show statistically significant differences in performance between white, middle-class students and students in other subgroups.

- Sets the standard for making AYP at the *proficient* level of achievement.

- Directs the Department to begin using a "value-added progress dimension" and to include it in the performance ratings within two years after July 1, 2005.

- Requires the Department to include a growth factor based on the performance index score in the performance ratings until the value-added progress dimension has been incorporated.

- Creates the Ohio Accountability Task Force to examine implementation of the value-added progress dimension and to make recommendations regarding Ohio's accountability system.

- Requires the disaggregation of data on the district and building report cards by disabled students, limited English proficient students, migrant students, and gifted students.

- Eliminates the disaggregation of data on the report cards by vocational education students.

- Requires the inclusion of the percentage of "highly qualified" teachers on the report cards.

- Requires separate calculations of performance index scores and achievement on the performance indicators for each school district and building without the inclusion of students with disabilities.

- Directs the Department to establish a system of "intensive, ongoing support" for the improvement of school districts and buildings.

- Eliminates a requirement that the Department provide the Ohio SchoolNet Commission with an annotated bibliography of successful intervention practices.

- Describes the sanctions that apply to districts and buildings, including community schools, that fail to make AYP in two or more consecutive school years.

- Requires the Department to conduct audits of a sampling of community schools to ensure compliance with sanctions.

- Requires public school choice and supplemental educational services for students in schools that receive federal Title I funds and fail to meet AYP for two or more consecutive school years.

- Generally limits school districts to spending a combined total of 20% of their Title I funds to pay for transportation for students transferring under public school choice and for supplemental educational services.

- Eliminates "Urban-21 school districts" that are not also "Big-Eight school districts" from the definition of "challenged school districts" in which start-up community schools may be located.

- Permits any existing start-up community school that has been established in an Urban-21 school district (not otherwise meeting the definition of a

challenged school district) prior to the act's effective date to continue to operate.

- Permits an educational service center (ESC) to sponsor a community school in any challenged school district.

- Requires the State Board of Education, by September 30, 2003, to recommend to the General Assembly standards governing the operation of Internet- or computer-based community schools.

- Makes other changes to the community school law.

- Modifies the terms of a $250,000 earmark in the 2003-2005 budget act (Am. Sub. H.B. 95) for training of community school sponsors by requiring the Department of Education to contract with the Ohio Foundation for School Choice to conduct the training instead of conducting the training itself.

- Requires the Superintendent of Public Instruction to submit a report to the General Assembly within 90 days after the act's effective date describing the projected cost of compliance with the No Child Left Behind Act and the financial consequences for noncompliance with that act.

- Directs the Legislative Office of Education Oversight to conduct a study of each of the following: (1) the academic achievement gap, (2) the provision of intervention services, (3) the Ohio Graduation Test performance of the Class of 2007, and (4) the progress of meeting the federal requirement of having only "highly qualified" teachers in core subject areas.

- Eliminates the requirement that certain State Board of Education rules be approved by the General Assembly prior to taking effect.

- Eliminates the requirement that the Superintendent of Public Instruction present proposed academic standards and model curricula to a joint meeting of the House and Senate Education Committees at least 45 days prior to the State Board's adoption of those standards or curricula.

- Eliminates the requirement that the State Board propose a plan for "end of course exams" as an alternative to passing the OGT to earn a high school diploma.

- Permits a school district to retain a student's data verification code in any file of a student who is no longer enrolled in that district.

- Specifies that school district officials are not required to attach a certificate of available resources to current payrolls for or employment contracts with "any" employees or officers of the school district, instead of those payrolls for or contracts with only "regular" employees as under prior law.

- Permits a student who relocates (or whose parent relocates) outside of the school district in which the student is entitled to attend school after the first full week in October to continue to attend school in the district free of tuition for the balance of the school year under certain conditions, if both affected school districts have a policy permitting this.

- Clarifies how the Department of Education is to treat state charge-off supplement payments and transitional aid payments when calculating the reappraisal guarantee for school districts.

- Authorizes the Ohio Tuition Trust Authority to suspend the sale of tuition credits, either permanently or temporarily, if an adjustment in the price of tuition credits will not improve the actuarial soundness of the Ohio Tuition Trust Fund.

- Creates the Variable Operating Fund for the operation and administration of the variable savings program, as well as paying other expenses.

- Expands former law to allow certain entities to establish a scholarship program consisting of contributions made to variable *and* college savings program ("guaranteed savings program") accounts instead of just college savings program accounts.

- Defines how certain state colleges and universities are to calculate the previous year's tuition charges for purposes of complying with tuition caps.

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CONTENT AND OPERATION

Overview

The No Child Left Behind Act of 2001 (NCLB) is an extensive reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA), which is the major federal law affecting the educational requirements and funding of public elementary and secondary schools.[1] NCLB, which became effective January 8, 2002, has as its stated purpose to improve the education of all children by focusing on (1) stricter accountability, both at the school and district level, (2) frequent assessments in reading and math, (3) greater school choice for students,

[1] *No Child Left Behind Act of 2001, Pub. L. No. 107-110, 20 U.S.C. 6301 et seq.*

especially those in poorly performing schools, (4) teacher quality, and (5) increased flexibility in the spending of federal funds.

Title I, Part A (hereafter referred to as Title I) is the central program of the ESEA and provides funds for the educational needs of low-income and other at-risk students. This program is the most significant in terms of funding and the requirements it imposes on states (see **COMMENT** 1). Many of the changes made by NCLB apply only to Title I districts and schools (*i.e.*, districts and schools that receive funds under Title I).[2] Other changes apply more broadly, however, because NCLB requires the participation of all public school students in the state's assessment system.

Ohio was formerly in partial compliance with NCLB. The act modifies Ohio's law where necessary to conform to NCLB. There are essentially three main areas in which the act makes changes to former law: (1) achievement testing, (2) school district and building accountability, and (3) school district and building report cards.[3]

With regard to testing, NCLB requires annual standardized testing in grades three through eight in reading and math beginning in the 2005-2006 school year.[4] Therefore, the act adds reading and math achievement tests in each of those grades in which such tests were not already required to be administered under prior state law. It also adjusts the phase-in of the achievement tests to comply with the timeline for testing specified in NCLB.

A stated intent of the accountability provisions in NCLB is to ensure that all students are achieving a level of academic proficiency by the end of the 2013-2014 school year.[5] For this purpose, each state must define "adequate yearly progress" (AYP), which is an annual measure of academic progress toward meeting the 2013-2014 goal based on student scores on the statewide standardized tests and one or more other academic indicators.[6] Only Title I districts and schools

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[2] *Generally, Title I funds are allocated to states and passed on to school districts by the state department of education. Districts then distribute the funds to individual schools based upon the number of disadvantaged students enrolled in those schools.*

[3] *NCLB's requirements regarding teachers are not in this act. They are included in H.B. 2 and S.B. 2 of the 125th General Assembly, the stated purpose of which is to implement the recommendations of the Governor's Commission on Teaching Success.*

[4] *20 U.S.C. 6311(b)(3)(C)(vii).*

[5] *20 U.S.C. 6311(b)(2)(F).*

[6] *20 U.S.C. 6311(b)(2)(B) and (C).*

are subject to determinations of AYP.[7] To make AYP, districts and schools must generally meet the yearly targets for (1) all students in the aggregate *and* (2) specified subgroups of the student population.[8]

School districts and buildings that fail to make AYP for two or more consecutive school years face consequences intended to provide educational options to students and help those districts and schools improve their performance. These consequences become increasingly more stringent the longer a district or school fails to make AYP.[9]

Another key component of NCLB is public dissemination of information regarding student academic performance in the aggregate and disaggregated by subgroup.[10] Ohio's reporting system, namely the district and school report cards issued annually by the Department of Education, serves this function.[11] However, the act combines the new components of AYP and a "performance index score" (see "***Determination of performance ratings for districts and buildings***" below) with the existing state performance indicators for the purpose of determining the ratings assigned to districts and schools on the report cards. The act also includes additional categories for the disaggregation of data as mandated by NCLB.

Achievement tests

As stated above, NCLB requires annual statewide tests in reading and math in grades three through eight beginning in the 2005-2006 school year. Reading and math tests also must be given at least once between grades ten and twelve. By the 2007-2008 school year, states must administer science tests at least once in each of the following grade spans: (1) grades three through five, (2) grades six

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[7] *See 20 U.S.C. 6316.*

[8] *20 U.S.C. 6311(b)(2)(I).*

[9] *20 U.S.C. 6316. Prior to the start of the 2002-2003 school year, the Ohio Department of Education identified districts and schools that failed to make AYP for the two immediately preceding school years. Those districts and schools were in "school improvement" status for the 2002-2003 school year under NCLB. Thus, they were required to begin providing public school choice effective with that school year (see "**Public school choice**" below).*

[10] *20 U.S.C. 6311(h)(1) and (2).*

[11] *20 U.S.C. 6311(h)(3).*

through nine, and (3) grades ten through twelve. All of these tests must be aligned with statewide academic standards.[12]

Under continuing Ohio law, achievement tests are being phased in to replace the former proficiency tests. The five subject areas covered by the achievement tests are reading, writing, math, science, and social studies. Each achievement test is required to be aligned with the statewide academic standards adopted by the State Board of Education for the relevant subject area.[13] Ohio's former assessment system satisfied many of the NCLB provisions regarding the administration of tests aligned with academic standards in reading, math, and science. It did not meet the requirement, however, for *annual* testing in reading and math in grades three through eight. Also, the development of some achievement tests required by prior state law needed to be accelerated to meet the deadlines imposed by NCLB. The act makes these and other changes to Ohio's assessment system to comply with NCLB.

Additional reading and math achievement tests

(secs. 3301.0710(A)(1) and (C)(1), 3301.0711, and 3301.0712)

Under former Ohio law, achievement tests in reading were to be given in third, seventh, and tenth grades. Math achievement tests were to be administered in fourth, seventh, and tenth grades. To comply with NCLB's mandate for annual testing in those subjects in grades three through eight, the act adds reading and math achievement tests for those grades in which they were not formerly required. As with the other achievement tests, the additional tests included in the act must be developed by the State Board with input from Ohio parents, classroom teachers, school administrators, and other personnel with expertise in the appropriate subject area.[14] Achievement tests in writing, science, and social studies and the

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[12] *20 U.S.C. 6311(b)(3)(C).*

[13] *The State Board adopted academic standards for reading, writing, and math on December 11, 2001. Standards for science and social studies were adopted December 10, 2002.*

[14] *The act permits the Department of Education to include "anchor" questions on achievement tests. Anchor questions are items used to guarantee that different versions of the same test are of comparable difficulty. Anchor questions are not considered in computing students' scores on achievement tests and, therefore, are not a public record. (Sec. 3301.0711(N).) Continuing law specifies that questions on achievement tests must be value-neutral, as determined by the Fairness Sensitivity Review Committee established by rule of the State Board.*

Ohio Graduation Tests (OGT) in reading and math remain unchanged by the act and will be administered in the same grade levels as required under prior law.

The new assessment system created by the act will be completely phased in beginning with the 2007-2008 school year. This is one year later than the achievement tests had to be fully phased in under prior state law. Due to the changes in the phase-in schedule, the sixth grade proficiency tests will be phased out one year earlier than under prior law and the fourth grade proficiency test in math will be given for an extra year. All of the proficiency tests will be eliminated by the end of the 2004-2005 school year.

The following tables compare the former system of achievement testing with the framework established by the act.

	Achievement Tests in Former Law					**Achievement Tests under the Act**				
	Reading	**Writing**	**Math**	**Science**	**Social Studies**	**Reading**	**Writing**	**Math**	**Science**	**Social Studies**
Grade 3	X					X		X		
Grade 4		X	X			X	X	X		
Grade 5				X	X	X		X	X	X
Grade 6						X		X		
Grade 7	X	X	X			X	X	X		
Grade 8				X	X	X		X	X	X
Grade 10	X	X	X	X	X	X	X	X	X	X

The act also specifies that if the Department contracts with more than one vendor for the development of the achievement tests, then the Department must ensure the "interchangeability" of those tests (sec. 3301.079(E)).

Proficiency Test	Last administration in school year beginning July 1 of	Achievement Test	First administration in school year beginning July 1 of
		3rd grade reading test	2003
		3rd grade math test	2004
4th grade reading test	2003	4th grade reading test	2004
4th grade math test	2004	4th grade math test	2005 (2004)[a]
4th grade writing test	2003	4th grade writing test	2004
4th grade science test	2004	5th grade science test	2006 (2005)[a]
4th grade citizenship test	2004	5th grade social studies test	2006 (2005)[a]
		5th grade reading test	2004
		5th grade math test	2005
6th grade reading test	2004	6th grade reading test	2005
6th grade math test	2004	6th grade math test	2005
6th grade writing test	2004	7th grade writing test	2006
		7th grade reading test	2005 (2006)[a]
		7th grade math test	2004 (2006)[a]
6th grade science test	2004	8th grade science test	2006
6th grade citizenship test	2004	8th grade social studies test	2007 (2006)[a]
		8th grade reading test	2004
		8th grade math test	2004
9th grade reading test	2002[b]	OGT in reading	2002
9th grade math test	2002[b]	OGT in math	2002
9th grade writing test	2002[b]	OGT in writing	2004
9th grade science test	2002[b]	OGT in science	2004
9th grade citizenship test	2002[b]	OGT in social studies	2004

[a] If the act changes the school year in which an achievement test must first be administered from that specified in prior law, the year required by prior law is noted in parentheses following the year required by the act.

[b] The ninth grade proficiency tests were administered to all ninth graders for the last time in March 2003. Students who did not pass one or more of the tests in the ninth grade have multiple opportunities to retake the tests throughout high school. If a student has not passed a ninth grade proficiency test by the end of his or her senior year in high school, the student has until September 15, 2008, to pass that test in order to be eligible for a high school diploma based upon passage of the ninth grade proficiency tests. After that date, the student would need to pass the OGT in the failed subject area to receive a diploma.

Scores on the achievement tests

(sec. 3301.0710)

NCLB requires at least three ranges of scores on state assessments to indicate the degree to which students are mastering state academic standards.[15] Under prior law, Ohio had four ranges of scores--*advanced*, *proficient*, *basic*, and *below basic*--on all achievement tests except for the OGT. For each OGT, the State Board of Education established a single passing score that demonstrated a proficient level of skill for the tenth grade.

The act makes three changes to prior law. First, it adds a fifth score range for the achievement tests between the *proficient* and *advanced* levels, which is called *accelerated*. Second, it renames the lowest range *limited*.[16]

Third, the act requires the State Board to establish five ranges of scores on the OGT to bring Ohio into compliance with NCLB. These must be the same five ranges used on the elementary achievement tests. In addition, the act specifies that the State Board must designate a score in at least the *proficient* range on each OGT that will be the passing score used for determining eligibility for a high school diploma.

The act provides that in designating the ranges of scores on the achievement tests, if the State Board intends to make any changes to recommendations for such scores made by any committee established by the Department of Education, the State Board must explain the change to the Ohio Accountability Task Force (see "***Ohio Accountability Task Force***" below). The Task Force in turn must recommend whether the State Board should proceed with the intended change. However, the State Board retains ultimate authority to set the test scores. Whenever a Department committee makes recommendations for designating scores, it must inform the State Board of the implications of setting the scores at the suggested levels, including the probable breakdown of students scoring at each level disaggregated by subgroups.[17]

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[15] *34 C.F.R. § 200.1(c)(1)(ii).*

[16] *Under the act, the proficiency tests, which formerly only had one proficient score, are required to have the same four ranges of scores previously used for the achievement tests (Section 3).*

[17] *It does not appear that there is any requirement that the State Board request recommendations for achievement test score ranges from any committee of the Department of Education. Since it is the State Board that is authorized to designate the scores and not the Department, it is possible that the Department of Education would*

Intervention services

(secs. 3301.0711(D) and 3313.6012)

Several requirements to provide students with intervention services are triggered by the score they receive on a proficiency or achievement test. Law retained in part by the act requires school districts and community schools to provide intervention services in the next school year to any student who scores in the *below basic* (*limited* in the act) range on an achievement test, other than the OGT, or who does not attain a *proficient* score on a fourth, sixth, or ninth grade proficiency test. The services must address the subject areas in which the student scored at those levels. All intervention services must be "commensurate with the student's test performance."

The act adds students scoring in the *basic* range on an achievement test to those required to receive intervention services. In other words, all students scoring below the *proficient* level on achievement tests, whether in the *basic* or *limited* range, must be given intervention services. This is the same requirement as in continuing law for the third grade reading achievement test (see "***Third grade reading guarantee***" below).

The act adds another new intervention requirement. Under prior law, districts and community schools were not required to provide intervention services based on OGT scores. However, under the act, students who score below the *proficient* level on an OGT must receive intervention services.[18] Under the act, the criteria for providing intervention services are the same for both proficiency and achievement tests.[19]

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make recommendations or establish a committee to make recommendations for score ranges only if the State Board requested the Department to do so.

[18] *Am. Sub. H.B. 95 of the 125th General Assembly further requires academic watch and academic emergency school districts to administer practice versions of the OGT to ninth graders beginning in the 2003-2004 school year. Academic emergency districts then must select high schools (based upon their practice test results and graduation rates) in which to provide intervention services to students in danger of failing the OGT in the tenth grade.*

[19] *The act also makes a technical correction with regard to intervention services based on proficiency test scores. Sec. 3313.6012 specifically requires students to receive intervention services after failing a fourth, sixth, or ninth grade proficiency test. The sixth grade proficiency tests were inadvertently omitted in previous amendments to sec. 3301.0711(D), which is meant to contain the same intervention requirements.*

Also, former law exempted special education students for whom an individualized education program (IEP) had been prepared from receiving intervention services. Under the act, districts and community schools must provide special education students with intervention services based on their performance on proficiency and achievement tests.

Elimination of exemption from achievement tests for limited English proficient students

(secs. 3301.0711(C), 3313.61(K), 3313.611(E), and 3313.612(C))

Prior law stipulated that a student whose primary language was not English was considered English-limited if (1) the student had been enrolled in United States schools for less than three full school years and (2) it had been determined in the current school year that the student lacked sufficient English skills for a proficiency or achievement test to produce valid information concerning that student's academic knowledge.[20] An English-limited student enrolled in a public school formerly could be exempted from taking any proficiency or achievement test. Such an exemption lasted for one year and was obtained from the board of education of the district in which the student was enrolled. The exemption could be renewed for two additional years. In any year in which an English-limited student received an exemption, the district had to assess the student's progress in learning English. Any student who did not receive an exemption was required to take all applicable proficiency or achievement tests. In no case could an English-limited exemption be used to excuse a high school student from the requirement to pass proficiency tests or the OGT to earn a diploma.

Ohio law did not meet the provisions of NCLB regarding students with limited English proficiency. NCLB explicitly requires the participation of limited English proficient (LEP) students enrolled in public schools (including community schools) in all state assessments.[21] Specifically, an LEP student must be assessed in one of the following ways: (1) by taking a state assessment in the same manner as it is administered to other students, (2) by taking the assessment with accommodations tailored to the student's special needs, or (3) by an alternate assessment method, including assessing the student in his or her native language.[22] After three consecutive years of enrollment in United States schools, however,

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[20] *School districts made the latter determination based on criteria developed by the Department of Education (sec. 3301.0711(C)(3)).*

[21] *20 U.S.C. 6311(b)(3)(C)(ix)(III).*

[22] *34 C.F.R. § 200.6(b)(1)(i).*

LEP students must be assessed in English in reading.[23] They may continue to be assessed in their native languages in other subject areas until they have achieved English language proficiency. School districts must administer annual assessments of English proficiency to all LEP students to determine when proficiency has been attained.[24] Once a student achieves English proficiency, all future state assessments must be taken in English.

The act makes changes to former law to comply with NCLB. First, it eliminates references to "English-limited students" and replaces them with the phrase "limited English proficient students," which is the term used in the federal law. It also adopts the federal definition of "limited English proficient (LEP)" for the purpose of Ohio law. According to that definition, a limited English proficient student generally is an individual who: (1) is between the ages of 3 and 21, (2) is enrolled in an elementary or secondary school, (3) was not born in the United States or whose native language is not English, and (4) has such difficulty speaking, reading, writing, or understanding English that the student may be unable to perform well enough in class or on state tests to meet expected state standards for achievement.[25]

Second, the act eliminates the temporary, one-year exemptions from taking proficiency or achievement tests previously available for LEP students. It specifies instead that an LEP student enrolled in a public school cannot be excused from taking any proficiency or achievement test. A school district may permit an LEP student to take a particular test with accommodations, however. The Department of Education must determine appropriate accommodations for LEP students, but typically they might involve allowing extra time or the use of a dictionary. The act does not specifically provide an option for LEP students to be assessed in their native languages.

Third, the act removes the three-year limit imposed by prior law on a student's LEP status. Rather, LEP students are classified as such for as long as they meet the federal definition of limited English proficiency. Under the act, districts and community schools must annually assess an LEP student's progress in learning English to determine when the student is fluent enough that the federal definition is no longer appropriate.

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[23] *20 U.S.C. 6311(b)(3)(C)(x).*

[24] *20 U.S.C. 6311(b)(7).*

[25] *20 U.S.C. 7801.*

Finally, continuing law permits chartered nonpublic schools to voluntarily administer the elementary proficiency and achievement tests. (They *must* administer the ninth grade proficiency tests and the OGT because passing those tests is required for a diploma from a chartered nonpublic school.)[26] LEP students enrolled in chartered nonpublic schools formerly were eligible for the same exemptions from the elementary tests as public school students. However, unlike public school students, they may continue to be excused from taking any such tests under the act. This is because NCLB demands only that all *public school* students participate in a state's assessment system. Thus, under the act, chartered nonpublic schools may indefinitely excuse LEP students from any proficiency or achievement tests, except those tests required to earn a diploma.

Third grade reading guarantee

(secs. 3301.0710(C)(1) and 3301.0711(B)(1); Sections 4 and 5)

A provision in continuing law commonly known as the "third grade reading guarantee" aims to ensure that students are reading at grade level by the end of third grade.[27] One component of this effort, which is unchanged by the act, requires school districts and community schools to annually assess students at the end of first and second grade and provide them with intervention services if they are reading below grade level. In the third grade, students are given multiple opportunities to pass the third grade reading achievement test. The test is administered three times a year according to the following schedule: (1) once before December 31, (2) once in mid-March, and (3) once during the summer before fourth grade. Third graders who do not attain a score in the *proficient* range on the fall or spring administration of the achievement test must be offered intense remediation services over the summer before taking the test for the third time.

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[26] *Secs. 3301.0711(K) and 3313.612.*

[27] *The third grade reading guarantee replaced the prior fourth grade reading guarantee beginning July 1, 2003. The fourth grade reading guarantee operated in substantially the same manner as the third grade reading guarantee described here (former sec. 3313.608, not in the act). In accordance with the scheduled phase-out of the proficiency tests in continuing law, the fourth grade reading proficiency test will be administered for the last time in the 2003-2004 school year. (This is a transitional year in which third graders will be given the third grade reading achievement test for the first time as well. 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 2003-2004 school year remain subject to the fourth grade reading guarantee in prior law.*

Under prior law, except for special education students who took an alternate assessment, third graders who scored in the *below basic* (the equivalent of *limited* under the act) range on the summer administration of the test were subject to one of the following three options selected at the discretion of the school district or community school:

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

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

(3) Retention in third grade.

For students who were promoted to fourth grade without attaining the *proficient* score on the third grade reading achievement test, there were three opportunities to retake the test in fourth grade and a final opportunity in fifth grade. If a student still had not passed the test at the end of his or her fourth grade year, the district or school had the same options described above regarding the promotion or retention of that student.

The act makes two changes to the third grade reading guarantee. First, the act eliminates entirely the administrations of the third grade reading test in fourth and fifth grades. Once annual testing in reading is phased in as required by NCLB, students will take grade-level reading tests in those grades.

Second, as under prior law, districts and schools retain the discretion to promote or retain third graders who score in the *limited* range on the achievement test in accordance with the guidelines described above. Under the act, however, special education students are no longer exempt from such considerations. Decisions about whether to promote or retain them must be made in the same way as they are for other students, although presumably the individualized education programs (IEP) of those students would factor into the decisions.

National Assessment of Educational Progress (NAEP)

(sec. 3301.0710(E))

Beginning in the 2002-2003 school year, states must participate in biennial administrations of the National Assessment of Educational Progress (NAEP) in reading and math in the fourth and eighth grades under NCLB. This requirement is waived in any year the federal government does not appropriate funds to pay for

such participation.[28] Continuing Ohio law gives the Department of Education authority to require districts to participate in NAEP.[29] Continuing law also requires the State Board of Education, in designating dates for the administration of proficiency or achievement tests, to allow a reasonable length of time between those dates and dates on which districts must administer NAEP assessments due to a Department mandate. The act simply specifies that the State Board must keep those same considerations in mind when NAEP is administered because of NCLB provisions.

Administration of diagnostic assessments

(secs. 3301.0715 and 3313.6012; Sections 4 and 5)

Background

Diagnostic assessments are tools designed to provide feedback on a student's academic strengths and weaknesses. As opposed to tests used to indicate how much knowledge a student has relative to how much knowledge he or she *should* have at a certain point (like the achievement 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.

Prior law

Under continuing law, by July 1, 2007, the State Board of Education must 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, it is prohibited from adopting a diagnostic assessment for any grade and subject in which an achievement test is given.[30] All diagnostic assessments must be aligned with the statewide academic standards and be designed to measure student comprehension and mastery of the content of the standards. When any diagnostic assessment has been developed, the

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[28] *20 U.S.C. 6311(c)(2).*

[29] *See sec. 3301.27, not in the act.*

[30] *As the act's testing schedule requires annual reading and math achievement tests in grades three through eight, no reading and math diagnostic assessments must be adopted in those grades.*

Department of Education must make it available at no cost to all school districts and community schools.[31]

Former law required each district, as well as community schools, to administer the diagnostic assessments at least once annually to all students in the appropriate grade levels to gauge their progress in attaining the academic standards. Also, whenever a student transferred into a new school, the district or community school had to administer the appropriate diagnostic assessments to that student within 30 days after the transfer. Districts rated excellent were allowed to use diagnostic assessments of their choice rather than the state-developed ones.[32]

Under law unchanged by the act, diagnostic assessments are scored at the district level in accordance with Department rules. Districts and community schools must provide intervention services to students whose results indicate that they are not making sufficient progress toward mastering academic material for their grade level. With one exception, scores on diagnostic assessments are not reported to the Department. The exception is for the results of the kindergarten diagnostic assessments, which are used by the Department to compare the academic readiness of kindergarteners.[33]

The act

The act retains some aspects of prior law. All transfer students must be given the appropriate diagnostic assessments within 30 days of entering a new school. Also, under the act, administration of diagnostic assessments to students in grades kindergarten through two remains mandatory. School districts must administer the "kindergarten readiness assessment" developed by the Department within the first six weeks of school to all kindergarteners. The results of these assessments must be reported to the Department for a baseline comparison of kindergarten students. The act preserves the prohibition against reporting results from any other diagnostic assessments to the Department.

Under the act, however, administration of the diagnostic assessments for grades three through eight is voluntary except in one instance. Any diagnostic assessments developed by the State Board must be given to all students in schools,

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[31] *Sec. 3301.079(D).*

[32] *Under continuing law, diagnostic assessments must also be used to evaluate the reading skills of first and second graders under the third grade reading guarantee to determine whether the students are reading at grade level (see "**Third grade reading guarantee**" above).*

[33] *Sec. 3301.0714(B)(1)(o).*

including community schools, that did not make AYP in the two previous school years (see "***Making AYP***" below). In all cases when the administration of a diagnostic assessment is mandatory, it must be administered in the same manner required by prior law. Also, the act states that *all* districts and community schools *may* administer a diagnostic assessment to any student at their discretion.

As noted above, districts and community schools must provide intervention services to students who are not performing at grade level based upon a diagnostic assessment. This requirement applies to all districts and community schools under the act, even those that voluntarily administer diagnostic assessments. Thus, under the act, schools that have made AYP for one or more school years need not give diagnostic assessments, but if they choose to do so, they *must* offer intervention services to students who are struggling.

Districts that made AYP in the previous school year are granted some flexibility in selecting diagnostic assessments under the act. Those districts are not obligated to give the state-developed diagnostic assessments, except for the kindergarten readiness assessment, but they still must administer diagnostic assessments to all students who are required by the act to take them. Thus, they are free to develop their own locally or purchase others. Such districts can substitute their own diagnostic assessments for the state assessments even in schools that have not made AYP for two consecutive years and, therefore, must give diagnostic assessments to all of their students.

School district and building report cards

The Department of Education issues annual report cards for school districts and individual school buildings based upon education and fiscal performance data. In addition, the Department gives each district and building an academic performance rating, which appears on the individual report cards. Districts and buildings receive a rating of excellent, effective, continuous improvement, academic watch, or academic emergency.

State Board authority to establish performance indicators

(sec. 3302.02)

Law retained in part by the act directs the State Board of Education to create at least 17 performance indicators for school districts and buildings on an annual basis through 2006. Thereafter, the State Board must establish new indicators every six years. Although the State Board can generally establish any indicators it chooses, the Board must 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.[34] Under prior law, the academic performance ratings assigned to districts and buildings were based on the percentage of performance indicators met by the district or building. The State Board had to notify all school districts of the selected performance indicators at least two years before they were included in the ratings.

The act requires the State Board to establish performance indicators annually through 2007 rather than 2006. This one-year extension conforms to the act's timeline for the phase-in of the achievement tests. Under that timeline, the new assessment system will be completely phased in beginning with the 2007-2008 school year. After that year, as under prior law, the State Board must establish new performance indicators every six years.

In any year that the State Board establishes performance indicators, it must inform the Ohio Accountability Task Force (see "***Ohio Accountability Task Force***" below) of the indicators as well as the rationale for choosing them. It must also explain the reasoning used in determining whether a school district or building meets each indicator.

The act removes the requirement that school districts be notified of the performance indicators two years in advance of their inclusion in the report card ratings.[35]

Determination of performance ratings for districts and buildings

(secs. 3302.01 and 3302.03(A), (B), and (D))

The performance indicators were previously the only determinant of the academic performance ratings school districts and buildings received on their report cards. The act adds two new components to this calculation. Thus, under the act, performance ratings are based on three components: (1) achievement on the performance indicators, (2) a "performance index score," and (3) whether a district or building makes "adequate yearly progress" (AYP). Language in the act also requires the Department of Education to develop a fourth component for future inclusion in the ratings system.

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[34] *The 30 performance indicators established by the State Board for use during the 2002-2003 school year included passage rates on proficiency tests, attendance rate, and graduation.*

[35] *The act retains prior law prohibiting the State Board from creating a performance indicator that is based solely on the fall administration of the fourth grade reading proficiency test or the third grade reading achievement test.*

Performance index score (sec. 3302.01(E)). The performance index score is a measure designed to show improved performance on the proficiency and achievement tests by students scoring at all levels. In contrast to the performance indicators, which only measure the percentage of students scoring at or above the *proficient* level on such tests, the performance index score takes into account the percentage of students scoring at *each* of the five levels--*limited*, *basic*, *proficient*, *accelerated*, and *advanced*. By comparing the performance index score of a district or building over time, it would be possible to track the progress of the district or building in raising student test scores generally. It would show up in a comparison of performance index scores; for example, if a school increased the number of fourth graders scoring at the *basic* level on the fourth grade math achievement test by 12% from one year to the next. This enables the school to demonstrate progress in improving student test scores from the *limited* level to the *basic* level. Such a change would not be apparent in looking at the performance indicators because the students would still not be scoring at the *proficient* level.

The act describes the procedure for determining the performance index score for districts and buildings. The Department must assign weights to each of the levels of scores on the proficiency and achievement tests. Untested students receive a weight of zero and students who take a test receive progressively larger weights the higher they score. These weighted proportions are totaled for each subject area of reading, writing, math, science, and social studies. The average of the totals from the subject area calculations is the performance index score.

Making AYP (sec. 3302.01(F), (G), (H), and (I)). As defined by NCLB, the measure of "adequate yearly progress," or AYP, is a combination of student performance on state assessments and at least one other academic indicator. AYP generally is not made unless a district or building meets annual targets for its total student population and certain subgroups of the student population and at least 95% of its students enrolled at the time of the test administration participate in state assessments. Subgroups that count for purposes of AYP are (1) major racial and ethnic groups, (2) students with disabilities, (3) economically disadvantaged students, and (4) limited English proficient (LEP) students.[36] By making AYP, a district or building demonstrates satisfactory progress toward having all students performing at the proficient level on state assessments by June 30, 2014, and toward closing the achievement gap between students of different races and socioeconomic status.

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[36] *20 U.S.C. 6311(b)(2)(C) and (I). The federal law permits a specified percentage of students with disabilities to perform below grade level without affecting a school's or district's AYP determination. This percentage will eventually be determined by federal rule.*

Each state must develop its own definition of AYP. This involves two steps. First, the state must set yearly targets for the minimum percentage of students required to be proficient in reading and math, as gauged by passage rates on state assessments. These "annual measurable objectives" must increase in increments through the 2013-2014 school year to gradually move all students toward reading and math proficiency by that time.[37] Second, the state must select one or more other academic indicators to include in its AYP definition. States must use graduation rate as the other indicator for high schools, but they are free to choose whatever other indicator they want for their elementary and middle schools.[38]

The act uses this process to define AYP. Beginning with the 2003-2004 school year, the State Board of Education must set annual measurable objectives. For example, if an annual measurable objective is set at 40%, then 40% of students must score at or above the *proficient* level on reading and math proficiency and achievement tests in that year to keep the state on course to having all students proficient on such tests by June 30, 2014. School districts and buildings can meet the annual measurable objective based upon student test results either from the current school year or a three-year average of test data. The State Board must use the results from the first administration of each reading or math achievement test to make any necessary adjustments in the annual measurable objective for that subject in the following year.

The act also establishes other academic indicators as part of the AYP definition. These are the attendance rate for elementary and middle schools and the graduation rate for high schools. For the graduation and attendance rates, the State Board must set an appropriate threshold that designates when minimum expectations for those indicators have been met.[39]

In compliance with NCLB, a district or building makes AYP under the act when it satisfies the criteria in either Column 1 or Column 2 in the table below.

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[37] *20 U.S.C. 6311(b)(2)(G) and (H).*

[38] *20 U.S.C. 6311(b)(2)(C)(vi). The other academic indicators chosen by states cannot reduce the number of districts and schools that would otherwise face sanctions under NCLB (20 U.S.C. 6311(b)(2)(D)).*

[39] *The act changes the method of calculating graduation rates from that in prior law by using an "on-time" graduation rate. In other words, the graduation rate is based on the number of students who earn a diploma within four years after beginning ninth grade. Prior law calculated the graduation rate by removing from the pool of potential graduates in each year those students who took longer than four years to earn a diploma. The change is required by NCLB. (Sec. 3302.01(B).)*

Column 1 represents the typical method of making AYP. Column 2 is known as the "safe harbor provision" in the federal law. This provision allows districts and buildings that do not meet annual measurable objectives in a given year, especially due to the performance of one or more subgroups, to make AYP if they have decreased the number of students in those subgroups who do not attain the *proficient* level on the state assessments by 10% or more from the previous year or from the average percentage of such students in the two previous years.

	Typical Method	"Safe harbor provision"
District or building makes AYP if:	(1) At least 95% of its total student population and of each subgroup participates in grade-level reading and math proficiency or achievement tests in the applicable year.[a] (2) Its total student population and each subgroup meets or exceeds the annual measurable objectives for that year in reading and math.[b] (3) It meets or exceeds the minimum threshold or makes progress on all other academic indicators for that year.	(1) At least 95% of its total student population and of each subgroup participates in grade-level reading and math proficiency or achievement tests in the applicable year.[a] (2) With respect to the total student population or a subgroup, whichever caused the failure of the district or building to make AYP by the typical method: (a) The percentage of students scoring below the *proficient* level on applicable reading and math proficiency or achievement tests decreases by at least 10% from the percentage of such students in the previous year or the average percentage of such students in the two previous school years; (b) The total student population or subgroup meets or exceeds the minimum threshold on all other academic indicators for that year or makes progress toward meeting the minimum threshold on one or more of such indicators.

[a] Students who take a test with accommodations, such as taking the test untimed or orally, and disabled students who take an alternate assessment must be counted as taking the test in determining the overall participation rate. However, if a subgroup in a district or building contains less than 40 students, it does not have to meet the 95% standard for participation. However, if there are 30 economically disadvantaged students in a single building but 75 such students in the entire district, the district would have to meet the 95% participation rate while the building would not.

[b] In calculating whether a district or building satisfies criterion (2) in Column 1, the act prohibits the Department of Education from including the subgroup of students with disabilities unless it contains 45 or more students. All other subgroups must contain at least 30 students to be included by the Department.

Designating the performance ratings (sec. 3302.03(A), (B), and (D)). Under the act, the Department of Education must publicize on each report card how a district or building performed on the three components included in determining the academic performance rating assigned to the district or building. As in former law, the Department must indicate the extent to which a district or building meets each of the performance indicators and the number of applicable performance indicators that have been achieved. Also, as required by the act, the Department must include the performance index score of the district or building and whether it made AYP. In calculating achievement on each of these components, the Department must include only those students who are counted in the district's ADM in October and are continuously enrolled in the district or building through the time of the March administration of the proficiency or achievement tests.[40] When the same test is given more than once a year, as is the case with the third grade reading achievement test, the Department must use the cumulative totals from the fall and spring administrations of the test in determining how districts and buildings fare on each component.

The following table shows how the performance ratings are determined. An *excellent* district or building that fails to make AYP for three consecutive years is downgraded to *effective*. An *effective* district or building that fails to make AYP for three consecutive years is downgraded to *continuous improvement*.

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[40] *A district's ADM is the district's enrollment measured as the average daily number of students attending school in the district during the first full school week in October (sec. 3317.03, not in the act).*

Rating	Percentage of performance indicators met		Performance index score		Makes AYP
Excellent	94%-100%	*or*	*	*and*	Yes
	94%-100%	*or*	*	*and*	No
Effective	75%-93%	*or*	*	*and*	Yes
	75%-100%	*or*	*	*and*	No
Continuous improvement	0%-74%	*and*	*	*and*	Yes
	50%-74%	*or*	*	*and*	No
Academic watch	31%-49%	*or*	*	*and*	No
Academic emergency	0%-30%	*and*	*	*and*	No

* The act requires the Department to set these point values on a graduated scale.

Recommendations to account for achievement gaps between subgroups of students in performance ratings

(Section 20)

The act requires the Department of Education to make recommendations to the State Board for assigning performance ratings to districts and buildings that, although they demonstrate AYP, show statistically significant differences in performance between white, middle-class students and other subgroups (see "***Making AYP***" above). The Department's recommendations must (1) provide for lowering the performance rating of such a district or school, (2) specify the degree of difference in performance that should be deemed unacceptable, and (3) specify the length of time that districts and buildings should be granted to close the performance differences before having their performance ratings lowered. The Department must make its recommendations to the State Board within one year of the act's effective date and must provide copies to the Governor, the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House of Representatives, and the chairpersons and ranking minority members of the education committees.

Value-added progress dimension

(secs. 3302.01(K) and 3302.021; Section 9)

Between July 1, 2005, and July 1, 2007, the Department of Education must begin using a "value-added progress dimension" and incorporate it into the system of performance ratings and report cards issued for school districts and buildings.[41] As defined in the act, the value-added progress dimension is "a measure of academic gain for a student or group of students over a specific period of time that is calculated by applying a statistical methodology to individual student achievement data derived from the achievement tests." Commonly referred to as the value-added effect, such a measure demonstrates progress made by districts and buildings, or even particular teachers, in improving the academic performance of their students.

The act sets specific criteria for the value-added progress dimension the Department must use. First, it must be a complete system designed for collecting necessary data, calculating the value-added progress dimension, analyzing data, and generating reports for individual students, grade levels, schools, and districts. Second, the system must have been used previously for at least one year by a non-profit organization led by the Ohio business community in a pilot project operated in conjunction with Ohio school districts for the purpose of collecting student achievement data and reporting it to the districts electronically.

In implementing the value-added progress dimension, the Department is limited to spending a maximum of $2 per student for data analysis and reporting. This amount must allow for the implementation of the value-added progress dimension in the same manner and with the same services as provided for the pilot project school districts. However, the Department or an individual district may contract for additional services beyond those provided in the pilot project districts at any time for a higher fee per student.

The State Board must adopt rules for integrating the value-added progress dimension into Ohio's accountability system.[42] These rules must require the Department to protect the confidentiality of students' test scores and individual

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[41] *The act directs the Ohio Accountability Task Force (see "**Ohio Accountability Task Force**" below) to determine the exact starting dates for implementing the value-added progress dimension and for incorporating it into the report cards.*

[42] *The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119., not in the act).*

student performance reports in accordance with state and federal law.[43] Unique student identifiers (for example, assigned random numbers) may be used to maintain privacy. Test scores and student reports may only be shared with a student's classroom teacher, other appropriate educational personnel, and the student's parent. Also, the State Board must establish a scale that describes different levels of academic progress in reading and math relative to a standard year of academic growth in those subjects for grades three through eight. In adopting its rules, the State Board must consult with the Ohio Accountability Task Force created by the act.

Temporary growth factor (Section 15). Until the Department has incorporated the value-added progress dimension into the accountability system, it must include a growth factor based on the performance index score in determining the performance ratings for school districts and buildings. According to the Department, this measure would allow a low-performing district or building to improve its rating if it increased its performance index score over time by a standard amount set by the Department.

Ohio Accountability Task Force. Under the act, the Ohio Accountability Task Force is broadly charged with reporting to the Department and the State Board on all issues related to Ohio's accountability system for school districts and buildings. In addition, it must examine the implementation of the value-added progress dimension by the Department. This includes the Department's use of the system for collecting and analyzing data, procedures for calculating the value-added progress dimension, the reporting of performance data to districts and buildings, and the provision of professional development to teachers and administrators on the interpretation of the data. It further includes a review of any analysis and reporting fees paid by the Department in connection with

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[43] *Specifically, with respect to federal law, the Department must comply with the Family Educational Rights and Privacy Act of 1974 (FERPA) (20 U.S.C. 1232g). FERPA forbids educational agencies, such as school districts and institutions of higher education, to release educational data relating to a student, without the written consent of the student or the student's parent, to anyone other than the student, the student's parent, other educational agencies, and certain law enforcement agencies. This prohibition does not apply to student directory information such as name, address, date of birth, dates of attendance, and participation in recognized activities and sports. Ohio has its own statute that is similar to FERPA (sec. 3319.321, not in the act). In handling student test scores and reports, the Department must adhere to Ohio laws that prohibit the reporting of personally identifiable student information to the Department or State Board (sec. 3301.0714(D)) and the release of individual test scores by the Department to entities other than the student's school district (sec. 3301.0711(I)).*

implementing the value-added progress dimension to determine if they are appropriate for the services received.

No later than seven years after its first meeting, the Task Force must make recommendations to improve Ohio's accountability system. These recommendations must be adopted by a majority vote of the Task Force and reported to the State Board, the Governor, the Speaker of the House of Representatives, and the President of the Senate.

The Ohio Accountability Task Force consists of the following 13 members:

(1) The chairpersons and ranking minority members of the House and Senate Education Committees, who are nonvoting members of the Task Force;

(2) A representative of the Governor, appointed by the Governor;

(3) The Superintendent of Public Instruction, or a designee;

(4) A representative of teachers' unions, appointed by the Speaker of the House of Representatives;

(5) A representative of school boards, appointed by the President of the Senate;

(6) A school district superintendent, appointed by the Speaker of the House of Representatives;

(7) A representative of business, appointed by the President of the Senate;

(8) A representative of a nonprofit organization led by the Ohio business community, appointed by the Governor;

(9) A school building principal, appointed by the President of the Senate; and

(10) A member of the State Board of Education, appointed by the Speaker of the House of Representatives.

Initial appointments to the Ohio Accountability Task Force must be made within 30 days after the act's effective date, with those terms expiring on January 1, 2005. Thereafter, appointed members serve two-year terms and may be reappointed. Within 60 days after the act's effective date, the Task Force must convene for its first meeting. Future meetings must occur at least six times a year. Task Force members are not compensated for their work.

Disaggregation of performance data

(secs. 3301.0714(B)(4) and 3302.03(C)(3))

When reporting student performance data on district and building report cards or in annual reports to the federal government, NCLB requires such data to be disaggregated according to certain categories. Specifically, that data must be broken down by (1) gender, (2) major racial and ethnic groups, (3) students with disabilities, (4) economically disadvantaged students, (5) limited English proficient (LEP) students, and (6) migrants.[44] Under law largely retained by the act, student performance data on Ohio's report cards is disaggregated by several groups, including gender, race/ethnicity, economically disadvantaged status, and vocational education students.[45]

The act adds the categories of students with disabilities, LEP students, and migrant students to comply with NCLB. Although not required by NCLB, it also adds the category of gifted students. The act eliminates the category of vocational education students. To the extent possible, student performance data also must be cross-indexed by combinations of different categories. For example, the report cards could include the performance of economically disadvantaged white students or female Hispanic students. All new data necessary to meet NCLB requirements must be collected by the Education Management Information System (EMIS) under the act.

Continuing Ohio law prohibits including performance data on the report cards if the data is statistically unreliable or could personally identify a student. This provision avoids a situation in which the size of a particular group in a district or building is too small either to generate valid data or to protect the confidentiality of individual test scores. The act further specifies that the Department of Education cannot report performance data for any group comprised of fewer than ten students within a single district or building.

Performance reports excluding students with disabilities

(sec. 3302.031(F))

In addition to the regular report cards, the act requires the Department of Education to annually prepare a report for each school district that indicates what the district's and each building's performance on all applicable performance

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[44] *20 U.S.C. 6311(b)(3)(C)(xiii).*

[45] *Under continuing law, data on the report cards is also disaggregated by age, mobility, and enrollment in a conversion community school.*

indicators (and overall performance index score) would be if all students with disabilities were excluded from the calculations. A district's report must be provided to the district superintendent and posted on the Department's website for public access.[46]

Reporting of the percentage of "highly qualified" teachers

(sec. 3302.03(C)(7))

When issuing school district and building report cards, the act requires the Department of Education to include the percentage of teachers in the district or building who are "highly qualified," within the meaning of NCLB. Additionally, the report cards must indicate how the percentage of highly qualified teachers in each district or building compares with the percentage of highly qualified teachers in "similar" districts and buildings.[47]

School district and building accountability

Accountability provisions in Ohio law

(secs. 3302.04 and 3314.03(A)(24))

Prior law. Ohio formerly had its own accountability provisions that applied to all public schools except for community schools. Under prior law, the State Board of Education had to establish a standard unit of improvement for school districts and buildings and specify the percentage of performance indicators that a district or building did not meet on which it would need to achieve the standard unit of improvement to make progress toward becoming better. A district was required to develop a three-year, district-wide continuous improvement plan (CIP) if it received a rating other than excellent or effective. Similarly, any district had to create a three-year CIP for any building within the district that received such a rating. Prior law subjected academic watch and academic emergency districts and buildings to intervention by the Department of Education. Possible interventions included site evaluations, technical assistance, or the appointment of a guidance panel to direct improvement efforts.[48]

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[46] *Sec. 3302.03(C)(5).*

[47] *See "**Study of "highly qualified teachers"**," below, for background information on this federal requirement.*

[48] *See also O.A.C. 3301-56-01.*

To help consistently struggling buildings, prior law required school districts to choose among certain options aimed at improving the overall performance of the buildings. Specifically, if after three years under a CIP, an academic emergency district had a building within the district that was in academic emergency *and* that failed to show improvement on the performance indicators that the building did not meet, then the district had to undertake at least one of the following actions to attempt to improve the building's performance:

(1) Replace the building's principal;

(2) Examine the factors impeding student achievement in the building and redesign the building to address those factors, including transferring or reassigning teachers, administrators, or other school personnel;

(3) Institute a new schoolwide curriculum or educational model consistent with the statewide academic standards and change the structure of the school day or year;

(4) Contract with a college or university education department, an educational service center (ESC), or the Department of Education to operate the building, including the provision of personnel, supplies, and equipment;

(5) Grant priority over all other applicants to students from the building who wish to transfer to another building within the district under the district's open enrollment policy;

(6) Close the building and reassign its students to other buildings within the district; or

(7) With approval of the Department, develop and implement a comprehensive alternative plan to improve the building's overall performance.

After a district had taken one of these actions, the building had two years to improve on the performance indicators it did not meet to demonstrate progress. If the building failed to do so, the district had to select another of the intervention options to improve the building.

A district could request a state intervention team, comprised of "outstanding teachers and administrators" appointed by the Department, to visit the building and evaluate all aspects of its operations. This type of evaluation included the building's management, curriculum, instructional methods, resource allocation, and scheduling. Upon completion of the evaluation, the intervention team would make recommendations to the district regarding methods for improving the building's performance. The Department could only approve a district's request for an intervention team, however, if the Department could

adequately fund the team's work or if the district agreed to pay for the team's expenses.

The act. Some of Ohio's accountability provisions are changed by the act. First, the act repeals the provisions relating to interventions in academic emergency buildings operated by academic emergency school districts, except for the provisions relating to state intervention teams. In some cases, similar options are available under NCLB and are included in the new sanctions described in the act. The act also eliminates the requirement that the State Board establish a standard unit of improvement. This change reflects the fact that the number of years a district or building does not make AYP, rather than if it achieves the standard unit of improvement, triggers the level of intervention required in the act (see "***NCLB accountability requirements in the act***" below).

Second, the requirement to develop a CIP is based on failure to make AYP rather than the performance rating assigned to a district or building. Under the act, each district that does not make AYP for two consecutive years must create a district-wide CIP, regardless of its report card rating. Similarly, districts must develop CIPs for individual buildings that fail to make AYP for two years.

The act delineates the contents of CIPs in more detail. As under former law, each CIP must contain (1) an analysis of the reasons for the failure of the district or building to meet any of the applicable performance indicators it did not meet and (2) strategies the district or building will use and resources it will allocate to address its academic achievement problems. The act, however, also requires a CIP to include an analysis of the reasons the district or building did not make AYP and a description of progress toward improvement made in the preceding year.

Third, community schools must comply with all accountability provisions to the extent possible under the act. Community school sponsors must take the same actions required to be taken by school districts with respect to individual buildings. Such actions include selecting suitable consequences for community schools that do not make AYP from among the options presented in the act.[49] The Department of Education must conduct audits of a sampling of community schools to monitor compliance.

Finally, under the act, the Department is broadly charged with setting up a system of "intensive, ongoing support" that gives priority to the improvement of

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[49] *Since the act subjects community schools to determinations of AYP for the purpose of triggering consequences, each community school report card must state whether the school made AYP or not for a given year (see "**Community school report cards**" below).*

school districts and buildings in academic watch and academic emergency. Presumably, this system would include the interventions available in prior law, such as site evaluations and technical assistance. Regional service providers, such as ESCs, regional professional development centers, and special education regional resource centers, must be integrated into the system to provide services to those districts and buildings.

NCLB accountability requirements in the act

(sec. 3302.04)

NCLB contains several provisions aimed at chronically underperforming school districts and buildings.[50] Under the federal law, these sanctions are triggered by the failure of a district or building to make AYP for two or more consecutive years. Only Title I districts and buildings are subject to determinations of AYP under NCLB. Therefore, non-Title I districts and buildings are not subject to NCLB's consequences.

The sanctions outlined in NCLB are incorporated into the act. However, the act goes beyond the requirements of NCLB by applying AYP to *all* districts and buildings (see "***Designating the performance ratings***" above). However, under the act, the consequences of public school choice and supplemental educational services (see "***School choice provisions in the act***" and "***Supplemental educational services***" below) only apply to students in buildings receiving Title I funds. The other consequences apply to all districts and buildings, regardless of whether they receive any Title I funds.

School districts are responsible for implementing sanctions for individual buildings under the act. For community schools subject to the act's consequences, the sponsors of those schools are charged with enforcing them. The Department of Education, on the other hand, generally selects appropriate sanctions for districts. These consequences for districts and buildings are highlighted in the following tables.

[50] *See generally 20 U.S.C. 6316.*

	Consecutive years of failure to make AYP				
	2	**3**	**4**	**5**	**6**
Sanctions for school buildings and community schools	(1) Continue to implement building CIP (2) Notify the parents of students enrolled in the building in writing about the academic issues that led to the building's failure to make AYP. The notification must also describe actions being taken by the district or building to improve the building's academic performance and any progress achieved toward that goal in the previous school year. (3) Provide public school choice* (4) Administer diagnostic assessments and provide intervention	(1) Continue to implement building CIP (2) Provide public school choice* (3) Offer supplemental educational services* (4) Administer diagnostic assessments and provide intervention	(1) Continue to implement building CIP (2) Provide public school choice* (3) Offer supplemental educational services* (4) Take at least one of the following actions: (a) Institute a new curriculum that is aligned with the statewide academic standards (b) Decrease the building's authority to manage its internal operations (c) Appoint an outside expert, which may include a state intervention team, to make recommendations to improve the building's academic performance (d) Extend the length of the school day or year (e) Replace the principal or other key staff (f) Reorganize the building's administrative structure (5) Administer diagnostic assessments and provide intervention	(1) Continue to implement building CIP (2) Provide public school choice* (3) Offer supplemental educational services* (4) Develop a restructuring plan during the next school year to improve the building's academic performance. The plan must include at least one of the following options: (a) Reopen the school as a conversion or new start-up community school (b) Replace building staff (c) Contract with a nonprofit or for-profit entity to operate the building (d) Turn operation of the building over to the Department of Education (e) Other significant restructuring of the building's governance (5) Administer diagnostic assessments and provide intervention	(1) Continue to implement building CIP (2) Provide public school choice* (3) Offer supplemental educational services* (4) Implement the restructuring plan developed during the previous school year (5) Administer diagnostic assessments and provide intervention

* Applies only to buildings that receive Title I funds.

	Consecutive years of failure to make AYP				
	2	**3**	**4**	**5**	**6**
Sanctions for school districts	(1) District must continue to implement its CIP (2) District must provide a written description of the district's CIP to the parent of each student enrolled in the district	District must continue to implement its CIP	(1) District must continue to implement its CIP (2) Department of Education must take at least one of the following corrective actions: (a) Withhold a portion of the district's Title I funds (b) Direct the district to replace key district staff (c) Institute a new curriculum that is aligned with the statewide academic standards (d) Establish alternative forms of governance for individual schools within the district (e) Appoint a trustee to manage the district in place of the superintendent and board of education The Department must also conduct audits of a sampling of districts to monitor compliance with the corrective actions.	(1) District must continue to implement its CIP (2) Department must continue to monitor district compliance with the corrective action(s) taken in previous school year	(1) District must continue to implement its CIP (2) Department must take at least one corrective action that is different from the corrective action previously taken after four years of failing to make AYP

Public school choice

(secs. 3302.04(E) and 3313.97)

NCLB requirements. Public school choice is a central, and perhaps the most publicized, component of NCLB. Under the federal law, if a school building that receives Title I funds fails to make AYP for two or more consecutive years, the governing district must offer *all* students enrolled in the building the opportunity to transfer to another building within the district or to a community school. Priority must be granted to the lowest-achieving students among the economically disadvantaged subgroup. Students cannot transfer to another building that is struggling academically, but must be allowed to attend a building that has made AYP for at least two consecutive school years.[51] If there is no alternative building to which students can transfer, the district must, "to the extent practicable," attempt to enter into a cooperative agreement with another district willing to take students who wish to transfer.[52] This scenario might arise, for example, if there is only one district school that offers the relevant grade level or all schools that serve the appropriate grade level are not making AYP.

Under NCLB, the district generally must provide transportation to students seeking to transfer under the choice provision with its Title I funds (see "***Payments for transportation and supplemental educational services***" below).[53] A district's obligation to offer public school choice to students in a building ends when the building makes AYP for two consecutive years.[54] At that point, the district's transportation responsibility also ends. However, NCLB requires districts to allow students who transfer to remain in their chosen school until they have completed the highest grade of instruction there. Students who opt to remain enrolled in a building to which they transferred while their school of origin was not making AYP must secure their own transportation to the school after the district is no longer required to transport them.[55]

School choice provisions in the act. Under the act, districts must offer public school choice in accordance with Ohio's intradistrict open enrollment program to students who are in buildings that receive Title I funds and have failed

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[51] *20 U.S.C. 6316(b)(1)(E).*

[52] *20 U.S.C. 6316(b)(11).*

[53] *20 U.S.C. 6316(b)(9).*

[54] *20 U.S.C. 6316(b)(12).*

[55] *20 U.S.C. 6316(b)(13).*

to make AYP for two or more consecutive years. Continuing state law requires *all* districts to permit students to transfer within the district to a building other than the one to which they are otherwise assigned. Each district's open enrollment policy must include certain procedures for admitting applicants to alternative school buildings. Among these procedures are the following: (1) capacity limits, (2) priority over transfer applicants for students living in the attendance area of a building or already enrolled there, and (3) mechanisms to ensure racial balance in the district's schools. A district's procedures cannot bar students from transferring under open enrollment because they lack certain academic or athletic skills, are handicapped, or have been subject to disciplinary proceedings.

Therefore, under the act, the same open enrollment policies govern *all* intradistrict transfer students. A student seeking to transfer from a failing school under NCLB and a student wishing to leave a high-performing school for a specialized curriculum at another school under open enrollment must be treated equally when considering transfer requests. The act does not require districts to seek out arrangements with other districts in the area to take transfer students when no alternative schools are available in their home districts. (See **COMMENT** 2.)

As explained below (see "***Payments for transportation and supplemental educational services***"), districts must use Title I funds to pay for transportation for students who transfer under the federal school choice provision.

Supplemental educational services

(secs. 3302.01(J) and 3302.04(E))

Under NCLB, if a school building that receives Title I funds fails to make AYP for three or more consecutive school years, the district must offer supplemental educational services to economically disadvantaged students enrolled in the building. Supplemental educational services can include tutoring, remediation, or other forms of instructional assistance. All supplemental services must be conducted outside of regular school hours by an entity approved by the state department of education. There is considerable leeway for states in approving providers, which can include nonprofit organizations, private tutoring companies, distance learning providers, or even the district itself. Priority for supplemental educational services must be given to the lowest-achieving students who are eligible. As with the provision of transportation to students transferring under public school choice, districts must use Title I funds to pay the costs of supplemental educational services for students who request them (see "***Payments for transportation and supplemental educational services***" below).[56] Districts

[56] *20 U.S.C. 6316(e).*

can stop offering supplemental services to students in a building after the building has made AYP for two consecutive school years.[57]

All of these federal provisions regarding supplemental educational services are incorporated into the act.[58] The act specifically applies these provisions only to schools that receive Title I funds.[59]

Payments for transportation and supplemental educational services

(sec. 3302.04(E))

As noted above, school districts must use Title I funds to pay for the costs of transportation for students transferring under the school choice provision of NCLB and for supplemental educational services. NCLB sets caps on mandatory district expenditures, however. Specifically, districts are not required to spend more than a combined total of 20% of their Title I funds to provide transportation and supplemental services in any year in which they are obligated to offer both. They must spend at least 5% of such funds on each requirement, though, unless all demand for transportation or for supplemental services can be met with a smaller amount. Districts with buildings that do not make AYP for two consecutive years, and therefore must only offer public school choice, must spend the maximum 20% of Title I funds on transportation alone, unless it can satisfy all demand with fewer funds.[60]

The same expenditure limits are established by the act. Furthermore, the act clarifies that if a district offers both public school choice and supplemental educational services, an eligible student can take advantage of one or the other opportunity, but not both. The act also specifies that if 20% of a district's Title I funds is insufficient to provide the required transportation or supplemental services, the district must give priority over all other students to the lowest-achieving economically disadvantaged students.

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[57] *20 U.S.C. 6316(b)(12).*

[58] *As defined by the act, supplemental educational services are "academic assistance, such as tutoring, remediation, or other educational enrichment activities, that is conducted outside of the regular school day by a provider approved by the [Department of Education]" (sec. 3302.01(J)).*

[59] *However, "intervention" is required for all students in both Title I and non-Title I schools for students not at the proficient level on achievement and proficiency tests.*

[60] *20 U.S.C. 6316(b)(10).*

Changes to community school law

Background

Community schools (often called "charter schools") are public, nonprofit, nonsectarian schools that operate independently of any school district but under a contract with a sponsoring entity. The schools are exempt from many education laws and regulations and often serve a limited number of grades or a particular purpose. Conversion community schools may be sponsored by any school district in the state. Start-up community schools are new schools that may be sponsored only in certain defined "challenged school districts" (see "***Location of start-up community schools***" below).[61] The schools are funded with state funds that are deducted from the state aid account of the school districts in which the enrolled students are entitled to attend school.

Location of start-up community schools

(sec. 3314.02(A)(3) and (G))

As stated above, start-up community schools can be located only in "challenged school districts." Under law retained in part by the act, a challenged school district is any of the following:

(1) A "Big-Eight" school district;

(2) An "Urban-21" school district;

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[61] *Under law largely unchanged by the act, the sponsor of a start-up community school, which must be approved by the Department of Education, may be any of the following: (1) the school district in which the school is located, (2) a school district located in the same county as the district in which the school is located has a major portion of its property, (3) a joint vocational school district serving the same county as the district in which the school is located has a major portion of its property, (4) an educational service center serving the same county as the district in which the school is located has a major portion of its property or an adjacent county, (5) a sponsoring authority appointed by the board of trustees of a state university under certain specified conditions, or (6) a qualified federally tax-exempt entity under certain specified conditions (sec. 3314.02(C)(1)). Until the enactment of Sub. H.B. 364 of the 124th General Assembly, effective April 8, 2003, the State Board of Education was authorized to sponsor start-up community schools. That act permits the State Board to continue it existing sponsorship of schools for up to two school years while the schools look for new sponsors, after which time the State Board may sponsor community schools only in specified exigent circumstances. That act also permits certain other sponsors qualified under prior law to continue to sponsor existing and new schools without being subject to Department approval as a sponsor.*

(3) A school district that is either in a state of academic watch or academic emergency as declared by the Department of Education; or

(4) A school district that is in the former Pilot Project Area (Lucas County).[62]

The act eliminates "Urban-21" districts that are not also "Big-Eight" districts from the definition of challenged school districts. The effect of this change is that additional start-up community schools may not be located in an urban, non-Big-Eight district unless the district is declared to be in a state of academic emergency or academic watch. The act does, however, permit any start-up school that is already located in an Urban-21 district that would not otherwise meet the definition of a challenged school district to continue to operate after the effective date of the act.

Sponsorship of community schools by educational service centers

(sec. 3314.02(C)(1)(d))

Prior law imposed a geographical restriction on where an educational service center (ESC) could sponsor a start-up community school. Specifically, an ESC could only sponsor a community school in a challenged school district located in a county within the territory of the ESC or in a county contiguous to such county. The act removes this restriction and permits an ESC to sponsor a community school in any challenged school district. This change is identical to one made by Am. Sub. H.B. 95 of the 125th General Assembly (the 2003-2005 general operating budget act).

Definition of Internet- or computer-based community school

(sec. 3314.02(A)(7))

Law generally retained by the act defines an Internet- or computer-based community school (sometimes called an "electronic school" or "e-school") as a community school "in which the enrolled students work primarily from their residences on assignments provided via an Internet- or other computer-based instructional method that does not rely on regular classroom instruction." The act adds that the students' assignments are "in nonclassroom-based learning opportunities" and that instruction may be provided "via comprehensive

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[62] *The "Big-Eight" school districts are Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown. The "Urban-21" school districts are all of the Big-Eight districts plus Cleveland Heights, East Cleveland, Elyria, Euclid, Hamilton, Lima, Lorain, Mansfield, Middletown, Parma, South-Western, Springfield, and Warren.*

instructional methods that include Internet-based, other computer-based, and noncomputer-based learning opportunities." These changes are identical to changes made by Am. Sub. H.B. 95 of the 125th General Assembly.

Community school report cards

(sec. 3314.012)

Under continuing law, once a community school has been open for two school years, the Department of Education is required to issue an annual report card describing the academic performance of the school.[63] The act specifies that community school report cards must include all information applicable to school buildings within school districts. Such information includes an academic performance rating based upon achievement on the performance indicators, a performance index score, and whether the school made AYP. (See "***Determination of performance ratings for districts and buildings***" above.)[64]

Revision of earmark for training of community school sponsors

(Section 19)

The 2003-2005 biennial budget act, Am. Sub. H.B. 95 of the 125th General Assembly includes an appropriation to the Department of Education in each of FY 2004 and FY 2005 for its various responsibilities with respect to community schools.[65] It earmarks up to $250,000 of this appropriation in each fiscal year for the Department to develop and conduct training sessions for sponsors and prospective sponsors of community schools, and directs the Department, in developing the sessions, to collect and disseminate examples of "best practices" used by sponsors of independent charter schools in Ohio and other states.[66] (Continuing law makes the Department responsible for oversight of community

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[63] *These report cards are based on models developed by a committee made up of employees of the Department of Education and representatives appointed by the Director of the Legislative Office of Education Oversight. Those models are required to "reflect the variety of grade levels served and the missions of the state's community schools . . . [and to] include both financial and academic data."*

[64] *Community schools must comply with the act's sanctions for failure to make AYP even in years they do not receive a report card.*

[65] *Item 200-455 appropriates $4,231,842 in each fiscal year from the General Revenue Fund for this purpose.*

[66] *See Section 41.06 of Am. Sub. H.B. 95 of the 125th General Assembly.*

school sponsors, and directs it to provide technical assistance, conduct training sessions, and distribute informational materials.[67])

The act supersedes the terms of this earmark of funds by Am. Sub. H.B. 95, and instead directs the Department to use the earmarked $250,000 each year to contract with the Ohio Foundation for School Choice to develop and conduct the training sessions for community school sponsors. The contract must require the Foundation, in developing the sessions, to collect and disseminate examples of best practices used by sponsors of independent charter schools in Ohio and other states. The act explicitly prohibits the Department from implementing the Am. Sub. H.B. 95 earmark for sponsor training.

Standards for Internet- or computer-based community schools

(sec. 3314.033)

The act requires the State Board of Education, by September 30, 2003, to recommend to the General Assembly standards governing the operation of Internet- or computer-based community schools and other educational courses delivered primarily through electronic media. The act does not state what the General Assembly is to do with the recommended standards.

Report to the General Assembly on costs of implementing NCLB requirements

(Section 10)

The act requires the Superintendent of Public Instruction, within 90 days after the effective date of the act, to submit to the General Assembly a detailed financial analysis of the projected costs for the state and for each school district of compliance with NCLB, the amount of new federal funds the state can reasonably expect to receive each year under NCLB, and the financial consequences to the state and each school district for noncompliance with NCLB.

In addition, the financial analysis must examine the costs involved in improving school district and building capacity to meet federal and state requirements. The Superintendent, in evaluating these costs, must examine (1) the costs to all school districts and buildings incurred in making AYP each year through the 2013-2014 school year and the costs incurred to have all students performing at the *proficient* level on achievement tests by June 30, 2014, (2) the costs of providing intervention services to students who are not achieving at expected levels, (3) the costs of professional development for teachers and administrators on the statewide academic content standards and on the

[67] *Sec. 3314.015(A)(1), not in the act.*

interpretation of student performance data, (4) the costs of extending the school day or year in a school building that fails to meet AYP for four consecutive years, and (5) the costs of complying with the requirement that teachers of core subject areas be "highly qualified."[68] The Superintendent may also examine other costs, if appropriate.

Studies to be conducted by the Legislative Office of Education Oversight

Study of the academic achievement gap

(Section 11)

The act directs the Legislative Office of Education Oversight (LOEO) to evaluate the correlation between students' race and economic class and academic achievement. In particular, the study must compare the academic achievement of low-income, African-American and Hispanic students to middle-class, white students in the fourth, sixth, and ninth grades. To conduct the study, the LOEO must use at least five years of data collected and maintained by the Department of Education. The LOEO must submit results of this study to the General Assembly by September 30, 2004.

Study of intervention services

(Section 12)

Continuing law and the act require school districts to provide intervention services to students in various circumstances, such as if a student does not achieve proficiency on a particular achievement test.[69] To evaluate how intervention services are being provided, the act requires the LOEO to study the mandated intervention services provided to students. As part of this study, the LOEO must examine (1) the types of intervention services school districts are currently providing to students, (2) the manner in which the Department of Education informs school districts of their obligations with respect to the provision of intervention services and assists districts to develop appropriate intervention strategies, (3) the manner in which the Department tracks the compliance of school districts in providing intervention services, (4) the cost to districts of providing intervention services, and (5) whether there are any intervention services that districts are not providing because of insufficient funding. By

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[68] *See "**Study of "highly qualified teachers"**," below, for background information on this federal requirement.*

[69] *See "**Intervention services**" and "**Administration of diagnostic assessments**" above. See also secs. 3301.0711, 3301.0715, 3313.608, and 3313.6012.*

December 31, 2004, the LOEO is required to submit a written report of its findings to the General Assembly.

Study of the Class of 2007's performance on the Ohio Graduation Tests

(Section 13)

Under continuing law, students in the high school graduating class of 2007 are the first class of students who must pass all five of the Ohio Graduation Tests to receive a high school diploma, unless a specific exemption from this requirement applies or alternative conditions for a diploma are met.[70] The act directs the LOEO to study the performance of this graduating class in meeting the statewide academic standards. All students who enter the ninth grade in the school year beginning July 1, 2003, must be included in the study, and the LOEO cannot exclude any students who leave school prior to graduation.

In conducting the study, the LOEO must determine (1) the number of students in the Class of 2007 who score at the *proficient* level on all five of the tests by June 30, 2007, and (2) the number of students in the Class of 2007 who satisfy the alternative conditions for a diploma, to the extent possible.

Annually, the LOEO must submit written reports to the General Assembly of its findings with a final, comprehensive report submitted by December 31, 2007.

Study of "highly qualified teachers"

(Section 14)

Background. To improve teacher quality, NCLB requires that all teachers hired after the start of the 2002-2003 school year who teach "core academic

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[70] *See sec. 3313.61. Under the alternative conditions, a student who is required to pass the Ohio Graduation Tests to receive a diploma and fails to achieve a proficient score on one Ohio Graduation Test may receive a diploma if the student (1) missed proficiency by 10 points or less, (2) has a 97% attendance rate, excluding excused absences, (3) has not been expelled in the last four school years, (4) has a grade point average of at least 2.5 on a 4.0 scale (or its equivalent) in the subject area in which the student did not achieve proficiency, (5) has completed the high school curriculum requirements in that subject area, (6) has taken advantage of any intervention services in that subject area, and (7) has letters recommending graduation from all high school teachers who taught the student in that subject area and from the high school principal. (Sec. 3313.615, not in the act.)*

subjects" in a program supported by federal Title I funds be "highly qualified."[71] Core academic subjects include English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. Thus, teachers who teach noncore academic subjects, such as vocational courses, need not be highly qualified within the meaning of NCLB. By the end of the 2005-2006 school year, *all* teachers in core academic subjects, whether newly hired or continuing educators and whether or not in a Title I school, must be highly qualified.[72]

To be highly qualified within the meaning of NCLB, a teacher must have passed the state teacher licensing examination. Secondly, every highly qualified teacher must have obtained full state certification. Full state certification may be attained either through fulfilling the state's certification requirements applicable to an individual teacher's years of experience or through an alternative route, as long as the alternative route has various characteristics. A teacher who has had certification provisions waived on either an emergency, temporary, or provisional basis is not highly qualified within the meaning of NCLB.

A compliant alternative route, first, must be one through which the teacher receives high-quality, classroom-focused professional development that occurs before and while teaching. Second, the alternative route must provide that the teacher participates in a program where the teacher receives structured guidance and ongoing support which is presumably given by other educators. Third, a teacher participating in an alternative route to certification may only serve as a teacher for a maximum of three years before full certification. Lastly, an alternative certification route must require a teacher to demonstrate satisfactory progress toward full state certification.

In addition to having obtained full state certification and having passed the state licensing exam, a teacher who is hired after July 1, 2002, must hold a bachelor's degree. Such a teacher teaching in a public elementary school must demonstrate subject knowledge and teaching skills in reading and language arts, writing, mathematics, and other areas of the basic elementary school curriculum. This demonstration of knowledge must be by passage of a rigorous state test. A newly hired middle or high school teacher must pass a rigorous state test in each academic subject the teacher teaches or have completed an undergraduate degree,

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[71] *A teacher teaching in a program supported by Title I funds includes a teacher in a targeted assistance school who is paid with Title I funds, a teacher in a schoolwide Title I school, and a teacher employed by a school district with Title I funds to provide services to eligible private school students (34 C.F.R. § 200.55(a)(2)).*

[72] *34 C.F.R. § 200.55.*

graduate degree, coursework equivalent to an undergraduate major, or advanced certification in each subject area the teacher teaches.

A teacher employed as a teacher prior to July 1, 2002, must meet the same requirements as a newly hired teacher, except that a previously employed teacher may demonstrate subject matter competency through a uniform state evaluation process instead of either passing the rigorous state test or having completed college coursework in teaching areas.[73]

The act. The act requires the LOEO to study, over a five-year period, the progress of school districts and the Department of Education in hiring highly qualified teachers. The study must evaluate (1) the progress of individual school districts in employing highly qualified teachers, (2) whether the definition of "highly qualified teacher" adopted by the State Board complies with NCLB, and (3) the efforts of the Department in helping districts meet the highly qualified teacher requirement and in monitoring the progress of districts in the employment of highly qualified teachers.

The LOEO must submit three interim reports and one final report to the General Assembly regarding the employment of highly qualified teachers. The first interim report must evaluate compliance with the highly qualified teacher requirement in the 2002-2003 and 2003-2004 school years. The second interim report must evaluate the 2004-2005 school year, and the third interim report must evaluate the 2005-2006 school year. A final report must evaluate the 2006-2007 school year and the prior four school years.

Elimination of General Assembly approval of some State Board of Education rules

(secs. 3302.04, 3302.05, 3313.6010, and 3314.20)

Am. Sub. S.B. 55 of the 122nd General Assembly, effective November 21, 1997, created and modified a number of provisions regarding state measurement and oversight of the academic performance of public schools. In so doing, the act required the State Board of Education to recommend to the General Assembly rules for all of the following, which, under the act, were not to take effect unless approved by the General Assembly through adoption of a *joint* resolution:

- Academic intervention for school districts in a state of academic emergency or academic watch (sec. 3302.04(C));

[73] *34 C.F.R. § 200.56.*

- Exemptions from education laws and rules for high-performing school districts (sec. 3302.05);

- Permission for school districts to contract for after-hours academic remediation and intervention services in mathematics, science, reading, writing, and social studies in grades one through six (sec. 3313.6010); and

- Requirement that each school district with an average daily membership greater than 5,000 students establish a site-based management council for at least one school building in the district (sec. 3314.20).

This act eliminates the requirement that these rules or subsequent revisions of them be subject to approval by the General Assembly. Instead, the act requires the State Board to adopt the rules under its own authority.[74]

The act's effect on certain rule changes

(Sections 16 and 17)

On January 14, 2003, the State Board proposed changes to rule 3301-101-01 regarding exemptions from laws and rules for high-performing school districts, making that rule applicable to excellent and effective districts instead of effective and continuous improvement districts as under the existing rule. The State Board also proposed changes to rule 3301-35-10 regarding site-based management councils to exempt excellent as well as effective districts from compliance. Both changes were intended to conform administrative rules with statutory law as amended by Am. Sub. S.B. 1 of the 124th General Assembly.[75] S.J.R. 4 and S.J.R. 3 of the 125th General Assembly, respectively, approved the rule changes.

The act specifies that both of these rule amendments are not subject to the requirement that they be approved by the General Assembly prior to taking effect.

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[74] *Sec. 3301.0718, not in the act, prohibits the State Board from adopting any standards or curriculum in health and physical education unless first approved by concurrent resolution adopted by both houses of the General Assembly. The act does not affect this requirement.*

[75] *That act created a new "excellent" rating for the highest-performing school districts.*

This provision would have obviated the need for adoption of S.J.R. 3 and S.J.R. 4 if the resolutions had not been adopted prior to enactment of the act.[76]

Elimination of requirement that academic standards and model curricula be presented to a joint meeting of the House and Senate Education Committees

(sec. 3301.079(F))

Am. Sub. S.B. 1 of the 124th General Assembly required the State Board of Education, by December 31, 2001, to adopt academic standards for all grades in reading, writing, and mathematics, and by December 31, 2002, to adopt such standards in science and social studies. In addition, 18 months after adopting those respective standards, the State Board is required under that act to adopt a model curriculum for each of those subjects. These standards and curricula are the foundation of the state's new achievement tests that will replace the proficiency tests. That act also provided that at least 45 days prior to the State Board's adoption of any academic standards or model curricula, the Superintendent of Public Instruction must "present" those standards and curricula to a joint meeting of the House and Senate Education Committees. This act eliminates the latter requirement that the Superintendent make a presentation to a joint meeting of the Education Committees.[77]

Bibliography of intervention practices

(sec. 3301.801)

Prior law required the Department of Education to develop an annotated bibliography of research studies on academic intervention and prevention practices that have been successful in improving the academic performance of students from different ethnic and socioeconomic groups. The bibliography was to be provided to the Ohio SchoolNet Commission for inclusion in the Commission's clearinghouse of information for classroom teachers. The act eliminates the requirement to develop and maintain such a bibliography.

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[76] *Both resolutions were adopted by the Senate on February 19, 2003, and by the House of Representatives on June 25, 2003.*

[77] *Each of the joint meetings required by Am. Sub. S.B. 1 was held except for the one regarding the science and social studies model curricula, which are not due to be adopted by the State Board until June 2004.*

State Board plan for "end of course exams"

(repealed sec. 3301.0713)

The act repeals a provision that required the State Board of Education to propose a plan for "end of course exams" as an alternative to passing the Ohio Graduation Tests to earn a high school diploma.

Retention of a student's data verification code

(sec. 3301.0714(D)(2))

Under continuing law, each school district is required to assign a unique data verification code to every student for purposes of reporting student-level data to the Education Management Information System (EMIS). When a student transfers to a different school district or community school, the data verification code must be included in the student's records sent to the new school.

Prior law required the former school district to remove all references to the data verification code in any student records retained by the district once the student transferred. The act removes this provision. Thus, a school district from which a student has transferred may retain the student's data verification code in any records kept by the district.

School district certificate of available resources

(sec. 5705.412)

School districts are generally required to attach a certificate of available resources to every contract for an expenditure that exceeds the lesser of $500,000 or 1% of the total revenue for the current fiscal year that will be credited to the district's general revenue fund. The certificate must indicate that the district has or will have adequate revenue in approved tax levies, state funding, and other resources to cover the amount of the contract for the entire term of the contract. The certificate must be signed by the district treasurer, the president of the district board of education, and the district superintendent.[78] A contract that lacks the required certificate of available resources is void, and the law provides for a civil action to recover the funds illegally spent and to levy a fine against any district officer who in absence of good faith violated the requirement.

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[78] *If the district has been declared to be in a state of fiscal emergency under R.C. Chapter 3316. (not in the act), a designated member of the district's financial planning and supervision commission is to sign the certificate in lieu of the other district officers.*

Law generally unchanged by the act does not require the attachment of a certificate of available resources "for current payrolls of, or contracts of employment with, *regular* employees or officers" of a school district. The act specifies that this exception applies to current payrolls of or employment contracts with "any" employees or officers of the school district.

Tuition-free attendance if student relocates after the October ADM count

Background

Generally, any nonhandicapped child who is between 5 and 21 years old and any handicapped child who is between 3 and 21 years old may attend school free of charge in the school district in which the child's parent lives or in which the child lives if placed with an Ohio resident for adoption.[79] Also, the child may attend school in the school district in which the *child* resides if:

(1) The child is in the legal custody of a government agency or some person other than the child's parent;

(2) The child resides in an institution, group home, foster home, or other licensed residential child care facility;

(3) The child requires special education services that are provided by that district; or

(4) The child's parent is institutionalized.

In these cases, however, another school district or other entity usually must pay tuition to the accepting school district on behalf of the child.[80]

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[79] *Secs. 3313.48 (not in the act) and 3313.64(B)(1) and (3). Also, a board of education may enroll a child free of tuition for up to 60 days on the sworn statement of an adult resident of the district that the resident has initiated legal proceedings for custody of the child (sec. 3313.64(E)).*

[80] *Secs. 3313.64(B)(2) and 3313.65. See definition of "home" in sec. 3313.64(A)(4).*

Continuing law also prescribes formulas for calculating the tuition that is owed to a school district. In the case of a student who is a resident of Ohio, the prescribed formula is designed to contribute the local per pupil tax revenue that was not generated for that student because the person responsible for tuition does not live in the district. In the case of a student who is not a resident of Ohio, the formula is designed to contribute both the local tax revenue and the state's share of funding for that student. (See secs. 3317.08, 3317.081, and 3317.082, the latter two sections not in the act.)

In other cases, continuing law permits certain individuals who are not otherwise entitled to attend school in a particular school district to do so without anyone owing tuition. For example, any child under 18 years old who is married is entitled to attend school in the child's district of residence regardless of where the parent resides.[81] And, upon submitting prescribed statements to a school district, a child who resides with a parent who is having a new house built is entitled to attend school for up to 90 days in the district where the new house is being built. Similarly, a child residing with a parent who has a contract to purchase a house and is waiting to close the mortgage loan is entitled to attend school for up to 90 days in the district where the house is being purchased.[82] Also, a child who is in the custody of the child's parent but resides with a grandparent is entitled to attend the schools of the district in which the grandparent resides, provided that the child does not require special education services and provided that, prior to attendance in the district, the two district boards of education enter into a written agreement specifying that good cause exists for the child's attendance in the grandparent's district.[83] In all, there are 13 such circumstances under continuing law in which a student may attend school in a district other than the one where the student is otherwise entitled to attend school without obligating anyone to pay tuition on that student's behalf.

<u>The act</u>

(secs. 3313.64(I), 3313.65, 3317.023, and 3317.08)

Under the act, a child under 22 years old may continue attending school in a school district, if, at the end of the first full week of October, the child was entitled to attend school in that district and was actually enrolled in the schools of that district, but since that time the child or the child's parent has relocated to a new address outside of the district yet within the same county as the child's or parent's address immediately prior to the relocation. The child may continue to attend the school to which the child was assigned at the end of the first full week of October, for the balance of the school year if:

(1) Both affected district boards of education have adopted policies permitting attendance under the act's provisions; and

(2) The child's parent provides written notification of the relocation outside of the school district to the superintendents of the two affected school districts.

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[81] *Sec. 3313.64(F)(2).*

[82] *Sec. 3313.64(F)(6) and (7).*

[83] *Sec. 3313.64(F)(11).*

The act also provides that if a person or entity is obligated to pay tuition on behalf of the child at the end of the first full week in October, that person or entity continues to owe such tuition to the district for the lesser of the balance of the school year or the balance of the time the child attends school in the district under the act's provisions.

At the beginning of the next school year, however, a child may no longer attend school in the school district under the provisions of the act. Presumably, at that time, the child would enroll in the schools of the child's or parent's resident school district, enroll in some other school such as a nonpublic school or a community school, continue to attend the school but pay tuition, or qualify for one of the statutory excuses for nonattendance at school.

A child who attends school in a school district under the provisions of the act is entitled to transportation either under an agreement between the two districts or, if the districts have not entered into such an agreement, in the same manner as continuing law prescribes for a student under interdistrict open enrollment. That law specifies that, upon request of a parent, a school district enrolling a student from another district must provide transportation for that student within the boundaries of the attending district, as long as the district offers transportation to students of the same grade level and distance from school who actually live in the district. The district, however, is required to pick up and drop off a nonhandicapped interdistrict open enrollment student only at a regular school bus stop designated in accordance with the district's transportation policy. Nevertheless, the district may reimburse the parent of that student for the reasonable cost of transportation from the student's home to the designated school bus stop if the student's family has an income below the federal poverty line.[84]

<u>Calculating the reappraisal guarantee</u>

(sec. 3317.04; Section 22)

The reappraisal guarantee, a component of the state school funding system, prevents a school district from losing any state funds in the first fiscal year after the county auditor has reappraised or updated the valuation of taxable property. (County auditors formally reappraise property value every six years and, in the third year of the six-year period, perform a statistical update of the valuations). For example, if the county auditor reappraised property values in 2003, the school districts in that county could receive no less state funding in FY 2004 than they received in FY 2003. The effect is to exempt districts for one year against any reduction in state funding that might be triggered by the increase in the valuation

[84] *Sec. 3313.981(H), not in the act.*

of taxable property. The guarantee is only for the first fiscal year following the reappraisal or update.

The act makes two clarifications concerning the calculation of a district's reappraisal guarantee payment. First, it subtracts from the guaranteed amount any "charge-off supplement" payment the district received in the prior fiscal year. For example, a district that is eligible for the reappraisal guarantee in FY 2004 would receive in that year the amount of its FY 2003 state payments, minus any FY 2003 charge-off supplement. (The charge-off supplement, sometimes called "gap aid," provides a subsidy to make up any gap between a school district's effective tax rate and its assumed local share, or "charge-off," for base-cost, special education, vocational education, and transportation funding.[85] Essentially, the state supplement makes up the difference if a school district's actual tax revenues are less than its local share calculated under the funding formulas.)

Second, it adds to the reappraisal guarantee amount, *for FY 2005 only*, the amount of any "transitional aid" payment a school district receives in FY 2004. For example, a district eligible for the reappraisal guarantee in FY 2005 would receive in that fiscal year the amount of its FY 2004 state payments (less any FY 2004 charge-off supplement) plus any FY 2004 transitional aid payment. (Transitional aid was instituted by Am. Sub. H.B. 95, the budget act for the 2003-2005 biennium. It provides a temporary state payment in FY 2004 and FY 2005 to assure that if a district experiences a reduction in state funding in either year, the reduction will not exceed 5% of its previous year's funding. The transitional aid payment is the amount necessary to prevent the reduction from exceeding 5%.[86])

Modifications to the powers of the Ohio Tuition Trust Authority

Background

The Ohio Tuition Trust Authority operates two college savings programs: (1) a college savings program (also known as the "guaranteed savings program") and (2) a variable savings program.[87] Individuals who participate in the guaranteed savings program purchase tuition credits on behalf of a designated beneficiary at a cost that is approximately 1% of the weighted average tuition at Ohio's public four-year state universities plus a fee imposed by the Authority to

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[85] *See sec. 3317.0216, not in the act.*

[86] *See Section 41.37 of Am. Sub. H.B. 95 of the 125th General Assembly.*

[87] *Section 529 of the Internal Revenue Code authorizes states to establish programs such as these. These programs receive favorable federal and state tax treatment for their assets and distributions to beneficiaries.*

maintain the actuarial soundness of the program.[88] Each credit, then, may be redeemed upon the beneficiary's enrollment at any institution of higher education in the United States for 1% of the weighted average tuition charged at public four-year state universities in Ohio for the year in which the credits are spent for tuition expenses. Tuition credits are backed by the full faith and credit of the State of Ohio.

Under the variable college savings program, rather than purchasing tuition units, an individual contributes money to an investment account managed by the state, or its agent, for the benefit of the beneficiary. Assets of the variable savings program are invested in savings accounts, life insurance or annuity contracts, securities, bonds, or other investment products in accordance with a plan adopted by the Authority. Because the program is market-based, it generally provides a variable rate of return and contributors assume all investment risk.

Suspension of the college savings program

(sec. 3334.12(A))

Under continuing law, the Authority must engage an actuary to evaluate the soundness of the Ohio Tuition Trust Fund each year, and adjust tuition unit prices as necessary to preserve the Fund's actuarial soundness. Such an evaluation also may be made any other time that the Executive Director determines an evaluation is necessary. If the Fund's assets are not sufficient to ensure the soundness of the Fund, the Authority must make mid-year adjustments in the price of tuition units.

The act provides that, if the Authority finds that such an adjustment in tuition unit price is likely to diminish the marketability of tuition units to the extent that actuarial soundness is unlikely to be restored, and external economic factors continue to negatively impact the soundness of the program, the Authority may suspend sales of tuition units, either permanently or temporarily. During any such suspension, the Authority must continue to service existing guaranteed college savings accounts.

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[88] *"Weighted average tuition" is the tuition cost resulting from the following calculation: (1) the addition of the products of the annual undergraduate tuition charged to Ohio residents at each four-year state university multiplied by that institution's total number of undergraduate fiscal year equated students and (2) the division of the resulting gross total from (1) by the total number of undergraduate fiscal year equated students attending four-year state universities (sec. 3334.01(I)).*

Establishment of the Variable Operating Fund and use of revenue from sale of variable savings options

(sec. 3334.19(F) and (G))

The act creates in the custody of the Treasurer of State the Variable Operating Fund, into which any fees, charges, and other costs imposed or collected by the Authority in operating the variable program must be deposited. The assets in the Fund are to be used by the Authority to pay expenses of operating and administering the variable college savings program. Additionally, other expenses, disbursements, or payments the Authority considers appropriate for the benefit of any college savings program administered by the Authority or the state or its citizens can be paid from the Fund.

Under law generally unchanged by the act, the Authority must spend assets of the variable program in the following order of priority: (1) to make payments on behalf of participants, (2) to make refunds upon the termination of individual savings accounts, and (3) to pay the costs of administering the variable program. The act adds a fourth priority, to pay or cover other expenditures or disbursements the Authority determines necessary or appropriate.

Apparently, both of these changes to the use of assets raised through the variable program will enable the Authority to pay expenditures of the guaranteed savings program with fees collected through the variable program and the investment assets of the variable program.

Scholarship programs

(secs. 3334.01(S) and 3334.17(A))

Continuing law authorizes the state, a political subdivision of the state, and any organization that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code to establish a scholarship program to award scholarships consisting of tuition credits to students under a guaranteed college savings program. The act expands this provision to authorize such entities to establish a scholarship program to award scholarships consisting of contributions made to any college savings program for students. The effect of the modification is to allow such contributions to be made to a variable college savings program account as well as a guaranteed program account.

Cap on tuition charges at state-assisted institutions of higher education

(Section 21)

Background

Am. Sub. H.B. 95 of the 125th General Assembly (the biennial appropriations act) imposes a limit on the amount of in-state undergraduate instructional and general fees the board of trustees of a state university, community college, state community college, technical college, or university branch (collectively, "state institutions") may charge. In general, the boards of trustees of these state institutions may only increase instructional and general fees for in-state undergraduate students 6% from the amount of such fees in the prior academic year. Although the budget act does not explicitly state in which academic years this 6% cap is effective, presumably it means the 2003-2004 and 2004-2005 academic years. The Ohio State University, however, may increase such fees up to 9% from the amounts charged in the prior academic year for the 2003-2004 and 2004-2005 academic years.

Am Sub. H.B. 95 permits state institutions to impose an additional 3.9% increase on instructional and general fees in each academic year, if the proceeds of this increase are used for scholarships for low-income students or technology initiatives. Except for the board of trustees of The Ohio State University, no board of trustees of these state institutions may authorize an increase in excess of 6% in a single vote. The Ohio State University may authorize an increase of up to 9% in a single vote.[89]

Calculation of the previous year's instructional and general fees

The act prescribes how a state institution is to calculate the permissible increase in instructional and general fees. Because the permissible increase is a percentage increase from the previous year's instructional and general fees, the act specifies that the previous *year's* instructional and general fees equal one of the following:

(1) If a state institution is on a quarter system and the institution *does not* increase instructional and general fees during the summer term, the previous year's instructional and general fees are the sum of the instructional and general fees charged to a full-time student in the fall, winter, and spring quarters.

(2) If a state institution is on a quarter system and the institution *does* increase instructional and general fees during the summer term, the previous year's

[89] *See Section 89.05 of Am. Sub. H.B. 95 of the 125th General Assembly.*

instructional and general fees are three-fourths of the sum of the instructional and general fees charged to a full-time student in the fall, winter, spring, and summer quarters.

(3) If a state institution is on a semester system and the institution *does not* increase instructional and general fees during the summer term, the previous year's instructional and general fees are the sum of the instructional and general fees charged to a full-time student in the fall and spring semesters.

(4) If a state institution is on a semester system and the institution *does* increase instructional and general fees during the summer term, the previous year's instructional and general fees are two-thirds of the sum of the instructional and general fees charged to a full-time student in the fall, spring, and summer semesters.

The act explicitly exempts Miami University from these calculations.[90] Thus, Miami University is not required to average its tuition charges from the 2002-2003 academic year when determining how much tuition it may charge in the 2003-2004 academic year. The effect of this exclusion is that Miami University is not required to decrease its tuition charges in the 2003-2004 and 2004-2005 academic years below the approximately $18,000 a year it charges undergraduate students.

COMMENT

1. Since enactment of NCLB, the federal government has increased appropriations to the states for implementation of the new requirements, especially those mandated by Title I, Part A of the ESEA. Ohio received approximately $330 million in Title I, Part A funds for FY 2003, which was about a 13% increase over FY 2002 appropriations. Another 8% increase to approximately $356 million is estimated for FY 2004. These funds may be withheld by the U.S. Department of Education for noncompliance with NCLB.

2. The public school choice provision in the act may not be in full compliance with the requirements of NCLB regarding school choice. It is not clear whether the open enrollment law conforms precisely to the NCLB requirements. A district, for example, that uses a lottery system to assign students to alternative schools would not necessarily guarantee that students from schools

[90] *Beginning in the summer term 2003, Miami University increased its in-state undergraduate tuition charges to equal the out-of-state undergraduate tuition charges. Thus, all undergraduate students are charged approximately $18,000 a year for tuition. Ohio residents receive scholarships that reflect state support to the University.*

that fail to make AYP for two or more years and wish to transfer to a higher-performing school would be allowed to do so. It would also not ensure that priority in transferring out of a failing school is granted to the lowest-achieving, low-income students as required by NCLB.

Also, guidelines issued by the U.S. Department of Education state that districts may not use lack of capacity to deny students the option to transfer under NCLB.[91] Open enrollment policies like Ohio's, which limit transfers based on building capacity, may conflict with the federal law.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	01-23-03	p.	72
Reported, H. Education	05-21-03	p.	501
Passed House (88-10)	05-21-03	pp.	501-504
Reported, S. Education	06-25-03	p.	871
Passed Senate (27-5)	06-25-03	pp.	882-883
House refused to concur in Senate amendments (54-45)	06-25-03	pp.	991-994
Senate requested conference committee	07-10-03	p.	917
House acceded to request for conference committee	07-10-03	p.	1010
Senate agreed to conference committee report (29-3)	08-07-03	pp.	954-957
House agreed to conference committee report (87-8)	08-12-03	pp.	1027-1031

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[91] *See "Public School Choice: Non-Regulatory Guidance," U.S. Department of Education (December 4, 2002), p. 12.*