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BILL SUMMARY

- Adds the following achievement tests to the system of achievement testing in current 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.
- Renames the four levels of scores on the proficiency and achievement tests to limited proficient, nationally proficient, Ohio proficient, and advanced proficient.
- Requires the State Board of Education to designate four levels of scores for the Ohio Graduation Tests (OGT).
- Clarifies that the State Board must set a score in the Ohio proficient level on the OGT as the passing score needed to qualify for a high school diploma.
- Requires legislative oversight and approval of changes the State Board intends to make in achievement test score ranges from those recommended by a committee established by the Department of Education.
- Eliminates the fall administration of the third grade reading achievement test.
- Prohibits exempting a limited English proficient (LEP) student from a proficiency or achievement test unless the student is given an alternate assessment.

- Requires LEP students to be assessed in reading in English after enrollment in U.S. schools for three consecutive years.
- Requires school districts to annually assess the progress of LEP students in learning English.
- Requires students who score in the *limited proficient* range on an OGT 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 proficient score on the third grade reading achievement test apply to special education students: (1) promotion to the next grade if the principal and reading teacher agree that other evaluations of the student's work indicate that the student is academically prepared for the next grade, (2) promotion to the next grade with "intensive intervention" in that grade, or (3) retention in the current grade.
- Requires school districts and community schools to administer diagnostic assessments to students only in the following cases: (1) when a school building fails to make adequate yearly progress (AYP) for two or more consecutive school years and (2) when a student transfers into a new district.
- Eliminates the requirement that the results of kindergarten diagnostic assessments be reported to the Department of Education for a comparison of the academic readiness of kindergarteners.
- Requires the Education Management Information System (EMIS) to collect any data mandated by federal law.
- Abolishes the authority of the State Board to establish performance indicators for school districts and buildings and instead statutorily specifies the performance indicators for districts and buildings.
- Includes AYP and a performance index score in the determination of performance ratings for districts and buildings.
- Sets the standard for making AYP at the nationally proficient level of achievement.

- Directs the Department to include a "value-added progress dimension" in the performance ratings by July 1, 2005.
- Creates the Ohio Accountability Committee to monitor 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, and migrant students.
- Eliminates the disaggregation of data on the report cards by vocational education students.
- Directs the Department to establish a system of "intensive, ongoing support" for the improvement of school districts and buildings.
- 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 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.
- Requires the Department to conduct audits of a sampling of community schools to ensure compliance with sanctions.
- Requires students who request to be transferred to an alternative school under public school choice to be given priority under a district's open enrollment policy.
- Requires the Superintendent of Public Instruction to submit a report to the General Assembly describing the projected cost of compliance with the "No Child Left Behind Act" and the financial consequences for noncompliance with that act.

- Requires school districts to permit students who are enrolled in a "persistently dangerous school" or who are victims of an offense of violence while at school to transfer to another school within the district.

TABLE OF CONTENTS

Overview.....	5
Achievement tests.....	7
Additional reading and math achievement tests.....	7
Scores on the achievement tests.....	10
Intervention services.....	11
Elimination of exemption from achievement tests for English-limited students.....	12
Third grade reading guarantee.....	14
National Assessment of Educational Progress (NAEP).....	16
Administration of diagnostic assessments.....	17
Background.....	17
Current law.....	17
The bill.....	18
School district and building report cards.....	18
Elimination of State Board authority to establish performance indicators.....	19
Determination of performance ratings for districts and buildings.....	22
Rating.....	26
Makes AYP.....	26
Value-added progress dimension.....	27
Disaggregation of performance data.....	29
School district and building accountability.....	30
Accountability provisions in Ohio law.....	30
NCLB accountability requirements in the bill.....	32
Consecutive years of failure to make AYP.....	34
Public school choice.....	36
Supplemental educational services.....	37
Payments for transportation and supplemental educational services.....	38
Persistently dangerous schools.....	39
Report to the General Assembly on costs of implementing NCLB requirements.....	40
State Board plan for "end of course exams".....	40

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, 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 is currently in partial compliance with NCLB. The bill modifies Ohio's law where necessary to conform to NCLB. There are essentially three main areas in which the bill makes changes to current 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 bill adds reading and math achievement tests in each of those grades in which such tests are not already required to be administered under

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

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 low-income students enrolled in those schools.*

³ *NCLB's requirements regarding teachers are not in this bill. They are included in S.B. 2, 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).*



current state law. It also adjusts the current 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 a measure of annual academic achievement based on student scores on the statewide standardized tests and one or more other academic indicators.⁶ Only Title I districts and schools 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 current reporting system, namely the district and school report cards issued annually by the Department of Education, serves this function.¹¹ However, the bill combines the new components of AYP and a "performance index score" (see "*Determination of performance ratings for districts and buildings*" below) with the current state performance indicators for the purpose of determining the ratings assigned to districts and schools on the report cards. It

⁵ 20 U.S.C. 6311(b)(2)(F).

⁶ 20 U.S.C. 6311(b)(2)(B) and (C).

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 are in "school improvement" status for the 2002-2003 school year under NCLB. Thus, they were required to begin providing public school choice effective with the current 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).

also explicitly lists the state performance indicators to be used for the ratings. Finally, the bill 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 through nine, and (3) grades ten through twelve. All of these tests must be aligned with statewide academic standards.

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.¹² Thus, Ohio's assessment system satisfies NCLB provisions regarding the administration of tests aligned with academic standards in reading, math, and science. It does 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 current state law must be accelerated to meet the deadlines imposed by NCLB. The bill 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 current Ohio law, achievement tests in reading are given in third, seventh, and tenth grades. Math achievement tests are 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 bill adds reading and math achievement tests for those grades in which they are not currently required. As with the current achievement tests, the additional tests included in the bill must be developed by the State Board with input from Ohio parents, classroom teachers, school administrators, and other personnel with expertise in the appropriate

¹² *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.*

subject area.¹³ Achievement tests in writing, science, and social studies and the Ohio Graduation Tests (OGT) in reading and math remain unchanged by the bill and would be administered in the same grade levels as required under current law.

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

The following tables compare the current system of achievement testing with the framework established by the bill.

	Achievement Tests in Current Law					Achievement Tests under the Bill				
	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

¹³ The bill 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 Department.

The bill 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 bill changes the school year in which an achievement test must first be administered from that specified in current law, the year required by current law is noted in parentheses following the year required by the bill.

^b The ninth grade proficiency tests were administered to all ninth graders for the last time in March 2003. For students who do not pass one or more of the tests in the ninth grade, they 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(A)(2) and (B))

NCLB requires at least three ranges of scores on state assessments to indicate the degree to which students are mastering state academic standards.¹⁴ Under current law, Ohio has 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 establishes a single passing score that demonstrates a "proficient" level of skill for the tenth grade.

The bill makes two changes to current law. First, it renames the four ranges of scores on the achievement tests in the following manner: (1) below basic becomes "limited proficient," (2) basic becomes "nationally proficient," (3) proficient becomes "Ohio proficient," and (4) advanced becomes "advanced proficient."¹⁵

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

Legislative oversight and approval of designated scores (sec. 3301.0710(F)). The bill 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 president of the State Board must explain the change to a joint meeting of the House and Senate Education Committees.¹⁶ In addition,

¹⁴ 34 C.F.R. § 200.1(c)(1)(ii)(C).

¹⁵ Under the bill, it appears that the proficiency tests, which currently only have one "proficient" score, would also be required to have the same four ranges of scores as the achievement tests (Section 3).

¹⁶ 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 make recommendations or establish a committee to make recommendations for score ranges only if the State Board requested the Department to do so. It is not clear what degree of oversight and legislative approval of the score designations is required if the Department does not utilize a committee to make recommendations to the State Board.

the bill prohibits the State Board from adopting the intended change unless it is first approved by both houses of the General Assembly through a concurrent resolution.

Intervention services

(secs. 3301.0711(D) and 3313.6012)

Under current law, several requirements to provide students with intervention services are triggered by the score they receive on a proficiency or achievement test. School districts and community schools must provide intervention services in the next school year to any student who scores in the *below basic* ("limited proficient" in the bill) range on an achievement test, other than the OGT, or who does not attain a *proficient* ("Ohio proficient" in the bill) 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 bill adds one new intervention requirement. Under current law, districts are not required to provide intervention services based on OGT scores. However, the change to four levels of scores on the OGT brings those tests under the existing intervention requirement. Therefore, students who score at the limited proficient level on an OGT must receive intervention services. The other current intervention requirements remain the same under the bill. Students who score in the *nationally proficient* range on the third grade reading achievement test, for example, must receive intervention services in the summer just as they would under current law for scoring in the *below basic* range.¹⁷

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

¹⁷ *The bill 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.*

Elimination of exemption from achievement tests for English-limited students

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

Current law stipulates that a student whose primary language is not English is considered English-limited if (1) the student has been enrolled in U.S. schools for less than three full school years and (2) it has been determined in the current school year that the student lacks sufficient English skills for a proficiency or achievement test to produce valid information concerning that student's academic knowledge.¹⁸ An English-limited student enrolled in a public school currently may be exempted from taking any proficiency or achievement test. Such an exemption lasts for one year and must be obtained from the board of education of the district in which the student is enrolled. The exemption may be renewed for two additional years. In any year in which an English-limited student receives an exemption, the district must assess the student's progress in learning English. Any student who does not receive an exemption is required to take all applicable proficiency or achievement tests. In no case can 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 does 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.¹⁹ 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.²⁰ After three consecutive years of enrollment in U.S. schools, however, LEP students must be assessed in English in reading.²¹ 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

¹⁸ *School districts must make the latter determination based on criteria developed by the Department of Education (sec. 3301.0711(C)(3)).*

¹⁹ *20 U.S.C. 6311(b)(3)(C)(ix)(III).*

²⁰ *34 C.F.R. § 200.6(b)(1).*

²¹ *20 U.S.C. 6311(b)(3)(C)(x).*

proficiency has been attained.²² Once a student achieves English proficiency, all future state assessments must be taken in English.

The bill makes changes to current 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.²³

Second, the bill eliminates the temporary, one-year exemptions from taking proficiency or achievement tests currently available for LEP students. It specifies instead that an LEP student can only be excused from taking a particular proficiency or achievement test (with or without accommodations) *if* the student is given an alternate assessment.²⁴ This alternate assessment must be designed to yield reliable information about the student's academic ability and be approved by the Department of Education. In approving alternate assessments, the Department must ensure that the assessments produce measurable results comparable to those produced by the proficiency or achievement tests. This similarity of data allows the Department to include the results of alternate assessments for LEP students on the school district and building report cards.

Third, the bill removes the three-year limit imposed by current 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 bill, 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. Due to this change, with the exception of reading tests, LEP students may be assessed using an alternate assessment (in their native language, for example) until they achieve English proficiency. All students, under the bill, must take *reading* proficiency and achievement tests in English

²² 20 U.S.C. 6311(b)(7).

²³ 20 U.S.C. 7801.

²⁴ *Continuing law specifies that a school district (or chartered nonpublic school) cannot prohibit an LEP student from taking a proficiency or achievement test if the student wishes to do so.*

once they have been enrolled in U.S. schools for three consecutive years.²⁵ Presumably, however, districts always retain the option of providing LEP students with accommodations, such as extra time, to enable them to take the standard version of a reading proficiency or achievement test.

Fourth, the bill maintains current law by requiring LEP students to pass the ninth grade proficiency tests or the OGT, as applicable, to receive a high school diploma. However, under the bill, passage of an alternate assessment taken in place of a ninth grade proficiency test or OGT counts toward satisfying the testing requirement for earning a diploma for an LEP student.

Finally, continuing law permits chartered nonpublic schools to voluntarily administer the elementary proficiency and achievement tests. (They *must* administer the OGT because passing those tests is required for a diploma from a chartered nonpublic school.)²⁶ LEP students enrolled in chartered nonpublic schools may be excused from taking any such tests under the bill. However, they are *not* required to take any alternate assessments. This is because NCLB demands only that all *public school* students participate in a state's assessment system. Thus, under the bill, chartered nonpublic schools may indefinitely excuse English-limited 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, 5, and 6)

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 bill,

²⁵ NCLB also permits a school district, on a case-by-case basis, to give a reading assessment to an LEP student in a language other than English for up to two additional years beyond the general three-year waiver granted to all LEP students (i.e., up to five total) (20 U.S.C. 6311(b)(3)(C)(x)). This option is not incorporated into the bill.

²⁶ Sec. 3301.0711(K) and 3313.612.

²⁷ The third grade reading guarantee replaces the current fourth grade reading guarantee beginning July 1, 2003. The fourth grade reading guarantee operates in substantially the same manner as the third grade reading guarantee in current law described here (current sec. 3313.608, not in the bill). 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

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, under the current reading guarantee provision, 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* (the equivalent of "Ohio proficient" under the bill) 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.

Except for special education students who take an alternate assessment, third graders who score in the *below basic* (the equivalent of "limited proficient" under the bill) range on the summer administration of the test are 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 agree, based upon other evaluations of the student's reading skill, that the student is academically prepared for fourth grade work;

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

(3) Retention in third grade.

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

The bill makes several changes to the third grade reading guarantee. First, according to the Ohio Department of Education, the U.S. Department of Education has advised that only the first administration of a state assessment can count for accountability purposes under NCLB. For this reason, the bill removes the fall administration of the third grade reading achievement test in the third grade and

take the reading proficiency test in the 2003-2004 school year remain subject to the fourth grade reading guarantee in current law. The bill specifies that the test will only be given one time (in March) that year instead of the three administrations of the test required by current law (Section 8).



requires the test to be administered in mid-March and sometime during the following summer. Districts and community schools must still provide summer remediation services for third graders who do not attain a score in the Ohio proficient range on the test, and students still have the opportunity to retake the test after the remediation. Determinations of whether school districts and buildings make AYP, however, only recognize the scores of third graders for the test given in March (see "**Making AYP**" below).

Second, the bill eliminates entirely the administrations of the third grade reading test in fourth and fifth grades. As noted above, they cannot count for accountability purposes under the federal law. Furthermore, once annual testing in reading is phased in as required by NCLB, students will take grade-level reading tests in those grades.

Finally, as under current law, districts and schools retain the discretion to promote or retain third graders who score in the *limited proficient* range on the achievement test in accordance with the guidelines described above. Under the bill, 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 law gives the Department of Education authority to require districts to participate in NAEP. Current Ohio 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 bill simply specifies that the State Board must keep those same considerations in mind when NAEP is administered because of NCLB provisions.

²⁸ 20 U.S.C. 6311(c)(2).

Administration of diagnostic assessments

(secs. 3301.0714(B) and (P), 3301.0715, and 3313.6012; Sections 4, 5, and 6)

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.

Current 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. 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 Department of Education must make it available at no cost to all school districts.²⁹

Current law requires each district that is not rated *excellent*, 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 transfers into a district or into a new school within the same district, the district must administer the appropriate diagnostic assessments to that student within 30 days after the transfer. Once they are developed, 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.

Diagnostics 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

²⁹ *Sec. 3301.079(D).*

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.

The bill

Under the bill, administration of the state developed diagnostic assessments is voluntary except in two instances. The first case applies to school buildings that did not make AYP in the two previous school years (see "**Making AYP**" below). Diagnostic assessments must be given to all students in those schools, including community schools. In the second case, districts and community schools must administer diagnostic assessments to *interdistrict* transfer students. The bill eliminates the requirements in current law that diagnostic assessments be given to students who transfer within the same district and that transfer students be assessed within 30 days after enrolling at their new schools. In those cases when administration of a diagnostic assessment is mandatory, it must be administered in the same manner required by current law. Also, the bill states that *all* districts and community schools *may* administer a diagnostic assessment to any student at their discretion.

As under current law, 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 bill, even those that voluntarily administer diagnostic assessments. Thus, under the bill, 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 and community schools still need to assess the reading ability of first and second graders under the bill for the purpose of the third grade reading guarantee, but they can use any assessment they prefer.

The bill retains the prohibition against reporting results from the diagnostic assessments to the Department. It also eliminates the requirement to report results from kindergarten diagnostic assessments to the Department for a baseline comparison of academic readiness. Districts would only have to administer a diagnostic assessment to a kindergartener under the bill if the student transferred from another district during the school year or the student's school failed to make AYP in the two previous school years. Consequently, not all kindergarten students would take a diagnostic assessment.

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.

Elimination of State Board authority to establish performance indicators

(repealed sec. 3302.02; new sec. 3302.02; Section 3)

Current law directs the State Board of Education to create at least 17 performance indicators on an annual basis through 2006. Thereafter, the State Board must establish new indicators every six years. Academic performance ratings assigned to school districts and buildings on the report cards currently are based solely on the percentage of performance indicators met by each district or building. 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. The State Board must notify all school districts of the selected performance indicators at least two years before they are included in the academic performance ratings.

The bill eliminates the authority of the State Board to establish performance indicators. Rather, the expected state performance indicators are listed explicitly in the bill. This would return to the practice in effect prior to enactment of Am. Sub. S.B. 1 of the 124th General Assembly, when all performance indicators were codified.

Under the bill, the performance indicators listed are those that would be in effect beginning July 1, 2007, which would be the first school year the achievement tests are fully phased in. They are limited to passage rates at the Ohio proficient level on each of the achievement tests, attendance rate, and graduation rate. As under current law, all of the performance indicators apply to districts, but only those applicable to a particular building apply to that building. The following are the performance indicators specified in the bill:

(1) At least 75% of third graders Ohio proficient on the third grade reading achievement test;

(2) At least 75% of third graders Ohio proficient on the third grade math achievement test;

(3) At least 75% of fourth graders Ohio proficient on the fourth grade reading achievement test;



(4) At least 75% of fourth graders Ohio proficient on the fourth grade writing achievement test;

(5) At least 75% of fourth graders Ohio proficient on the fourth grade math achievement test;

(6) At least 75% of fifth graders Ohio proficient on the fifth grade reading achievement test;

(7) At least 75% of fifth graders Ohio proficient on the fifth grade math achievement test;

(8) At least 75% of fifth graders Ohio proficient on the fifth grade science achievement test;

(9) At least 75% of fifth graders Ohio proficient on the fifth grade social studies achievement test;

(10) At least 75% of sixth graders Ohio proficient on the sixth grade reading achievement test;

(11) At least 75% of sixth graders Ohio proficient on the sixth grade math achievement test;

(12) At least 75% of seventh graders Ohio proficient on the seventh grade reading achievement test;

(13) At least 75% of seventh graders Ohio proficient on the seventh grade writing achievement test;

(14) At least 75% of seventh graders Ohio proficient on the seventh grade math achievement test;

(15) At least 75% of eighth graders Ohio proficient on the eighth grade reading achievement test;

(16) At least 75% of eighth graders Ohio proficient on the eighth grade math achievement test;

(17) At least 75% of eighth graders Ohio proficient on the eighth grade science achievement test;

(18) At least 75% of eighth graders Ohio proficient on the eighth grade social studies achievement test;

(19) At least 75% of tenth graders Ohio proficient on the OGT in reading;



- (20) At least 75% of tenth graders Ohio proficient on the OGT in writing;
- (21) At least 75% of tenth graders Ohio proficient on the OGT in math;
- (22) At least 75% of tenth graders Ohio proficient on the OGT in science;
- (23) At least 75% of tenth graders Ohio proficient on the OGT in social studies;
- (24) At least 85% of eleventh graders Ohio proficient on the OGT in reading;
- (25) At least 85% of eleventh graders Ohio proficient on the OGT in writing;
- (26) At least 85% of eleventh graders Ohio proficient on the OGT in math;
- (27) At least 85% of eleventh graders Ohio proficient on the OGT in science;
- (28) At least 85% of eleventh graders Ohio proficient on the OGT in social studies;
- (29) A 90% graduation rate;
- (30) A 93% attendance rate.

Temporary law in the bill states that for each year prior to the 2007-2008 school year, the performance indicators will be achievement rates (*i.e.*, the percentage of students scoring at or above the Ohio proficient level) on any proficiency or achievement tests administered that year as well as attendance and graduation rates. For each proficiency or achievement test administered to students in grades three through eight, the Ohio proficient rate must be 75%. For each high school proficiency or achievement test, the Ohio proficient rate must be 75% of students in the grade level in which the test is first administered. The Ohio proficient rate of tenth graders on the ninth grade proficiency test must be 85% until that test is phased out. Finally, the graduation rate must be set at 90% and the attendance rate at 93% for those years.

Since the performance indicators are no longer variable under the bill (except to the extent that the configuration of proficiency and achievement tests differs each year until July 1, 2007), the bill removes the requirement in current law that school districts be notified of the indicators two years in advance of their inclusion in the report card ratings.

Determination of performance ratings for districts and buildings

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

The performance indicators are currently the only determinant of the academic performance ratings school districts and buildings receive on their report cards. The bill adds two new components to this calculation. Thus, under the bill, 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 bill also requires the State Board to develop a fourth component for future inclusion in the ratings system.

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 *Ohio proficient* level on such tests, the performance index score takes into account the percentage of students scoring at *each* of the four levels--limited proficient, nationally proficient, Ohio proficient, and advanced proficient. 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. 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 nationally proficient 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 proficient level to the nationally proficient level. Such a change would not be apparent in looking at the performance indicators because the students would still not be scoring at the Ohio proficient level.

The bill describes the procedure for determining the performance index score for districts and buildings. Untested students and students scoring at each level of skill on a proficiency or achievement test are assigned weights as follows: (1) 0 for untested students, (2) 0.3 for students at the limited proficient level, (3) 0.6 for students at the nationally proficient level, (4) 1.0 for students at the Ohio proficient level, and (5) 1.2 for students at the advanced proficient level. 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 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.³⁰ 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.

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.³¹ 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.³²

The bill 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 nationally proficient range on reading and math proficiency and achievement tests in that year to keep the state on course to having all students nationally proficient on such tests by June 30, 2014 (see **COMMENT 3**). School districts and buildings can meet the annual measurable objective based upon student test results either from the current school year or from the last three consecutive school years averaged together. 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 bill also establishes other academic indicators as part of the AYP definition. These are the attendance rate for elementary and middle schools and

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

³¹ 20 U.S.C. 6311(b)(2)(G) and (H).

³² 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)).

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.

In compliance with NCLB, a district or building makes AYP under the bill when it satisfies the criteria in either Column 1 or Column 2 in the table below. 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 level of nationally proficient 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:	<p>(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</p> <p>(2) Its total student population and each subgroup meets or exceeds the annual measurable objectives for that year in reading and math.^b</p> <p>(3) It meets or exceeds the minimum threshold on all other academic indicators for that year.</p>	<p>(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</p> <p>(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:</p> <p style="padding-left: 40px;">(a) The percentage of students scoring below the nationally proficient level on 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;</p> <p style="padding-left: 40px;">(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.</p>

^a Students who take a test with accommodations, such as taking the test untimed or orally, and disabled and LEP 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 bill 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) and (B)). Under the bill, 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 current 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 bill, 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 formula 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.³³

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*.

Rating	Percentage of performance indicators met		Performance index score		Makes AYP
Excellent	94%-100%	<i>or</i>	100 or greater	<i>and</i>	Yes
	94%-100%	<i>or</i>	100 or greater	<i>and</i>	No
Effective	75%-93%	<i>or</i>	90-99	<i>and</i>	Yes
	75%-100%	<i>or</i>	90 or greater	<i>and</i>	No
Continuous improvement	0%-74%	<i>and</i>	0-89	<i>and</i>	Yes
	50%-74%	<i>or</i>	80-89	<i>and</i>	No
Academic watch	31%-49%	<i>or</i>	70-79	<i>and</i>	No
Academic emergency	0%-30%	<i>and</i>	0-69	<i>and</i>	No

³³ A district's formula 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 bill). The bill also specifies that in calculating passage rates on proficiency and achievement tests for the purpose of the performance indicators, the Department must include limited English proficient (LEP) students who take an alternate assessment in the same way that is currently done with special education students (sec. 3302.03(D)(1)).

Value-added progress dimension

(secs. 3302.01(K) and 3302.021; Section 7)

No later than July 1, 2005, the Department of Education must incorporate a "value-added progress dimension" into the system of performance ratings and report cards issued for school districts and buildings. As defined in the bill, 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 bill 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.

The State Board must adopt rules for integrating the value-added progress dimension into Ohio's accountability system.³⁴ These rules must require the Department to protect the confidentiality of students' test scores and individual student performance reports in accordance with state and federal law.³⁵ Unique student identifiers may be used to maintain privacy. Test scores and student

³⁴ *The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119., not in the bill).*

³⁵ *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 bill). 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)).*

reports may only be shared with a student's classroom teacher 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 Committee created by the bill.

Ohio Accountability Committee. Under the bill, the Ohio Accountability Committee is broadly charged with advising the Department and the State Board on all issues related to Ohio's accountability system for school districts and buildings. In addition, it must monitor 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. No later than five years after its first meeting, the Committee must make recommendations to improve and simplify Ohio's accountability system. These recommendations must be adopted by a majority vote of the Committee and reported to the State Board, the Governor, the Speaker of the House of Representatives, and the President of the Senate.

The Ohio Accountability Committee consists of the following 11 members:

- (1) The chairpersons and ranking minority members of the House and Senate Education Committees;
- (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 non-profit organization led by the Ohio business community, appointed by the Governor.

Initial appointments to the Ohio Accountability Committee must be made within 30 days after the bill'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 bill's effective date, the Committee must convene for its first meeting. Future meetings must occur at least six times a year. Committee 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.³⁶ Student performance data on Ohio's report cards is currently disaggregated by several groups, including gender, race/ethnicity, economically disadvantaged status, and vocational education students.³⁷ The bill adds the categories of students with disabilities, LEP students, and migrant students to comply with NCLB. It also eliminates the category of vocational education students. All new data necessary to meet NCLB requirements must be collected by the Education Management Information System (EMIS) under the bill.

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 bill further specifies that the Department cannot report performance data for any group comprised of fewer than ten students within a single district or building.

³⁶ 20 U.S.C. 6311(b)(3)(C)(xiii).

³⁷ Under continuing law, data on the report cards is also disaggregated by age, mobility, and enrollment in a conversion community school.

School district and building accountability

Accountability provisions in Ohio law

(secs. 3302.04, 3314.012, and 3314.03(A)(24))

Current law. Ohio currently has its own accountability provisions that apply to all public schools except for community schools. Under current law, the State Board of Education must 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 is required to develop a three-year, district-wide continuous improvement plan (CIP) if it receives a rating other than excellent or effective. Similarly, any district must create a three-year CIP for any building within the district that receives such a rating. Current law subjects academic watch and academic emergency districts and buildings to intervention by the Department of Education. Possible interventions include site evaluations, technical assistance, or the appointment of a guidance panel to direct improvement efforts.³⁸

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

- (1) Replace the building's principal;
- (2) Examine the factors impeding student achievement in the building and redesign the building to address those factors, including transferring or reassigning teachers, administrators, or other school personnel;
- (3) Institute a new schoolwide curriculum or educational model consistent with the statewide academic standards and change the structure of the school day or year;
- (4) Contract with a college or university education department, an educational service center (ESC), or the Department of Education to operate the building, including the provision of personnel, supplies, and equipment;

³⁸ See also O.A.C. 3301-56-01.

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

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

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

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

A district may 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 includes the building's management, curriculum, instructional methods, resource allocation, and scheduling. Upon completion of the evaluation, the intervention team must make recommendations to the district regarding methods for improving the building's performance. The Department may only approve a district's request for an intervention team, however, if the Department can adequately fund the team's work or if the district agrees to pay for the team's expenses.

The bill. Some of Ohio's accountability provisions are changed by the bill. First, the bill 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 bill. The bill 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 bill (see "***NCLB accountability requirements in the bill***" below).

Second, the contents of CIPs are delineated in more detail under the bill. As under current 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 bill, however, also requires a CIP to include an analysis of the reasons the district or building did not make AYP, if applicable, 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 bill. 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 bill.³⁹ The Department of Education must conduct audits of a sampling of community schools to monitor compliance.

Finally, under the bill, the Department is broadly charged with setting up a system of "intensive, ongoing support" that gives priority to the improvement of school districts and buildings in academic watch and academic emergency. Presumably, this system would include the interventions available in current 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 bill

(sec. 3302.04)

NCLB contains several provisions aimed at chronically underperforming school districts and buildings.⁴⁰ 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 bill. However, the bill goes beyond the requirements of NCLB by applying AYP to *all* districts and buildings (see "Designating the performance ratings" above). However, under the bill, the consequences of public school choice and supplemental services 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 bill. For community schools subject to the bill's consequences, the sponsors of those schools are charged with enforcing them. The

³⁹ *Since the bill 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 (sec. 3314.012).*

⁴⁰ *See generally 20 U.S.C. 6316.*

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.



Consecutive years of failure to make AYP					
Sanctions for school buildings	2	3	4	5	6
	<p>(1) Continue to implement building CIP</p> <p>(2) Notify the parents of students enrolled in the building in writing about the academic issues that led to the rating the building received on its report card. 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.</p> <p>(3) Provide public school choice*</p> <p>(4) Administer diagnostic assessments and provide intervention</p>	<p>(1) Continue to implement building CIP</p> <p>(2) Provide public school choice*</p> <p>(3) Offer supplemental educational services*</p> <p>(4) Administer diagnostic assessments and provide intervention</p>	<p>(1) Continue to implement building CIP</p> <p>(2) Provide public school choice*</p> <p>(3) Offer supplemental educational services*</p> <p>(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</p> <p>(5) Administer diagnostic assessments and provide intervention</p>	<p>(1) Continue to implement building CIP</p> <p>(2) Provide public school choice*</p> <p>(3) Offer supplemental educational services*</p> <p>(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) Other significant restructuring of the building's governance</p> <p>(5) Administer diagnostic assessments and provide intervention</p>	<p>(1) Continue to implement building CIP</p> <p>(2) Provide public school choice*</p> <p>(3) Offer supplemental educational services*</p> <p>(4) Implement the restructuring plan developed during the previous school year</p> <p>(5) Administer diagnostic assessments and provide intervention</p>

* 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	District must continue to implement its CIP	(1) District must continue to implement its CIP	(1) District must continue to implement its CIP	(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		(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.	(2) Department must continue to monitor district compliance with the corrective action(s) taken in previous school year	(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.⁴¹ 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.⁴² 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).⁴³ A district's obligation to offer public school choice to students in a building ends when the building makes AYP for two consecutive years.⁴⁴ 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.⁴⁵

School choice provisions in the bill. Under the bill, 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

⁴¹ 20 U.S.C. 6316(b)(1)(E).

⁴² 20 U.S.C. 6316(b)(11).

⁴³ 20 U.S.C. 6316(b)(9).

⁴⁴ 20 U.S.C. 6316(b)(12).

⁴⁵ 20 U.S.C. 6316(b)(13).

to meet 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. Currently, 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.

The bill makes changes to open enrollment, however, to attempt to accommodate student transfers under NCLB. It explicitly requires a district's open enrollment policy to grant preference over all other applicants to those students who apply to enroll in an alternative school under NCLB's public school choice provisions. If there are insufficient openings for all the students who apply for public school choice, priority must be given to the lowest achieving, low-income students who apply for school choice.

The bill maintains the provision of current law that provides students already enrolled in a school building (presumably including those students who are already enrolled as a result of NCLB's school choice provisions) or students living in the attendance area of a building priority over students applying to transfer into that building. While districts must still use capacity limits to limit the number of openings at particular schools, as under current law, the bill does eliminate the requirement that racial balance concerns are to be considered in the open enrollment policy (see **COMMENT 2**).

Although the bill addresses most of the NCLB requirements, it would not incorporate all of them into Ohio law. Specifically, it 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.

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 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 non-profit 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).⁴⁶ Districts can stop offering supplemental services to students in a building after the building has made AYP for two consecutive school years.⁴⁷

All of these federal provisions regarding supplemental educational services are incorporated into the bill.⁴⁸ The bill specifically applies these provisions only to schools that receive Title I funds.

Payments for transportation and supplemental educational services

(sec. 3302.04(E))

As noted above, school districts must use their 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 limits 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

⁴⁶ 20 U.S.C. 6316(e).

⁴⁷ 20 U.S.C. 6316(b)(12).

⁴⁸ As defined by the bill, 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)).

the maximum 20% of Title I funds on transportation alone, unless it can satisfy all demand with fewer funds.⁴⁹

The same expenditure limits are established by the bill. Furthermore, the bill 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 bill 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.

Persistently dangerous schools

(sec. 3313.971)

NCLB requires states to allow students who attend a "persistently dangerous school" or who become victims of violent crime at school to transfer to a safe school, including a community school, within the same school district. Each state must develop a policy regarding such transfers.⁵⁰ On June 9, 2002, the State Board of Education adopted a policy to comply with NCLB. The bill codifies the State Board's policy.

Under the bill, a school is labeled as "persistently dangerous" when it exceeds a minimum number of violent offenses within the school zone in each of two consecutive school years.⁵¹ These minimums are as follows: (1) six violent offenses for schools with enrollments of 300 or less, (2) two violent offenses per 100 students for schools with enrollments between 301 and 1,349 students, and (3) 27 violent offenses for schools with enrollments of 1,350 or more students. When a school becomes persistently dangerous, its students must be allowed to transfer to a school that is not persistently dangerous. A student who becomes the victim of a violent offense while within the zone of the school he or she attends, whether or not such school has been labeled persistently dangerous, must also be permitted

⁴⁹ 20 U.S.C. 6316(b)(10).

⁵⁰ 20 U.S.C. 7912.

⁵¹ *The school zone consists of (1) the property on which a school is located during the times school is in session, (2) any other property owned or leased by the district board of education and on which some instruction, extracurricular activities, or training is conducted during the times school is in session, (3) school buses used to transport students to and from school or school-sponsored activities and designated bus stops, (4) school-sponsored activities that take place off the premises of the school, and (5) any activities held under the auspices of the district board.*

to transfer to another school. For a student to qualify to transfer under the latter provision, however, the alleged perpetrator of the offense must have plead guilty to or been convicted of committing the offense against the student.

Students must transfer to another school within the same district if possible under the bill. In that case, the district is not responsible for providing transportation to a nonhandicapped student *unless* the student can be picked up and dropped off at a regular school bus stop. If there is no district school that is not persistently dangerous and serves the grade level of a student seeking to transfer, then the district superintendent may enter into an agreement with the superintendent of another district allowing one or more students to enroll in the other district. For interdistrict transfers, the district accepting a student for enrollment is required to provide transportation for that student to and from school from designated bus stops within the district *if* a parent requests it and students of the same grade level and distance from school who live in the district are transported. The transportation requirements in the bill are essentially the same as those in current law for intradistrict and interdistrict open enrollment.

Report to the General Assembly on costs of implementing NCLB requirements

(Section 9)

The bill requires the Superintendent of Public Instruction, within 30 days after the effective date of the bill, 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.

State Board plan for "end of course exams"

(repealed sec. 3301.0713)

The bill repeals a provision requiring the State Board of Education to propose a plan for "end of course exams" as an alternative to passing the OGT to earn a high school diploma.

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 bill may not be in full compliance with the requirements of NCLB regarding school choice. 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.⁵² Open enrollment policies like Ohio's, which limit transfers based on building capacity, may conflict with the federal law.

3. Non-regulatory draft guidance pertaining to NCLB, issued by the U.S. Department of Education, states: "States choosing to add additional levels [of scores for tests beyond the mandatory three] must ensure that these additional levels do not result in lower expectations for students. . . . All students are expected to achieve to proficient or advanced levels of achievement."⁵³ Although non-regulatory guidance does not have the force of law, it is widely used by federal and state administrators in enforcing the law and is often regarded as an official explanation of how the law should be implemented. It is possible that the changes in the score ranges on the Ohio achievement tests may be viewed as "out of compliance" with NCLB by the U.S. Department.

Under NCLB, the purpose of the state tests is to measure how well students are meeting state academic standards. For this reason, state tests must be aligned with the state standards. Ohio has academic standards that outline content knowledge by grade level so this is what the achievement tests could be presumed to measure. Adequate yearly progress (AYP) is required to be a measure of student progress toward meeting the *state* academic standards. This goal may not be reached if the Ohio standard for making AYP ("nationally" proficient) is lower than the "Ohio" proficient standard for meeting other Ohio requirements (for example, to get a diploma and to meet the report card performance indicators).

⁵² See "Public School Choice: Non-Regulatory Guidance," U.S. Department of Education (December 4, 2002), p. 12.

⁵³ See "Standards and Assessments: Non-Regulatory Draft Guidance," U.S. Department of Education (March 10, 2003), p. 7.

HISTORY

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