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Bill Analysis

Legislative Service Commission

S.B. 279*

125th General Assembly
(As Reported by S. Education)

Sen. Robert Gardner

BILL SUMMARY

- Specifies that adequate yearly progress for school districts and buildings must be calculated in accordance with the No Child Left Behind Act (NCLB).
- Changes the criteria for imposing sanctions on school districts under that Act and requires each sanction to be imposed one year earlier than under current law.
- Requires the Ohio Department of Education to submit to each member of the Senate and House Education Committees: (1) a written description of changes in federal NCLB rules and policies each time such changes are made and (2) if the Department proposes to change the Ohio NCLB policies and procedures, a written outline of the existing Ohio policy and description of the changes the Department proposes to make.
- Prohibits the Ohio Department of Education from making changes in the Ohio NCLB policies and procedures based on changes in federal policies or rules if the General Assembly adopts a concurrent resolution disapproving those changes prior to the 31st day after the Department submits the required outline of current Ohio policy and description of proposed changes.
- Qualifies teachers employed by chartered nonpublic schools for annual stipends for holding valid certificates issued by the National Board for Professional Teaching Standards.

** This analysis was prepared before the report of the Senate Education Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Requires the Department of Education to pay National Board stipends to qualified nonpublic school teachers for the 2003-2004 school year.
- Allows students who must pass the ninth grade proficiency tests for a high school diploma to substitute passage of the Ohio Graduation Test in a particular subject for passage of the ninth grade test in the same subject to satisfy that testing requirement.
- Requires school districts to grant professional leave to their employees who are members of the Educator Standards Board.

CONTENT AND OPERATION

Background: adequate yearly progress under NCLB

As used in the No Child Left Behind Act (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. By making AYP, a school district or building demonstrates satisfactory progress toward NCLB's goal of having all students performing at the *proficient* level on state assessments by the end of the 2013-2014 school year and toward closing the achievement gap between students of different races and socioeconomic status. Districts and buildings that fail to make AYP are subject to sanctions based on the degree of that failure.¹

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. Second, the state must select one or more other academic indicators to include in its AYP definition. AYP generally is not made unless (1) a district or building meets the annual state targets for its total student population and certain subgroups of the student population and (2) at least 95% of its students participate in the state assessments.²

¹ 20 U.S.C. 6311(b)(2)(B) and (C) and 6316.

² 20 U.S.C. 6311(b)(2)(C)(vi) and (vii), (G), (H), and (I).

Calculation of AYP

(R.C. 3302.01; conforming changes in R.C. 3301.0711, 3302.03, 3302.04, and 3317.012)

The process described above for defining AYP is outlined in Ohio law. Current law, for example, directs the State Board of Education to establish annual measurable objectives and designates the other academic indicators as the graduation rate for high schools and the attendance rate for elementary and middle schools. Using a detailed method specified in statute, these factors are then used to determine whether a school district or building made AYP for a particular school year. The statutory language reflects a plan for NCLB compliance that was submitted by the Ohio Department of Education to the U.S. Department of Education and was subsequently approved by the federal agency.³

The bill eliminates the existing description of the method of determining AYP and specifies instead that AYP must be calculated in accordance with NCLB. For the purposes of Ohio law, NCLB includes (1) the federal statutes contained in that Act and any later amendments, (2) rules and regulations promulgated under those statutes, (3) guidance documents, and any other policy directives issued by the U.S. Department of Education regarding implementation of NCLB. Removal of the existing AYP definition from the Revised Code would permit Ohio law to remain consistent with federal law as federal interpretations of NCLB evolve. This change does not alter Ohio's AYP calculation method itself, which is subject to approval by the U.S. Department of Education.

Sanctions for school districts

(R.C. 3302.04(F))

Under current Ohio law, school districts are subject to sanctions when they fail to make AYP for two or more consecutive school years. Recently the U.S. Department of Education approved a change requested by the Ohio Department of Education regarding how Ohio applies sanctions to school districts for poor academic performance. Specifically, the approved policy recognizes three grade spans (grades 3-5, 6-8, and 10-12) for which AYP must be determined at the district level. A district fails to make AYP for a school year when it misses AYP in reading or math for any grade span in that year. However, if the district misses AYP in *the same subject area for all three grade spans* that year, the district must be "identified for improvement" by the Ohio Department of Education.

³ *Ohio's plan for NCLB compliance was originally approved on January 8, 2003.*

Identification for improvement, rather than missing AYP, triggers the imposition of sanctions on the district.⁴

To conform with this approved policy change, the bill subjects a school district to sanctions based on the number of years the district has been identified for improvement instead of the number of years it has failed to make AYP. It also requires the sanctions to start after the first year the district has been identified for improvement. Therefore, under the bill, sanctions are directed at the districts with the most serious academic problems. The bill does not change the nature of the sanctions, which are highlighted in the following chart.

⁴ See "Decision Letter on Request to Amend Ohio Accountability Plan" (August 5, 2004), available at <http://www.ed.gov/admins/lead/account/letters/ach.html>.

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

Under continuing law, a school district that has failed to make AYP for two consecutive school years must develop a three-year CIP containing (1) an analysis of the district's academic shortcomings, including the reasons it failed to make AYP, (2) strategies the district will use and resources it will allocate to address its academic achievement problems, (3) a description of progress toward improvement made in the preceding year, (4) an analysis of how the district is using professional development standards adopted by the State Board of Education, and (5) strategies the district will use to improve educators' cultural competency. The bill specifies that if a district does not have a CIP in place when it is identified for improvement, the district must develop and implement one.

Report of NCLB policy changes

(R.C. 3302.09)

The bill permanently requires the Ohio Department of Education to provide to each member of the Senate and House Education Committees a written description of any changes in NCLB implementation rules or policies made by the U.S. Department of Education each time such changes are made.

In addition, the bill provides that if the Ohio Department of Education plans to change any of its policies or procedures regarding the state's implementation of NCLB based on changes in federal policies or rules, the Department must submit to each member of the Education Committees a written outline of the existing Ohio policy regarding that implementation and a written description of the changes the Ohio Department proposes to make.

Finally, it also provides that the Department may not make any of the proposed changes sooner than the 31st day after the submission of the required outline and description. Under the bill, on and after that date, the Department may make the proposed changes unless the General Assembly has adopted a concurrent resolution disapproving them.

Stipend for National Board certified teachers

(R.C. 3319.55; Section 3)

Background

Under continuing law, school district teachers who hold valid teaching certificates issued by the National Board for Professional Teaching Standards are eligible for annual state-funded stipends. The National Board is an independent organization that awards certificates to teachers whose instructional practices, as demonstrated by evaluations of content knowledge and classroom performance, meet rigorous standards of teaching quality. Certificates are valid for ten years.

The annual state stipend is \$2,500 for teachers who entered the certification program prior to June 2003 and received their certificates by December 31, 2004. For teachers admitted into the program after May 2003 or who received their certificates after 2004, the annual state stipend is \$1,000. The stipends are reduced in any year in which insufficient funds are available to pay the full amounts.

The bill

The bill extends eligibility for the annual National Board stipends to teachers employed by chartered nonpublic schools. Nonpublic school teachers must meet the same application requirements and receive identical stipend amounts as school district teachers under the bill.

The bill also requires the Department of Education retroactively to pay stipends to chartered nonpublic school teachers who held valid National Board certificates during the 2003-2004 school year and were employed full-time as teachers by chartered nonpublic schools during that year.⁵ To receive a stipend for the 2003-2004 school year, a teacher must submit evidence of the teacher's eligibility and the date the teacher was accepted into the National Board certification program to the Superintendent of Public Instruction. These materials must be submitted by a deadline, no earlier than the 61st day after the bill's effective date, set by the Superintendent. All stipends paid for the 2003-2004 school year must be in the same amounts similarly certificated public school teachers received for that year. Finally, the bill directs the Department to pay the 2003-2004 stipends from General Revenue Fund line item 200-410, Professional Development, from FY 2004 funds that are encumbered but have not been spent by the bill's effective date. If those funds are insufficient, the Department must use FY 2005 funds from the same line item.⁶ (See **COMMENT**.)

Substitution of OGT for ninth grade proficiency test to qualify for a diploma

(R.C. 3313.614)

Under continuing law, five tenth grade achievement tests, collectively known as the Ohio Graduation Tests (OGT), are being phased in to replace the former ninth grade proficiency tests. Both sets of tests cover the subjects of

⁵ *If a nonpublic school teacher already received a stipend for the 2003-2004 school year for any reason, the teacher is not eligible for a second stipend.*

⁶ *Am. Sub. H.B. 95 of the 125th General Assembly earmarked \$7,079,625 in FY 2004 and \$7,329,625 in FY 2005 for the partial payment of application fees for teachers seeking National Board certification and for stipends for teachers who are already certified (see section 41.03).*

reading, writing, math, and science. A fifth proficiency test in citizenship will be replaced by the OGT in social studies.

The class of 2007 is the first group of students that must pass the OGT to receive a high school diploma from a school district, community school, or chartered nonpublic school. Students in prior classes (*i.e.*, students who entered tenth grade prior to July 1, 2004) generally must pass the five ninth grade proficiency tests to graduate under current law. Those students have until September 15, 2008, to pass all required proficiency tests. If a student has not passed a ninth grade proficiency test by that date, the student must pass the OGT in the same subject to qualify for a diploma.

The bill allows students who must pass the ninth grade proficiency tests to substitute passage of the OGT in any subject for passage of the ninth grade proficiency test in that subject to qualify for a diploma. For this purpose, the OGT in social studies is considered comparable to the ninth grade proficiency test in citizenship. Since students who must pass the ninth grade proficiency tests are generally not required to take the OGT, presumably those students must notify their schools of their intent to participate in an administration of the OGT.⁷ As under current law, beginning September 15, 2008, such a student must pass the OGT in any subject in which the student has not yet passed a high school level test in order to receive a diploma.

Professional leave for school district members of the Educator Standards Board

(R.C. 3319.63)

The bill requires the board of education of a school district that employs any of the teacher or school administrator members of the Educator Standards Board to grant paid professional leave for the member while attending board meetings or otherwise conducting official board business.

⁷ *In the 2002-2003 and 2003-2004 school years, students who took the ninth grade proficiency tests in the ninth grade also took the reading and math OGT when they were in the tenth grade to comply with the No Child Left Behind Act. That act requires states to administer reading and math assessments to all students at some point during the 10-12 grade span (20 U.S.C. § 6311(b)(3)(C)(v)). Under current law, those students' scores on the OGT cannot be used to determine their eligibility for diplomas (Section 7 of Am. Sub. S.B. 1 of the 124th General Assembly). The bill eliminates that prohibition to enable students to substitute passage of the OGT in the tenth grade for a failing score on the comparable proficiency test in the ninth grade to satisfy diploma requirements (Section 4).*

Background

The General Assembly created the Educator Standards Board in 2004 to develop and submit to the State Board of Education recommendations for educator licensing and professional development standards.⁸ The Educator Standards Board is also required to perform certain other specific functions related to enhancing the teaching profession and student achievement. The board is made up of 21 members as follows:

(1) Eight teachers employed in a school district: two teachers in a secondary school, two teachers in a middle school, two teachers in an elementary school, one teacher in a pre-kindergarten classroom, and one teacher who serves on a local professional development committee. At least one of these eight teachers must be certified by the National Board for Professional Teaching Standards.

(2) One teacher employed by a chartered, nonpublic school;

(3) Four public school administrators;

(4) One person who is a member of a school district board of education;

(5) Three persons who are employed by institutions of higher education that offer approved teacher preparation programs: one who is employed by a private, non-profit Ohio college or university; one who is employed by a state university or university branch; and one who is employed by a state community college, community college, or technical college;

(6) The Superintendent of Public Instruction or the Superintendent's designee, as a nonvoting, ex officio member;

(7) The Chancellor of the Ohio Board of Regents or the Chancellor's designee, as a nonvoting, ex officio member; and

(8) The chairpersons of the education committees of the House and Senate, as nonvoting, ex officio members.

COMMENT

Prior to the 2003-2004 school year, the Department of Education paid stipends to chartered nonpublic school teachers who were certified by the National

⁸ *The Educator Standards Board was created by Am. Sub. S.B. 2 of the 125th General Assembly, effective June 9, 2004.*

Board. Uncodified law in every operating budget act since enactment of R.C. 3319.55 authorized the Department to pay all or part of the *application fee* for both public and chartered nonpublic school teachers for enrollment in the National Board certification program.⁹ Those same uncodified provisions also earmarked funds to pay the annual stipends "pursuant to" R.C. 3319.55, but never specified whether the Department was authorized to pay stipends to chartered nonpublic school teachers. The bill explicitly authorizes the Department to award stipends to eligible nonpublic school teachers by including them in R.C. 3319.55.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-15-04	p. 2265
Reported, S. Education	---	---

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⁹ Section 45.06 of Am. Sub. H.B. 117 of the 121st General Assembly, Section 50.13 of Am. Sub. H.B. 215 of the 122nd General Assembly, Section 4.04 of Am. Sub. H.B. 282 of the 123rd General Assembly, Section 44.04 of Am. Sub. H.B. 94 of the 124th General Assembly, and Section 41.03 of Am. Sub. H.B. 95 of the 125th General Assembly.