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Bill Analysis
Legislative Service Commission

Sub. H.B. 79*
126th General Assembly
(As Reported by S. Education)

Reps. Raga, Latta, Setzer, C. Evans, Hagan, DeWine, McGregor, Willamowski, Gilb, Flowers, Seaver, Reidelbach, Schlichter, Reinhard, Blasdel, Boccieri, Brown, Bupp, Calvert, Carmichael, Cassell, Coley, Collier, Combs, Core, Daniels, Dolan, Domenick, D. Evans, Faber, Gibbs, Harwood, Healy, Hughes, Koziura, Law, Martin, Otterman, T. Patton, Schaffer, Schneider, G. Smith, J. Stewart, Strahorn, Trakas, Ujvagi, Wagoner, Webster, Widener, Williams, Wolpert, Yates, Yuko

BILL SUMMARY

- Requires the State Board of Education to request a criminal records check of an applicant prior to renewing an educator license.
- Requires the State Board to request a criminal records check every five years for a person teaching under an eight-year professional teaching certificate or a permanent teaching certificate issued under former law.
- Permits the State Board to waive the requirement for a criminal records check if the applicant or licensee provides proof of having been the subject of a check in the previous year.
- Requires each school district, educational service center, community school, county MR/DD board, and chartered nonpublic school to submit to the Superintendent of Public Instruction certain information about specified misconduct by employees who are licensed by the State Board.
- Requires school districts, educational service centers, community schools, county MR/DD boards, and chartered nonpublic schools to keep reports of investigations of employee misconduct in the employee's personnel file, unless the Superintendent of Public Instruction determines

* *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.*

that the misconduct does not warrant taking action to suspend, revoke, or limit the employee's license.

- Requires each public children services agency to provide to the Superintendent of Public Instruction specified information about child abuse or neglect committed by a person licensed by the State Board that is directly related to the licensee's duties and responsibilities.
- Grants immunity from civil and criminal liability to employees of a public children services agency who provide information to the Superintendent of Public Instruction about child abuse or neglect committed by State Board licensees.
- Clarifies that a public children services agency must provide information to the Department of Job and Family Services about child abuse and neglect reports involving a person applying for licensure to operate a type A family day-care home or certification to operate a type B family day-care home only when those reports are substantiated.
- Delays the requirement for school districts to certify their formula ADMs twice annually for one year, until fiscal year 2007.
- Requires the Department of Education to propose to the General Assembly a penalty for school districts and community schools that intentionally report inaccurate attendance data.
- Accelerates the effective date of the following provisions from July 1, 2006, to this bill's effective date: (1) authorization for the State Board of Education to require the use of student data verification codes to protect student confidentiality, (2) the requirement to include student data verification codes on achievement tests, and (3) the provision prohibiting entities hired to score the achievement tests from releasing test scores, except to students' school districts.
- Permits the Department of Education to have access to student data verification codes for the purpose of administering the Educational Choice Scholarship Pilot Program.
- Specifies that the Department's documents relative to the Educational Choice Scholarship Pilot Program are generally public records, except for documents that contain both a student's data verification code and personally identifiable student data.

- Requires state institutions that serve special education students to use a student's data verification code when applying for tuition reimbursement from the student's resident school district.
- Requires the Department of Education to disaggregate the number of handicapped preschool children served in the previous fiscal year by developmental deficiency when reporting that number to the General Assembly.
- Requires contracting entities to complete value-added analyses of student data commissioned by the Department of Education in accordance with timelines established by the Superintendent of Public Instruction.

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CONTENT AND OPERATION

Background on authority of State Board of Education to investigate licensees

In exercising its power to license educators, the State Board of Education may refuse to issue a license to an applicant, may limit a license it issues to an applicant, or may suspend, revoke, or limit a license it has previously issued for any of several statutorily specified reasons. Specifically, the State Board may take one of these actions if it determines the applicant or license holder has done any of the following:

(1) Engaged in an immoral act, incompetence, negligence, or conduct unbecoming to the person's position; or

(2) Pled guilty to, been found guilty by a jury or court of, or been convicted of any of the following:

(a) A felony;

(b) Unlawful sexual conduct with a minor, sexual imposition, or sexual importuning;

(c) An offense of violence;

(d) Any of several theft offenses;

(e) A drug abuse offense that is not a minor misdemeanor; or

(f) A violation of a municipal ordinance substantively comparable to an offense listed in (a) through (e) above.¹

The State Board, or the Superintendent of Public Instruction on its behalf, may investigate any information that reasonably appears to be a basis for refusing, suspending, revoking, or limiting a license. The Superintendent must review the results of each investigation to determine whether the results warrant initiating an action against the applicant or licensee. All information obtained during an investigation is confidential and is not a public record. If no action is taken against the person within two years of the completion of the investigation, all records of the investigation must be expunged. If, however, the Superintendent recommends action, the State Board must provide written notice of the charges

¹ *R.C. 3319.31, not in the bill.*

and an opportunity for a hearing conducted in accordance with the Administrative Procedure Act.²

Criminal records checks for licensees

(R.C. 3319.291(A) and (B))

Background--initial licenses

Under current law not changed by the bill, when a person initially applies for an educator license, the person must submit two sets of fingerprints and written permission for the Superintendent of Public Instruction to forward the fingerprints to the Bureau of Criminal Identification and Investigation (BCII) and the Federal Bureau of Investigation (FBI). The State Board, or the Superintendent on the Board's behalf, then must request BCII to conduct a criminal records check of a first-time applicant prior to issuing a license. The State Board or Superintendent also may request BCII to conduct an FBI check of the applicant, but an FBI check is mandatory if the applicant cannot prove Ohio residency for the five years prior to the date the BCII check is requested, or provide evidence that the applicant has been the subject of an FBI criminal records check during that time.³ Information revealed by a criminal records check could be grounds for refusing, suspending, revoking, or limiting a license.

Criminal records checks for license renewals

The bill requires the State Board or the Superintendent to request a criminal records check for all license renewals. This requirement applies to all positions for which the State Board issues licenses, including teachers, administrators, counselors, school nurses, school psychologists, educational aides and paraprofessionals, superintendents, and school district treasurers and business managers. As in the case of a first-time applicant under current law, if an applicant for a license renewal cannot prove Ohio residency for the five years prior to the date the BCII check is requested, or provide evidence that the applicant has been the subject of an FBI criminal records check during that time, the State Board or Superintendent also must request an FBI check of the applicant.

² R.C. 3319.311. *Under the Administrative Procedure Act, the State Board's decision to refuse, limit, suspend, or revoke a license may be appealed to the appropriate county court of common pleas (R.C. 119.12, not in the bill).*

³ *A BCII criminal records check will show Ohio convictions for felonies and certain misdemeanors that are considered escalating misdemeanors (typically, crimes that are a misdemeanor on the first offense and a felony on subsequent offenses or when committed in certain contexts). An FBI check will report all convictions, both felony and misdemeanor, in all states.*

Under the State Board's current licensing rules for teachers, a provisional license is valid for two years and may be renewed or upgraded to a professional license upon its expiration. Professional licenses must be renewed every five years. Therefore, the bill generally would require a criminal records check at the following stages of a teacher's career: (1) upon initial application for a provisional educator license, (2) upon transition from a provisional license to a professional educator license, and (3) at five-year intervals thereafter. Licenses for nonteaching positions may be renewable on other cycles.

Periodic criminal records checks of holders of teaching certificates issued under former law

Prior to September 1, 1998, state law provided for the issuance of provisional (four-year), professional (eight-year), and permanent (lifetime) teaching "certificates." Many individuals currently teach under these certificates, which remain valid.⁴ On the other hand, a number of them must transition to the five-year professional educator license when their current four- or eight-year certificate expires and would be subject to a criminal records check under the bill when they do so. However, a person who was issued a permanent teacher's certificate on or before September 1, 1998, or who upgraded to a permanent teacher's certificate under the old standards on or before September 1, 2003, may work under that certificate for the remainder of the person's career without ever having to renew it.

The bill requires the State Board or the Superintendent of Public Instruction to request a criminal records check for any person who is teaching under a professional teaching certificate issued under former law upon a date prescribed by the State Board that is not later than five years from the date that the license was issued or renewed. In addition, under the bill, the State Board or Superintendent must request a criminal records check for any person who is teaching under a permanent teaching certificate upon a date prescribed by the State Board and every five years thereafter. Thus, persons teaching under longer running and permanent certificates issued under former law must undergo a criminal records check at least every five years in the same manner the bill requires of educators licensed under current law. Again, as in the case of a first-time applicant under current law, and renewals under the bill, if the holder of one of these eight-year or permanent certificates cannot prove Ohio residency for the five years prior to the date the BCII check is requested, or provide evidence that the applicant has been the subject of an FBI criminal records check during that time, the State Board or Superintendent also must request an FBI check of the applicant.

⁴ R.C. 3319.222, not in the bill.

Waiver of criminal records check for certain applicants

(R.C. 3319.291(C))

The bill permits the State Board to waive the criminal records check requirement, if the applicant or licensee has undergone a check in the past year as a condition of employment or if the applicant or licensee presents a certified copy of the results of a check issued by BCII within the past year. It is possible for an applicant for a license to have undergone a check prior to applying for the license. This is because under current law, not changed by the bill, school districts, educational service centers, community schools, and chartered nonpublic schools must request a criminal records check of all applicants under final consideration for employment in any position responsible for the care, custody, or control of a child. If the check uncovers any of a list of statutorily designated offenses, the applicant cannot be hired for a position involving the care, custody, or control of a child.⁵ This requirement applies to all persons who at anytime could be left alone with children, teachers and nonteaching employees alike.⁶

Reports by schools of licensee misconduct

(R.C. 3314.03(A)(11)(d), 3319.311, 3319.313, 3319.315, 5126.253, and 5126.255)

The bill requires that public and chartered nonpublic schools report to the Superintendent of Public Instruction specified information regarding acts of misconduct by their employees who are licensed by the State Board. Under the bill, a school district or educational service center board, county MR/DD board, community school (charter school) governing authority, and the chief administrator of a chartered nonpublic school must submit the name and social security number of an employee and a factual statement of the employee's misconduct if:

(1) The board, authority, or administrator *knows* that the employee has pleaded guilty to, has been found guilty by a jury or court of, or has been convicted of an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee for the care, custody, or control of a child.⁷ (Current law, not changed by the bill, requires the prosecutor in a case

⁵ R.C. 3319.39, not in the bill.

⁶ It has been held that even an applicant for employment as a part-time custodian, whose work hours include after-school hours, is subject to the criminal records check requirement (*Prete v. Akron City School Dist. Bd. of Edn.* (1995), 106 Ohio App.3d 761).

⁷ See "**Background on authority of State Board of Education to investigate licensees**" above.

involving a State Board licensee to report to the State Board and licensee's employer if the licensee pleads guilty to, is found guilty of, or is convicted of an offense for which the State Board may sanction the licensee.⁸)

(2) The board, authority, or administrator has initiated termination or nonrenewal proceedings against, has terminated, or has not renewed the contract of the employee because the board, authority, or administrator has reasonably determined that the employee has committed an act that is "unbecoming to the teaching profession" or an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee for the care, custody, or control of a child;

(3) The employee has resigned under threat of termination or nonrenewal as described in (2) above; or

(4) The employee has resigned because of or in the course of an investigation by the board, authority, or administrator regarding whether the employee has committed an act that is "unbecoming to the teaching profession" or an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee for the care, custody, or control of a child. (See **COMMENT.**)

The bill specifies that conduct "unbecoming to the teaching profession" is as described in rules adopted by the State Board. The bill also specifies that a determination made by a board, authority, or administrator under (2) above; or a termination, nonrenewal, resignation, or other separation from employment does not create a presumption of the employee's commission or noncommission of an act that is unbecoming to the teaching profession or an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee for the care, custody, or control of a child.

The requirement to report licensee misconduct supersedes any conflicting provision of a collective bargaining agreement or employment contract entered into after the bill's effective date.

Investigation reports included in a licensee's personnel file

(R.C. 3314.03(A)(11)(d), 3319.314, and 5126.254)

The bill requires a school district or educational service center board, county MR/DD board, community school (charter school) governing authority, and the chief administrator of a chartered nonpublic school to require that the

⁸ R.C. 3319.52, not in the bill.

report of any investigation of an employee, regarding whether the employee has committed an act or offense for which it is required to make a report of misconduct to the Superintendent of Public Instruction (under the bill's provisions described above), be kept in the employee's personnel file. The board, authority, or administrator must require the report to be moved from the employee's personnel file to a separate public file if, after an investigation, the Superintendent of Public Instruction determines that the results of that investigation do not warrant initiating action against the licensee.

Reports by public children services agencies of child abuse or neglect

Involving persons licensed by the State Board

(R.C. 3319.311 and 5153.176)

The bill requires a public children services agency (PCSA) to promptly provide to the Superintendent of Public Instruction information regarding the agency's investigation of a report of child abuse or neglect involving a person who holds a license issued by the State Board of Education, if the agency determines that child abuse or neglect occurred and that abuse or neglect is related to the person's duties and responsibilities under the license. Generally, a PCSA is required to keep information about an investigation confidential, but the bill relieves those confidentiality provisions to facilitate reporting information about licensees to the Superintendent.⁹ The Superintendent may use the information received from a PCSA in determining whether the person's license should be suspended, revoked, or limited. These reporting requirements prevail over any conflicting provisions of collective bargaining agreements or employment contracts entered into after the bill's effective date.

The information provided to the Superintendent by a PCSA must include (1) a summary of the nature of the allegations contained in the report and (2) the final disposition of the investigation of the report or, if the investigation is not complete, the status of the investigation. Upon a written request from the Superintendent, the PCSA must provide additional information about the agency's investigation, including information about the alleged child victim, the alleged perpetrator, and other persons considered important to the investigation. That additional information is described in the table below.

⁹ R.C. 2151.421 and 5153.17, neither section in the bill.

Information about a PCSA investigation of child abuse or neglect provided to the Superintendent of Public Instruction	
Information about the alleged child victim	<ul style="list-style-type: none"> (1) Name; (2) Date of birth; (3) Address and telephone number; (4) Grade level; (5) Name and contact information of the child's parent or guardian; (6) If available, name and contact information of any medical facility that provided treatment to the child, if the child was injured in connection with the abuse or neglect; (7) A summary of interviews with the child, including the time and place the abuse or neglect occurred and other circumstances surrounding the incident, or the contact information of another entity that conducted interviews; and (8) Copies of written correspondence between the child and the alleged perpetrator that the PCSA used to determine that abuse or neglect occurred, unless release of the correspondence is prohibited by law.
Information about the alleged perpetrator	<ul style="list-style-type: none"> (1) Name; (2) Date of birth; (3) Address and telephone number; (4) Name of school district and school that employed the person when the report was made; (5) If available, name and contact information of any medical facility that treated the person, if the person was injured in connection with the abuse or neglect; (6) A summary of interviews with the person, including the time and place the abuse or neglect occurred and other circumstances surrounding the incident, or the contact information of another entity that conducted interviews; (7) Copies of written correspondence between the person and the alleged child victim that the PCSA used to determine that abuse or neglect occurred, unless release of the correspondence is prohibited by law; and (8) If the person has been the subject of previous reports where the PCSA determined that physical or sexual child abuse occurred, a summary of the chronology of those reports, the final disposition of the investigations of the reports or the status of an ongoing investigation, and any underlying documentation concerning those reports.
Information about each other person the PCSA determined to be important to the investigation (including the reporter if authorized)	<ul style="list-style-type: none"> (1) Name; (2) Address and telephone number; and (3) A summary of interviews with the person or the contact information of another entity that conducted interviews.

All of the information in the table must be provided to the Superintendent by the PCSA, except in two circumstances. First, if the county prosecutor intends



to file criminal charges against the alleged perpetrator based on the allegations contained in the report, the prosecutor must authorize the release of the information to the Superintendent and may restrict the information so as not to interfere with the criminal case. Second, since continuing law protects the identity of persons who report incidents of child abuse or neglect,¹⁰ the bill prohibits a PCSA from providing the Superintendent with any information about the person who made the report, unless the reporter grants written permission to release the information.

Whenever a PCSA provides information to the Superintendent about an investigation involving a licensee of the State Board, the PCSA must notify the Superintendent that the information is confidential and that permitting or encouraging unauthorized dissemination of the information is a fourth-degree misdemeanor. If the PCSA determines that any person involved in a State Board investigation of the licensee's actions commits or otherwise causes the unauthorized dissemination of information provided by the PCSA, the PCSA must provide written notification of the dissemination to the county prosecutor.

Each PCSA must document any information provided to the Superintendent in its investigative record. The documentation must include (1) a list of the information provided, (2) the date the information was provided, (3) the name of the person to whom the information was provided, (4) the reason for providing the information, (5) a copy of the prosecutor's authorization to provide the information, if necessary, and (6) a copy of any notification provided to the prosecutor regarding unauthorized dissemination of the information.

Finally, the bill grants PCSA employees who provide information to the Superintendent in good faith immunity from civil or criminal liability for injury, death, or loss to person or property that results from the provision of the information.

Involving persons licensed or certified to operate a family day-care home

(R.C. 5153.175)

Current law requires a PCSA to promptly provide to the Department of Job and Family Services or a county department of job and family services any information the PCSA determines to be relevant for the purposes of evaluating the fitness of a person who has applied for licensure of a type A family day-care home or certification of a type B family day-care home. The information to be given includes (1) a summary report of the chronology of abuse and neglect reports of which the person is the subject and the final disposition of the investigation of the

¹⁰ R.C. 2151.421(H)(1), not in the bill.

reports or, if the investigations have not been completed, the status of the investigations and (2) any underlying documentation concerning those reports.

Under the federal Child Abuse Prevention and Treatment Act, receipt of federal funds for child protective services is conditioned on the enactment of provisions specifying that information from a child abuse or neglect report may be shared with other governmental entities only if the report is substantiated.¹¹ Therefore, the bill requires a PCSA to provide information to the Department of Job and Family Services or a county department of job and family services about a person applying to operate a type A or type B family day-care home only when the PCSA has determined that child abuse or neglect involving the person has actually occurred. The information required to be provided is the same as under current law, except that the summary of previous child abuse and neglect reports involving the person must be limited to those reports where the PCSA concluded that abuse or neglect did occur. Also, the bill requires the PCSA to notify the Department or county department that the information is confidential and that permitting or encouraging its unauthorized dissemination is a fourth-degree misdemeanor.

Background

A PCSA is (1) a county children services board, (2) a county department of job and family services, or (3) a private or government entity chosen by a board of county commissioners to provide protective, foster, adoption, and other similar services to children in a county.¹² Under current law not changed by the bill, when a PCSA receives a report of child abuse or neglect, it must investigate the report within 24 hours to determine the circumstances surrounding the alleged incident and the persons responsible. If the child abuse or neglect allegedly occurred in or involved an "out-of-home care entity," the agency must provide written notification of the allegations and the name of the alleged perpetrator, by the end of the day following the day the agency receives the report, to the administrator, director, or other chief administrative officer of the entity (unless that person is the alleged perpetrator, in which case the agency must notify the owner or governing board of the out-of-home care entity). An "out-of-home care entity" includes a type A family day-care home, child care provided by a type B family day-care home, a public school, a chartered nonpublic school, or, if the alleged perpetrator of the abuse or neglect is an individual licensed by the State Board of Education, a nonchartered nonpublic school.¹³

¹¹ 42 U.S.C. § 5106a(b)(2)(A)(xii).

¹² R.C. 5153.01 and 5153.02, neither section in the bill.

¹³ R.C. 2151.011(B)(27) and 2151.421, neither section in the bill.

Delayed implementation of twice-annual reporting of formula ADM

(R.C. 3317.01, 3317.02, and 3317.03)

"Formula ADM" (average daily membership) is the figure that represents for school funding purposes each school district's full-time-equivalent enrollment. Under former law, each district certified its formula ADM once annually, for the first full week of October. However, Am. Sub. H.B. 66 of the 126th General Assembly (the biennial operating budget) requires each school district, beginning in fiscal year 2006, to certify its formula ADM twice each fiscal year. The first count is the traditional October count and the second count is for the third full week of February. The October certification is used to calculate a district's state payments for the first half of the school year (July through December) and the average of the February and October certifications is used to calculate payments for the second half of the school year (January through June).

The bill delays implementation of the second annual formula ADM certification for one year, until fiscal year 2007. Therefore, in fiscal year 2006, payments to school districts will continue to be calculated based solely on the October count. A corresponding provision that allows for adjustments in payments to districts that experience enrollment growth also will continue through fiscal year 2006 under the bill. Under that provision, if a district's formula ADM for the first full week of February is at least 3% more than the formula ADM certified for October, the higher formula ADM must be used to calculate the remaining payments to the district.

Penalty for reporting inaccurate attendance data

(Section 6)

Within six months after the bill's effective date, the Department of Education must develop a proposal for an appropriate penalty for school districts and community schools that intentionally report inaccurate data regarding formula ADM (see above) or community school ADM and other attendance figures. The proposal also must include legislative recommendations regarding existing penalties for reporting inaccurate data. Copies of the proposal must be submitted to the House and Senate Education Committees, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House. The Department must provide public testimony on the proposal before the education committees.

Use of student data verification codes

Background

When a student initially enrolls in a school district or community school, the district or school must assign a unique data verification code to that student. The data verification code, commonly known as the Statewide Student Identifier (SSID), allows districts and community schools to confidentially report student-level data to the Department of Education through the Education Management Information System (EMIS). Generally, the Department is not permitted to have access to information that would enable a data verification code to be matched with personally identifiable student data.¹⁴

Confidentiality of achievement test scores

(Sections 3, 4, and 5)

Am. Sub. H.B. 66 of the 126th General Assembly (the biennial operating budget) enacted several provisions to protect the confidentiality of student scores on the statewide achievement tests. First, it authorized the State Board of Education to require the use of data verification codes to protect student confidentiality. Second, it required that each achievement test include the data verification code of the student to whom it is administered. Finally, it specified that the prohibition against the Department of Education releasing achievement test scores to any entity other than the students' school districts also applies to any company with which the Department contracts for the scoring of the tests.¹⁵

Under Am. Sub. H.B. 66, these provisions were to take effect July 1, 2006. This bill accelerates the effective date of the provisions by making them operative on this bill's effective date.

Administration of Educational Choice Scholarship Pilot Program

(R.C. 3301.0714(D)(2), 3310.11, and 3310.12)

The Educational Choice Scholarship Pilot Program provides scholarships to pay tuition at chartered nonpublic schools for students assigned to schools (other than in the Cleveland Municipal School District, the area of the Cleveland Scholarship Pilot Program) that have been declared to be in "academic

¹⁴ R.C. 3301.0714(D)(2).

¹⁵ R.C. 3301.0711(A)(1) and (I), not in the bill.

emergency" for three consecutive school years.¹⁶ The first scholarships are scheduled to be awarded for the 2006-2007 school year.

The bill permits the Department of Education to request the data verification codes of students applying for scholarships from those students' resident school districts or, if a student is enrolled in a community school, from that school. This authority, which is an exception to the general prohibition against the Department having access to data verification codes when they could be matched with personally identifiable student data, is limited solely to administering the Educational Choice Scholarship Pilot Program. School districts and community schools must provide a student's data verification code to the Department or the student's parent, upon request, in a manner specified by the Department. If a student will be entering kindergarten and has not yet been assigned a data verification code, the resident school district must assign a code to the student prior to submission.

The Department must provide each scholarship student's data verification code to the chartered nonpublic school in which the student enrolls. When a scholarship student takes the statewide achievement tests, which is a requirement for maintaining eligibility for the scholarship program, the chartered nonpublic school must administer the tests in the same manner as public schools, including placing the student's data verification code on each test (see above).¹⁷

Neither the Department nor a chartered nonpublic school may release a student's data verification code to any person, unless such release is otherwise authorized by law. The bill specifies that, except for materials that contain both a student's name or other personally identifiable data and the student's data verification code, documents relative to the scholarship program that are held by the Department are public records and may be released in accordance with state and federal privacy laws.¹⁸

¹⁶ *The Department of Education assigns a performance rating to each school district and building based on the federal No Child Left Behind Act of 2001 and standards adopted by the State Board of Education (R.C. 3302.03, not in the bill).*

¹⁷ *See R.C. 3301.0711(A)(1) and (K) and 3310.03(B), neither section in the bill.*

¹⁸ *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*

Applying for tuition reimbursement for special education students

(R.C. 3323.091)

Continuing law requires the Department of Mental Health, Department of Mental Retardation and Developmental Disabilities, Department of Youth Services, and Department of Rehabilitation and Correction to establish special education programs for disabled students served by institutions under their control. The superintendents of those institutions may apply to the Department of Education for special education and related services weighted funding (for school-age children) or unit funding (for preschool children) for each student they serve. In addition, each institution is entitled to tuition deducted from the state aid account of the student's resident school district. To claim the tuition under current law, an institution's superintendent must annually submit to the Department a statement that includes the disabled student's name and resident school district.

The bill requires superintendents to use each special education student's data verification code, rather than the student's name, to identify the student for the purpose of receiving tuition reimbursements.

Reporting of handicapped preschool children to General Assembly

(R.C. 3323.20)

Beginning July 1, 2006, the Department of Education must make annual electronic reports to the General Assembly on the number of handicapped preschool children for whom the Department paid a provider for services during the previous fiscal year. Current law requires this number to be disaggregated by the six categories of disabilities for which special education weighted funding is calculated.¹⁹ However, under current State Board of Education rules, handicapped preschool children are identified as disabled based on documented deficits in one or more areas of development, such as cognitive ability or motor skills, instead of using the same categories applicable to K through 12 students. Therefore, the bill requires the Department to report the number of handicapped preschool children disaggregated according to these developmental deficiencies.

of birth, dates of attendance, and participation in recognized activities and sports. Ohio has its own statute that is similar to FERPA (R.C. 3319.321, not in the bill).

¹⁹ *These categories are (1) speech and language handicap, (2) specific learning disabled, developmentally handicapped, or other health handicapped-minor, (3) hearing handicapped, vision impaired, or severe behavior handicapped, (4) orthopedically handicapped or other health handicapped-major, (5) multihandicapped, and (6) autistic, having traumatic brain injuries, or both visually and hearing disabled (R.C. 3317.013, not in the bill).*

Timelines for completion of value-added analyses

(R.C. 3302.021)

Continuing law requires the Department of Education, by July 1, 2007, to incorporate a "value-added progress dimension" into the annual performance ratings issued for school district and buildings. Commonly referred to as the value-added effect, this measure uses achievement test data to assess the academic gains made by individual students over the course of a school year. In implementing the value-added progress dimension, the Department must use a system previously used by a nonprofit organization led by the Ohio business community and may presumably contract with the organization for that purpose.²⁰ The bill specifies that any value-added data analysis conducted by an entity under contract with the Department must be completed in accordance with timelines established by the Superintendent of Public Instruction.

COMMENT

Although silent on the issue, the bill by its operation appears to restrict a school's ability to enter into a termination agreement that contains a stipulation prohibiting the school from revealing the reason that a former employee resigned or was terminated.

Current law, not changed by the bill, also provides a qualified immunity against civil liability for damages for public employers, including school districts and community schools, in disclosing information about the performance of former employees.²¹

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-23-05	p. 232
Reported, H. Education	06-09-05	pp. 943-944
Passed House (93-0)	06-15-05	pp. 960-962
Reported, S. Education	---	---

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²⁰ *The Ohio Business Roundtable's "Battelle for Kids" has developed a model value-added system that meets the statutory requirements.*

²¹ *R.C. 4113.71, not in the bill.*

