



Jennifer Stump

*Final Analysis*  
*Legislative Service Commission*

**Sub. H.B. 190**  
127th General Assembly  
(As Passed by the General Assembly)

**Reps.** Hite, Bupp, Wagner, J. McGregor, Combs, Adams, Goodwin, Wagoner, Stebelton, Webster, Letson, Hottinger, Peterson, Latta, Huffman, Otterman, Okey, Setzer, Dyer, Patton, Lundy, Luckie, Garrison, Evans, Celeste, Heard, Collier, Schlichter, Brady, Aslanides, Bacon, Bolon, Boyd, Budish, Core, DeBose, Domenick, Fende, Fessler, Flowers, Gibbs, Goyal, J. Hagan, Harwood, Healy, Hughes, Koziura, Mallory, Mandel, Oelslager, Sayre, Schindel, D. Stewart, Sykes, Szollosi, B. Williams, Yuko, Zehringer

**Sens.** Roberts, Morano, Sawyer, Jacobson, Mumper, Padgett, Bocchieri, Buehrer, Faber, Fedor, Gardner, Grendell, Harris, Kearney, Niehaus, Schaffer, Schuler, Schuring, Spada, Stivers, Wilson, Goodman, R. Miller, D. Miller, Smith, Cafaro, Mason

Effective date: Emergency, November 14, 2007

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**ACT SUMMARY**

**ACHIEVEMENT TESTING**

- Revises the scheduling of the spring administration of the elementary achievement tests from no earlier than the week containing May 1, as under former law, to no earlier than the week containing April 24.
- Provides for the elementary achievement tests to be administered over a two-week period, instead of consecutive days.

**TUITION AND INSTRUCTIONAL FEES**

- Permits school districts that are not eligible for state payments for all-day kindergarten to charge tuition on a sliding scale for all-day kindergarten classes.
- Requires the Department of Education to issue an annual report on tuition charged by school districts for all-day kindergarten.

- Requires the Department of Education, by April 30, 2008, to issue a report on fees charged by school districts for (1) classes or programs that are offered during the regular school day or after school and for which students earn credit or are assigned grades, (2) instructional materials, and (3) summer school.

### **EDUCATOR MISCONDUCT**

- Requires school districts, educational service centers, community schools, STEM schools, and chartered nonpublic schools to request criminal records checks for all job applicants and employees, not merely those whose duties entail the care of children.
- Requires private contractors hired by those employers to request criminal records checks for job applicants and employees who will work in schools.
- Requires subsequent criminal records checks every five years for school employees who are not subject to periodic post-employment records checks under other laws.
- Requires that the initial and periodic criminal records checks of school employees, including State Board of Education licensees, include checks of FBI records as well as state records.
- Permits the State Board of Education to revoke an expired educator license for misconduct.
- Requires the Educator Standards Board to make recommendations for a code of conduct for educators.
- Directs the Department of Education, by December 31, 2007, to recommend penalties for failure to report to the Department or the State Board of Education information about educators who have committed an act unbecoming to the teaching profession or that makes them a threat to students' safety.

### **OTHER PROVISIONS**

- Permits the Superintendent of Public Instruction to waive the minimum number of school days in the 2006-2007 school year for a joint

vocational school district that experienced delays in a state-assisted construction project.

- Extends to July 1, 2008, the deadline for issuance of recommendations by the public-private collaborative commission studying the promotion of student success in conjunction with the Ohio Core curriculum.
- Removes the Directors of Natural Resources and Job and Family Services from the Ohio Community Service Council and adds two members to the number appointed by the Governor.

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## CONTENT AND OPERATION

### State achievement tests

#### Background

Each city, exempted village, and local school district, each community school, and each science, technology, engineering, and math (STEM) school is required to administer the state achievement tests to its students annually.<sup>1</sup> The following table shows the achievement tests given in each grade.

|                 | Ohio Achievement Tests |         |      |         |                |
|-----------------|------------------------|---------|------|---------|----------------|
|                 | Reading                | Writing | Math | Science | Social Studies |
| <b>Grade 3</b>  | X                      |         | X    |         |                |
| <b>Grade 4</b>  | X                      | X       | X    |         |                |
| <b>Grade 5</b>  | X                      |         | X    | X       | X              |
| <b>Grade 6</b>  | X                      |         | X    |         |                |
| <b>Grade 7</b>  | X                      | X       | X    |         |                |
| <b>Grade 8</b>  | X                      |         | X    | X       | X              |
| <b>Grade 10</b> | X                      | X       | X    | X       | X              |

The tenth-grade tests are known collectively as the Ohio Graduation Tests (or "OGT"). A student enrolled in a school district, community school, STEM school, or chartered nonpublic school generally must pass all five areas of the OGT in order to qualify for a high school diploma. Also, based largely on student test scores on all achievement tests, the Department of Education annually rates the performance of each public school district and building, including most community schools.

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<sup>1</sup> Students who attend a chartered nonpublic school with a scholarship awarded under the Educational Choice Scholarship Pilot Program also must take the achievement tests (R.C. 3310.14, not in the act).

**Spring administration dates for the elementary tests**

(R.C. 3301.0710(C)(1) and (2))

The State Board of Education selects the dates for administration of the achievement tests, within statutory parameters. Former law required the spring administration of the *elementary*-level achievement tests (not the OGT) to begin no earlier than Monday of the week containing May 1. The third-grade reading test also must be given on a date prior to December 31.

The act moves the earliest date for the spring elementary tests to Monday of the week containing April 24, rather than May 1. Therefore, the earliest possible administration date under the act is April 19, instead of April 26. The act does not affect the December administration of the third-grade reading test.<sup>2</sup>

**Duration of the testing period**

(R.C. 3301.0710(H)(3))

Prior law specified that, when the State Board designated the dates for the administration of all *elementary*-level achievement tests, the Board had to require that the tests for each grade level be given on consecutive days. The act removes this requirement and, instead, specifies that the Board must require the elementary tests to be given "over a period of two weeks." This provision applies to the spring and December administrations of the elementary tests, but apparently it does not apply to the OGT.

**Shipping date of elementary tests**

(R.C. 3301.0711(G)(1))

Continuing law establishes a deadline for school districts to submit the elementary achievement tests to the scoring company hired by the Department of Education. Districts' submission deadlines depend on the size of their enrollment. Districts with a total enrollment of less than 2,500 must submit their tests by the Friday after the tests have been administered. Districts with enrollments of 2,500 or more, but less than 7,000, must submit their tests by the Monday after the tests have been administered. Districts with enrollments of 7,000 or more must submit

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<sup>2</sup> The act also does not affect the administration dates of the OGT, which must be no earlier than Monday of the week containing March 15 for 10th graders taking the test for the first time, and one date prior to December 31 and one date after December 31 but prior to March 31 for 11th and 12th graders re-taking a test (R.C. 3301.0710(C)(3)).

their tests by the Tuesday after the tests have been administered.<sup>3</sup> Since community schools and STEM schools are required to comply with the achievement testing law as if they were school districts,<sup>4</sup> it appears that the new graduated submission dates also apply to those schools.

The act clarifies that these submission deadlines refer to the days after *all* of the elementary achievement tests have been administered. In other words, all of the tests must be submitted to the scoring company at one time, after the final test has been administered for the designated testing period.

### **Tuition for all-day kindergarten**

(R.C. 3321.01(H); Section 4)

The act specifies that a school district that is *not* eligible for state poverty-based assistance payments for all-day kindergarten may charge fees or tuition for students enrolled in all-day kindergarten classes. If a district charges for all-day kindergarten, it must develop a sliding fee schedule based on a student's family income.<sup>5</sup> The act further states that its amendments regarding tuition for all-day kindergarten "are intended to clarify the General Assembly's original intent related to a school district's authority to charge fees or tuition for students enrolled in all-day kindergarten as it existed prior to the [act's] effective date, are remedial in nature, and are not intended to create any new authority."

### **Annual tuition surveys**

Under the act, the Department of Education must conduct an annual survey of all school districts authorized to charge fees or tuition for all-day kindergarten. Each district must provide the Department with the following information:

- (1) Whether the district charges fees or tuition for all-day kindergarten;
- (2) The amount of the fees or tuition charged;

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<sup>3</sup> Districts must submit tests administered during the make-up period, which is the nine days following the test's original administration date, by the Friday after the test is given.

<sup>4</sup> R.C. 3314.03(A)(11)(d) and 3326.14, latter not in the act.

<sup>5</sup> R.C. 3314.03(A)(11)(d) requires a community school to comply with R.C. 3321.01 as if it were a school district. Since the act amends R.C. 3321.01 to specify a school district's authority to charge for all-day kindergarten, it is possible that the act also may authorize community schools to charge for all-day kindergarten. R.C. 3314.08(I) (not in the act), however, states that a community school may not charge tuition for any student.

(3) How many of the students for whom tuition is charged are eligible for a free or reduced price lunch; and

(4) How many students are enrolled in traditional half-day kindergarten instead of all-day kindergarten.

The Department must issue an annual report on the results of the survey and post the report on its web site. Each report is due by April 30 with the first report to be published by April 30, 2008.

### **Background**

Generally, each kindergarten student is counted as one-half of one full-time-equivalent (FTE) student for purposes of calculating state operating funds for the school district or community school the student attends.<sup>6</sup> That is because the law presumes that kindergarten students attend school half of the time that students in grades 1 through 12 attend school. Thus, under the base-cost formula, each kindergarten student accounts for one-half of the full formula amount.<sup>7</sup> As described below, some districts also receive an additional poverty-based assistance payment for providing all-day kindergarten. Many school districts offer full-day kindergarten programs regardless of whether they receive state funding for the equivalent of a full day of service.

**Poverty-based assistance for all-day kindergarten.** In addition to their other state payments, certain school districts with relatively high concentrations of poverty may be eligible to receive a poverty-based assistance payment for the provision of all-day kindergarten. A district with a "poverty index" of 1.0 or greater (meaning the district's percentage of students living in families receiving public assistance is at least as high as the statewide percentage) or a district with a three-year average formula ADM (average daily membership) that is greater than 17,500 students is eligible to receive this payment. The amount of this payment is equal to one-half of the formula amount for each child attending all-day kindergarten. In other words, the district will receive the other half of the full formula funding to account for providing a full day of service to the student. The law also provides that a district that received this payment for a previous fiscal year continues to be eligible even if its poverty index goes below the 1.0 threshold.<sup>8</sup>

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<sup>6</sup> First paragraph of R.C. 3317.03, not in the act.

<sup>7</sup> R.C. 3317.012 and 3317.022(A), neither section in the act. The formula amount is \$5,565 in fiscal year 2008 and \$5,732 in fiscal year 2009.

<sup>8</sup> R.C. 3317.029(D), not in the act.

**All-day kindergarten payments to community schools.** Community schools receive state payments that are deducted from the state aid accounts of the resident school districts of their students. Accordingly, a community school (other than an Internet- or computer-based community school) may receive the all-day kindergarten poverty-based assistance payment of one-half the formula amount for each student for whom it actually provides all-day kindergarten, as long as the student's resident district is eligible for the payment, regardless of whether that district actually provides all-day kindergarten.<sup>9</sup>

**School district fee survey**

(Section 7)

The act directs the Department of Education to conduct a survey of all school districts, including joint vocational school districts, regarding instructional fees charged by the districts. By April 30, 2008, the Department must issue a report on the results of the survey and post the report on its web site. As part of the survey, each district must inform the Department of the following:

- (1) Whether the district charges fees for (a) classes or programs that are offered during the regular school day or after school and for which students earn credit or are assigned grades, (b) instructional materials, or (c) summer school;
- (2) The amount of the fees charged;
- (3) The grade levels to which the fees apply;
- (4) Whether the district uses a sliding fee scale based on family income;
- (5) Whether the district waives the fees or otherwise provides for their payment for students whose parents are unable to pay; and
- (6) Any other information deemed relevant by the Department.

**Criminal records checks of all school employees**

(R.C. 3319.39 and 3319.391; conforming changes in R.C. 109.57, 3314.03, 3314.19, 3319.089, 3326.11, 3326.23, and 3327.10)

**Background**

Law retained in part by the act prescribes criminal records checks of school employees as follows:

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<sup>9</sup> R.C. 3314.13, not in the act.

(1) Under continuing law, the State Board of Education must request a criminal records check of each person applying for or renewing an educator license or permit, an educational aide permit, or a pupil-activity program permit (for extracurricular coaches). The State Board also must request records checks every five years of individuals who hold permanent teaching certificates issued under the former teacher certification system.

(2) Under prior law, individuals applying for employment with a school district, educational service center, community school, STEM school, or a chartered nonpublic school had to submit to a criminal records check if applying for a position responsible for the care, custody, or control of children. If the records check revealed a conviction of or plea of guilty to certain crimes (mostly sex offenses, other offenses of violence, and drug offenses), an applicant could not be hired for a position responsible for the care, custody, or control of children. However, continuing law permits the State Board to adopt rules specifying circumstances under which a district, service center, or school may hire an otherwise disqualified individual who meets "standards in regard to rehabilitation."<sup>10</sup>

(3) The criminal records checks for both licensees and prospective employees must be conducted through the Bureau of Criminal Identification and Investigation (BCII). Formerly, the State Board or an employer could request BCII also to conduct an FBI check of the individual, but was required to request an FBI check if the individual could not prove Ohio residency for the prior five years or that the individual had been subject to an FBI check during that period. A criminal records check may be waived for an individual who presents a certified copy of the results of a BCII check that was conducted within the past year.

(4) Continuing law specifies that school bus drivers, whether employed by a school or a contractor, must be certified and have a criminal records check, including a mandatory FBI check, prior to transporting students. Another records check must be completed every six years upon re-certification. School bus drivers also must have a driving record check semiannually.<sup>11</sup>

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<sup>10</sup> The State Board's rehabilitation standards are in Ohio Administrative Code 3301-20-01(E) and (F).

<sup>11</sup> The requirement for six-year criminal records checks is prescribed by an administrative rule of the State Board of Education (Ohio Administrative Code 3301-83-06). The act codifies this requirement by amending it into R.C. 3327.10.

### **The act**

The act establishes several new requirements with respect to screening school employees for criminal histories. First, it requires criminal records checks of all employees and job applicants, not just those whose job duties entail the care, custody, or control of children. The employers that must request the checks are school districts, educational service centers, community schools, STEM schools, and chartered nonpublic schools. In addition, private contractors hired by any of these employers must request the checks for their employees who work in schools.

Second, the employers must request checks of both BCII records and FBI records, regardless of how long an employee has resided in Ohio.

Third, for employees who are not licensed by the State Board of Education and do not operate vehicles for pupil transportation, the checks, including FBI checks, must be repeated every five years. For nonlicensed individuals employed when the act takes effect, the employers must initiate the cycle by requesting a criminal records check by a date prescribed by the Department of Education. The act does not change the records checks requirements for licensed educators and school bus drivers. Licensed educators remain subject to periodic records checks when they renew their licenses and school bus drivers are subject to the checks on the same six-year cycle prescribed by former law.

Finally, the act explicitly prohibits an employer from hiring or continuing to employ any person whose criminal records check reveals a conviction of or plea of guilty to any crime that disqualifies an individual for employment with a public or chartered nonpublic school, unless the person meets the State Board's rehabilitation standards.

### **Mandatory FBI checks for licensees**

(R.C. 3319.291)

The act requires the State Board of Education to request BCII to include an FBI records check of each individual applying for or renewing a license or permit and of each permanent certificate holder undergoing a five-year check. Formerly, the State Board was authorized to request an FBI check of each applicant or licensee, and was required to request one only if the individual could not prove Ohio residency for the prior five years or that the individual had been subject to an FBI check in that period.

## **Revocation of expired educator license**

(R.C. 3319.31)

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 (see below). The act further permits the State Board, for any of the same reasons, to revoke a license that was previously issued and has expired.

### **Background**

Under continuing law, the State Board may refuse, suspend, limit, or revoke an educator license 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.

### **Recommendations for educator code of conduct**

(Section 9)

The Educator Standards Board is a 21-member body charged with making recommendations to the State Board of Education regarding (1) standards for teachers and principals, (2) standards for the renewal of educator licenses, and (3)

standards for educator professional development.<sup>12</sup> Under the act, the Educator Standards Board also must recommend a code of conduct for persons who are licensed by the State Board. The recommendations must include descriptions of inappropriate educator conduct and disciplinary actions that should be taken against educators who engage in each type of misconduct, including taking action against a person's license. The recommendations are due three months after the act's effective date.

### **Penalties for failure to report educator misconduct**

(Section 8)

The act requires the Department of Education, by December 31, 2007, to recommend to the General Assembly penalties for failure to report to the Department or the State Board of Education information about a person licensed by the State Board who has committed an act unbecoming to the teaching profession or that makes the person a threat to students' safety. Copies of the recommendations must be provided to the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House of Representatives, and the chairpersons and ranking minority members of the education committees.

### **Background on reporting educator misconduct**

**Reports by employers.** Continuing law requires public and chartered nonpublic schools to report to the Superintendent of Public Instruction specified information regarding misconduct by their employees who are licensed by the State Board. A school district or educational service center board, county MR/DD board, community school governing authority, STEM school governing body, 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, been found guilty by a jury or court of, or been convicted of an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee;

(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

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<sup>12</sup> R.C. 3319.60 and 3319.61, neither section in the act.

teaching profession"<sup>13</sup> or an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee;

(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.<sup>14</sup>

**Reports by public children services agencies.** Each public children services agency (PCSA) must provide to the Superintendent of Public Instruction information regarding the agency's investigation of a report of child abuse or neglect involving a person licensed by the State Board, if the agency determines that child abuse or neglect occurred and the abuse or neglect is related to the person's duties and responsibilities under the license.<sup>15</sup> 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 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.

**Reports by prosecutors.** If a person who holds an educator license is found guilty of a crime that is grounds for action against the license, the prosecutor in the case must notify the State Board of the license holder's name, address, and the crime for which the person was found guilty.<sup>16</sup>

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<sup>13</sup> "Conduct unbecoming to the teaching profession" is as described in rules adopted by the State Board.

<sup>14</sup> R.C. 3319.313, not in the act; see also R.C. 3314.03(A)(11)(d), 3326.11, and 5126.253, latter not in the act.

<sup>15</sup> R.C. 5153.176, not in the act.

<sup>16</sup> R.C. 3319.52, not in the act.

**Waiver from minimum days for joint vocational school districts**

(Section 3)

The act permits the Superintendent of Public Instruction, upon request of the superintendent of a joint vocational school district, to grant the district a waiver from the minimum number of school days required by law for the 2006-2007 school year if all of the following conditions applied to the district in that school year:

(1) The school district was participating in the Vocational School Facilities Assistance Program and the Executive Director of the Ohio School Facilities Commission certified to the Superintendent of Public Instruction that the district's project experienced delays due to unanticipated structural conditions.

(2) The project delays caused the district to be open for instruction for fewer days or hours than required by law.

(3) The district required its students to engage in activities outside of school that were relevant to the subject areas in which they were missing instruction to offset the reduction in instructional time.

Waivers must be granted within 30 days after the act's effective date. No waiver may be granted to a district that was closed for more than 11 days in excess of the 5 days it can be closed for a public calamity.

This provision is identical to a provision enacted by Section 4 of Am. Sub. H.B. 276 of the 126th General Assembly, effective March 30, 2007.

**Ohio Core public-private collaborative commission**

(Sections 5 and 6)

Am. Sub. S.B. 311 of the 126th General Assembly established a public-private collaborative commission to make recommendations for promoting greater incidence of student success in conjunction with the Ohio Core curriculum, which is the new minimum high school curriculum for public and chartered nonpublic school students in the Class of 2014 and later. The commission's recommendations must address "methods of encouraging students and their families to develop a greater vision for their successful future in Ohio, including consideration of career opportunities afforded by higher education and the use of mentorships, internships, and other programs to provide students and their families with guidance . . . toward pursuing higher education and career opportunities." The act extends the commission's deadline for issuing its recommendations from December 31, 2007, to July 1, 2008.

**Ohio Community Service Council**

(R.C. 121.40)

The act removes the Director of Natural Resources and the Director of Job and Family Services from the Ohio Community Service Council and adds two more members to the number of public members who are appointed by the Governor with the advice and consent of the Senate. The Council continues to consist of 21 members.

**Background**

The Council manages the federally funded AmeriCorps program in Ohio, promotes volunteerism and community service, and assists various state boards and departments, school districts, and institutions of higher education in coordinating community service programs.

Twenty-one Council members under the act include the Superintendent of Public Instruction, the Chancellor of the Ohio Board of Regents, the Director of Youth Services, the Director of Aging, the chairpersons of the House and Senate education committees, and 15 Governor's appointees. The Governor's appointees include teachers and school administrators, students, parents, and representatives of youth organizations, organizations engaged in volunteer program development and management, business, government, nonprofit organizations, social service agencies, veterans organizations, religious organizations, or philanthropies that support and encourage volunteerism.

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**HISTORY**

| ACTION                                      | DATE     |
|---|----------|
| Introduced                                  | 04-26-07 |
| Reported, H. Education                      | 06-20-07 |
| Passed House (97-0)                         | 06-26-07 |
| Reported, S. Education                      | 10-31-07 |
| Passed Senate (32-0)                        | 10-31-07 |
| House concurred in Senate amendments (96-1) | 11-07-07 |

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